MOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

—

, 1971

18

tee on Commerce

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

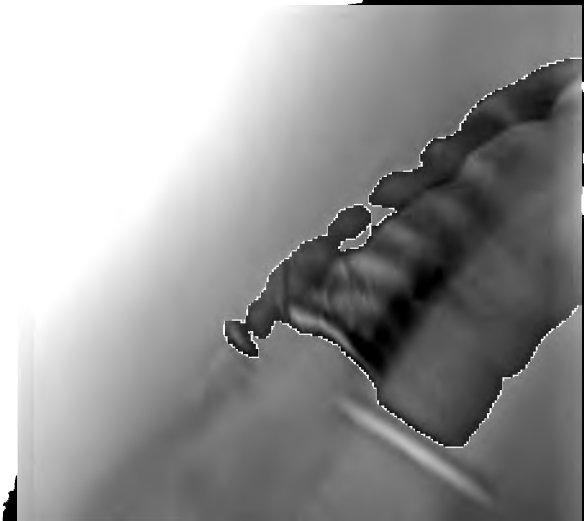
MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
64-345 O WASHINGTON : 1971



AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

2-1

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

Commerce

TOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

SELECT COMMITTEE

WARREN G. MAGNUSON, Washington, Chairman

[illegible], Rhode Island	[illegible], New Hampshire
[illegible], Georgia	[illegible], Vermont
[illegible], Arkansas	JAMES B. PEARSON, Kansas
[illegible], Florida	ROBERT P. griffin, Michigan
[illegible], Louisiana	HOWARD H. BAKER, Jr., Tennessee
[illegible], Ohio	MARLOW W. Cook, Kentucky
[illegible], North Carolina	MARK O. HATFIELD, Oregon
[illegible], Hawaii	TED STEVENS, Alaska
WILLIAM B. SPONG, Jr., Virginia	

PHILIP J. LOWRY, Staff Director
MICHAEL PERSHING, Chief Counsel
S. LEE SCHLENKER, Staff Counsel
ARTHUR PARKER, Jr., Minority Staff Director
PETER PROWITT, Minority Professional Staff

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
WILLIAM B. SPONG, JR., Virginia

NORRIS COTTON, New Hampshire
WINSTON PROUTY, Vermont
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan
HOWARD H. BAKER, JR., Tennessee
MARLOW W. COOK, Kentucky
MARK O. HATFIELD, Oregon
TED STEVENS, Alaska

FREDERICK J. LORDAN, *Staff Director*
MICHAEL PERTSCHUK, *Chief Counsel*
S. LYNN SUTCLIFFE, *Staff Counsel*
ARTHUR PANKOPF, JR., *Minority Staff Director*
PETER POWELL, *Minority Professional Staff*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

TOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

OTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
WILLIAM B. SPONG, JR., Virginia

NORRIS COTTON, New Hampshire
WINSTON PROUTY, Vermont
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan
HOWARD H. BAKER, JR., Tennessee
MARLOW W. COOK, Kentucky
MARK O. HATFIELD, Oregon
TED STEVENS, Alaska

FREDERICK J. LORDAN, *Staff Director*
MICHAEL PERTSCHUK, *Chief Counsel*
S. LYNN SUTCLIFFE, *Staff Counsel*
ARTHUR PANKOPF, JR., *Minority Staff Director*
PETER POWELL, *Minority Professional Staff*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

THURSDAY, MAY 6, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 11 a.m., pursuant to recess, in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman of the Committee) presiding.

Present: Senators Magnuson and Hart.

The CHAIRMAN. The committee will resume its hearings on the insurance bills. Robert Joost is the next witness.

We will be glad to hear from you. I understand that you are employed by the American Trial Lawyers Association, is that correct?

STATEMENT OF ROBERT H. JOOST

Mr. JOOST. I am from the American Trial Lawyers.

My name is Robert H. Joost. I am a lawyer, and I am employed by the American Trial Lawyers Association at its headquarters in Cambridge, Mass.

I am submitting this statement for the record in favor of pending legislation in the Congress to establish on a nationwide basis a system of compensation of victims of automobile accident regardless of fault.

Since the American Trial Lawyers Association opposes no-fault automobile insurance legislation, I am submitting this statement for myself only and not for the association.

The CHAIRMAN. Can I interrupt just a minute. Do we have a formal statement in opposition from the Trial Lawyers Association?

Senator HART. They testified yesterday in very strong opposition.

Mr. JOOST. First to establish my own professional credentials, I am a graduate, magna cum laude, of the Harvard Law School, where I was an editor of volumes 72 and 73 of the Harvard Law Review, and I am a graduate, magna cum laude, of Yale College, where I was a member of Phi Beta Kappa. I have also studied at Columbia University as a graduate student in economics.

In addition to my professional work from 1962 to the present for the American Trial Lawyers Association—until 1964 it was called the NACCA Bar Association—I have been heavily involved in two major statutory reform efforts in Massachusetts. I participated in the molding and remodeling of the new Massachusetts mental health code, which goes into effect July 1, as a member of the legal studies staff of the Massachusetts Special Commission on Mental Health and as a member of the Attorney General's Committee on Commitment Law Revision, and since 1968 I have been a reporter for the Criminal Law Revision

Staff member assigned to these hearings: S. Lynn Sutcliffe.

Commission of Massachusetts which is engaged in revision of the substantive criminal law of the State.

Also from 1967 to 1971 I was a part-time law professor at the New England School of Law in Boston. I have published articles and comments in a variety of legal journals, the most recent being a piece called "Housing and the Law: An Overview," published in 6 New England Law Review [illegible].

I am a member of the Massachusetts bar, and a member of the American, Massachusetts, and Boston Bar Associations, the American Trial Lawyers Association, and the American Judicature Society.

My present post with the American Trial Lawyers Association is assistant to the chairman of the legislative section, which I have held since 1969. For a period I was called special counsel, but the title was changed to assistant to the chairman in 1969.

I am also managing editor of Trial magazine, the bimonthly national legal news magazine published by ATL. As a matter of fact, I am the only lawyer in the editorial staff of this magazine. Copies of letterhead stationery which indicate my position are attached to my formal statement.

I was first employed by the trial lawyers in 1962, as assistant to the editor of the NACDA Law Journal, which is now called the Journal of the American Trial Lawyers. In that capacity, between 1962 and 1964, I wrote a substantial percentage of the articles published in volumes 29, 30, and 31 of the Journal. From 1964 to 1967, I worked for the association on a part-time basis as the paid author of a regular column in Trial magazine entitled "A Brief Sweep" in which I synopsized current law-review articles of interest. I accepted a full-time position as an editor of Trial in September of 1967.

In addition to almost a decade with the trial lawyers association itself, I also practiced law for 2 years with a law firm in Boston that concentrates on automobile negligence work—Sheff & McGarry; one of the partners was then a member of the board of governors of the American trial lawyers. The firm is typical of many such law firms across the Nation.

As an ATL staff member, I have attended numerous national meetings of the trial lawyers—two in Denver, one here in Washington, D.C., one in Las Vegas, one in San Francisco, and one in the Bahamas. In 1970, I arranged and attended regional meetings of Key Men—that is, members interested in influencing legislative action—in Cambridge, Las Vegas, Atlanta, Chicago, and Denver.

In 1971 to date, I have been to two such Key Men meetings; the 1971 meetings were devoted exclusively to how to defeat no-fault—completely—at both State and Federal levels.

This statement is thus based on long personal involvement with and observation of the principal opponents of legislation aimed at compensating automobile accident victims regardless of fault—the trial lawyers.

I am submitting this statement in support of the Hart-Magnuson bill as an act of conscience, as an attorney, and as a citizen. It is also submitted with sadness for I had hoped that the association itself would see and would accept the fact that we lawyers must put aside our personal pocketbook interest where the public interest conflicts.

Unfortunately, the group in control of ATL has refused to concede that there is such a conflict and has refused to accept that a profes-

sional association of attorneys has a higher obligation than maintenance of personal income.

As a matter of fact, the group in control has never even polled the membership on no-fault versus negligence because no-fault is viewed as putting them out of business.

I myself have been in favor of no-fault automobile insurance, at least in part, for some time, I reviewed the trialblazing book by Profs. Robert E. Keeton and Jeffrey O'Connell, "Basic Protection for the Traffic Victim," in the spring 1966 issue of the Portia Law Journal, at pages 266 to 267. In that review, I called the book a "pathfinder in a difficult area," and as to the no-fault plan advocated by the authors, I concluded:

> The proposed statute is a careful attempt at reform. If substantially enacted, it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

A copy of that review is attached to my statement.

I attach also a copy of a letter to the editor of the Boston Globe published December 6, 1966, in which I criticized then Gov. John A. Volpe for his opposition at the time to the no-fault concept. In this letter, I declared in conclusion:

> The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried.

I am pleased personally that in 1970 Massachusetts, under the leadership of Michael Dukakis, a Democrat, and Francis Sargent, a Republican, did seriously consider and enact into law a no-fault automobile insurance law. As both Governor Sargent and Mr. Dukakis have testified to a subcommittee of the House of Representatives, the results in Massachusetts, so far, exceed the most sanguine expectations of the proponents.

I attach a letter by Mr. Dukakis published in the Boston Globe of April 30, 1971, in which he calls for extending these benefits to all the people through a national no-fault system.

When I was hired by the American trial lawyers on a full-time basis in 1967, I had to agree to make no public statements in opposition to the position of the association. My personal views, however, did not change.

The CHAIRMAN. Mr. Joost, do the American trial lawyers have their national headquarters here in town?

Mr. JOOST. No, in Cambridge, Mass. We have a Washington representative, but the headquarters are in Cambridge across the Cambridge common from the Harvard Law School.

To reiterate, my personal views did not change. As a matter of fact, my enthusiasm for the no-fault approach to automobile reparations increased. While my original decision to favor the Keeton-O'Connell plan might have stemmed, at least in part, from the fact that I studied torts from its principal author, Professor Keeton, and because Mr. Keeton was instrumental in getting me my first job with NACCA in 1962, my editorial position with *Trial* starting in September 1967 gave me the time and the access to books and reports which were necessary to a true appreciation of all the issues involved.

Let me state formally for the record: In my judgment, based on my years of study, thought, and observation, I believe that a system of automobile reparations based on compensation of all the tangible losses

of all victims of automobile accidents in the United States without regard to fault would be a much better system than the present one based on compensation of all the tangible and intangible losses of vic tims but only if the victim proves that a financially solvent defendant by his negligence proximately caused his injuries and only if he proves fault and damages by a preponderance of the evidence in a tria before a court or jury.

Under no-fault, the public, the beneficiaries, and consumers of auto mobile insurance would get better protection for the premium dollar spent and at lower annual cost.

In addition, the hard-pressed judicial systems of the Federal and State governments would get some relief. The problems of the court of America today are largely on the criminal docket rather than th civil docket side, but it is my judgment that no-fault, by lifting ou of the courts a substantial volume of cases, would free up enoug judge time, enough judicial man-hours to make it possible to try ever criminal defendant in this country within 60 days from date of arrest or at least within 6 months. It is by no means the complete answer t the crisis of our courts, but it is a part of the solution, and a par incidentally, that does not require the expenditure of additional tax payer money.

Finally, no-fault is a much more efficient system than the presen one. The present one was not developed for a nation with 100 millio registered motor vehicles and a multibillion dollar insurance industry it was developed for a horse and carriage society, in another country, i another century, in the pre-liability-insurance era.

Since 1932 and the Columbia University study, it has been apparen to anyone who has studied the literature closely that something bett than the automobile negligence liability-insurance system was avai able. The success of the Saskatchewan plan in one of the provinces o Canada confirmed this point.

However, for almost 40 years, the people of the United States we denied this "something better" because the individuals who feed o and earn their livelihood from the automobile negligence system ha pen also to possess a great deal of political clout.

They had, in fact, enough political muscle to snuff out the id before it could even be tried in any State of the Union until the Com monwealth of Massachusetts in 1970 enacted a no-fault law. The Ma sachusetts statutes, however, came about as a result of rather uniq circumstances which are unlikely to be duplicated in many oth States: A very strong proponent in each political party; the highe premium rates in the Nation; a weak statewide organization of tri lawyers; and a State legislative tradition of being innovative.

Since there has never been any question as to my personal prefe ence for no-fault, I confess that I did speak, my true feelings wi some discreet friends. About a month ago, I received a telephone c from a congressional aide. He asked if I would testify before Congre on no-fault legislation. Apparently, one of my "discreet" frien hadn't been so discreet, and the congressional aide had learned th there was a lawyer who worked for the American Trial Lawyers A sociation, a trial lawyers' lawyer, who didn't agree with the par line.

I told him no because I wasn't myself convinced that automobile insurance was a proper subject for Federal rather than State legislation. I told him that I leaned toward the view that the States should be given every opportunity to act before the Federal Government comes in, in whole or in part.

Since that surprise telephone call, I have agonized and pondered.

Finally, after a recent meeting of key men in Chicago, I concluded that I had to testify. If Congress is to execute its duty, which is to all the people of the United States and not just to the trial lawyers, it should get the views of one who has studied and thought hard about this no-fault business for many years, and who has been a trial lawyers' lawyer.

In my judgment, the only way in which this Nation is going to get real justice, opportunity and environmental health is if the Congress and the State legislatures authorize the private and independent trial lawyers of America to become "private attorneys general" on behalf of private citizens and to authorize the trial lawyers to bring private-remedy actions for injunctions, court orders to perform, and damages against those who pollute, against those who discriminate, against those who rent substandard housing and against those who take advantage of consumers—in return for a reasonable attorney's fee and true costs, fixed by the court and paid by the defendant found by the courts to be in violation.

The fact is, therefore, that the enactment of the Hart-Magnuson legislation will not wipe out the trial bar for there are so many wrongs that need to be litigated and righted in our courts of justice. But the courts today are so chock-a-block full of existing business that they can't really take on big new workloads, even if class actions, treble-damage suits and all the rest were authorized in all the areas in which adequate enforcement of existing law is important.

The fact is, Mr. Chairman, that the trial lawyers of America, who should be out there litigating for America, a better America, are vegetating in the pork barrel of automobile negligence work.

The fact is that the only thing that will get the private and independent litigation experts en masse into environmental litigation, consumer protection litigation, inadequate housing litigation, antisnooping litigation and all the other things that lawyers can do in court which this country needs to have done is for the Congress of the United States to push them out of their present overstuffed and overpaid womb.

As I mentioned, until recently I leaned toward the position that, I now believe firmly that a decision to leave it to the States is, in fact, a State level before the Federal Government acts. I no longer do. I now believe firmly that a decision to leave it to the States is, in fact, a decision to retain the automobile negligence system with all its waste, all its excessive administrative costs, all its duplication, all its slow pace of operation.

If the Congress declines to act now, there will be some automobile insurance legislation passed by a few States in addition to my own. The legislation will even be called no-fault. But the terminology will be designed for one reason, to keep the Congress out. In reality, these State laws will continue the waste and the inefficiency of the present negligence liability-insurance system while ameliorating some of its bad effects.

[illegible] will [illegible] the key problem which Gov. Francis [illegible] to in a recent speech—the problem [illegible] I have attached to this [illegible] a recent speech on this subject by [illegible]

[illegible] the ATL key men from Ohio [illegible] of their State legis- [illegible] disabused [illegible] lawyers have [illegible] State legislatures.

[illegible] Texas Trial Lawyers Association has been run- [illegible] contribute [illegible] campaign fund for [illegible] Texas trial lawyers now [illegible]

[illegible] LIFT are divided [illegible] Texas Legislature. Let me [illegible] issue [illegible] newsletter. "Ready [illegible] The author of the newsletter is [illegible] secretary of [illegible]

[illegible]

LIFT is the [illegible] effort of Texas Trial Lawyers Association. It stands for [illegible] The *El Paso Times* [illegible] for the [illegible] candidates it [illegible]

LIFT is [illegible] officers are con- [illegible]

[illegible] in Texas. [illegible] *special issue* [illegible] schemes, in other [illegible]

[illegible] *Austin!*

A more complete description of LIFT, published in an ATL 1970 [illegible] "A Trial Lawyer's Legislative Workbook" and [illegible] Attorney William R. [illegible] of ATL's leg- [illegible] chairman of the [illegible]

It may be of interest to this committee to know that the Texas Trial Lawyers Association, which produces LIFT as its latest effort . . . a legislative kitty which is [illegible] itself a tax-exempt organiza- tion. I attach also from the Trial Lawyer's Workbook a copy of letters the Texas affiliate received from tax attorneys supporting their exempt status and advising them how to keep it.

What this means, of course, is that in at least one State the Federal Government, by tax preference, is subsidizing political opposition to the Keeton-O'Connell plan and other no-fault proposals at the same time that Federal Government officials argue that the States can and will pass good no-fault laws.

Mr. Chairman, how many State senators or State representatives in Texas are going to vote for meaningful automobile insurance reform,

when they know that if they do attract candidates, good speakers, with money from LIFT and campaign help from the trial lawyers are going to run against them in the next primary or the next general election?

What real chance do the people of Texas have to receive the benefits of the no-fault system of automobile reparations—unless this Congress passes Federal no-fault legislation?

At the Key Men meeting on April 24, I heard that the LIFT program has been adopted by at least one additional State. According to Attorney Thomas A. Heffernan of Cleveland, Ohio—I believe his law partner, Mr. Craig Spangenberg, addressed this committee the other day—the Ohio Academy of Trial Lawyers is now enrolling subscribers to its version which bears the acronym ADOPT. This attorney predicted flatly, unequivocally, and totally that the Ohio Legislature will never enact any no-fault automobile insurance legislation in any form.

At that meeting, the chairman of ATL's legislative section, Attorney Jerry Finn of Newark, N.J., summed up the discussion by saying: "Let's all ADOPT LIFT." No one objected.

More direct fundraising methods are also used by trial-lawyer groups. According to Attorney Jon Carlson of Belleville, Ill., who spoke at the meeting, every member of the St. Clair, County, Ill., Bar Association has been assessed $100 for a fund to fight Governor Ogilvie's insurance reform legislation.

Incidentally, Mr. Carlson and Attorney Leonard Ring of Chicago both asserted at this meeting that Ogilvie's bill doesn't have "a chance" to become law in Illinois. In Mr. Ring's words: "We control the Senate, Ogilvie controls the House; it's a standoff."

Mr. Chiarman, again, what chance do the consumers of automobile insurance in Illinois have to secure the benefits of no-fault unless the Congress acts?

At another "key men" meeting, this one held for representatives from the northeast region, on April 17, in the offices of the American Trial Lawyers Association in Cambridge, Mass., several of the representatives suggested that defense lawyers, that is, personal injury lawyers who are retained by insurance companies to defend against automobile negligence claims, are a good source for funds to finance the fight against no-fault.

The key men were urged to form general anti-no-fault lawyers' groups and citizens' groups and resign themselves to the fact that defense lawyers were afraid to let their names be used since many of them are retained by insurance companies which are in favor of no-fault auto insurance. I believe it was Attorney Daniel H. Mahoney of Albany, N.Y., who mentioned that such a citizen's committee was functioning in New York State and had purchased newspaper advertising in several papers against the Gordon bill in the New York State Legislature (the Gordon bill is patterned after the Massachusetts law).

It was stated that the advertisements should become punchier. I notice the recent ones just say no-fault is a hoax.

Another Key Man, and a former Connecticut State legislator, Attorney Leon Riscassi of Hartford, mentioned that the Connecticut trial lawyers had also had good luck in raising funds from the sheriffs and constables of the State of Connecticut. Apparently, the deputies

are paid on a fee basis; they were convinced that no-fault would mean fewer legal papers to serve and, therefore, lower incomes for themselves.

The committee may also be interested in another method that has been used for more than 3 years to fight no-fault. Since late in 1967, the association has been arranging for large fees to be paid by one or another trial lawyer group to a supposedly neutral academic, Prof. David Sargent of Suffolk University Law School in Boston, in return for his speaking, appearing, and testifying before private and legislative groups all around the country.

I see no objection to the appearances or to his being paid—Dave Sargent is a very able law professor; he has a viewpoint, and the subject matter demands the most careful and complete discussion—but I do find it less than honorable that Professor Sargent appears wearing his Suffolk University hat rather than his trial lawyers mantle, and that his audiences are not told who is paying him or how much.

As a matter of fact, at one of the recent Key Men meetings, somebody was complaining that Professor Sargent's rates were going up. The delegates said that he is now asking $500 an appearance plus expenses—for 1 day.

As the committee may know, this morning in Boston the supreme judicial court of Massachusetts heard oral argument in a suit challenging the constitutionality of the Massachusetts no-fault statute. The action has been brought by the immediate past president of the Massachusetts chapter of the American Trial Lawyers, Attorney Robert Cohen.

There was a short news item in the Boston Sunday Globe for April 25, 1971, page A-5, on one of the methods used to finance this constitutional-challenge litigation. According to the Globe's account:

> Attorneys are wondering about a couple of ethical questions raised by the activities of the lawyers bringing the test case of no-fault auto insurance law. The lawyers, Robert Cohen and Alexander Celia, have sent other attorneys a mimeographed form offering for sale at $50 per set the two-volume brief ($45) they have prepared on the case and the appendices ($5) . . . Fellow lawyers say (1) they've never heard of a lawyer openly selling a brief . . . and (2) the appendix consists of court records, which may not be theirs to sell.

To summarize and reiterate, it is my considered judgment that the trial lawyers will probably prevent any meaningful no-fault legislation from being enacted in any of the State legislatures, with a few possible exceptions. It is naive to argue that there is a choice between Federal legislation and legislation in the other 49 State capitals. The only choice is between Federal no-fault legislation or maintenance of the present negligence system, the system which the Department of Transportation's $2 million study so carefully and painstakingly criticized.

There is, I might add, a second reason why I believe Congress must act. If the trial lawyers have a stronghold on the State legislatures how does one find words to describe the power position of the insurance industry and its armies of lobbyists in all statehouses? There is at this time in my opinion absolutely no justification in experience or policy for the present exemption of the insurance industry from meaningful Federal regulation.

According to Attorney Heffernan of Cleveland, again, the trial lawyers have one lobbyist in the Ohio Legislature and the insurance

companies between them have 30. If the ATL people can make the assertions they make with their one lobbyist and ADOPT/LIFT, think what assertions the insurance companies can make in their private conclaves.

The objective of the insurance industry, according to the best information and intelligence the trial lawyers have been able to acquire, is maximum profit. Rest assured, there are enormous profit possibilities in no-fault automobile insurance unless it is tightly audited and regulated.

The reason for this is that a no-fault policy basically is a combined medical, accident-and-health and income-replacement policy which pays benefits in case of motor vehicle caused injury.

But the rates in Massachusetts, after the no-fault statute was passed, were not set on the basis of experience with accident and health and income replacement coverage, but rather on the basis of reductions from current automobile personal injury liability insurance rates. It is going to take a considerable number of reductions before one gets down to the accident and health premium level, and in the interim, rather enormous profit potential is available to the industry.

S. 945, the Uniform Motor Vehicle Insurance Act, represents new coverage by a new system. Since there are not now any Federal personal injury liability insurance rates, rates won't be set—they couldn't be set—by reductions from existing Federal rates. They will have to be set afresh from the new perspective, and that is what is appropriate when the subject is a new and different kind of coverage.

In my opinion, only the Federal Government has the strength and the capability to tightly audit and regulate no-fault automobile insurance coverage. If profits in excess of a reasonable return are to be prevented, no-fault must be legislated by the Federal Congress. Any other course would just mean the substitution of one form of consumer abuse with another.

I urge the passage of the Hart-Magnuson legislation.

Now, while this concludes my prepared statement, I would like to add a summary of what has happened since I mailed this statement to the Congress.

I was informed on Monday, April 26, after I mailed my statement to Washington, of the decisions reached at another trial lawyers' meeting in Chicago on April 24. At that meeting, the executive committee of the American Trial Lawyers Association unanimously approved a resolution creating a completely new department—the department of Federal-State relations—with a proposed budget of $322,200 for the fiscal year which begins August 1.

The executive committee voted to finance the budget for this new department by (1) reducing the budget of the department of public affairs and education (which edits and publishes *Trial*) by $112,000, and by (2) dues increases expected to net an additional $200,000.

As part of the cutback in the public affairs and education department, its director was ordered to dismiss me, the only lawyer, at the end of the fiscal year, as well as several additional staff members.

In view of the statement I had mailed to Washington, I told the department head, the editor of *Trial*, that I would leave after the 2-week notice period which means I cease to be an employee tomorrow, May 7.

The director of the new department of Federal and State relations—a department incidentally which goes from nonexistence to being the larges department, consuming 25 percent of the association's total budget—the director will be Mr. Alan Locke. Mr. Locke is not a lawyer, but his brother, Barry Locke, is an aide to Secretary Volpe.

As part of that one-third-of-a-million-dollar budget, the association has contracted with a professional public relations firm to fight "no-fault—the firm of Edelman & Co. of Chicago.

Thank you.

The CHAIRMAN. Thank you for your very potent statement.

I am going to have to leave in a minute, but I just want to point out that I, like yourself, in the beginning was hesitant about proceeding on the Federal level, thinking we could encourage States to get at this matter. I mentioned that sometime ago—3 or 4 years ago. But I have found from practical experience that it just doesn't seem to be moving

Now inaction may result from some of the things you are talking about—I suppose they are factors—but even in my own State, and I am quite close to the legislature there, having served in it at one time, I find a lot of opposition to the concept of no-fault by legislators who I guess have never sought out to lawyers or insurance companies or anybody else. But when no-fault is proposed to them, then they will ask someone like an insurance man that they know of or a trial lawyer who just about convince them that no-fault isn't a good system. And there is no rebuttal. There is no chance for the premium payer or the consumer of automobile insurance to get their word in

The result is there is just no action. I can conceive that, if we did something here that would allow the States to try and do something in a reasonable time, it would just not happen. We have run into that in all kinds of safety legislation. We tried to compel the States to have auto safety laws and it didn't happen until we passed a Federal bill Sometimes, when we begin hearings on Federal legislation, it wakes some people up and they start to get busy. But when you are talking about 50 States, that isn't true; it is going to be a long, long time.

So, I am appreciative of your testimony, and being a lawyer myself I understand how they operate sometimes, although I am a little rusty at the practice of law now.

This is a very potent testimony because I think there are two things that plague every home in the United States. There are a lot of other things, but these are two things we know plague every home, financially, emotionally, and every other way. One is health insurance and the other is auto insurance. They affect every home, not only because of the money involved but because of the kinds of things that happen When insurance companies are canceling contracts, when rates go up for insurance, people are afraid to go to the hospital or make an auto claim. They don't know if they can afford to take such action. And this is true in every home. I have said many times in the past 3 or 4 years that auto insurance and health insurance are two things that Congress ought to set itself to.

I am so glad that there is so much interest in this no-fault bill of Senator Hart's and myself, and we are hopeful to move along. And your testimony here is quite potent, and I appreciate it.

Now you will have to excuse me. I have to go down and discuss some maritime matters.

Senator HART (presiding). Mr. Joost, I think "potent" is an excellent word to describe your testimony, and I would think that it would move this legislation along.

Mr. JOOST. I hope so.

Senator HART. It should. We will see if it will.

Now, I made so many notes as you went along that I don't know where to begin, but there are several points that I would like either to have you clarify or by a question, underscore.

Mr. JOOST. Certainly.

Senator HART. Before I get to that, let me comment. On the very first page you describe your professional qualifications. I have met a magna cum laude man from Harvard law, and I have known Harvard Law Review editors. I am not sure if I ever met a magna cum laude graduate from Yale. I have met Phi Beta Kappas. But this is the first time I have met all of them at once. Do you understand my reluctance to ask you questions?

Frankly, I was tempted on other days in these hearings we have had witnesses speak against the bill to suggest the high level of self-interest which inevitably would operate on their judgment. I didn't. You are pretty blunt about it. I guess the reason I didn't is my belief—my hope—that in the legislative considerations of these proposals, intelligent men will be able to evaluate the background from which on any of these witnesses speak. It was not that I was unconscious.

Mr. JOOST. I hope your claim has merit.

Senator HART. Here is one I will have to ask you to clarify. We opened these hearings with Secretary Volpe as the witness, and I haven't reread the testimony—maybe my memory is faulty—I though he was one of the great fighters for the Massachusetts no-fault plan. I get the impression that he knows the fight: you can wait for the States and give them a try. Your vision of his role is sharply different from my impression.

Is my impression wrong?

Mr. JOOST. Your impression is wrong, sir.

As you know, Massachusetts has had a compulsory-automobile-liability-insurance law since 1927. There have been problems under this law, including the fact that it helped to put Massachusetts in the untenable position of being the State with the highest auto-insurance premiums in the country. In 1966 or 1967, shortly after John Volpe's election to the first 4-year term as Governor of Massachusetts, shortly after that election, the Governor filed legislation to end the compulsory-liability-insurance system and enact a financial-responsibility law and also to establish a fraudulent-claims bureau.

Now, financial-responsibility laws exist in 47 of the 50 States. Only three States, Massachusetts, New York and North Carolina, have compulsory automobile-insurance laws. Financial-responsibility laws are a little like the dog-bite laws; you may get the "first bite" free, but after that you have to have liability insurance.

Governor Volpe pushed for "financial responsibility," even though it has never really worked, because "financial responsibility" means there will always be some totally uncompensated victims. If you get hit by an automobile, and if the person who hits you doesn't have liability insurance or private wealth or substantial property subject

to attachment. "financial responsibility" means you are totally without protection in case of injury.

I have heard of cases in States with financial-responsibility laws where hospitals wouldn't even admit an automobile accident victim until they received proof that either he had a Blue Cross certificate or that the person who hit him was insured or highly solvent.

Despite all this, Governor Volpe introduced a financial-responsibility bill. Mike Dukakis, who was a classmate of mine at Harvard Law School and a very active Democratic Member of the House of Representatives, decided that the Democrats had to come up with an insurance program also. He decided that it should be a real reform program, and thus he filed the "no-fault" legislation that had been drawn by Professor Keeton at Harvard.

Governor Volpe did not support him. Mike got it through the House of Representatives on a hot summer day when there weren't too many people there; he moved substitution on the floor, and the Keeton-O'Connell plan passed. Lo and behold, the trial lawyers panicked. There was an emergency return of employees on vacation. All kinds of things happened. People scurried all over the place.

Finally, there was a day of great jubilation when somebody persuaded the head of the Teamsters Union in Massachusetts, I think his name was Nick Morrisey, to agree to run full-page ads by the Teamsters opposing no-fault, provided the trial lawyers would pay for them all. With this kind of support, "no fault" was killed in the State senate.

Governor Volpe never made a statement in support of "no fault." He never had to act, of course, since the bill was prevented from coming to his desk as Governor. The same thing happened again in 1968. Governor Volpe never endorsed the concept while he was Governor.

Senator HART. My question might appear to be critical of the Secretary. I was asking for clarification. I react this way. Sort of the Biblical welcome-home thing. If in fact once he was opposed or not helpful, he now has moved to the point of urging the adoption of no-fault across the country, but says—and I sense rather reluctantly—that we ought to wait, you know, pass a resolution and encourage the States to do it. In any event he does, you will be glad to know, support no-fault.

Mr. JOOST. I think one reason for his support now is the fact that his Lieutenant Governor, now Governor, Francis Sargent, has found that the "no-fault" thing works. You know, there is nothing like trying something—try it and see if it works. The Massachusetts law is really not a very good law technically. I have drafted a lot of statutes for the criminal law commission, and believe me, the Massachusetts no-fault law is technically very poor.

The first sentence is 567 words long. The second sentence is 14 words. The guts of the statute are contained in a definitions section, the definition of PIP, personal injury protection. With all, it is a weak and limited bill, but the important thing is that it is working. The premium rates are coming down, although they have got to come down much more.

Senator HART. Governor Sargent filed a statement with us yesterday complaining about the failure of the Massachussetts plan to reflect the savings that were accruing to the insurance carriers.

I won't ask you to describe in fuller detail how your vacation was interrupted, but I am intrigued by the passing comment that you made about it.

Do you know whether the Internal Revenue Service has reviewed any of these programs or war chests, or whatever you want to call them, specifically the one in Texas?

Mr. JOOST. I just don't know. The letter from tax counsel which I attach to this statement states the facts—in other words, you have told us thus and so. The LIFT program is not in that statement of facts. So I can't blame tax counsel. I have no way of knowing what Internal Revenue has or has not done.

Senator HART. Some place in here you describe a county bar association assessing a sum.

Mr. JOOST. $100.

Senator HART. That was on each member to generate moneys to fight the Ogilvie plan in Illinois County? Could they fog that up in such a fashion as to make it a deductible business expense?

Mr. JOOST. Again, I am not a tax lawyer, and I think I had better stay out of that can of worms.

Senator HART. The group which files and obtains a tax exempt status nonetheless may not use moneys in legislative lobbying unless it wants to forfeit its exemption. I am not a tax lawyer either, but isn't that a correct statement?

Mr. JOOST. That is correct. I think the reasons for it are terribly important public-policy reasons. We cannot permit special-interest groups, particularly special-interest economic groups, to be both tax exempt and free to lobby. When you come right down to it the bar associations, at least the American Trial Lawyers Association, is nothing more, nothing less than a trade association. If groups like this are subsidized by the Federal Government to pursue lobbying and legislative activities aimed, not at the best interest of the Federal Government or the best interest of the people, but at their own personal best interest, their own personal pocketbook interest, then the public is deceived.

The trial lawyers speak in terms of "offensive" legislative activity, which means persuading States to enact new provisions such as comparative negligence as a replacement to the rule of contributory negligence, and "defensive" legislative activity, which means preventing the passage of "things we can't live with"—preeminently no-fault auto insurance.

I think the reasons why Congress continually has said, in all its revision of the Federal Tax Code, that you can't be both tax exempt and lobby, are good. There are particular situations, I know, where the prohibition hurts, but I think the reasons in favor are overwhelming and clear. Personally, I think that the tax law on exemptions for trade associations and such groups should be tightened.

Senator HART. The fact that you have advised us with respect to the activities which you, as a result of sitting with the "Key Men" meetings, know are included in the agenda of these groups would, I think, put the Internal Revenue Service on notice. I am not suggesting that it is or isn't an abuse, I don't know. But certainly you have raised the question. As you say, it is a basic public policy concern that that kind of activity not be subsidized.

[illegible] the [illegible] of the trial lawyers [illegible] in the Senate. With the little experience I had in Lansing, which [illegible] I would think that impossible to no [illegible] when they enlis [illegible] your testimony. As for thi [illegible] speaking, and draw [illegible] from the association. This [illegible] probably will be with u [illegible] I suppose. I don't know how yo [illegible] this should be most conscious [illegible] of the consciousness of what they [illegible] before criticizing someone els [illegible] and they ar [illegible] the fact that the group t [illegible] knows [illegible] more about the sub [illegible] than the politicians or the group [illegible].

Mr. [illegible] The thing that disturbs me per [illegible] the [illegible] situation is that the schools, the teacher [illegible] in the [illegible], as a certain sor [illegible] in our uni [illegible] students [illegible] faculty members are i [illegible] I would like to believe [illegible] those who choos [illegible] who choose to become professors, will in fac [illegible] the Socratic manner.

[illegible] the Socratic method of teaching [illegible] of Socrates method of [illegible] from my limite [illegible] courses was the pursuit of truth. I don't thin [illegible] truth and at the same time accept suggestions, which yo [illegible] from people who frankly do not care about the argu [illegible] as they get the desired results.

Senator Hart. Perhaps discussion for academics is what we shoul [illegible] as we recommend discussion for the political lecture

Mr. Joost. I think you [illegible] academics recommend discussion for poli [illegible] know that they recommend it for themselves.

Senator Hart. Drawing on your experience in the course of ou [illegible] questions have been raised about the basic constitutionalit of the Hart-Magnuson proposal and more actively about State no-fau [illegible].

Now, first, on the question of the Massachusetts no-fault law, wha [illegible] your opinion with respect to its constitutionality?

Mr. Joost. Well, obviously, I cannot outguess the Supreme Jud [illegible] Court of Massachusetts, but my feeling is it may in fact—a ke part of it may in fact—be held unconstitutional on the grounds tha it is an arbitrary, capricious classification.

Now, the Massachusetts law works on what may be called the thre hold concept. If you have $500 of medical and hospital bills, and the are reasonable, then you can get a tort lawyer, go to court, get a jur trial, and you are entitled to and can recover a verdict that includ general damages for intangible losses—pain, suffering, inconveniec emotional hurt, and all the rest.

But, if your medical bills are less than $500—there is a whole li of things, prosthetic devices, ambulance charges, and so forth th are includible—if they are less than $500 you cannot get gener damages; you cannot recover for pain and suffering; you cannot g a jury trial.

The Supreme Court of the United States in a line of cases—I don't have the citations here—has spoken of the necessity for reasonable classifications, reasonable categories which bear some logical relationship to the subject matter. Now, I think it is possible that the SJC of Massachusetts will conclude that this $500 business is an unreasonable classification. It has no relation to what kind of an automobile accident it is or what the injuries are, it has no relation to any of the findings of the DOT studies; nobody says that $500 is the magic cutoff between serious and trivial accidents. I don't know where the threshold cutoff came from in the legislative hurly-burly on this law but it came and the number picked was $500.

I think it is quite possible that this could be called arbitrary. If it is arbitrary and capricious, the provision could be wiped out as unconstitutional. I would like to contrast this $500 clause with the related provision in your own bill, Senator Hart. In section 4, your bill says that you can recover general damages in a tort suit if there is a "catastrophic harm," as defined. Now catastrophic harm strikes me as being a very reasonable category. We can distinguish rationally between catastrophic harm, which is defined, and all the rest, which is noncatastrophic harm. That is reasonable classification. I think it fits what was meant by the great justices who have declared that due process means a "scheme of ordered liberty," "the American scheme of justice." Due process requires reasonable classifications, not cutoffs plucked out of thin air. Otherwise, there is a denial of equal protection. Catastrophic harm is a very good dividing point, and certainly it is within the legislative province to define it.

As to the Hart-Magnuson bill itself, I see no constitutional problems. If anything is clear from the original documents on the founding of this Republic, the one power that everyone agreed should go to the Federal Government was the power to regulate interstate commerce. I think that automobiles today—automobile driving today—is the single biggest kind of interstate commerce we have.

Now, the members of the Constitutional Convention of 1789 didn't say everything that was interstate had to be regulated by Congress. But I think it was their understanding that the important things should be centrally regulated if this was to be a viable Federal Union. I believe that automobile driving is so interstate today that all its aspects—the manufacture in terms of safety and environmental controls, the compensation of the people injured, the insurance against losses caused—all belong under Federal regulation. It is preeminently, not marginally, interstate commerce.

The Federal Government regulates many things. There are also a lot of Federal criminal statutes that use the interstate commerce power as a threshold, a kickoff to establish Federal jurisdiction. Automobile operation involves much more interstate commerce than many of these things now governed by Federal law.

There is a real practical necessity for uniform automobile compensation law. If there were 50 different State laws on auto insurance, there would be tremendous confusion. I think the insurance companies would find that even their computers would get tired figuring exactly how the system works in each State and what the applicable law is.

So it is clearly interstate commerce. The subject is clearly within the competence of the Congress. It is clear under the necessary and

[illegible] that when the [illegible] Congress enters an area which is within its [illegible] authority, it has [illegible] to be its wisdom and discretion [illegible].

The argument has been made that the [illegible] violates the seventh amendment [illegible] I do not believe that argument has merit. The [illegible] over the years has rather [illegible] and I think rather [illegible] prevented from including the seventh amendment right to [illegible] if the [illegible] discussion [illegible] what is meant by the process.

Senator [illegible]. I have not heard [illegible] at the end of a [illegible] some Members of the Congress that [illegible] what they would describe as [illegible] right to present in a tort case to [illegible] the [illegible] way. [illegible] that question that comes their wonder about the [illegible] such as this. In other words, I guess they would say what you are doing is [illegible] a Federal [illegible] on an individual [illegible] system [illegible] for whatever [illegible] in the [illegible].

Mr. JOOST. There are precedents for this. I have mentioned the New England [illegible] of law. I might add [illegible] labor law is a prime example of an area in which the States and the State courts had major authority. The States defined and enforced the rights of management and of labor, of owners and of strikers. Then came Federal acts—the Norris-LaGuardia Act and the Wagner Act in the 1930's, as amended by the Taft-Hartley Act, as amended by the Landrum-Griffin Act—and no longer was a factory owner able to use his State court system to enforce "yellow dog" contracts or convict strikers of [illegible] activity.

Prior to the 1930's the Federal Government had no great involvement in labor matters. But the U.S. Supreme Court upheld the National Labor Relations Act in the 1930's when its constitutionality was challenged on the ground that Congress could not take these powers from the States. The Court sustained the Wagner Act because it clearly involved the regulating of interstate commerce.

The rationale for a Federal Union demands that there be a customs union, a "common market" to stimulate the commercial intercourse which is necessary so that every component can benefit to the greatest possible extent. There has to be central regulation of the things that are really central. I would argue that transportation matters such as automobiles and the driving of automobiles must, like labor matters, be regulated by the central authority. I think this is what the founders had in mind when they gave Congress the power "to regulate commerce * * * among the several States."

Senator HART. You said in your prepared testimony that there were many rewarding jobs open to the trial lawyers of this country—exciting jobs. What has happened to the trial bar in Massachusetts now that they are operating under this no-fault program there? Have they gone to the environmental protection field or are they still busy with insurance law?

Mr. JOOST. Well, just yesterday I heard on the news that the Massachusetts State Senate had given final approval to a bill to permit private citizens to sue those who are alleged to cause damage to the environment.

I believe that it is a better bill than the one that Michigan passed last year on the same subject. It has also passed the House and it has gone to a conference committee. According to the radio broadcast, the Associated Industries of Massachusetts are preparing a last ditch effort to defeat this bill which would permit individual citizens to sue to enforce the pollution—control statutes and regulations which are already law, but we believe that it will survive the conference committee and Governor Francis Sargent has indicated he personally believes private-remedy suits represent a very important approach to environmental protection.

Congress last year year passed a provision authorizing "Citizens Suits" as one of the amendments to the Clean Air Act. The Federal law provides for reasonable attorney's fees to be paid by violators. This is proper—I think the lawyer should receive a fair compensation for what he does—but that is very different from the frequently exorbitant fees earned in the automobile—negligence business.

Senator HART. The Ogilvie bill in Illinois, is it a Massachusetts no-fault bill?

Mr. JOOST. No, it is not. It is a different kind.

I would say, first, it is a misnomer to call the Ogilvie bill a nofault bill. In fact, a headline in the *Wall Street Journal* declared that the "Ogilvie System Would Bypass No-Fault Concept."

"Others have agrued" that the Ogilvie bill is a no-fault system and one which, if enacted, will make it— unnecessary for the Congress to act.

When you break it down and look at the Ogilvie bill, you see that it is really not a system, it is not a plan. As a result of my work with statutory recodification and revision efforts, I very much believe that the legislative bodies should not try to copy the courts and decide things on a case-by-case basis, a little thing here and a little thing there. Rather, they should try to create systems that make sense and leave it to the courts to fill in the bits and pieces. The Ogilvie plan is not such a system. It is a hodgepodge collection of 13 different bills on different points. The 13 bills don't add up to a system, no-fault or otherwise.

In substance, the Ogilvie bills involve a scaling down, a reduction of the amount of money that would be paid by insurers to motor vehicle accident victims who bring tort suits. That reduction in payout makes two things possible: A reduction in auto insurance premiums which looks good, and a package of first-party-benefits. The first-party-benefits package would pay a maximum of $2,000 per victim in medical, hospital, and funeral benefits plus a maximum of 52 weeks of wage loss up to $150 a week in income continuation benefits.

What this amounts to is adding some no-fault frosting onto the same old negligence cake. The cake itself won't be changed except to scale it down in size.

The most important section of the bill is the section called "General Damages." It states that damages for pain, suffering, mental anguish, and inconvenience shall not exceed the total of a sum equal to 50 percent of the reasonable medical treatment expenses * * * if * * * the total of such * * * expenses is $500 or less, and a sum equal to the amount of such reasonable expenses, if any, in excess of $500."

What this bill does is to say, sure, you can have a jury trial and you can get general damages for pain and suffering, but the jury cannot

find as a fact that your general damages are worth any more than your medical expenses if your medical expenses are over $500, and the jury can't find—they will be in reversible error if they do—that your pain and suffering is worth more than 50 percent of your medical bills if they are less than $500.

Now, I think this restriction represents unwise tampering with the jury. I think that if you give the right to trial by jury in a negligence case, you must really give the plaintiff that right.

The Ogilvie plan keeps the automobile jury, but puts it into a straightjacket so far as damages is concerned. Let's assume the plaintiff is a violinist and something happens to his hand; in the auto accident he breaks a finger, it is put in a cast, the total medical bill is $200. However, for an entire season he cannot play with the Chicago Symphony Orchestra. What Governor Ogilvie is saying is that this particular violinist's pain and suffering and inconvenience for not being able to play with the Chicago Symphony for an entire season shall not exceed $150. This bill is doing something that makes me very uncomfortable; you give or retain a right, you "press-release" it as a right, but you take away its substance.

There is another provision in the Ogilvie package that I would like to take the time to comment on. The section is called "Fraudulent Claims," and it is a substantive criminal law, not an insurance law. Just looking at it technically—and for 3 years I have been drafting and analyzing criminal statutes—this is a bad bill.

The criminal law can take on just so much. It is a little bit like the Great Lakes; it looks enormous, but in fact you can dump only a certain amount of indigestible material into it; dump too much and it ceases to live.

Now, what the provision says is that:

> Any person who . . . indirectly . . . acts in concert with a person seeking to falsely and fraudulently represent . . . or exaggerate the nature and extent of motor-vehicle-caused injury or damage to property shall, if the sum so obtained or attempted to be obtained is less than $100, be sentenced to not more than one-year imprisonment, or if the sum exceeds $100, shall be imprisoned not more than 10 years.

Now, this is silly. First of all, there is no sure method of obeying it. All that is necessary for a criminal conviction is to prove the defendant acted in concert with someone who was trying to exaggerate a claim. You don't have to do it intentionally, you don't have to do it knowingly or recklessly or negligently; it is enough that it happens.

You can imagine the lawyer, whose client never tells him honestly what happened, who puts on evidence which in fact exaggerates by $101 the extent of the client's injury.

That attorney could go to jail for 10 years.

Now, I think this is foolish. All that the section is going to do is to make lawyers reluctant to talk to their clients lest they be accused of acting "in concert" with one who exaggerates; it will thus have a "chilling effect" on the attorney-client relationship; as a practical matter it will not work. People are not going to be prosecuted for this, not in the present state of the criminal courts. The fraudulent claims bit—in so many cases it is not fraud—it is rather something which is built right into the negligence/liability insurance system. Assume you are paying $300 a year in auto-insurance premiums, and

you don't have an accident for 10 years, and then something happens. You know how you paid in $3,000 and you know it is so much that I think that you really do feel a pain in your head.

Mr. SUTCLIFFE. In discussions with Mr. Markus and the trial lawyers yesterday the subject of the Federal-State fund was raised. It was explained to us that that fund would be used to create liaison with Congress in order to facilitate our efforts in considering legislation. You have now told us that you, an expert, as demonstrated in these hearings, have been relieved of your position with the trial lawyers. Can you tell us who will be talking to Congress to help us in our reform of the automobile compensation system?

Mr. JOOST. I think I mentioned that the head of this department will be a nonlawyer, Mr. Alan Locke, whose brother I believe is press secretary to the Department of Transportation, and he will have at his command a Washington representative, Mr. Wayne Smith, who is also not a lawyer, and the services of Edelman & Co., a public relations firm in Chicago, with a New York branch, which will handle the account from a Hartford office.

So I think the help that the Congress will be getting—well, you can weigh yourself what contribution such a group of experts will make to the solution of the problem.

Mr. SUTCLIFFE. One more comment that is taken from yesterday's hearing transcript. This is a response of Mr. Markus to questions about LIFT and ADOPT. He said:

> I might say the items you are describing, frankly I wish they were stronger and more effective. These items represent a very minuscule percentage of the amount the insurance industry is now spending in this area. We have reason to believe it is many millions of dollars.

From your vantage point, does that seem to be an accurate statement?

Mr. JOOST. I will have to answer "Yes," "No," and "I don't know." I do not know what the total figures are, either for LIFT or "for the insurance industry, but I do know that the LIFT ideas is on a curve of rising expectations. The State chapters and affiliates will be stimulated by this well-financed Department of Federal-State Relations which will send people around to show the local groups "how to do it," how to act effectively politically. LIFT and ADOPT programs—every State will have its own acronym—will probably be started in a majority of the States within a very short period of time.

Perhaps I overstressed the financial aspect of LIFT, the fact that it was called "a legislative kitty which is paying off." I do not think that money is the sole source of political and lobbying strength. The real strength comes from the fact that the trial lawyer has many skills, skills which can also make him an attractive political candidate or an effective campaign manager. He is accustomed to speaking. He is accustomed to responding to questions. He is not afraid to appear in public. He is accustomed to hostile questioning. He knows how to get information. He has a lot of friends and a lot of contacts. If he has been an able lawyer for 10 years or so, he knows an awful lot of people who think he is pretty good. If he goes in with this expertise and this ability and really takes to the stump to support and help a candidate with speeches and letters and phone calls, telling people what a great guy "Honest" Joe Doakes is, then Joe Doakes has a lot going for him beyond the, say, $10,000 campaign contribution from LIFT.

You have to bear in mind that campaigns for State legislatures are much less expensive than campaigns for Congress. It does not take that much money. Millions of dollars could easily be wasted by insurance companies while tens of thousands precisely placed by trial lawyers on a particular race could mean veto-power control over a particular State legislature. The important thing is not just how much money a political fund raises and spends; it is also the way in which the money is placed, the way in which it is spent, that counts. For this reason, any comparison of lobbying expenditures between lawyers and insurance companies is of limited value.

Again, this is a very subtle way, and I think, therefore, a very effective way to influence legislation. You do not go after legislation; you go at the person who has a right to vote on legislation, namely, the person who sits in the State legislature. If a legislator votes "wrong," you find a strong opponent, the most attractive person in the district who will run, you fund him, you back him up, you have people prepare programs for him, literature for him, professionally advise him. Thus supported, he is going to have a good chance to defeat the "bad" legislator.

So I am not surprised at these 1970 results in Texas, that out of eight candidates backed in the Democratic primary for the State senate, six won. LIFT's first year, 1970, was their dry run. They can probably get a higher percentage than six out of eight in the future, but even 0.750 is a pretty good batting average.

Again, you see why it is difficult to answer your question.

Mr. SUTCLIFFE. I recognize that and appreciate your response.

The committee would like to draw for a moment, if you will permit us, upon your technical knowledge of the Massachusetts plan. You have mentioned the Illinois plan with the first-party overlay over the existing tort system. In Massachusetts they ostensibly have a first party coverage for tangible losses as between the policyholder and his insurance company, but in that plan they created a subrogation-like arrangement so that the insurance companies of the policyholders have to get together to determine which of their policyholders was at fault. Then through arbitration the company whose policyholder is found to be at fault reimburses the other company for the amount of his first-party payments to his own policyholder as well as its claims cost.

Mr. JOOST. It is something like that. I think they have a 400-word sentence.

Mr. SUTCLIFFE. I hope I got by with a 200-word explanation. What impact will this procedure have on the efficiency of the no-fault system in Massachusetts, and if you will, address yourself to what kind of inconvenience it will create for the consumer who has to have his insurance company talk to him pretty thoroughly about the accident and maybe even have his insurance company ask to come before an arbiter to explain what happened?

Mr. JOOST. If this is in fact what is finally held to be the meaning of the Massachusetts statute, it will be yet another way in which consumers lose out. I have the laws here—Acts of 1970, chapter 67, and chapter 744. I pasted the two statutes together to determine what the law really says, but that doesn't help with internal questions. It is really very hard to know exactly what the Massachusetts no-fault

law means on many points. It has, conservatively, about 30 ambiguities, one thing in one sentence, another thing in another section.

To give you an example, there is a merit-rating provision. If you are claims-free for a year, you are entitled to a 2-percent discount on your insurance premium. But no one knows whether the discount is 2 percent per year cumulatively, intermittently, or totally. If you go 3 years without an accident, file a claim in the fourth year, and then you are accident-free in the fifth, and sixth years, do you then get a 10-percent reduction, a 4-percent reduction or a 2-percent reduction?

There are so many ambiguities and technicalities, that frankly I am not prepared to comment on the retention of subrogation, except to say that I believe your summary is accurate.

Mr. SUTCLIFFE. Do you know why it was done? What is the rationale for this kind of an arrangement?

Let me read one thing and see if you might concur in it. This is in the Massachusetts Association of Independent Insurance Agents and Brokers' booklet entitled "Special Report on Massachusetts Auto Insurance."

On page 13 they talk about what they entitle the "Inter-Insurer Subrogation." They conclude: "In practical effect this means that the liability exposure of companies remains essentially as good or as bad as it was before."

Is this provision included in there only to allow those companies who have all the good risks right now to keep them and to benefit from them?

Mr. JOOST. I think it is clear that subrogation between insurance companies is completely contrary to the theory of no-fault. Basically, the theory of no-fault insurance is that we let the loss stay where it falls but reimburse the victim for that loss from the insurance pool to which he and all other motorists have contributed. To subrogate on a case-by-case basis, to shift money back and forth between insurance companies on the basis of which company's policyholder was at fault, whether it is done by arbitrators or whether it is done by a court, involves a waste of time, a waste of people, a waste of money for hearings, for preparation, for salaries. The cost of waste is eventually paid for by the consumer in the form of higher-than-necessary premiums.

In most cases, the claims of A company vs. B balance out against the claims of B company vs. A in a rather constant ratio. If the law permits this back-to-forth subrogation, then the administrative costs of the system will be excessive. If the law permits this back-and-forth subrogation, then the administrative costs of the system will be excessive. If that agent's association brochure states that this is the Massachusetts law, it probably is, because the genesis of our no-fault it law was a bill, I think it was S. 500, that was filed on behalf of the Massachusetts Agents and Brokers Association.

That original bill was changed enormously. Already two parts of the law have been held unconstitutional by the Supreme Judicial Court of Massachusetts. The trial lawyers' strategy was to make the bill into a Christmas tree when they saw that the votes were there in 1970 to pass no-fault—to put on so many goodies that the whole thing would fall because the Governor would be compelled to veto it because otherwise the insurance companies would yell too much.

to attachment, "financial responsibility" means you are totally without protection in case of injury.

I have heard of cases in States with financial-responsibility laws where hospitals wouldn't even admit an automobile accident victim until they received proof that either he had a Blue Cross certificate or that the person who hit him was insured or highly solvent.

Despite all this, Governor Volpe introduced a financial-responsibility bill. Mike Dukakis, who was a classmate of mine at Harvard Law School and a very active Democratic Member of the House of Representatives, decided that the Democrats had to come up with an insurance program also. He decided that it should be a real reform program, and thus he filed the "no-fault" legislation that had been drawn by Professor Keeton at Harvard.

Governor Volpe did not support him. Mike got it through the House of Representatives on a hot summer day when there weren't too many people there; he moved substitution on the floor, and the Keeton-O'Connell plan passed. Lo and behold, the trial lawyers panicked. There was an emergency return of employees on vacation. All kinds of things happened. People scurried all over the place.

Finally, there was a day of great jubilation when somebody persuaded the head of the Teamsters Union in Massachusetts, I think his name was Nick Morrisey, to agree to run full-page ads by the Teamsters opposing no-fault, provided the trial lawyers would pay for them all. With this kind of support, "no fault" was killed in the State senate.

Governor Volpe never made a statement in support of "no fault." He never had to act, of course, since the bill was prevented from coming to his desk as Governor. The same thing happened again in 1968. Governor Volpe never endorsed the concept while he was Governor.

Senator HART. My question might appear to be critical of the Secretary. I was asking for clarification. I react this way. Sort of the Biblical welcome-home thing. If in fact once he was opposed or not helpful, he now has moved to the point of urging the adoption of no-fault across the country, but says—and I sense rather reluctantly—that we ought to wait, you know, pass a resolution and encourage the States to do it. In any event he does, you will be glad to know, support no-fault.

Mr. JOOST. I think one reason for his support now is the fact that his Lieutenant Governor, now Governor, Francis Sargent, has found that the "no-fault" thing works. You know, there is nothing like trying something—try it and see if it works. The Massachusetts law is really not a very good law technically. I have drafted a lot of statutes for the criminal law commission, and believe me, the Massachusetts no-fault law is technically very poor.

The first sentence is 567 words long. The second sentence is 140 words. The guts of the statute are contained in a definitions section; the definition of PIP, personal injury protection. With all, it is a weak and limited bill, but the important thing is that it is working. The premium rates are coming down, although they have got to come down much more.

Senator HART. Governor Sargent filed a statement with us yesterday complaining about the failure of the Massachussetts plan to reflect the savings that were accruing to the insurance carriers.

I won't ask you to describe in fuller detail how your vacation was interrupted, but I am intrigued by the passing comment that you made about it.

Do you know whether the Internal Revenue Service has reviewed any of these programs or war chests, or whatever you want to call them, specifically the one in Texas?

Mr. JOOST. I just don't know. The letter from tax counsel which I attach to this statement states the facts—in other words, you have told us thus and so. The LIFT program is not in that statement of facts. So I can't blame tax counsel. I have no way of knowing what Internal Revenue has or has not done.

Senator HART. Some place in here you describe a county bar association assessing a sum.

Mr. JOOST. $100.

Senator HART. That was on each member to generate moneys to fight the Ogilvie plan in Illinois County? Could they fog that up in such a fashion as to make it a deductible business expense?

Mr. JOOST. Again, I am not a tax lawyer, and I think I had better stay out of that can of worms.

Senator HART. The group which files and obtains a tax exempt status nonetheless may not use moneys in legislative lobbying unless it wants to forfeit its exemption. I am not a tax lawyer either, but isn't that a correct statement?

Mr. JOOST. That is correct. I think the reasons for it are terribly important public-policy reasons. We cannot permit special-interest groups, particularly special-interest economic groups, to be both tax exempt and free to lobby. When you come right down to it the bar associations, at least the American Trial Lawyers Association, is nothing more, nothing less than a trade association. If groups like this are subsidized by the Federal Government to pursue lobbying and legislative activities aimed, not at the best interest of the Federal Government or the best interest of the people, but at their own personal best interest, their own personal pocketbook interest, then the public is deceived.

The trial lawyers speak in terms of "offensive" legislative activity, which means persuading States to enact new provisions such as comparative negligence as a replacement to the rule of contributory negligence, and "defensive" legislative activity, which means preventing the passage of "things we can't live with"—preeminently no-fault auto insurance.

I think the reasons why Congress continually has said, in all its revision of the Federal Tax Code, that you can't be both tax exempt and lobby, are good. There are particular situations, I know, where the prohibition hurts, but I think the reasons in favor are overwhelming and clear. Personally, I think that the tax law on exemptions for trade associations and such groups should be tightened.

Senator HART. The fact that you have advised us with respect to the activities which you, as a result of sitting with the "Key Men" meetings, know are included in the agenda of these groups would, I think, put the Internal Revenue Service on notice. I am not suggesting that it is or isn't an abuse, I don't know. But certainly you have raised the question. As you say, it is a basic public policy concern that that kind of activity not be subsidized.

Incidentally, you describe the political muscle of the trial lawyers groups in the States. With the little experience I had at Lansing, which is the State capital of Michigan, I would think that opposition to no fault in those places is getting more political muscle when they enlist the stories and testimonies as alluded to in your testimony. As for this business of the professor at Suffolk testifying, speaking, and draw the fire from the association: this practice probably will be with us as long as we have this kind of society, I suppose. I don't know how you get a hard-hitting or that. The politicians should be most conscious of the glasshouses in which they dwell before criticizing someone else. We do it in reverse, or since he some lecture to groups and they are then compensated. I am always struck by the fact that the group to which the politician is lecturing knows infinitely more about the subject matter than the politician, but the group pays him.

Mr. JOOST. That is not always true. The thing that disturbs me personally about the university situation is that the scholar, the teacher does hold himself out to his students, if to no one else, as a certain sort of person. We have been having a certain amount of trouble in our universities because not all students believe all faculty members are in that position. But I would like to believe, myself, that those who choose to work in academia, who choose to become professors, will in fact pursue the truth in the old Socratic manner.

All the law schools say they have the Socratic method of teaching. The goal of Socrates' method at least as I recall it from my limited memory of philosophy courses, was the pursuit of truth. I don't think you can pursue truth and at the same time accept stipends, which you do not disclose, from groups who frankly do not care about the argument so long as they get the desired results.

Senator HART. Perhaps disclosure for academics is what we should recommend just as we recommend disclosure for the political lecturer.

Mr. JOOST. I think you find academics recommend disclosure for politicians much more than they recommend it for themselves.

Senator HART. Drawing on your background, in the course of our hearings, questions have been raised about the basic constitutionality of the Hart-Magnuson proposal and more acutely about State no-fault legislation.

Now, first, on the question of the Massachusetts no-fault law, what is your opinion with respect to its constitutionality?

Mr. JOOST. Well, obviously, I cannot outguess the Supreme Judicial Court of Massachusetts, but my feeling is it may in fact—a key part of it may in fact—be held unconstitutional on the grounds that it is an arbitrary, capricious classification.

Now, the Massachusetts law works on what may be called the threshold concept. If you have $500 of medical and hospital bills, and they are reasonable, then you can get a tort lawyer, go to court, get a jury trial, and you are entitled to and can recover a verdict that include general damages for intangible losses—pain, suffering, inconvenience, emotional hurt, and all the rest.

But, if your medical bills are less than $500—there is a whole list of things, prosthetic devices, ambulance charges, and so forth that are includible—if they are less than $500 you cannot get general damages; you cannot recover for pain and suffering; you cannot get a jury trial.

The Supreme Court of the United States in a line of cases—I don't have the citations here—has spoken of the necessity for reasonable classifications, reasonable categories which bear some logical relationship to the subject matter. Now, I think it is possible that the SJC of Massachusetts will conclude that this $500 business is an unreasonable classification. It has no relation to what kind of an automobile accident it is or what the injuries are, it has no relation to any of the findings of the DOT studies; nobody says that $500 is the magic cutoff between serious and trivial accidents. I don't know where the threshold cutoff came from in the legislative hurly-burly on this law but it came and the number picked was $500.

I think it is quite possible that this could be called arbitrary. If it is arbitrary and capricious, the provision could be wiped out as unconstitutional. I would like to contrast this $500 clause with the related provision in your own bill, Senator Hart. In section 4, your bill says that you can recover general damages in a tort suit if there is a "catastrophic harm," as defined. Now catastrophic harm strikes me as being a very reasonable category. We can distinguish rationally between catastrophic harm, which is defined, and all the rest, which is noncatastrophic harm. That is reasonable classification. I think it fits what was meant by the great justices who have declared that due process means a "scheme of ordered liberty," "the American scheme of justice." Due process requires reasonable classifications, not cutoffs plucked out of thin air. Otherwise, there is a denial of equal protection. Catastrophic harm is a very good dividing point, and certainly it is within the legislative province to define it.

As to the Hart-Magnuson bill itself, I see no constitutional problems. If anything is clear from the original documents on the founding of this Republic, the one power that everyone agreed should go to the Federal Government was the power to regulate interstate commerce. I think that automobiles today—automobile driving today—is the single biggest kind of interstate commerce we have.

Now, the members of the Constitutional Convention of 1789 didn't say everything that was interstate had to be regulated by Congress. But I think it was their understanding that the important things should be centrally regulated if this was to be a viable Federal Union. I believe that automobile driving is so interstate today that all its aspects—the manufacture in terms of safety and environmental controls, the compensation of the people injured, the insurance against losses caused—all belong under Federal regulation. It is preeminently, not marginally, interstate commerce.

The Federal Government regulates many things. There are also a lot of Federal criminal statutes that use the interstate commerce power as a threshold, a kickoff to establish Federal jurisdiction. Automobile operation involves much more interstate commerce than many of these things now governed by Federal law.

There is a real practical necessity for uniform automobile compensation law. If there were 50 different State laws on auto insurance, there would be tremendous confusion. I think the insurance companies would find that even their computers would get tired figuring exactly how the system works in each State and what the applicable law is.

So it is clearly interstate commerce. The subject is clearly within the competence of the Congress. It is clear under the necessary and

proper clause that when the Congress enters an area which is within its constitutional authority, it may legislate as its wisdom and discretion dictate.

The argument has been raised that the Hart-Magnuson bill violates the seventh amendment with respect to jury trial. I do not believe that argument has merit. The Supreme Court, over the years, has rather carefully, and I think rather deliberately, refrained from including the seventh amendment right to civil jury in any of the dicta discussing or defining what is meant by due process.

Senator HART. I have not heard it developed really to the end of a paragraph, but I sense some concern, perhaps among some Members of the Congress, that goes this way: Can we legislate, wipe out what they would describe as everybody's right to proceed in a tort case to establish and recover for any hurt? It isn't voiced quite that way, but I think that it is out of that question that comes their wonder about the reach of a bill such as this. In other words, I guess they would say what you are doing is by a Federal act washing out an individual's States rights to use a State court system to recover for whatever he can establish was wrongfully caused.

Mr. JOOST. There are precedents for this. I have taught at the New England School of Law: I taught labor law. I think labor law is a prime example of an area in which the States and the State courts had major authority. The States defined and enforced the rights of management and of labor, of owners and of strikes. But then came Federal acts—the Norris-LaGuardia Act and the Wagner Act in the 1930's, as amended by the Taft-Hartley Act, as amended by the Landrum-Griffin Act—and no longer was a factory owner able to use his State court system to enforce "yellow dog" contracts or convict strikers or enjoin union activity.

Prior to the 1930's, the Federal Government had no great involvement in labor matters. But the U.S. Supreme Court upheld the National Labor Relations Act in the 1930's, when its constitutionality was challenged on the ground that Congress could not take these powers from the States. The Court sustained the Wagner Act because it clearly involved the regulating of interstate commerce.

The rationale for a Federal Union demands that there be a customs union, a "common market" to stimulate the commercial intercourse which is necessary so that every component can benefit to the greatest possible extent. There has to be central regulation of the things that are really central. I would argue that transportation matters such as automobiles and the driving of automobiles must, like labor matters, be regulated by the central authority. I think this is what the founders had in mind when they gave Congress the power "to regulate commerce * * * among the several States."

Senator HART. You said in your prepared testimony that there were many rewarding jobs open to the trial lawyers of this country—exciting jobs. What has happened to the trial bar in Massachusetts now that they are operating under this no-fault program there? Have they gone to the environmental protection field or are they still busy with insurance law?

Mr. JOOST. Well, just yesterday I heard on the news that the Massachusetts State Senate had given final approval to a bill to permit private citizens to sue those who are alleged to cause damage to the environment.

I believe that it is a better bill than the one that Michigan passed last year on the same subject. It has also passed the House and it has gone to a conference committee. According to the radio broadcast, the Associated Industries of Massachusetts are preparing a last ditch effort to defeat this bill which would permit individual citizens to sue to enforce the pollution—control statutes and regulations which are already law, but we believe that it will survive the conference committee and Governor Francis Sargent has indicated he personally believes private-remedy suits represent a very important approach to environmental protection.

Congress last year year passed a provision authorizing "Citizens Suits" as one of the amendments to the Clean Air Act. The Federal law provides for reasonable attorney's fees to be paid by violators. This is proper—I think the lawyer should receive a fair compensation for what he does—but that is very different from the frequently exorbitant fees earned in the automobile—negligence business.

Senator HART. The Ogilvie bill in Illinois, is it a Massachusetts no-fault bill?

Mr. JOOST. No, it is not. It is a different kind.

I would say, first, it is a misnomer to call the Ogilvie bill a nofault bill. In fact, a headline in the *Wall Street Journal* declared that the "Ogilvie System Would Bypass No-Fault Concept."

"Others have agrued" that the Ogilvie bill is a no-fault system and one which, if enacted, will make it— unnecessary for the Congress to act.

When you break it down and look at the Ogilvie bill, you see that it is really not a system, it is not a plan. As a result of my work with statutory recodification and revision efforts, I very much believe that the legislative bodies should not try to copy the courts and decide things on a case-by-case basis, a little thing here and a little thing there. Rather, they should try to create systems that make sense and leave it to the courts to fill in the bits and pieces. The Ogilvie plan is not such a system. It is a hodgepodge collection of 13 different bills on different points. The 13 bills don't add up to a system, no-fault or otherwise.

In substance, the Ogilvie bills involve a scaling down, a reduction of the amount of money that would be paid by insurers to motor vehicle accident victims who bring tort suits. That reduction in payout makes two things possible: A reduction in auto insurance premiums which looks good, and a package of first-party-benefits. The first-party-benefits package would pay a maximum of $2,000 per victim in medical, hospital, and funeral benefits plus a maximum of 52 weeks of wage loss up to $150 a week in income continuation benefits.

What this amounts to is adding some no-fault frosting onto the same old negligence cake. The cake itself won't be changed except to scale it down in size.

The most important section of the bill is the section called "General Damages." It states that damages for pain, suffering, mental anguish, and inconvenience shall not exceed the total of a sum equal to 50 percent of the reasonable medical treatment expenses * * * if * * * the total of such * * * expenses is $500 or less, and a sum equal to the amount of such reasonable expenses, if any, in excess of $500."

What this bill does is to say, sure, you can have a jury trial and you can get general damages for pain and suffering, but the jury cannot

[illegible] is a fact that your general damages are worth any more than you [illegible] if your medical expenses are over $500, and the jur[illegible] [illegible]—they will be in reversible error if they do—that your pai[illegible] and suffering is worth more than 5[illegible] percent of your medical bills i[illegible] they are less than $[illegible].

Now, I think this restriction represents unwise tampering with th[illegible] I think that if you give the right to trial by jury in a negligenc[illegible] you must [illegible] give the plaintiff that right.

[illegible] keeps the automobile jury, but puts it into [illegible] so far as damages is concerned. Let's assume the plain[illegible] [illegible] and something happens to his hand; in the auto acci[illegible] [illegible] a finger, it is [illegible] a case, the total medical bill is $20[illegible] [illegible] season be called play with the Chicago Sym[illegible] [illegible] Governor Ogilvie is saying is that this pa[illegible] [illegible] and suffering and inconvenience for not bein[illegible] [illegible] the Chicago Symphony for an entire season shall no[illegible] [illegible] This [illegible] something that makes me very uncom[illegible] [illegible] you "press-release" it as a right [illegible] its substance.

There is another provision in the Ogilvie package that I would lik[illegible] [illegible] on. The section is called "Fraudulen[illegible]" and it is a substantive criminal law, not an insurance law [illegible]—and for 3 years I have been drafting [illegible]—this is a bad bill.

[illegible] law can take on just so much. It is a little bit like th[illegible] books [illegible] but in fact you can dump only a certai[illegible] [illegible] into it: dump too much and it cease[illegible] [illegible].

Now, what the provision says is that:

> Any person who [illegible] indirectly . . . acts in concert with a person seekin[illegible] [illegible] or exaggerate the nature and exten[illegible] [illegible] or damage to property shall, if the sum so ob[illegible] [illegible] is less than $100, be sentenced to not mor[illegible] [illegible] or if the sum exceeds $100, shall be imprisone[illegible] [illegible] than 10 years.

Now, this is silly. First of all, there is no sure method of obeying it. All that is necessary for a criminal conviction is to prove the defendant acted in concert with someone who was trying to exaggerate a claim. You don't have to do it intentionally, you don't have to do it knowingly or recklessly or negligently; it is enough that it happens.

You can imagine the lawyer, whose client never tells him honestly what happened, who puts on evidence which in fact exaggerates by $101 the extent of the client's injury.

That attorney could go to jail for 10 years.

Now, I think this is foolish. All that the section is going to do is to make lawyers reluctant to talk to their clients lest they be accused of acting "in concert" with one who exaggerates; it will thus have a "chilling effect" on the attorney-client relationship; as a practical matter it will not work. People are not going to be prosecuted for this, not in the present state of the criminal courts. The fraudulent claims bit—in so many cases it is not fraud—it is rather something which is built right into the negligence/liability insurance system. Assume you are paying $300 a year in auto-insurance premiums, and

you don't have an accident for 10 years, and then something happens. You know how you paid in $3,000 and you know it is so much that I think that you really do feel a pain in your head.

Mr. SUTCLIFFE. In discussions with Mr. Markus and the trial lawyers yesterday the subject of the Federal-State fund was raised. It was explained to us that that fund would be used to create liaison with Congress in order to facilitate our efforts in considering legislation. You have now told us that you, an expert, as demonstrated in these hearings, have been relieved of your position with the trial lawyers. Can you tell us who will be talking to Congress to help us in our reform of the automobile compensation system?

Mr. JOOST. I think I mentioned that the head of this department will be a nonlawyer, Mr. Alan Locke, whose brother I believe is press secretary to the Department of Transportation, and he will have at his command a Washington representative, Mr. Wayne Smith, who is also not a lawyer, and the services of Edelman & Co., a public relations firm in Chicago, with a New York branch, which will handle the account from a Hartford office.

So I think the help that the Congress will be getting—well, you can weigh yourself what contribution such a group of experts will make to the solution of the problem.

Mr. SUTCLIFFE. One more comment that is taken from yesterday's hearing transcript. This is a response of Mr. Markus to questions about LIFT and ADOPT. He said:

> I might say the items you are describing, frankly I wish they were stronger and more effective. These items represent a very minuscule percentage of the amount the insurance industry is now spending in this area. We have reason to believe it is many millions of dollars.

From your vantage point, does that seem to be an accurate statement?

Mr. JOOST. I will have to answer "Yes," "No," and "I don't know." I do not know what the total figures are, either for LIFT or "for the insurance industry, but I do know that the LIFT ideas is on a curve of rising expectations. The State chapters and affiliates will be stimulated by this well-financed Department of Federal-State Relations which will send people around to show the local groups "how to do it," how to act effectively politically. LIFT and ADOPT programs—every State will have its own acronym—will probably be started in a majority of the States within a very short period of time.

Perhaps I overstressed the financial aspect of LIFT, the fact that it was called "a legislative kitty which is paying off." I do not think that money is the sole source of political and lobbying strength. The real strength comes from the fact that the trial lawyer has many skills, skills which can also make him an attractive political candidate or an effective campaign manager. He is accustomed to speaking. He is accustomed to responding to questions. He is not afraid to appear in public. He is accustomed to hostile questioning. He knows how to get information. He has a lot of friends and a lot of contacts. If he has been an able lawyer for 10 years or so, he knows an awful lot of people who think he is pretty good. If he goes in with this expertise and this ability and really takes to the stump to support and help a candidate with speeches and letters and phone calls, telling people what a great guy "Honest" Joe Doakes is, then Joe Doakes has a lot going for him beyond the, say, $10,000 campaign contribution from LIFT.

You [illegible] legislatures are [illegible] does not take [illegible] vested by insur- [illegible] trial law- [illegible] over a par- [illegible] how much [illegible] way in which [illegible] For this [illegible] lawyers and [illegible]

Again, [illegible] a very effec- tive way to [illegible] legislation: you go at the person who has a right to vote on legislation, namely, the person who sits in the state legislature. If a legislator votes "wrong," you find a strong opponent, the most influential person in the district who will run for the legislature, you have people pre- pare programs for him, [illegible] professionally advise him. Thus supported, he is going to have a good chance to defeat the "bad" legislator.

So I am not surprised at these LIFT results in Texas, that out of eight candidates backed in the Democratic primary for the State sen- ate, six won. LIFT's first year, [illegible] was their dry run. They can prob- ably get a higher percentage than six out of eight in the future, but even 0.750 is a pretty good batting average.

Again, you see why it is difficult to answer your question.

Mr. SUTCLIFFE. I recognize that and any reciate your response.

The committee would like to draw for a moment, if you will permit us, upon your technical knowledge of the Massachusetts plan. You have mentioned the Illinois plan with the first-party overlay over the existing tort system. In Massachusetts they ostensibly have a first-party coverage for tangible losses as between the policyholder and his insurance company, but in that plan they created a subrogation-like arrangement so that the insurance companies of the policyholders have to get together to determine which of their policyholders was at fault. Then through arbitration the company whose policyholder is found to be at fault reimburses the other company for the amount of his first-party payments to his own policyholder as well as its claims cost.

Mr. JOOST. It is something like that. I think they have a 400-word sentence.

Mr. SUTCLIFFE. I hope I got by with a 200-word explanation. What impact will this procedure have on the efficiency of the no-fault system in Massachusetts, and if you will, address yourself to what kind of inconvenience it will create for the consumer who has to have his insur- ance company talk to him pretty thoroughly about the accident and maybe even have his insurance company ask to come before an arbiter to explain what happened?

Mr. JOOST. If this is in fact what is finally held to be the meaning of the Massachusetts statute, it will be yet another way in which consumers lose out. I have the laws here—Acts of 1970, chapter 670 and chapter 744. I pasted the two statutes together to determine what the law really says, but that doesn't help with internal questions. It is really very hard to know exactly what the Massachusetts no-fault

law means on many points. It has, conservatively, about 30 ambiguities, one thing in one sentence, another thing in another section.

To give you an example, there is a merit-rating provision. If you are claims-free for a year, you are entitled to a 2-percent discount on your insurance premium. But no one knows whether the discount is 2 percent per year cumulatively, intermittently, or totally. If you go 3 years without an accident, file a claim in the fourth year, and then you are accident-free in the fifth, and sixth years, do you then get a 10-percent reduction, a 4-percent reduction or a 2-percent reduction?

There are so many ambiguities and technicalities, that frankly I am not prepared to comment on the retention of subrogation, except to say that I believe your summary is accurate.

Mr. SUTCLIFFE. Do you know why it was done? What is the rationale for this kind of an arrangement?

Let me read one thing and see if you might concur in it. This is in the Massachusetts Association of Independent Insurance Agents and Brokers' booklet entitled "Special Report on Massachusetts Auto Insurance."

On page 13 they talk about what they entitle the "Inter-Insurer Subrogation." They conclude: "In practical effect this means that the liability exposure of companies remains essentially as good or as bad as it was before."

Is this provision included in there only to allow those companies who have all the good risks right now to keep them and to benefit from them?

Mr. JOOST. I think it is clear that subrogation between insurance companies is completely contrary to the theory of no-fault. Basically, the theory of no-fault insurance is that we let the loss stay where it falls but reimburse the victim for that loss from the insurance pool to which he and all other motorists have contributed. To subrogate on a case-by-case basis, to shift money back and forth between insurance companies on the basis of which company's policyholder was at fault, whether it is done by arbitrators or whether it is done by a court, involves a waste of time, a waste of people, a waste of money for hearings, for preparation, for salaries. The cost of waste is eventually paid for by the consumer in the form of higher-than-necessary premiums.

In most cases, the claims of A company vs. B balance out against the claims of B company vs. A in a rather constant ratio. If the law permits this back-to-forth subrogation, then the administrative costs of the system will be excessive. If the law permits this back-and-forth subrogation, then the administrative costs of the system will be excessive. If that agent's association brochure states that this is the Massachusetts law, it probably is, because the genesis of our no-fault it law was a bill, I think it was S. 500, that was filed on behalf of the Massachusetts Agents and Brokers Association.

That original bill was changed enormously. Already two parts of the law have been held unconstitutional by the Supreme Judicial Court of Massachusetts. The trial lawyers' strategy was to make the bill into a Christmas tree when they saw that the votes were there in 1970 to pass no-fault—to put on so many goodies that the whole thing would fall because the Governor would be compelled to veto it because otherwise the insurance companies would yell too much.

They put in a provision that there should be a 15-percent rate reduction, not only for personal-injury policies but also for property liability and collision-insurance policies. There were other things that were put in also. Notwithstanding, the Governor in fact signed the final product. The legislature then amended some of the extras, and in November our Supreme Judicial Court voided the unrelated rate reductions. The insurance companies did in fact yell that they would no longer do business in Massachusetts, but they are all still there and doing handsomely.

There will have to be a great many appellate decisions in Massachusetts to finally determine all the parts of this law. In that context, I would like to command all the people who had anything to do with the drafting of S. 945. I think it is a very well-written bill. It is even better than the one that Senator Hart filed last year. Technically, there are fewer ambiguities. As a matter of fact, I talked with a personal friend just a couple of days before I came down here, a professor at Yale who has written a book on the subject, "The Costs of Accidents," and he says it is the best-written no-fault bill that he has seen filed anywhere this year.

Perhaps I overstress the importance of the draftsmanship, but when so many people are going to have to use a law, live with a law, operate under it, the language should be comprehensible to the layman. The law is not just for the lawyers, it is not our private property. It should not be expressed in archaic or arcane terminology, difficult for the layman to follow. If it applies to all, be it the criminal law or the automobile law, it should be comprehensible by all.

I think your proposed statute, while it could be improved some more, I think it is really very good.

Mr. SUTCLIFFE. That is all the questions I have. Thank you.

Senator HART. Thank you for the last comment which I can take with good grace because, as you suspect, the Members of the Senate rarely do the drafting, and I certainly had nothing to do with what you said was a good product, but I am delighted that you said what you did, because it will permit me to go to those who did draft it and indicate your judgment on the quality of it.

One last question because I have it thrown at me by some of my colleagues; and it is not the result of a trial lawyer lobbying my colleagues. It is just their preliminary reaction to this proposal. In short, they say I know we have got to do something about automobile insurance; I am for you; except you have gone too far. I do not want to have to pay to fix up some bum that drives with inexcusable carelessness. Can't you take care of that problem for me? That is the end of the question. How do you respond to that?

Mr. JOOST. Speaking personally, regardless of philosophy, I am afraid you are going to have to pay to take care of that inexcusable bum. The only question is how. We might, for example, have to pay for him or his dependents through welfare. We must face the fact that we pay because that man—that really bad driver, drunken driver—is more than a bum on the highway. That is only one part of him. He may also be a skilled craftsman in a machine-tool company. When he is all banged up and does not get rehabilitation and does not get good medical service and cannot come back to work for a long time, the Nation—not just the company—is deprived of his economic input into

the total goods and services of this Nation. We are paying, we do pay, every time someone is really hurt in an accident. The only question is how—out of general revenues or an automobile insurance pool into which the "bum" pays premiums which cover the risk?

I think the most commendable feature of your legislation—whether you did this consciously or not—is that you accept the fact that we are paying and say how do we best get auto victims back in business. I think that by giving the victim basically unlimited medical benefits plus unlimited rehabilitation benefits plus compensation for loss of earnings for a period up to 2½ years, you do everything that reasonable men can do to get that automobile victim back in business, be he a student or a housewife or a production worker or an architect or what have you. In my judgment, this emphasis-on-the-future is much more important; much more just; much more compelling than anything trial lawyers may say about the importance of pain and suffering and the dignity of a jury trial.

I think the Supreme Court will consider the seventh amendment argument in light of that essential justice and compassion. The bill's purpose is so terribly important that the Congress should act without delay.

Senator HART. Thank you.

Let me make one last comment. Normally when this comment is made it reflects a feeling that because of some act of individual courage and sensitive conscience somebody has put himself into the army of the unemployed by coming in here and testifying. With your extraordinary talents there would never be the danger that your services would not be sought. So I know that when you decided, as you put it here, "finally I concluded I had to accept the call to testify," that you did not face economic deprivation from the decision, but that really is not the most difficult part of stepping up and speaking hard truths. Lots of people who are the beneficiaries of enormous trust income never speak.

The fact that you would come as you have to as one who has been a trial lawyers' lawyer and told us that no-fault is the answer is an act, I think, of considerable courage, and I am sure that Senator Magnuson, had he been able to stay, would have joined me in that expression.

Mr. JOOST. Thank you, sir.

(The articles referred to earlier follow:)

[Vol. 1, No. 2 (Spring 1966)]

PORTIA LAW JOURNAL

Basic Protection for the Traffic Victim—*A Blueprint for Reforming Automobile Insurance*. By Robert E. Keeton[1] and Jeffrey O'Connell.[2] Boston, Toronto: Little, Brown and Company. 1965. Pp. xv, 624. $13.50.

A brief review can scarcely do justice to the complexity, intricacy, and thousands of hours of research, thought, analysis, discussion, and consultation that lie behind this ingenious and creative work. It is a pathfinder in a difficult area. Whether the proposed new basic automobile insurance system, based essentially upon strict rather than negligence liability, *should* be adopted is a question that lies within the responsibility and expertise of the legislatures. Clearly, however, each state legislature and even the Congress (what is more inter-state

[1] Professor of Law, Harvard Law School.
[2] Professor of Law, University of Illinois Law School.

commerce these days than automobile driving? should study carefully th proposed reform and the mechanisms devised for it.

The articles state that the major state courts use the present system compensation for automobile accidents in each of the states: (1) many injure persons receive no compensation and others receive less than their economi losses because the other driver hasn't enough insurance or assets, or becaus the victim must show the other person was at fault and he was legally blam less. Proof at times is hard to get, e.g. if the accident was hit-and-run; (2) th present system is extraordinarily slow and cumbersome what with delay in th courts, and the injurious victim will his back against the wall financiall may settle for less than his just deserts; (3) there is too much unfairness, a a practical matter, with some people getting more than they deserve and othe less; (4) the fault system is extraordinarily expensive to administer and th heavy administrative cost is added to the premium all each car owner pays (5) the present system is a constant temptation to dishonesty—inducement to exaggeration and invention strike at the integrity of driver and injured alik all to often corrupting both and making the driver twice a victim—injure and defeated. Substantial documentation is advanced to support each of the assertions.

The basic corrective advanced is absolute basic compulsory automobile i surance. Under such a system, *anyone* a driver is in an accident *his own i surance company* shall compensate him or his guest for their "loss," whic shall not include pain, suffering and inconvenience. Benefits would be pai monthly as the loss accrues. Tort liability would remain but only in majo cases (where damage for pain and suffering exceeds $5,000 and other tort dan ages exceed $10,000).

The proposed scheme is a careful attempt at reform. If substantially enacte it would provide a fairer and more sensible solution to the grave national pro lem of compensating automobile accident victims.

One question that arises, however, that the articles do not consider, is wheth one can ever truly compensate an automobile accident victim in *dollars; e.g.* man who loses his legs or a child who no longer has a father? No one has sai that *all* auto injuries and deaths can be eliminated, for many have suggeste that if automobiles were designed with safety rather than sex-appeal as the fir order of business, the staggering highway toll would be reduced. The most "Bas Protection for the Traffic Victim" would seem to be that the government do ever thing possible to protect a man from ever becoming a traffic victim in the fir place, through enforcing higher standards for driver skill and demanding tank-like approach to auto design.

ROBERT H. JOOST.[1]

[From the Boston Globe, Tuesday, Dec. 6, 1966]

LETTERS TO THE EDITOR

KEEP THE COMPULSORY

. . . With all due respect to the governor of the commonwealth, the leader i Massachusetts of the party which I personally support, the financial responsibilit law idea is an irresponsible "solution" to the problem of automobile insuranc Compulsory insurance must be retained. But the rates must also be cut signif cantly. The Dukakis bill is based upon the results of long and painstaking r search by a group under two highly regarded professors of law and tort law a thorities. The Dukakis/Keeton-O'Connell plan will not eliminate the right to tri by jury, as some responsible lawyers unfamiliar with the details seem to b afraid. Insurance companies will not lose money, nor will the plaintiff's person injury lawyer, whose livelihood rests on a contingent fee, suffer unduly.

The political parties and their representatives in the Legislature and executiv and the members of the bar who are all "officers of the court" have a respo sibility to the people and to the commonwealth that shou'd rule out self-interes personal pocketbook considerations, and partisanship on an issue so basic an vital: the right to be sure of compensation for automobile injuries (hence th need for compulsory insurance) and the right to drive a car, which often equal the right to employment in today's world (hence the need for significant redu

---

[1] Member of the Massachusetts Bar; former assistant to the Editor, Journal of th erican Trial Lawyers.

tions, not increases, in automobile liability rates). The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried. The problem is critical—nay-sayers are not enough.

ROBERT H. JOOST.

[From the Boston Globe, Friday, Apr. 30, 1971]

LETTERS TO THE EDITOR

NATIONAL NO-FAULT

I was puzzled by your editorial on no-fault auto insurance entitled "Volpe's Wise Proposal" (April 19).

The editorial is puzzling primarily because it is no secret in Washington that Volpe was prepared to recommend national no-fault auto insurance legislation and that his recommendation was sabotaged by White House action.

The Globe may be right in arguing that a rigid national system of no-fault auto insurance would not be a sensible course at this time. On the other hand, if no-fault makes sense in Massachusetts, I see no reason why it does not make sense for the nation as a whole.

Legislating on a national basis on the subject of motor vehicles is hardly a novel proposition. I doubt that anyone would seriously suggest today that we should not have national standards for motor vehicle safety. Congress has also acted to impose auto emission controls on a national basis. In fact, it has gone so far as to deny states jurisdiction of any kind over auto emission controls.

Accordingly, the case for national no-fault auto insurance in some form is a strong one. Simplicity and uniformity of treatment are essential in a nation where so many of us cross state lines in motor vehicles every day. It would be tragic, in my opinion, to encourage a situation in which a crazy quilt of state no-fault laws emerges which results in changes in basic rules or gaps in coverage simply because a motorist leaves his home state.

There may be a sensible compromise between the no-action position of the Nixon Administration and the advocates of comprehensive national no-fault insurance. Congress could pass legislation this year requiring the states to enact no-fault laws within the next two years. The Secretary of Transportation would be given the authority to approve each plan but every state would have some latitude in developing its details so long as the state plan met certain basic criteria.

Such a course may be the one which Congress ultimately takes this year. It is, in my view, the minimum required if we are not to subject the motorists of the nation to a hodge-podge of conflicting laws and insurance policies in the years to come.

MICHAEL S. DUKAKIS.

[From the Journal of Commerce, Apr. 26, 1971]

BAY STATE'S INSURANCE INDUSTRY HIT

GOVERNOR CHARGES PROFITS ARE NOT PASSED TO CONSUMER

BOSTON, April 25.—The auto insurance industry was bitterly criticized here today by the Commonwealth's governor for failing to pass onto consumers the substantial savings the companies have incurred from the Bay State's three-month old no-fault auto insurance system.

Gov. Francis W. Sargent said that during the first three months of this year, the underwriters have seen their claim costs drop by over 35 percent but have not come forward with plans to lower premiums.

The governor also alleged that many insurers have tried to obscure the options in the no-fault program which would lower their auto insurance rates.

"The average paid claim cost in the first quarter of last year was $205," Gov. Sargent said. "The average paid claim cost in the first quarter of this year is $131. The total amount of paid losses in the first quarter of last year were $359,590—this year they are $229,479.

proper clause that when the Congress enters an area which is within its constitutional authority, it may legislate as its wisdom and discretion dictate.

The argument has been raised that the Hart-Magnuson bill violates the seventh amendment with respect to jury trial. I do not believe that argument has merit. The Supreme Court, over the years, has rather carefully, and I think rather deliberately, refrained from including the seventh amendment right to civil jury in any of the dicta discussing or defining what is meant by due process.

Senator HART. I have not heard it developed really to the end of a paragraph, but I sense some concern, perhaps among some Members of the Congress, that goes this way: Can we legislate, wipe out what they would describe as everybody's right to proceed in a tort case to establish and recover for any hurt? It isn't voiced quite that way but I think that it is out of that question that comes their wonder about the reach of a bill such as this. In other words, I guess they would say what you are doing is by a Federal act washing out an individual's States rights to use a State court system to recover for whatever he can establish was wrongfully caused.

Mr. JOOST. There are precedents for this. I have taught at the New England School of Law; I taught labor law. I think labor law is a prime example of an area in which the States and the State courts had major authority. The States defined and enforced the rights of management and of labor, of owners and of strikes. But then came Federal acts the Norris-LaGuardia Act and the Wagner Act in the 1930's, as amended by the Taft-Hartley Act, as amended by the Landrum-Griffin Act—and no longer was a factory owner able to use his State court system to enforce "yellow dog" contracts or convict strikers or enjoin union activity.

Prior to the 1930's, the Federal Government had no great involvement in labor matters. But the U.S. Supreme Court upheld the National Labor Relations Act in the 1930's, when its constitutionality was challenged on the ground that Congress could not take these powers from the States. The Court sustained the Wagner Act because it clearly involved the regulating of interstate commerce.

The rationale for a Federal Union demands that there be a customs union, a "common market" to stimulate the commercial intercourse which is necessary so that every component can benefit to the greatest possible extent. There has to be central regulation of the things that are really central. I would argue that transportation matters such as automobiles and the driving of automobiles must, like labor matters be regulated by the central authority. I think this is what the founders had in mind when they gave Congress the power "to regulate commerce * * * among the several States."

Senator HART. You said in your prepared testimony that there were many rewarding jobs open to the trial lawyers of this country—exciting jobs. What has happened to the trial bar in Massachusetts now that they are operating under this no-fault program there? Have they gone to the environmental protection field or are they still busy with insurance law?

Mr. JOOST. Well, just yesterday I heard on the news that the Massachusetts State Senate had given final approval to a bill to permit private citizens to sue those who are alleged to cause damage to the environment.

I believe that it is a better bill than the one that Michigan passed last year on the same subject. It has also passed the House and it has gone to a conference committee. According to the radio broadcast, the Associated Industries of Massachusetts are preparing a last ditch effort to defeat this bill which would permit individual citizens to sue to enforce the pollution—control statutes and regulations which are already law, but we believe that it will survive the conference committee and Governor Francis Sargent has indicated he personally believes private-remedy suits represent a very important approach to environmental protection.

Congress last year year passed a provision authorizing "Citizens Suits" as one of the amendments to the Clean Air Act. The Federal law provides for reasonable attorney's fees to be paid by violators. This is proper—I think the lawyer should receive a fair compensation for what he does—but that is very different from the frequently exorbitant fees earned in the automobile—negligence business.

Senator HART. The Ogilvie bill in Illinois, is it a Massachusetts no-fault bill?

Mr. JOOST. No, it is not. It is a different kind.

I would say, first, it is a misnomer to call the Ogilvie bill a nofault bill. In fact, a headline in the *Wall Street Journal* declared that the "Ogilvie System Would Bypass No-Fault Concept."

"Others have agrued" that the Ogilvie bill is a no-fault system and one which, if enacted, will make it— unnecessary for the Congress to act.

When you break it down and look at the Ogilvie bill, you see that it is really not a system, it is not a plan. As a result of my work with statutory recodification and revision efforts, I very much believe that the legislative bodies should not try to copy the courts and decide things on a case-by-case basis, a little thing here and a little thing there. Rather, they should try to create systems that make sense and leave it to the courts to fill in the bits and pieces. The Ogilvie plan is not such a system. It is a hodgepodge collection of 13 different bills on different points. The 13 bills don't add up to a system, no-fault or otherwise.

In substance, the Ogilvie bills involve a scaling down, a reduction of the amount of money that would be paid by insurers to motor vehicle accident victims who bring tort suits. That reduction in payout makes two things possible: A reduction in auto insurance premiums which looks good, and a package of first-party-benefits. The first-party-benefits package would pay a maximum of $2,000 per victim in medical, hospital, and funeral benefits plus a maximum of 52 weeks of wage loss up to $150 a week in income continuation benefits.

What this amounts to is adding some no-fault frosting onto the same old negligence cake. The cake itself won't be changed except to scale it down in size.

The most important section of the bill is the section called "General Damages." It states that damages for pain, suffering, mental anguish, and inconvenience shall not exceed the total of a sum equal to 50 percent of the reasonable medical treatment expenses * * * if * * * the total of such * * * expenses is $500 or less, and a sum equal to the amount of such reasonable expenses, if any, in excess of $500."

What this bill does is to say, sure, you can have a jury trial and you can get general damages for pain and suffering, but the jury cannot

find as a fact that your general damages are worth any more than your medical expenses if your medical expenses are over $500, and the jury can't find—they will be in reversible error if they do—that your pain and suffering is worth more than 50 percent of your medical bills if they are less than $500.

Now, I think this restriction represents unwise tampering with the jury. I think that if you give the right to trial by jury in a negligence case, you must really give the plaintiff that right.

The Ogilvie plan keeps the automobile jury, but puts it into a straightjacket so far as damages is concerned. Let's assume the plaintiff is a violinist and something happens to his hand: in the auto accident he breaks a finger, it is put in a cast, the total medical bill is $200. However, for an entire season he cannot play with the Chicago Symphony Orchestra. What Governor Ogilvie is saying is that this particular violinist's pain and suffering and inconvenience for not being able to play with the Chicago Symphony for an entire season shall not exceed $150. This bill is doing something that makes me very uncomfortable: you give or retain a right, you "press-release" it as a right, but you take away its substance.

There is another provision in the Ogilvie package that I would like to take the time to comment on. The section is called "Fraudulent Claims," and it is a substantive criminal law, not an insurance law. Just looking at it technically—and for 3 years I have been drafting and analyzing criminal statutes—this is a bad bill.

The criminal law can take on just so much. It is a little bit like the Great Lakes: it looks enormous, but in fact you can dump only a certain amount of indigestible material into it: dump too much and it ceases to live.

Now, what the provision says is that:

> Any person who . . . indirectly . . . acts in concert with a person seeking to falsely and fraudulently represent . . . or exaggerate the nature and extent of motor-vehicle-caused injury or damage to property shall, if the sum so obtained or attempted to be obtained is less than $100, be sentenced to not more than one-year imprisonment, or if the sum exceeds $100, shall be imprisoned not more than 10 years.

Now, this is silly. First of all, there is no sure method of obeying it. All that is necessary for a criminal conviction is to prove the defendant acted in concert with someone who was trying to exaggerate a claim. You don't have to do it intentionally, you don't have to do it knowingly or recklessly or negligently; it is enough that it happens.

You can imagine the lawyer, whose client never tells him honestly what happened, who puts on evidence which in fact exaggerates by $101 the extent of the client's injury.

That attorney could go to jail for 10 years.

Now, I think this is foolish. All that the section is going to do is to make lawyers reluctant to talk to their clients lest they be accused of acting "in concert" with one who exaggerates; it will thus have a "chilling effect" on the attorney-client relationship; as a practical matter it will not work. People are not going to be prosecuted for this, not in the present state of the criminal courts. The fraudulent claims bit—in so many cases it is not fraud—it is rather something which is built right into the negligence/liability insurance system. Assume you are paying $300 a year in auto-insurance premiums, and

you don't have an accident for 10 years, and then something happens. You know how you paid in $3,000 and you know it is so much that I think that you really do feel a pain in your head.

Mr. SUTCLIFFE. In discussions with Mr. Markus and the trial lawyers yesterday the subject of the Federal-State fund was raised. It was explained to us that that fund would be used to create liaison with Congress in order to facilitate our efforts in considering legislation. You have now told us that you, an expert, as demonstrated in these hearings, have been relieved of your position with the trial lawyers. Can you tell us who will be talking to Congress to help us in our reform of the automobile compensation system?

Mr. JOOST. I think I mentioned that the head of this department will be a nonlawyer, Mr. Alan Locke, whose brother I believe is press secretary to the Department of Transportation, and he will have at his command a Washington representative, Mr. Wayne Smith, who is also not a lawyer, and the services of Edelman & Co., a public relations firm in Chicago, with a New York branch, which will handle the account from a Hartford office.

So I think the help that the Congress will be getting—well, you can weigh yourself what contribution such a group of experts will make to the solution of the problem.

Mr. SUTCLIFFE. One more comment that is taken from yesterday's hearing transcript. This is a response of Mr. Markus to questions about LIFT and ADOPT. He said:

> I might say the items you are describing, frankly I wish they were stronger and more effective. These items represent a very minuscule percentage of the amount the insurance industry is now spending in this area. We have reason to believe it is many millions of dollars.

From your vantage point, does that seem to be an accurate statement?

Mr. JOOST. I will have to answer "Yes," "No," and "I don't know." I do not know what the total figures are, either for LIFT or "for the insurance industry, but I do know that the LIFT ideas is on a curve of rising expectations. The State chapters and affiliates will be stimulated by this well-financed Department of Federal-State Relations which will send people around to show the local groups "how to do it," how to act effectively politically. LIFT and ADOPT programs—every State will have its own acronym—will probably be started in a majority of the States within a very short period of time.

Perhaps I overstressed the financial aspect of LIFT, the fact that it was called "a legislative kitty which is paying off." I do not think that money is the sole source of political and lobbying strength. The real strength comes from the fact that the trial lawyer has many skills, skills which can also make him an attractive political candidate or an effective campaign manager. He is accustomed to speaking. He is accustomed to responding to questions. He is not afraid to appear in public. He is accustomed to hostile questioning. He knows how to get information. He has a lot of friends and a lot of contacts. If he has been an able lawyer for 10 years or so, he knows an awful lot of people who think he is pretty good. If he goes in with this expertise and this ability and really takes to the stump to support and help a candidate with speeches and letters and phone calls, telling people what a great guy "Honest" Joe Doakes is, then Joe Doakes has a lot going for him beyond the, say, $10,000 campaign contribution from LIFT.

[illegible] State legislatures an[illegible] [illegible] Congress. It does not tak[illegible] [illegible] insured by insur[illegible] [illegible] trial law[illegible] [illegible] over a par[illegible] [illegible] just how muc[illegible] [illegible] the way in whic[illegible] [illegible] that comes. For thi[illegible] [illegible] between lawyers an[illegible]

[illegible] therefore, a very effec[illegible] [illegible] legislation; yo[illegible] [illegible] legislation, namely, th[illegible] [illegible] legislator does wrong, [illegible] person in the distric[illegible] [illegible] you have people pre[illegible] [illegible] professionally advise him [illegible] [illegible] chance to defeat th[illegible]

[illegible] in Texas, that out o[illegible] [illegible] for the State sen[illegible] [illegible] win. They can prob[illegible] [illegible] six or eight in the future, bu[illegible] [illegible] anything.

[illegible] answer your question.

Mr. [illegible]. [illegible] elaborate your response.

The [illegible] for a moment, if you will permi[illegible] us, upon your [illegible] of the Massachusetts plan. Yo[illegible] have mentioned the [illegible] the first-party overlay over th[illegible] existing tort system. In Massachusetts they ostensibly have a first-party coverage for [illegible] losses as between the policyholder and hi[illegible] insurance company, but in that plan they created a subrogation-lik[illegible] arrangement so that the insurance companies of the policyholders hav[illegible] to get together to determine which of their policyholders was at fault. Then through arbitration the company whose policyholder is foun[illegible] to be at fault reimburses the other company for the amount of hi[illegible] first-party payments to its own policyholder as well as its claims cost[illegible]

Mr. JOOST. It is something like that. I think they have a 400-wor[illegible] sentence.

Mr. SUTCLIFFE. I hope I got by with a 200-word explanation. Wha[illegible] impact will this procedure have on the efficiency of the no-fault systen[illegible] in Massachusetts, and if you will, address yourself to what kind o[illegible] inconvenience it will create for the consumer who has to have his insur[illegible] ance company talk to him pretty thoroughly about the accident an[illegible] maybe even have his insurance company ask to come before an arbite[illegible] to explain what happened?

Mr. JOOST. If this is in fact what is finally held to be the meaning of the Massachusetts statute, it will be yet another way in whic[illegible] consumers lose out. I have the laws here—Acts of 1970, chapter 67[illegible] and chapter 744. I pasted the two statutes together to determine wha[illegible] the law really says, but that doesn't help with internal questions. It is really very hard to know exactly what the Massachusetts no-faul[illegible]

law means on many points. It has, conservatively, about 30 ambiguities, one thing in one sentence, another thing in another section.

To give you an example, there is a merit-rating provision. If you are claims-free for a year, you are entitled to a 2-percent discount on your insurance premium. But no one knows whether the discount is 2 percent per year cumulatively, intermittently, or totally. If you go 3 years without an accident, file a claim in the fourth year, and then you are accident-free in the fifth, and sixth years, do you then get a 10-percent reduction, a 4-percent reduction or a 2-percent reduction?

There are so many ambiguities and technicalities, that frankly I am not prepared to comment on the retention of subrogation, except to say that I believe your summary is accurate.

Mr. SUTCLIFFE. Do you know why it was done? What is the rationale for this kind of an arrangement?

Let me read one thing and see if you might concur in it. This is in the Massachusetts Association of Independent Insurance Agents and Brokers' booklet entitled "Special Report on Massachusetts Auto Insurance."

On page 13 they talk about what they entitle the "Inter-Insurer Subrogation." They conclude: "In practical effect this means that the liability exposure of companies remains essentially as good or as bad as it was before."

Is this provision included in there only to allow those companies who have all the good risks right now to keep them and to benefit from them?

Mr. JOOST. I think it is clear that subrogation between insurance companies is completely contrary to the theory of no-fault. Basically, the theory of no-fault insurance is that we let the loss stay where it falls but reimburse the victim for that loss from the insurance pool to which he and all other motorists have contributed. To subrogate on a case-by-case basis, to shift money back and forth between insurance companies on the basis of which company's policyholder was at fault, whether it is done by arbitrators or whether it is done by a court, involves a waste of time, a waste of people, a waste of money for hearings, for preparation, for salaries. The cost of waste is eventually paid for by the consumer in the form of higher-than-necessary premiums.

In most cases, the claims of A company vs. B balance out against the claims of B company vs. A in a rather constant ratio. If the law permits this back-to-forth subrogation, then the administrative costs of the system will be excessive. If the law permits this back-and-forth subrogation, then the administrative costs of the system will be excessive. If that agent's association brochure states that this is the Massachusetts law, it probably is, because the genesis of our no-fault it law was a bill, I think it was S. 500, that was filed on behalf of the Massachusetts Agents and Brokers Association.

That original bill was changed enormously. Already two parts of the law have been held unconstitutional by the Supreme Judicial Court of Massachusetts. The trial lawyers' strategy was to make the bill into a Christmas tree when they saw that the votes were there in 1970 to pass no-fault—to put on so many goodies that the whole thing would fall because the Governor would be compelled to veto it because otherwise the insurance companies would yell too much.

[illegible] that there should be a 15-percent rate reduction [illegible] for personal-injury policies but also for property liability and [illegible] policies. There were other things that were [illegible] Notwithstanding the governor [illegible] signed the final product. The insurance [illegible] some of the extras, and in [illegible] the unrelated rate reduction. The insurance companies [illegible] that they would no longer [illegible] but they are still there and [illegible].

There will [illegible] a great many people in Massachusetts [illegible] the passage of this law. In that context, I [illegible] to do with the drafting of it. I think it is a very well-written bill. It is even [illegible] Technically, there are [illegible]. As a matter of fact, I talked with a personal friend just a couple of days before I came down here, a professor at Yale who has written a book on the subject, "The Costs of Accidents," and he says it is the best-written bill that he has seen filed anywhere this year.

Perhaps I overstress the importance of the draftsmanship, but when so many people are going to have to use a law, live with a law, operate under a law, the language should be comprehensible to the layman. The law is not just for the lawyers. It is not our private property. It should not be expressed in arcane or arcane terminology, difficult for the layman to follow. If it applies to all be it the criminal law or the automobile law, it should be comprehensible to all.

I think your proposed statute, while it could be improved some more, I think it is really very good.

Mr. SUTCLIFFE. That is all the questions I have. Thank you.

Senator HART. Thank you for the last comment which I can take with good grace because, as you suspect, the Members of the Senate rarely do the drafting, and I certainly had nothing to do with what you said was a good product, but I am delighted that you said what you did, because it will permit me to go to those who did draft it and indicate your judgment on the quality of it.

One last question because I have it thrown at me by some of my colleagues; and it is not the result of a trial lawyer lobbying my colleagues. It is just their preliminary reaction to this proposal. In short, they say I know we have got to do something about automobile insurance; I am for you; except you have gone too far. I do not want to have to pay to fix up some bum that drives with inexcusable carelessness. Can't you take care of that problem for me? That is the end of the question. How do you respond to that?

Mr. JOOST. Speaking personally, regardless of philosophy, I am afraid you are going to have to pay to take care of that inexcusable bum. The only question is how. We might, for example, have to pay for him or his dependents through welfare. We must face the fact that we pay because that man—that really bad driver, drunken driver—is more than a bum on the highway. That is only one part of him. He may also be a skilled craftsman in a machine-tool company. When he is all banged up and does not get rehabilitation and does not get good medical service and cannot come back to work for a long time, the Nation—not just the company—is deprived of his economic input into

the total goods and services of this Nation. We are paying, we do pay, every time someone is really hurt in an accident. The only question is how—out of general revenues or an automobile insurance pool into which the "bum" pays premiums which cover the risk?

I think the most commendable feature of your legislation—whether you did this consciously or not—is that you accept the fact that we are paying and say how do we best get auto victims back in business. I think that by giving the victim basically unlimited medical benefits plus unlimited rehabilitation benefits plus compensation for loss of earnings for a period up to 2½ years, you do everything that reasonable men can do to get that automobile victim back in business, be he a student or a housewife or a production worker or an architect or what have you. In my judgment, this emphasis-on-the-future is much more important; much more just; much more compelling than anything trial lawyers may say about the importance of pain and suffering and the dignity of a jury trial.

I think the Supreme Court will consider the seventh amendment argument in light of that essential justice and compassion. The bill's purpose is so terribly important that the Congress should act without delay.

Senator HART. Thank you.

Let me make one last comment. Normally when this comment is made it reflects a feeling that because of some act of individual courage and sensitive conscience somebody has put himself into the army of the unemployed by coming in here and testifying. With your extraordinary talents there would never be the danger that your services would not be sought. So I know that when you decided, as you put it here, "finally I concluded I had to accept the call to testify," that you did not face economic deprivation from the decision, but that really is not the most difficult part of stepping up and speaking hard truths. Lots of people who are the beneficiaries of enormous trust income never speak.

The fact that you would come as you have to as one who has been a trial lawyers' lawyer and told us that no-fault is the answer is an act, I think, of considerable courage, and I am sure that Senator Magnuson, had he been able to stay, would have joined me in that expression.

Mr. JOOST. Thank you, sir.

(The articles referred to earlier follow:)

[Vol. 1, No. 2 (Spring 1966)]

PORTIA LAW JOURNAL

Basic Protection for the Traffic Victim—*A Blueprint for Reforming Automobile Insurance*. By Robert E. Keeton[1] and Jeffrey O'Connell.[2] Boston, Toronto: Little, Brown and Company. 1965. Pp. xv, 624. $13.50.

A brief review can scarcely do justice to the complexity, intricacy, and thousands of hours of research, thought, analysis, discussion, and consultation that lie behind this ingenious and creative work. It is a pathfinder in a difficult area. Whether the proposed new basic automobile insurance system, based essentially upon strict rather than negligence liability, *should* be adopted is a question that lies within the responsibility and expertise of the legislatures. Clearly, however, each state legislature and even the Congress (what is more inter-state

[1] Professor of Law, Harvard Law School.
[2] Professor of Law, University of Illinois Law School.

commerce these days than automobile driving?) should study carefully thi proposed reform and the justifications advanced for it.

The authors state that five major shortcomings affect the present system o compensation for automobile accidents in each of the states: (1) many injure persons receive no compensation and others receive less than their economi losses because the other driver hasn't enough insurance or assets, or becaus the victim must show the other person was at fault and he was legally blame less. Proof, at times is hard to get, *e.g.* if the accident was hit-and-run; (2) th present system is extraordinarily slow and cumbersome, what with delay in th courts, and the impecunious victim, with his back against the wall financially may settle for less than his just deserts; (3) there is too much unfairness, a a practical mater, with some people getting more than they deserve and other less; (4) the fault system is extraordinarily expensive to administer and thi heavy administrative cost is added to the premium bill each car owner pays (5) the present system is a constant temptation to dishonesty—"inducement to exaggeration and invention strike at the integrity of driver and injured alike all too often corrupting both and leaving the latter twice a victim—injure and debased." Substantial documentation is advanced to support each of thes assertions.

The basic corrective advanced is absolute basic compulsory automobile in surance. Under such a system, *anytime* a driver is in an accident *his own in surance company* shall compensate him or his guest, for their "loss," whic shall not include pain, suffering and inconvenience. Benefits would be pai monthly as the loss accrues. Tort liability would remain, but only in majo cases (where damage for pain and suffering exceeds $5,000 and other tort dan ages exceed $10,000).

The proposed statute is a careful attempt at reform. If substantially enacted it would provide a fairer and more sensible solution to the grave national prob lem of compensating automobile accident victims.

One question that arises, however, that the authors do not consider, is whethe one can ever truly compensate an automobile accident victim in *dollars; e.g.* man who loses his legs or a child who no longer has a father? No one has sai that *all* auto injuries and deaths can be eliminated, but many have suggeste that if automobiles were designed with safety rather than sex-appeal as the firs order of business, the staggering highway toll would be reduced. The most "Basi Protection for the Traffic Victim" would seem to be that the government do every thing possible to protect a man from ever becoming a traffic victim in the firs place, through enforcing higher standards for driver skill and demanding tank-like' approach to auto design.

ROBERT H. JOOST.[a]

[From the Boston Globe, Tuesday, Dec. 6, 1966]

LETTERS TO THE EDITOR

KEEP THE COMPULSORY

. . . With all due respect to the governor of the commonwealth, the leader i Massachusetts of the party which I personally support, the financial responsibilit law idea is an irresponsible "solution" to the problem of automobile insuranc Compulsory insurance must be retained. But the rates must also be cut signif cantly. The Dukakis bill is based upon the results of long and painstaking re search by a group under two highly regarded professors of law and tort law au thorities. The Dukakis/Keeton-O'Connell plan will not eliminate the right to tri by jury, as some responsible lawyers unfamiliar with the details seem to b afraid. Insurance companies will not lose money, nor will the plaintiff's persona injury lawyer, whose livelihood rests on a contingent fee, suffer unduly.

The political parties and their representatives in the Legislature and executive and the members of the bar who are all "officers of the court" have a respon sibility to the people and to the commonwealth that shou'd rule out self-interes personal pocketbook considerations, and partisanship on an issue so basic an vital: the right to be sure of compensation for automobile injuries (hence th need for compulsory insurance) and the right to drive a car, which often equal the right to employment in today's world (hence the need for significant redu

[a] Member of the Massachusetts Bar; former assistant to the Editor, Journal of th ican Trial Lawyers.

tions, not increases, in automobile liability rates). The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried. The problem is critical—nay-sayers are not enough.

ROBERT H. JOOST.

[From the Boston Globe, Friday, Apr. 30, 1971]

LETTERS TO THE EDITOR

NATIONAL NO-FAULT

I was puzzled by your editorial on no-fault auto insurance entitled "Volpe's Wise Proposal" (April 19).

The editorial is puzzling primarily because it is no secret in Washington that Volpe was prepared to recommend national no-fault auto insurance legislation and that his recommendation was sabotaged by White House action.

The Globe may be right in arguing that a rigid national system of no-fault auto insurance would not be a sensible course at this time. On the other hand, if no-fault makes sense in Massachusetts, I see no reason why it does not make sense for the nation as a whole.

Legislating on a national basis on the subject of motor vehicles is hardly a novel proposition. I doubt that anyone would seriously suggest today that we should not have national standards for motor vehicle safety. Congress has also acted to impose auto emission controls on a national basis. In fact, it has gone so far as to deny states jurisdiction of any kind over auto emission controls.

Accordingly, the case for national no-fault auto insurance in some form is a strong one. Simplicity and uniformity of treatment are essential in a nation where so many of us cross state lines in motor vehicles every day. It would be tragic, in my opinion, to encourage a situation in which a crazy quilt of state no-fault laws emerges which results in changes in basic rules or gaps in coverage simply because a motorist leaves his home state.

There may be a sensible compromise between the no-action position of the Nixon Administration and the advocates of comprehensive national no-fault insurance. Congress could pass legislation this year requiring the states to enact no-fault laws within the next two years. The Secretary of Transportation would be given the authority to approve each plan but every state would have some latitude in developing its details so long as the state plan met certain basic criteria.

Such a course may be the one which Congress ultimately takes this year. It is, in my view, the minimum required if we are not to subject the motorists of the nation to a hodge-podge of conflicting laws and insurance policies in the years to come.

MICHAEL S. DUKAKIS.

[From the Journal of Commerce, Apr. 26, 1971]

BAY STATE'S INSURANCE INDUSTRY HIT

GOVERNOR CHARGES PROFITS ARE NOT PASSED TO CONSUMER

BOSTON, April 25.—The auto insurance industry was bitterly criticized here today by the Commonwealth's governor for failing to pass onto consumers the substantial savings the companies have incurred from the Bay State's three-month old no-fault auto insurance system.

Gov. Francis W. Sargent said that during the first three months of this year, the underwriters have seen their claim costs drop by over 35 percent but have not come forward with plans to lower premiums.

The governor also alleged that many insurers have tried to obscure the options in the no-fault program which would lower their auto insurance rates.

"The average paid claim cost in the first quarter of last year was $205," Gov. Sargent said. "The average paid claim cost in the first quarter of this year is $131. The total amount of paid losses in the first quarter of last year were $359,590—this year they are $229,479.

36 PC REDUCTION

"That is a 36 per cent reduction (in claim costs) this year over last," th governor said in an address before the Massachusetts Association of Independen Insurance Agents and Brokers.

The governor said if the average paid claim costs for 1971 hold at the presen rate through June they will be 69 per cent lower than the first six months o 1970.

"Translated into possible future premium reductions that comes out to further premium cost cut of 25 per cent for bodily injury insurance, though nc property damage and collision for in those years price inflation and the hig cost of auto repair drive these costs steadily up," Gov. Sargent said. "But i bodily injury, the only area affected by no-fault, we can at least hope for furthe cost cuts if present experience continues."

Gov. Sargent said he would release a statistical summary next week on th first three months of the first in the nation no-fault system.

"The great irony of no-fault so far is that the industry that fought it so har is now profiting the most from it," said the governor. Further, the industr while it profits, blocks the consumer from the benefit of the new system, he sai

Gov. Sargent told the insurance men they were keeping the public ignorar about how to take advantage of savings on auto insurance premiums.

"Last year we provided options in auto insurance to let the buyer build hi own insurance program through bodily injury deductibles for those with sufficie health insurance," he said, "and $100 and $200 deductibles in property damag insurance.

"We encouraged companies to provide further deductibles to cut cost of co lision and comprehensive insurance," he said.

"I am told the industry in some cases has not only failed to inform custome of these options but has actually refused to allow their purchase," Gov. Sarge said. "Worst of all, I am told that many companies have forced customers t buy more insurance than they want in order to buy any at all."

Gov. Sargent said he would order a "step up in investigation of the abus so far charged—and the industry had better be ready to reply.

[From the Boston Sunday Globe, Apr. 25, 1971]

WIRE TAPS

Attorneys are wondering about a couple of ethical questions raised by t activities of the lawyers bringing the test case of no-fault auto insurance la The lawyers, Robert Cohen and Alexander Cella, have sent other attorneys mimeographed form offering for sale at $50 per set the two-volume brief ($4 they have prepared on the case and the appendix ($5). The case is to be hea next month before the Supreme Judicial Court. Fellow lawyers say (1) they' never heard of a lawyer openly selling a brief—"It's a little bit arrogant before y even win"—and (2) the appendix consists of court records, which may not theirs to sell.

A TRIAL LAWYER'S LEGISLATIVE WORKBOOK

HOW TO DO IT

Q.: "What do you feel is the best method to establish and keep rapport wi sympathetic legislators and how do you suggest bill introductions, legislati advocacy and hearings be conducted?—Do you have an active 'Legislative co mittee' in your state trial lawyers organization and how does it work?—Do a trial lawyer groups make campaign contributions to candidates to legislati office, or is this done on an individual basis? Outside of finance, do they aid hi in vote-getting? How do you go about encouraging bright young plaintiff-orient lawyers to seek legislative office? In general, how does your state organizati handle 'legislative advocacy', appearance before committees, and follow-up bills? Do you think it is necessary to have a full or part-time man on the job the state capitol to keep members informed?"

(*Texas:* William R. Edwards.)

We have found that the best method of establishing and keeping rapport with legislators whether sympathetic or not (hopefully securing the help of those who are not necessarily sympathetic by so doing) is what I like to call the "buddy system". By this we mean the real responsibility for each of the legislators is placed on the trial lawyers located within their respective districts. We expect our members to befriend the legislators, to get to know them not only as political friends, but as personal friends. We endeavor to secure representative trial lawyers' membership in the district of each legislator. By virtue of such personal contact, we are able to secure the help and understanding of many legislators who are not lawyers and who have not had any real experience with our problems. Additionally, in the past year, we have made some progress toward securing help from non-lawyers convincing them that our programs are right and that by contributing their money and influence through us, such persons may be able to be of much greater influence in securing passage of such legislation that they could otherwise. One such non-lawyer from Dallas was of extreme help to us in our recent passage of the Texas Tort Claims Act, his interest in the matter having accrued by virtue of the death of a daughter caused by governmentally-immune conduct. Generally speaking, if a bill to be introduced is on its face one which is of a public nature, that is for the good of the people, as opposed to the good of the lawyers, we do not hesitate to have one of our strong supporters in the legislature, even one of our members, introduce the legislation, and in fact encourage it. However, as to strictly lawyer legislation, we prefer to get a non-lawyer member, one whose interests are not apparently aligned with ours to introduce the bill if possible. Because of our continued twelve-month-a-year program of legislative contact, we have never had any difficulty in securing introduction of any bills by the "proper" people. With respect to legislative hearings, our experience has indicated conclusively that if we will work closely with those committee members who agree with our position as to any particular legislation, and actively participate in the preparation of the case for our side of the bill, much as we would prepare a court case, that by virtue of careful preparation, including expert witnesses, statistics, etc. that we are ordinarily in a position to place before the committee hearing the bill a far better picture and far more effective case than the other side has usually taken the time or the effort to prepare. *Careful preparation* of the case for or against the bill cannot be over-emphasized.

We have a legislative committee and it is very active. It is the function of our legislative committee to see to the election of representatives who will support our positions, to formulate our legislative programs, to secure introduction of the bills we propose to pass and to shepherd those through to final passage and signature by the Governor. During the legislative session, in our office in Austin [state capital], we maintain a continuous program of public relations including an open bar and a buffet luncheon. During the last session of the legislature, we averaged in the neighborhood to twenty or twenty-five representatives and senators for lunch each day the legislature was in session. We have *one cardinal rule* with respect to the office we maintain in Austin across the street from the Capitol grounds: No lobbying may be done in the office. No pending bills may be discussed unless a particular legislator brings up the subject and asks that it be discussed. We have tried to make our office a place where the members of the legislature can come to escape the continual bombardment of lobbyists—where they get a drink or a good meal and relax. We are convinced that the legislators appreciate this rule.

Approximately two years ago we instituted a bank-draft plan whereby our members and anyone else we can persuade to do so contributes $10.00 a month to a fund maintained in Austin. The fund has been recently renamed and designated LIFT (Lawyers Involved For Texas). This fund is available for use in election contests for either State Senator or State Representative—it is not available for use in the campaign of any candidate seeking state-wide office. The fund is administered by the legislative committee and the President of the Texas Trial Lawyers Association. It is distributed carefully to secure the greatest effect by the use of the money. We expect contributions wherever possible to be made on an individual basis. This program is in line with the "Buddy System" outlined above. However, there are obviously areas in which our membership is not in a position to adequately finance a candidate. Funds are made available on such a basis. Occasionally, there will be an extremely important race between a good friend and a bad enemy of the Association. In such instances we

[illegible] of more to the particular contest. Ou[illegible] in the campaigns of legislator[illegible]—financially and otherwise—[illegible] who are philosophically attune[illegible]

[illegible] given to any candidate for elective offic[illegible] Texas has enabled u[illegible]—to run for offic[illegible] when they fully understand ou[illegible] we are attempting to secure in the wa[illegible] the people. So long as we co[illegible] lawyer as opposed t[illegible] are properl[illegible] effective in securin[illegible]

[illegible] of the legislativ[illegible] is appointed. This subco[illegible] the particular bill. The subcommitte[illegible] the sponsors in both th[illegible] through the legislature. Th[illegible] and presentation of evidence [illegible] for keeping the asso[illegible] —if necessary—[illegible] the membersh[illegible] review of bills intr[illegible] our knowledg[illegible] committee. Regular reports on what [illegible] the members of the Tex[illegible]

[illegible] responses have reproduce[illegible] most of the ideas me[illegible]

[illegible] Key Man Meeting, Denv[illegible]

"We have approximately 1,200 members in the TTLA. The only requiremen[illegible] (1) one pay $20 a year in dues and (2) be a law[illegible]

"We have had an executive director since 1962. The present Executive Dir[illegible] not a lawyer. He [illegible]

"To have a successful trial lawyers legislative program:

#1. You have to have an active [illegible] of legislation.

#2. You have to have a substantial number of people who are able to disc[illegible] the merits of the legislation.

#3. Your program should be neither a Democratic nor a Republican progra[illegible] neither a Populist nor an Americanist program. It must be a program for t[illegible]

#4. The scope of the legislative program should be very narrow: to get m[illegible] justifiable money into the hands of claimants.

"Legislative advocacy is a complicated art; there are no simple routes [illegible] effectiveness. The most successful lobbying group at the last session of t[illegible] Texas legislature was a group that left a fifth of best-quality whiskey in eve[illegible] legislator's car. Reason: "Huh, those ——— think they can buy my v[illegible] with a bottle of booze ——— them." Subtlety and hard, intelligent work [illegible] essential.

Up, Up and Away!!

LIFT is the latest effort of Texas Trial Lawyers Association. It stands [illegible] Lawyers Involved for Texas, and it's a runaway success . . . The *El Paso Tim[illegible]* reported in its Capital Column June 14th, that *LIFT was responsible* for t[illegible] Democratic nomination in this year's primaries of six of the eight candida[illegible] it backed for the *state senate*.

LIFT is a legislative kitty which is paying off. Most of your officers [illegible] *contributing $10 per month* on a bank draft authority to LIFT.

If you want to be a part of the movement for *comparative negligence* in Tex[illegible] *for statutory* authority to let jurors know what they are doing in *special is[illegible] verdicts*, and *for* a successful rejection of *Keeton-O'Connell* schemes, in oth[illegible] *words, if you* want your practice to *survive*, better get with it.

Send a check, any amount, to *LIFT, 201 Westgate Bldg, Austin!*

Observation by Nebraska State Senator [Nebraska has only one house of legislature—49 Senators] at Denver Key Man meeting, June 1970:

"We *never* hear from the lawyers of Nebraska except when we are about to vote on a bill that is of interest to them. Thus, it is not surprising that when we voted on repeal of the automobile guest statute, there were only 8 votes out of 49 in favor of repeal. Contrast the trial lawyers whom we never see with the bankers who are the most highly organized group in the state. The Nebraska Bankers Association is always around to lobby and to help and to answer questions—including questions totally unrelated to legislation affecting banks. We build up confidence, rapport, friendship with the bankers. The lawyers are unknowns whom we ignore in turn."

GRAVES, DOUGHERTY, GEE, HEARON, MOODY & GARWOOD,
THE AUSTIN NATIONAL BANK BUILDING,
POST OFFICE BOX 98,
Austin, Tex., February 16, 1967.

Byrd, Davis, Eisenberg & Clark,
Texas Trial Lawyers Association,
214 Austin National Bank Building,
Austin, Tex.
(Attention: Mr. Jack C. Eisenberg.)

DEAR JACK: You have inquired of us whether the expenditure of dues of the Association for purposes of retaining a legislative counselor might have a bad tax effect on the Association.

In our opinion, which must necessarily be rather hastily given because of the time pressure involved, this would have no effect upon the tax situation.

If you will refer to our letter of May 28, 1965 regarding the deductibility of dues or contributions you will note that Denny Ingram concluded that dues were not deductible as contributions but only as ordinary and necessary trade or business expenses. In reaching this conclusion, Denny opined that the Association could not qualify as a charitable organization under IRC Section 501(c)(3). I agree with his conclusion although I have not re-checked it in detail and am relying on it. It is true that 501(c)(3) organizations are forbidden to attempt to influence legislation as a substantial part of their total activities. However in my view the Association falls more nearly under Section 501(c)(6) as a Business League, Chamber of Commerce, or organization of the same general class, being an association of persons having some common business or professional interest, the purpose of which is to promote such a common interest and not to engage in a regular business of the kind ordinarily carried on for profit. If I am correct in this conclusion, and I think I am, the most recent authorities which I have been able to find indicate that legislative activity does not defeat the exemption if it is otherwise allowable, and this even though the legislative activity is the organization's sole or principal activity. See *Washington State Apples, Inc.*, 46 B.T.A. 64; Rev. Rul. 61-177, 1961-2 C.B. 117, modifying Rev. Rul. 54-442, 1954-2 C.B. 131. Nor does the statute itself contain any requirement that organizations falling under 501(c)(6) refrain from legislative activity as does Section 501(c)(3), applicable to charitable organizations generally.

For the above reasons, I do not think that the retaining of legislative counsel by the Association would effect either its tax status or the tax status of dues paid in by its members. I hope that the foregoing answers your question adequately and if you have any further questions or wish further light on the subject, please let me know and I will atempt to oblige.

Yours sincerely,

THOMAS G. GEE.

Texas Association of Plaintiffs Attorneys,
214 Austin National Bank Building,
Austin, Tex.
(Attention: Mr. Tom Davis.)

GENTLEMEN: This letter is designed as our preliminary opinion to you concerning the status of the present method of dues payment in your association, your present organizational structure, and recommendations for future operation and changes in structure.

Your present method of dues payment involves variance in the amount o the dues. You are concerned that some large dues payments or contribution might be denied income tax deductibility to a fixed dues schedule and withou any definite or substantial added membership benefit.

The variance of dues is a procedure quite customary when there are varyin classes of members in a professional organization. Customarily, enhanced bene fits accompany a more expensive form, or higher class, of membership. Suc benefits might include the receipt of additional literature, more prominent pe sonal publicity, and perhaps even a forgiveness of future dues for a definit or indefinite period of time. Generally, extremely wide variations in dues pa ments of classes of members is seldom found.

Accordingly, some of your dues payments are not too ordinary in thei nature, and there does indeed exist a serious question as to their deductibilit when made in large amounts virtually in the nature of a gift or contributio rather than within an established reasonable framework of dues.

There are only two possible theories under which the dues can be deductible

First, that they are donations to a charity pursuant to Internal Revent Code (I.R.C.) § 170. Since contributions to a local bar association have bee denied such favorable treatment and since there is ample authority of simil import for other professional and trade organizations, it must be conclude that the dues are not deductible charitable gifts. GCM 4805, 1928 C.B. 58, ar *P-H Federal Taxes*, ¶ 4522. The basic reasoning is service to a private rath than a public cause. Authority granting deductible treatment for gifts to org nizations such as The State Bar of Texas must be distinguished because th type of an organization is deemed an arm of the government. R.R. 59-152, 195 1 C.B. 54. Also note that the fact that an organization is a charity exempt fro income taxation under I.R.C. § 501 or exempt from income taxation simply b cause it does not make a profit, does not control the question. The tests of co erage under § 170 and § 501 are different.

Second, the dues may be ordinary and necessary trade or business expens I.R.C. § 162. Regulations § 1.162-6 expressly allows the deductibility of pr fessional expenses including ". . . dues to professional societies and subscriptio to professional journals. . . ." However, each such deduction must withsta the test of being "ordinary and necessary." A review of the cases and treatis reflects much litigation or administrative activity concerning this language. S 1 Rabkin & Johnson, *Federal Income, Gift, and Estate Taxation*, § 3.02; *P-Federal Taxes*, ¶ 11,031; 4 Mertens, *Law of Federal Income Taxation*, § 25. 25.122; and Carson and Weiner, *Ordinary and Necessary Expenses* (1959). It quite possible that a large contribution not providing any added benefit over smaller contribution might be neither ordinary nor necessary.

How can this doubt be resolved? Unfortunately, the lack of authority in t area provides little possibility of a reliable answer. But, some guidelines, cluding observance of the patterns of other organizations, can be evolved in or to lessen the probability of serious questioning of the dues system. First, clas of memberships can be based upon some reasonable bases such as time in pr tice, honors and publicity accorded certain classes of members, special privile to certain classes of members, etc. Second, advance payment of dues might permitted for reasonable periods. Third, a companion organization might founded which serves the general public more so that it will qualify as a char under I.R.C. § 170 to which a deductible contribution can be made. Comp for example, the American Bar Association Endowment and the American Foundation, two charitable foundations which are allied to the American Association. If such an allied organization is formed, you should seek a ruling of its status for contributions and for exemption of its income.

As for your organizational structure, we would recommend that your asso tion be reorganized as a Texas non-profit corporation in order to provide limited liability, definiteness of structure, and other attendant benefits ther offered. This structure is easier to explain to taxing authorities, offers a c answer of lines of authority for contractual relationship as well as any poss intraorganizational disputes, and avoids the general partnership liability e member now has.

We will be glad to confer with you to provide further detail on any of foregoing matters.

Sincerely,

DENNY O. INGRAM, J

Senator HART. Because of a phone call we must recess briefly.
(Recess.)
Senator HART. The committee will be in order.
Let me welcome Mr. John J. O'Brien of Newtown Square, Pa.
Mr. O'Brien, we appreciate your testimony.

STATEMENT OF JOHN J. O'BRIEN, NEWTOWN SQUARE, PA.

Mr. O'BRIEN. Senator Hart and committee members, I reside in Newtown Square, Delaware County, Pa. I am employed as an insurance manager by the Franklin Mint, Inc., of Franklin Center, Pa. I am here as a concerned citizen to speak on behalf of automobile liability insurance reform. Before giving my testimony, it might be helpful if I commented on my educational and employment history. After receiving a bachelor of law degree in 1950, I was employed for approximately 11 years by insurance companies in various claims positions, including those of adjuster, examiner and manager. I was national director of claims services of Avis Rent-A-Car Systems for 3½ years and insurance manager of the Mack Truck Corp. for 5½ years.

Over the years, I have become totally convinced that our present system of tort liability does not satisfy the principal purpose of liability insurance, which is to see that innocent victims are paid their losses. Of course, as an insurance claim representative, I was taught that was not the principal purpose of liability insurance, rather I was educated to believe that my principal responsibility, and I might say properly so, was to conserve company assets by settling claims for the lowest possible dollar. A good settlement most frequently was not one that was fair.

It is a well-documented fact that the current system works unfairly. It favors the affluent and mitigates against the poor. The individual injured in an auto accident who is living from payday-to-payday is a soft touch for an experienced adjuster. There is also gross inequity in the amounts paid in the settlement of claims. The small bodily injured claimants are often overpaid, while the seriously injured often collect but a fraction of their losses, after payment of attorney fees that average 25 percent of benefits.

We hear more and more complaints about the soaring cost of automobile insurance, as well as the inability to purchase coverage at any cost outside of an assigned risk pool.

The backlog of tort cases is insuring that those who have to pursue their claims in court can in some cases wait as long as 5 years for a verdict. If they are unable to work and require income, to whom do they turn? Quite often they are carried by their attorneys. I believe that in agreeing to this, they are joining the attorney in basically unethical conduct. In many cases their personal resources are totally inadequate.

The fault system is obviously failing to meet the needs of motorists, and reform appears to be imminent.

I have read with interest the Hart-Magnuson proposed "Uniform Motor Vehicle Insurance Act (S. 945)" which incorporates the no-fault liability insurance concept. I believe such a law by the Federal Government is desirable, since it is apparent that the States will not

voluntarily adopt uniform legislation. By mandating a model bill t the States the problem of liability insurance reform would be resolved

In my opinion, the legislation under consideration could serve a a model bill, subject to some amendment and deletion. The bill's defi nition of catastrophic loss (page 3, lines 17 through 21) is too re stricted. Would not the term "catastrophic harm" as defined, exclude for example, a surgeon or concert pianist who lost the tip of a finger or one who suffered residual stiffness in his fingers?

The definition of economic loss (page 4, lines 7 through 15) shoul be amended to pay a percentum of the individual's income withou limitation. A limit of $1,000 a month would in many instances b totally inadequate to meet the needs of injured claimants.

Page 11 from line 19 through line 21 of page 12 should be deleted This portion of the act has to do with putting an additional part o the burden on the trucking companies.

In my opinion, the provisions contained in this section are unreason able. Those underwriters who specialize in insuring heavy-dut trucks would of necessity require more premium, the cost of whic would in all probability be passed back to the public. It would b more equitable to assess the cost against all motor vehicle owners.

I was delighted upon reading the provisions of the proposed "Moto Vehicle Group Act (S. 946)." As a corporate insurance buyer on of my most frustrating experiences is to have someone in managemen come to me with a problem involving his personal automobile insur ance. Despite the clout of hundreds of thousands of dollars in pre miums for which I am responsible, I can rarely get my principa underwriters to extend coverage to an individual who has receive a declination.

As an example, one of our executive's 17-year-old son worked an saved to buy an automobile. After the acquisition, the car sat in th driveway for months because he couldn't obtain insurance. The youn man finally saved the $374 required to buy insurance in the Pennsyl vania assigned risk plan. He has inadequate coverage—$10,000–$20,00 bodily injury and $5,000 property damage—and is a menace in th sense that if he has a serious accident, for which he is at fault, seve economic loss could be incurred by one or more innocent people.

If I could offer the employees of my firm group automobile i surance, underwritten subject to the terms of S. 946, many of the problems would be eliminated. The reason I cannot make such offer is that the interests of the few is being given precedence the States over the interests of the many. The insurance agency sy tem will be hurt if corporations and associations are permitted have access to group auto coverages. That would be unfortunate b again the special interest of a particular class should not be giv priority. The reduced cost, easy payment by payroll deduction a availability of coverage to the individual, who in many instan cannot buy insurance at equitable rates, far exceeds our concern the agency system.

In addition to the foregoing testimony, I will be happy to ans any questions of Senator Hart.

Senator HART. Mr. O'Brien, just as I commented to Mr. Joost, is not an easy decision for you to come down here and speak this w which makes it even more obvious my obligation to thank you behalf of the committee for telling us this.

You speak from a background that is very broad, and I would think it is the kind of testimony that would be most persuasive.

Mr. O'BRIEN. Thank you.

Senator HART. You mention that in the insurance business a good settlement isn't necessarily a fair settlement.

Mr. O'BRIEN. That is so true.

Senator HART. Could you tell us a little more fully what you mean by that?

Mr. O'BRIEN. I have in my own experience defended settlements that I have made, third-party liability settlements, to my immediate superiors, and when they didn't compliment me, I have said to them, "but it was a fair settlement." And most often as not, they would turn to me and say "Fair, but not a good settlement."

And we knew what was meant by a good settlement. The first call settlement made by an adjuster for the out-of-pocket expenses, plus a few dollars over and above for inconvenience, pain and suffering is considered a good settlement. Insurance companies favor first call settlements for the primary purpose of closing out claims before the injured parties fully realize the extent of their damages or injuries.

Senator HART. How would they become fair settlements under the mandatory first-party system?

Mr. O'BRIEN. Because they would no longer be adversary settlements. It would be a matter of settling a claim with your own insured. You treat your insured a bit differently than you treat a total stranger whom you believe is interested in taking as many dollars from you as he can.

That is not to say that the insured will not be interested in getting as many dollars as he can, but the relationship will be totally different and it does tend to a more equitable settlement.

Senator HART. That is probably the way I should have put the question. It would produce a more equitable settlement?

Mr. O'BRIEN. That's right.

Senator HART. Certainly, those expenses legitimately incurred, including the potentially substantial area of rehabilitation would be a fixed obligation.

Mr. O'BRIEN. That is correct. Additionally, Senator Hart, the injured party, if treated improperly by the claims adjuster has his agent to turn to who in turn can go back to the underwriting department, the sales department, if you will, and it usually has sufficient leverage to bring the claims department in line.

Senator HART. You said one of the pressures that operates under the existing system is the delay where a man is in need of funds. You mentioned a backlog of court cases.

Now, in our hearings the suggestion has been made to us that we ought to establish an arbitration system, at least for the smaller claims. That would both reduce the court backlog and it would lower expenses, administrative expenses.

Philadelphia does arbitrate, as I understand it, claims under $3,000. As you have observed, has there been any savings in administrative costs?

Mr. O'BRIEN. I have not been in the Philadelphia area for more than a year and a half. I am not prepared to say I know firsthand, but comments that have been made to me would lead me to believe that there isn't any real savings.

I can't see that arbitration and the speeding up of the settlement of cases reducing the court backlog would help to reduce the cost of insurance to individual policyholders.

If anything, I think if you speeded justice up more people would be inclined to obtain the services of attorneys to represent them in their cases.

Senator HART. That certainly was the point that was made or the conclusion that was reached in a very detailed study that the Department of Transportation made.

You put your finger on a section of the bill that all of us realize we are going to have to work on, and that is section 4. You spoke of the surgeon who might lose the tip of a finger. You have already contributed substantially to the work of this committee, but maybe we can enlist you for another job.

If possible, could you suggest in writing later to us some language that might help us achieve what we are really after to safeguard, get rid of the spurious pain and suffering claims and yet recognize in the case of the surgeon who loses a finger that there is very substantial economic loss that would be called pain and suffering.

Mr. O'BRIEN. It could be a matter for the medical profession. It has been suggested to me that perhaps in pretrial a court-appointed doctor, or panel of doctors, could evaluate the injury sustained by the would-be plaintiff, and if, in the opinion of the appointee, taking into consideration the person's occupation and other pertinent circumstances, the doctor or panel of physicians reported back to the judge, yes, this individual has suffered catastrophic loss, this would be his or her entry into court to sue in tort.

Just having a term to be defined by—let me ask you a question. Who would determine this, as you have drafted the bill?

Senator HART. A court, as it is drafted here.

Mr. O'BRIEN. May I also comment on using, as in the case of Massachusetts, $500 medical expense as the trigger for a tort action?

Senator HART. Yes.

Mr. O'BRIEN. I am amazed that anyone today would think that this was any sort of barrier. In any major city, I can put myself into a private room for 3 or 4 days for not necessarily treatment but just examination, and I will have a bill in excess of $500. Once again I think the medical profession should be brought in, and this should not be tied to medical expense, because any able attorney in conjunction with doctors, who, in many cases, are more than willing to cooperate, can build the client's medical bills to the necessary level.

Senator HART. Capable but not ethical.

Mr. O'BRIEN. There is a difference.

Senator HART. You heard the testimony earlier today from Mr. Joost. You are recommending the adoption of S. 945 so that it applies nationally. Does this suggest that you believe that the States would not move in a uniform way to change the present compensation system?

Mr. O'BRIEN. More than suggest. I am totally convinced that the States will never do it. I attended a meeting of the State of Pennsylvania Chamber of Commerce Insurance Consumer Committee, of which I am a member, just a few weeks ago, and the motion was made that we advise the chamber that action should be taken in the a[illegible]

of a State no-fault plan, but should it be the Massachusetts plan, should it be another plan, no one seemed to know.

As sure as I am sitting here, if 10 years from now the Federal Government has not moved in this direction, you are going to have a hodge-podge of laws that will be intolerable. I don't want to see the Federal Government set up a bureaucracy to administer a Federal program. I think it is to the best interest of us all that the States have a model bill and administer the bill under some form of supervision by the Federal Government.

Senator HART. Again, Mr. O'Brien, I am grateful you could come and speak as you have. I am sure that you will not be applauded by all of your old friends in the business but, as you say here, the special interest of the particular class should not be given priority.

Everybody buys that as a principle and yet human nature being what it is, we never recognize that we are making an exception to that principle often. We just don't realize it.

Mr. O'BRIEN. That was not true in the case of the corner grocer. If he had had the wherewithall to have legislation enacted against supermarkets, we would be waiting in block-long lines to buy our groceries from the man on the corner.

So, what I am saying is we have reached a point in time where we must have change. The change is painful, but after it takes place, I think it will work better for everyone. I am now being offered that which the industry refers to as the mass marketing of personal lines—homeowners and automobile insurance on a payroll deductible basis.

Of course, under mass marketing, we still have the problem of the individual who is subject to underwriting. It will not answer—it will not solve the problems that would be resolved by group coverage, but the industry itself recognizes that it has to move in that direction if it is to avoid group personal lines.

I am referring to my comments under 946.

Senator HART. Yes, you were very explicit in your support of that, very explicit, and the example you cite is a sobering one.

Again, we are very grateful that you have come down.

Mr. O'BRIEN. It was my honor.

Senator HART. We will recess until 2:30 p.m.

(Whereupon, at 1:40 p.m., the hearing was recessed, to reconvene at 2:30 p.m., this same day.)

AFTERNOON SESSION

Senator HART. The committee will be in order.

We resume our hearing this afternoon having as our first witness the president of Aetna, Mr. Frederick D. Watkins.

Mr. Watkins, welcome.

STATEMENT OF FREDERICK D. WATKINS, PRESIDENT, AETNA INSURANCE CO., HARTFORD, CONN.

Mr. WATKINS. Thank you, Senator.

To begin my testimony this afternoon I would like to present for your information a film that was produced by the Aetna Insurance Co. to respond to what we believe is a very urgent need in connection with no-fault insurance—an informed public.

We feel that there is a great void in public understanding of what the present automobile insurance system really is, and what we are trying to accomplish in advocating the no-fault principle.

This is a documentary film. It includes proponents and opponents of the no-fault concept. We feel that it does a good job and we intend to use it wherever we possibly can across the country to better inform the public. We are not trying to sell insurance with it. We are trying to inform people.

With your permission, sir; we will let it roll.

Senator HART. I would like very much to see it.

(Film presentation.)

Senator HART. As we go back on the record, Mr. Watkins, I am sorry that the record itself cannot carry the film which you have just shown. Whatever point of view one held with respect to no-fault, I think there would be agreement that the film presentation is a public service contribution of real significance, and I am delighted to have a chance to thank you and Aetna for doing it.

Mr. WATKINS. Thank you once again for your participation in it. I think you made a noble contribution to our film and the work we are attempting to accomplish.

Sir, would you like me to proceed with my statement?

Senator HART. Please.

Mr. WATKINS. Mr. Chairman, I am happy to have an opportunity to be here.

For clarification, I am Frederick D. Watkins, president, Aetna Insurance Co.

As your committee is all to well aware, automobile insurance today is sorely in need of reform. Investigations and hearings over the past years, including those of congressional committees and the Department of Transportation, have documented the facts substantiating the failures of the present negligence system beyond any dispute.

Because the need for reform is no longer the critical issue at these hearings, I would like to restrict my comments today to what I consider central questions before this committee: What type of reform should be enacted and whether it should be a matter for State or Federal initiative. What shape should reform take and how should it be implemented?

My own company's position is clear. Aetna endorses any plan that would introduce the no-fault concept of automobile insurance in either a pure or a modified form. We believe that the primary responsibility for this reform lies with the governments of the individual States. Thus, we support the recommendations of the Department of Transportation for State action guided by national goals.

Our approach is a pragmatic one in that we believe it is warranted both by the present situation and by the potential advantages of the no-fault reform initiated at the State level.

Let me elaborate.

Over 5 years ago my company advocated a first-party compensatory system of automobile insurance patterned after workmen's compensation to replace the existing tort liability system.

It was our belief then, as it is now, that the majority of ills associated with the present system revolve around the necessity of determining fault, case-by-case, in millions of traffic accidents each year

This time-consuming and expensive process restricts our ability to serve the public and to assist and protect the injured accident victim.

For this reason we advocate reform that would enable us to promptly pay an individual insurance benefits on the basis of his economic losses rather than on the basis of his fault or nonfault in an accident.

Most of the proposals being considered in the States and at the Federal level are based on this no-fault principle. This includes the most prominent plans developed by Professors Keeton and O'Connell, the American Insurance Association, the New York State Department of Insurance—your own, sir—and most recently the recommendation of the Department of Transportation.

As far as the basic insurance concepts are concerned, these proposals and their numerous derivations differ more in degree and in detail than in substance. All would provide for first-party benefits to accident victims, regardless of fault, covering medical and rehabilitation costs, wage loss, and miscellaneous expenses. The compensation would be paid promptly on a period basis.

To the extent that losses could be recovered on a no-fault basis—under some of the plans there are limits established—individuals in an accident would not be permitted to sue each other.

The concept has obvious merits. Most importantly, it would compensate all accident victims promptly according to their actual economic losses. Secondly, by eliminating much of the legal and investigative costs of the present system, it would reduce rates for the consumer and return a greater percentage of the premium dollar to the accident victim.

No-fault would also encourage a more balanced approach to traffic safety by restoring the proper role of the law enforcement bodies in dealing with criminal drivers rather than attempting to impose this responsibility upon the insurance system.

There is no universal agreement on the merits of no-fault, however. Some critics have referred to no-fault as a "victim tax," which in effect would take benefits away from the innocent in order to pay the guilty.

In truth, no-fault would guarantee fair compensation to all parties in an accident. Not even the innocent victim can be sure of as much under the present liability system.

I might add that no-fault, whatever the specific plan, should not be a straitjacket on the insured individual, any more than minimum liability coverages are today.

Individuals should certainly have the option to purchase coverages to suit their particular needs and wants. But the important thing is that no-fault would provide a basic level of compensation for everyone involved in automobile accidents instead of ignoring a significant number of victims.

Many opponents are particularly dismayed by no-fault's renunciation of the common law concept of tort action in accident cases. I would like to read you part of what I consider to be a persuasive answer to these critics:

> In the days of manual labor . . . and the stagecoach, there was no such problem, or if there was, it was almost negligible. Accidents there were in those days, and distressing ones; but they were relatively few and the employee who exercised any reasonable degree of care was comparatively secure from injury.

There was no army of the injured and dying, with constantly swelling ranks, marching with halting step and dimming eyes to the great hereafter. This is what we have with us now, thanks to the wonderful material progress of our age, and this is what we shall have with us for many a day to come.

Legislate as we may in the line of stringent requirements for safety devices or the abolition of employers' common-law defenses, the army of the injured will still increase, and the price of our greatness will still have to be paid in human blood and tears.

To speak of the common-law personal injury action as a remedy for this problem is to jest with serious subjects, to give a stone to one who asks for bread. The terrible economic waste, the overwhelming temptation to the commission of perjury, and the relatively small proportion of the sums recovered which comes to the injured parties in such actions, condemn them as wholly inadequate to meet the difficulty.

This passage was part of a decision written by Judge J. C. Winslow in *Borgnis v. Fall Company*, a case heard by the Wisconsin Supreme Court in 1911, 60 years ago.

Senator HART. One could only hope that anything we said would be as prophetic—what is it 60 years later—as what Judge Winslow said in that case that you excerpted. I have not seen this before.

Mr. WATKINS. It is considered a landmark case in workmen's compensation. As you point out, sir, its application today is obvious.

The insurance industry does not present a unified front either for or against no-fault, as you know. Some segments of the industry, including some insurance companies, are very outspoken against a first-party system. Other companies, including my own, have fully endorsed the concept.

What motivates our company to support no-fault?

Some people, notably the critics of no-fault, claim that insurance companies are pushing for this program in order to avoid paying large jury awards, to clean up on profits, and in general to exploit the consumer and the public. This is nonsense.

By any test, our business will stand or fall on the quality of service we render our customers—the insuring public. No-fault will help us meet this objective, not contradict it.

I personally believe that a no-fault system would have a favorable impact on the current crisis of insurance availability. Auto insurance is hard to get for a number of reasons, including restrictive rate regulation in many jurisdictions. But the problem goes deeper than this.

The fact is that the liability system itself makes it necessary for insurers to try to identify and insure only the best drivers—those likely to escape accident involvement—in order to avoid the unpredictable costs of accidents involving unknown third parties and their automobiles.

This effort is inevitably frustrating, I might add. But the result is that drivers in certain categories in certain locations find it virtually impossible to obtain auto insurance coverage on the open market. Thus they are forced into assigned risk plans.

I feel certain that a no-fault system would lead to expansion of the automobile insurance market. Underwriting standards would be significantly changed.

An individual's driving record would still be important, but so would his income, the size of his family, the kind of car he drives. These are predictable factors, with assignable values.

In short, insurers would be able to figure more accurately the cost of the risk they assume and, in a free and competitive marketplace would be able to offer coverage to virtually all drivers.

I believe, and my company and its affiliates believe, no-fault reform would ultimately improve the situation not only for the public but for the insurance industry by making possible more reasonable and realistic pricing of our product.

Today, sharp fluctuations in losses make the insurer's position too precarious to tolerate premium levels predicted on narrow or nonexistent profit margins and require the application of long-range trend factors in the pricing computation.

Under a first-party system, based on largely determinable rather than wholly unknown exposures, we would be able to predict losses with a greater degree of accuracy. Thus we would be in a better position to develop adequate rates based on moderate but realistic profit margins, avoiding the violent swings that have characterized our business for the past 10 years or so.

In summary, both from the point of view of the public and the insurance industry, no-fault would be meaningful reform. I strongly believe this.

I also believe that no-fault would be best implemented at the State level by the State governments, and I hold this view for what I regard as a most cogent reason.

In developing the no-fault plan that will be most effective in practice, we can learn much from the natural process of experimentation that occurs among the various states.

While the no-fault concept itself may be a rallying point for most reformers, there is no consensus on the best type of plan.

Some plans would set tort action thresholds at one figure; some at another. Some plans would pay total actual wage loss; others would set monthly limits of $750 or $1,000 or a specified percentage of salary. Some plans would include property damages in addition to bodily injury; others would not.

Before the public, the insurers, and the legislators can reasonably determine the relative merits of each plan, we need to experiment, and this is most appropriately carried out at the State level.

There are additional reasons, I think, why reform should be at the State level. State governments are closer and potentially more responsive to the particular needs of their constituencies, and in the matter of automobile insurance these needs may vary considerably.

Cost of living, for example, particularly medical care costs, often differ greatly from State to State. Contrast New York State to Mississippi.

Finally, the experience developed by the States in their traditional role as regulators of insurance—including the immediate availability of professional staffs knowledgeable in insurance—could be put to good use in dealing with reform at the State level.

Despite my strong preference for State rather than Federal action, I want to make it clear that I am neither dismayed nor frightened in any way by the interest being given to auto insurance reform by the Federal Government. On the contrary, I am encouraged by it. I am encouraged because it brings the urgency of reform into sharper focus.

The activities of this committee, its counterpart in the House, and the Department of Transportation—these activities provide not only direction for the States but incentive for them to act positively and without delay.

Most importantly, Federal attention to the problem serves to aler the public. This is crucial. Ultimately public pressure will stir ever the most recalcitrant State legislature to reform.

You may be interested in some recent events in my home State o Connecticut, which illustrates this point. This year the Connecticu legislature is considering no-fault for the second time. The first tim was 2 years ago when my good friend William R. Cotter, then insur ance commissioner and now our Representative from the First Con gressional District, sponsored an unsuccessful drive to have a no fault plan adopted.

This year, however, reformers were more optimistic. The majo no-fault bill under consideration by the legislature has the backin of the State labor council and a large portion of the local insuranc industry. In addition, the press has been very forthright in its suppor of the no fault.

In spite of this, the unanimous decision of the legislative committee considering the bill, a decision reached 3 weeks ago, was to appoin a study commission to report back to the legislature next year.

This was a blow to those of us who considered prompt action t be imperative, but with this massive opposition we were realisti enough to view the matter as virtually dead in the current sessio

Now it appears that we underestimated the enthusiasm of both th press and the public for no-fault reform. Editorial writers have bee very critical of the committee action and, as a result, today ther is reason for some optimism. State Senator Lieberman, the spons of the bill, and his associates have secured the necessary votes to pet tion the bill out of committee.

Not too long ago capital experts in Connecticut were saying suc an achievement would be a virtual miracle. Today we have that miracl It is to the credit of Senator Lieberman and his own tenacity in figh ing for reform. It is also evidence of the timeliness of the no-fau issue itself.

Although the outcome of the critical votes in both houses of th legislature still remains to be seen, at least for the time being, no-fau is alive once again in Connecticut.

I am convinced that public pressure for reform is the most powe ful force behind no-fault auto insurance. This is suggested not on by events in Connecticut but by various studies which show that informed public is overwhelmingly in favor of no-fault as an alte native to the present automobile liability system.

An informed public will support no-fault. But a public that do not understand the issues is a hindrance to reform. Results of a Gall poll published recently dramatically illustrate the need for bett public information.

In summary, the findings of this poll were as follows: Of the peop interviewed on April 3 and 4, 1971 only 19 percent understood t basic features of no-fault. Of this total, however, support for no-fa was 4-to-1.

Clearly, it is extremely important that public concern be activat I am confident that these hearings and those of the House commit will help to serve this purpose of public education.

As I said earlier, this was the reason that motivated us to prod this film and it is our firm corporate purpose to pursue in every w

we can this concept of no-fault. We think it is in our best interests, in the long run, because what is good for the consumer we feel will benefit us if it is to last.

Beyond this, sir, I would like to see this committee give its endorsement to the recommendations of the Department of Transportation, thus recognizing that the overall public interest would be best served by adoption of no-fault reform and its implementation at the State level.

Again, I thank you for the committee's invitation and this opportunity to present our views for your consideration.

Senator HART. It is that kind of thoughtful, and I think balanced testimony that is most useful to the committee. We appreciate your willingness to discuss it as you have. There is really great appeal in logic to your suggestion for waiting until we experiment at the State level.

Mr. WATKINS. Sir, may I——

Senator HART. If I had more confidence in the State action, I probably would be less hesitant to accept that as the prudent course. I do agree with you that the more people—all of us—come to understand what is involved the better. And understanding must include first an appraisal of what the system is that we have been living with. It is not surprising to me that only 19 percent of the people expressed an understanding of no-fault.

Was that the figure?

Mr. WATKINS. That is correct.

Senator HART. I am not sure many more would be able to say they understood what we have now. That is not critical of Aetna; I mean it is the nature of the animal. The broadest understanding possible is very desirable. And that film again will help.

If you advertise its showing in advance you will probably find included in the audience fellows like me who want to get up and explain why the no-fault feature is better, and you might find a trial lawyer there who might explain that the individual will be brutalized and who knows who else?

Mr. WATKINS. Mr. Sargent was there, but let me assure you, sir, that we paid no fees for participation in this film.

Senator HART. One point you make though about the present system. You say that among the arguments the critics make against no-fault is that it is a victim tax hurting the innocent and paying for the guilty and so on. You say it would, in truth, provide fair compensation to any and all parties in that accident. And then here is the point we ought not forget; not even the innocent victim can be sure of as much under the present liability system.

Mr. WATKINS. That is right.

Senator HART. We are going to have to run around the track a long time before they convince me that that statement is not correct.

Mr. WATKINS. We feel very sincerely that it is correct, sir. Unfortunately, in the present system, the public as a whole doesn't understand what we are insuring. We are insuring liability coverage for other people, legal liability. We owe our insured the obligation to protect him in that position as well as we can. We have no obligation to the third party, that is why it is called third-party liability insurance as you know, sir. But the average man and the public doesn't

understand that. He feels everybody should be compensated as is the case under workmen's compensation. And by public acceptance, if not by law, the automobile is such a social instrument now—in fact, every man has the inalienable right to drive an automobile—we feel that the only way this can be resolved is with a first-party system.

I have not been able to find, sir, a single instance in any of the States where a driver has lost his right to drive permanently, regardless of what he has done with his automobile. And the insurance system cannot be made the policemen of that type of a driver.

Senator HART. On that very point, the difficulty of getting a driver, whose lack of responsibility has been demonstrated many times, off the road. I hope will be commented on by a witness tomorrow.

As happens periodically, both of our Detroit daily papers in the past have run series on this. You know, where there is a driver with an arm's length record who is still out on the road. And I think it was sparked by just a tragedy of a few weeks ago where a driver with that kind of a record jumped a lane on an expressway and wiped out a family.

Mr. Sutcliffe?

Mr. SUTCLIFFE. Thank you, Senator.

Mr. Watkins, in your——

Senator HART. Now, I am not suggesting that the Federal Government should take over the licensing of automobile drivers. We have problems enough. But referring now to the reliability of letting States experiment with no-fault, why do you think we should allow States which have been so wretched even in the simple matter of getting a nutty driver off the road guide the development of insurance reform?

Mr. WATKINS. That is true, sir; and I don't honestly believe that we will, within the course of a few years, have all 50 States adopting this type of legislation. My statement didn't mean to imply that I felt there should be a permanent moratorium on Federal action. I heartily endorse the concept of national guidelines. I think you have laid down some excellent guideposts in your proposed legislation.

But, I think that since it is new, the public would be much better served if we could try various experiments without having mandated one system countrywide at one fell swoop.

Over the long pull, in a few years, if individual States haven't acted, I think we should review the bidding and then Congress should probably enact legislation that would either force the States to adopt minimum programs or the Federal program would become the law in the noncomplying States. In other words, Congress would mandate the individual States because they have had ample opportunity. Then through the experimentation process the individual State would—could if it wanted to—amend or adopt regulations that would ride over the Federal law but they would never be permitted to fall below it. It is simply a matter of time, sir, I think.

Senator HART. To what extent are you troubled by this suggestion that if all or most of the States did adopt no-fault but in a variety of patterns, that the complications resulting from simply the multiplicity of plans given the mobility of the driver of the car, would be a disservice to us all? How do you respond to that?

Mr. WATKINS. We have a similar circumstance right now. Massachusetts had its own—even before it adopted its no-fault plan Janu-

ary 1 of this year—compulsory insurance statute. A driver in Connecticut, whenever he got into Massachusetts, had a policy that automatically complied with the Massachusetts law. He was protected. And I think that during this experimentation process, policies would be issued to recognize these circumstances of the varying States.

If a man from Massachusetts, which has a no-fault law, were driving in, say Pennsylvania, where there isn't, and if there is an accident, he would be protected with whatever requirements might be in the Pennsylvania law, which of course would be basic third-party liability.

Senator HART. Thank you. Mr. Sutcliffe?

Mr. SUTCLIFFE. Thank you, Senator.

Mr. Watkins, pursuing the matter of the guideline approach, it was reported in the *Washington Post* following the testimony of Secretary Volpe in the House, that he had modified his position as to what he meant by national goals, and was willing to accept somewhat more of a Federal guideline approach capable of building a floor and a certain degree of uniformity into a State-by-State approach.

I judge by your comments that were the Congress to act now, you would not be adverse to a guideline into which a State plan would have to fit.

Is that my understanding of your statement?

Mr. WATKINS. Well——

Mr. SUTCLIFFE. Or have I stated it too strongly?

Mr. WATKINS. I believe you stated it too strongly, Mr. Sutcliffe. I am not in sympathy with the concept of a Federal mandate.

Mr. SUTCLIFFE. You see there are degrees of mandation. As the Department of Transportation study shows there are one, two, or three possible stages of development of no-fault—mandatory first-party coverage of medical expenses, wage replacement, and property damage. Certain possible gradations of tort exemption coinciding with the policy set forth could also be prescribed. We could set out guidelines, that said within the next 3 years, 2 years, whatever the legislation established, each State should work toward or shall work toward this level, and then within that, of course, there would be alternative ways of reaching those stated objectives.

Would this satisfy the desire for the need to have experimentation on a State-by-State basis which is, I understand, the rationale for your approach on the State-by-State basis?

Mr. WATKINS. I understand your proposal to imply that Federal legislation will be required at the end of this period of—end of this moratorium; is that correct?

Mr. SUTCLIFFE. Well, I am not certain that the legislation would require this. What you could do, as has been done in some other situations, is come back and take another look at it to see what the compliance has been. As to whether or not you have to at the end of the 3-year period to mandate that planning in the States that had not acted depends upon the kind of standards that are adopted and how easy it would be to judge whether the State had met those standards.

Mr. WATKINS. If I may be permitted, Senator Hart, you have given a tremendous amount of personal attention to this development over the past several years, and I would not be uncomfortable if the Almighty could guarantee that such a guiding hand would be continued over the next several years in this development, but I am fearful

of legislation being adopted now which suddenly has a way of becoming set in concrete, because I am convinced that this is such a new approach, it is so novel we are going to have to change with the the concept virtually month by month, if not year by year as it develops.

And I just have an inborn fear of legislation becoming concrete and we would have to live with what's in existence and also with the possibility that it may become a political football. Now, if——

Senator HART. Thanks for your compliment, but I am trying to figure out whether it's easier to get the Congress to go back after it's jumped or whether it's easier to go forward step by step. Depending on which way you want it to go, you think it works better the other way?

Mr. SUTCLIFFE. Let me, sir, ask you, as the president of an insurance company that does a great deal of business in interstate commerce what the practical implications for your company and perhaps other noninsurance businesses would be if you set up different laboratories to launch different experiments to test certain tenents of a no-fault concept that you have endorsed today.

The first question is: How many different forms would your company have to fomulate to comply with the various plans that would go into effect in different States?

Mr. WATKINS. Actually, we are in the paper business now. In nearly every State, there is some particular clause that is required to appear in the policy which requires overprinting. As you probably know, every time you run a piece of paper through the printing press even if it's to change two words, it's expensive. So we wouldn't be in any different posture than we are now.

Mr. SUTCLIFFE. But one of the advantages we are trying to seek with a change in the system is reduction in operating costs. Is it a significant reduction?

Mr. WATKINS. No. Our printing cost is infinitesimal. We would still have to keep statistics. We would want to, on a territory by territory basis, to validate this experimentation process that we are speaking of.

In fact, even if we did have a common program countrywide, I am sure the country would be divided into zones, population districts and so forth, and we would have the same statistical problems and requirements that we have now and I think it would be a problem. Yes, it would be a problem.

Mr. SUTCLIFFE. You mentioned validating the different experimentations. How do you evaluate experiments? We had explained this morning two different plans that are being touted as no-fault plans one in the State of Massachusetts which has been passed, and another being proposed in the State of Illinois.

A person knowledgeable as to contents of those plans explained that they were entirely different. One, in his opinion, was not a no-fault plan. Although it expanded first-party coverage it certainly had a rather difficult tort overload. I guess one of the validations that we are trying to find is, will operating costs be reduced? Will consumers therefore save in premium dollars? At the same time, will they be given a great deal more protection by their insurance policy in terms of compensation over what they presently receive? Do you run the risk of having experiments launched that are designed to prove that what you are testing for won't work?

Mr. WATKINS. Validation doesn't necessarily mean that what is being tested is proven to be feasible and useful. In other words, you can validate a failure. Specifically, if the validation says that a particular plan is no good, get rid of it. That in my terminology is a validation.

Mr. SUTCLIFFE. What if it turns out to be very good for insurance companies and very bad in terms of the amount of dollars that the consumer puts into it.

Mr. WATKINS. We are in one of the most highly competitive businesses in the United States. Also one of the most regulated at the State level. But we are in a very violently competitive business.

Mr. SUTCLIFFE. But as to each jurisdiction, you are each playing the same rules. So that you know if it turns out to produce expanded profits to the insurance companies the competition will be, how do we get the most people in that jurisdiction, not as to how you design the plan that is most beneficial to consumers.

Mr. WATKINS. I think you are making the assumption, Mr. Sutcliffe, that all companies will charge the same rates. I don't contemplate that. I think they will be competitive on rates and that in itself will be a lid on these profits, that the automobile insurance companies may make and which we haven't made for, lo, too many years.

Mr. SUTCLIFFE. It is not profits but the amount of expenditure of consumer dollars necessary to reach the kind of protection we all want that I am talking about.

Mr. WATKINS. There are two areas of benefit to the consumer. One, the premium he pays; and the other, what is returned to him in benefits. If the premium dollars is reduced from $100 to $80, and the public gets back in benefits, not in collection costs—if I can use that term, instead of lawyer's fees—65 percent, they are a lot better off because right now they are getting something less than 40 percent; some show as little as 14 percent out of that $100, or $14 out of the $100.

So I feel very sincerely, that competition between insurance companies, the different types of insurance companies because as you know we have agency companies, mutual companies, we have direct writers, mail-order companies, that don't even have local agents. That type of competition, I think, will certainly control the price of the product. Particularly in those States where we have a free-rating climate.

Mr. SUTCLIFFE. I don't want to belabor the point. But let me take your analogy of a plan that returns instead of 45 percent on the dollar, 65 percent. Now, that enables you with the same collection of premium dollars to offer more benefits to the consumer.

Mr. WATKINS. Yes.

Mr. SUTCLIFFE. What if you take that plan and put it in one State and take another plan, which returns only 50 percent in benefits to the consumer. You see, we have developing now in Massachusetts a no-fault plan which has some cost added onto it because of something labeled "interinsurer subrogation."

We have suggestions for a similar type of overlay in Illinois. If our objective is to utilize to the best extent possible premium dollars to maximize the benefits payable, and avoid economic waste, be it expressed in terms of economic waste for the consumer or in terms of eating up profits for industry, how much of the costs should the American public be willing to pay for the privilege of experimenting as you advocate?

Mr. WATKINS. Well, I don't think I can answer that question in the way you asked it. I don't think that there would be plans—a plan returning only 50 cents out of the premium dollar—I think would fall of its own weight.

Mr. SUTCLIFFE. What if it straightened out another problem, as perhaps the Massachusetts plan has done by taking bodily injury claims out of the picture in PD cases, thus correcting an unusual situation there.

Certainly an apparent improvement in the system has been realized. And the systems might be one that the people may be willing to live with even though it increases the efficiency of the system from 45 to only 50 percent?

Mr. WATKINS. Are you assuming that the people in the State of Massachusetts are going to want exactly the same thing that the people in Arizona do?

Mr. SUTCLIFFE. I guess I have to make that assumption. I have lived in too many parts of the country to think that the needs of people in various States are different.

If I am injured in the State of Washington, I will have the identical kinds of needs in terms of payment for hospitalization, rehabilitation and wage replacements that I will have if I were injured in the District of Columbia.

Mr. WATKINS. Proportionately, yes.

Mr. SUTCLIFFE. I might have to pay a little different cost for the insurance. But my needs, I think, would be pretty much the same.

Mr. WATKINS. Let me explain that I don't feel this experimentation period should go on ad infinitum. I hope—I hope that's clear. So we are not talking about something that is of long duration that is going to be continued in perpetuity.

I think very honestly that the bare facets of the various programs are going to surface rather rapidly. And as they surface, I think they should be identified and as soon as it's proven that they are feasible, workable, that it's what the public wants and it does relieve the pressure on the court system, that it makes more prompt reimbursement of medical expenses, it particularly encourages rehabilitation.

I think this is one of the most critical objections to the present system the fact that rehabilitation is so frequently negated because the poor person doesn't have the funds to take advantage of the remedial medical assistance that would save the use of his arm.

Consequently, after 6 months, why, it's irretrievably lost. The use of it is. The wealthy person has the means to finance that rehabilitation.

Mr. SUTCLIFFE. Have you given any consideration to how you appropriately draw the tort exemption line, you or your company? Because if these hearings are not going to produce Federal legislation they may serve as a guide to States that will be considering these important issues.

Mr. WATKINS. I cannot answer that in the affirmative, no. We have not put it down on paper. We have some pretty strong feelings in broad principle.

Mr. SUTCLIFFE. For the record, then, could you, if and when they are committed to paper, provide them to the committee?

Mr. WATKINS. I certainly will. In a nutshell we are purists. We believe in a pure compensatory system without any thresholds. I

other words, we follow Senator Hart's proposal that there will be unlimited medical reimbursement for incurred expenses and rehabilitation expenses.

Mr. SUTCLIFFE. What do you do with the intangible loss or the general damage?

Mr. WATKINS. We don't feel—we feel that that is a burden on society. If a person is made whole through prompt rehabilitation, through reimbursement of his economic losses, that fulfills society's obligation. This is true of workmen's compensation.

I am not holding up all the workmen's compensation laws as the model either. But I think the theory of workmen's compensation, the bold theory of workmen's compensation applies.

Mr. SUTCLIFFE. Would your company consider selling a first party policy to the individual on an optional basis to cover an intangible loss?

Mr. WATKINS. At this point I don't think we would. We might if competition forced us to. Again, let me emphasize, we are in a very competitive business. If we did, I feel sure we would want to have that intangible damage very carefully defined and limited to a fraction or a multiple of some readily identifiable expense.

Mr. SUTCLIFFE. Mr. Watkins, for the record, could you provide this committee with an estimate of the kinds of manpower training costs your company would have to engage in with different plans and different States compared to a uniform national plan of automobile insurance compensation?

Mr. WATKINS. Manpower training for underwriting?

Mr. SUTCLIFFE. For selling. I imagine there would have to be some difference there, for educating underwriters, for educating claims adjusters—those costs that might have to be incurred in the home office and in the jurisdictions in which you are writing if you had to market insurance under different plans. If we need clarification as to what we are after here, these can be just guesstimates. If it is not a valid question, please say so.

Mr. WATKINS. It is valid in some respects and we will certainly be glad to comply with your request. But companies that deal through independent agents, as does my company, have no control over those agents.

Mr. SUTCLIFFE. But you do provide them with information?

Mr. WATKINS. We provide them with information, but they are independent and they pride themselves in following their own educational patterns and their own devices. We can lead them to the trough but we cannot make them think.

Mr. SUTCLIFFE. I am sure they all do that anyway.

Mr. WATKINS. However, the principal concern would be in the area of loss adjustments which, of course, there would be no problem because it is purely first-party reimbursement and in the underwriting process.

But we will comply with your request. Be glad to.

(The following information was subsequently received for the record:)

At the present time we are handling a multiplicity of insurance plans and programs in the fifty state jurisdictions. Our best intelligence is that the staff, supported by our centrally-located Training and Development Department, should be able to handle the development of state-by-state No-Fault automobile programs.

While we believe economies would accrue in the preparation of printed material, we are unable at this time to identify any significant reduction in manpower training costs.

Mr. SUTCLIFFE. Just one other question. I did not note in your discussion the impact the construction of vehicles in a manner that would make them less susceptible to damage, might have on the cost of insurance.

We have before this committee legislation to establish property loss reduction standards for motor vehicles. Does your company take a position on that legislation?

Mr. WATKINS. We do not have technical support for such a position, but we do heartily endorse the concept that vehicles should be rated by their damageability. Now, how this is going to be established is another matter.

Mr. SUTCLIFFE. Do you think minimum levels of property damage susceptibility should be established by the Government that would mandate auto manufacturers to build their vehicles to comply with those minimum specifications?

Mr. WATKINS. I think it is in order for the Federal Government to establish safety standards: yes, sir.

Mr. SUTCLIFFE. And property loss reduction standards, bumper legislation?

Mr. WATKINS. This is what I call safety. Here again I think it is like going back to our discussion of no-fault. I think that guidelines could well be adopted and then if, in the course of a few years, those guidelines are not adhered to, then, by gosh, let's put some whip into them.

Mr. SUTCLIFFE. Thank you.

I have no further questions, Senator.

Senator HART. On that last point, I note in your prepared statement you expressed the belief that no-fault would lead to an expansion of the automobile insurance market and that underwriting standards would be changed significantly. Then you say "An individual's driving record would still be important, but so would his income, the size of his family, the kind of car he drives."

I assumed when I read that that you did agree with the question that Mr. Sutcliffe suggested?

Mr. WATKINS. In the main I do, sir.

Senator HART. Thank you again, both for your testimony and for the film. I hope there is very broad distribution of it.

Mr. WATKINS. Thank you, sir. I appreciate the opportunity.

Senator HART. Next the vice president and manager of the American Mutual Insurance Alliance, Mr. Andre Maisonpierre.

I think it was in another committee, but I remember pleasantly hearing your testimony then.

STATEMENT OF ANDRE MAISONPIERRE, VICE PRESIDENT AND MANAGER, AMERICAN MUTUAL INSURANCE ALLIANCE, WASHINGTON, D.C.

Mr. MAISONPIERRE. Thank you very much, Mr. Chairman.

My name is Andre Maisonpierre, and I am a vice president of the American Mutual Insurance Alliance. We are a voluntary association of more than 100 mutual insurance companies which provide auto

mobile and other property-casualty coverages in all 50 States and the District of Columbia.

We appreciate the opportunity of presenting our views to the committee. Since our oral statement very briefly summarizes our full statement, we respectfully request that the full statement will be made a part of the record.

Senator HART. It will be made a part of the record along with the exhibits.

Mr. MAISONPIERRE. We believe that the excessive human and economic losses resulting from auto accidents can be dramatically reduced. To this end, we have developed a reform proposal called the guaranteed protection plan which deals with all of the major factors contributing to high insurance costs and consumer dissatisfaction. This is a comprehensive approach to the automobile problem—an approach which calls for responsible reform in the automobile reparations system, in vehicle design, in driver performance, and in traffic safety regulations.

AUTOMOBILE DESIGN—KEY TO MAJOR INSURANCE SAVINGS

Automobile damage has become the dominant factor pushing up the cost of automobile insurance. About two-thirds of the total premium paid for a typical package of automobile insurance goes for coverage paid for vehicle repair or replacement.

Moreover, the cost of the vehicle coverages is now rising at an accelerating rate, while the cost of the bodily injury coverage is slowing down.

Rate filings made in a number of States over the past few months called for increases in the vehicle damage coverages of 10 percent to 20 percent or more, while the bodily injury rates remained the same or required minimal increases.

Thus, reducing crash damage to cars is the single most urgent priority in the alliance's guaranteed protection plan for auto insurance reform.

In prior testimony before this committee Dr. William Haddon, Jr., president of the Insurance Institute for Highway Safety, laid a firm foundation for congressional action to stimulate auto manufacturers to recognize the impact which fragile car designs has had in increasing the transportation costs of the American consumer.

Dr. Haddon's testimony covered a number of misunderstood points about low-speed crash problems. Among those, the following need emphasis.

(1) There is no necessary conflict between the goals of protecting automobile occupants from injury and protecting the vehicle itself from costly damage in collisions.

(2) Preventing low-speed crash damage will not automatically mean car price increases.

(3) Rear end damage is nearly as common as front-end damage—hence, protection of the rear of the car is just as important as protection of the front of the car.

(4) Low-speed test crashes and insurance data show that the bulk of property damage is produced by minor crashes.

Results of crash tests on 1971 models clearly indicate that presently available technology to reduce automobile damageability continues to be ignored in the design and manufacturing of automobiles.

On the other hand, improvements in vehicle design already are helping to reduce crash injuries and to minimize the cost of the economically less significant bodily injury coverages. Similar dedication to reducing car fragility would go a long way toward actually reducing the cost of automobile insurance.

PROPOSED REFORMS IN THE AUTO REPARATIONS SYSTEM

The guaranteed protection plan also calls for major reforms in the auto reparations system. These reforms are designed to achieve a reasonable balance among three difficult and often contradictory goals:

1. To provide crash victims with prompt and fair compensation.
2. To encourage driver responsibility.
3. To keep overall costs at a reasonable level.

Our statement describes the plan in detail. Let me merely outline some of its proposals.

The plan would require that every private passenger automobile policy issued or delivered in the applicable State shall include as minimum benefits, payable regardless of fault:

1. Medical and hospital expense coverage up to $2,00 a person.
2. Disability income coverage of 85 percent of gross income lost during a period commencing 30 days after the accident.

Insurance companies would, of course, be permitted to offer broader coverages than the statutory minimums.

The guaranteed protection plan would retain existing liability protection. Persons with losses exceeding their first-party, no-fault benefits would be entitled to compensation from the other driver for such losses. But insurance companies which pay the medical and disability benefits to their own policyholders could seek reimbursement from the party at fault or his company.

Thus, the proposed system would be no-fault in the sense that the accident victim would collect for his basic economic losses, regardless of who caused the accident. But it would be a fault system in the sense that it would preserve the principle of personal accountability.

In order to simplify the payment of both fault and no-fault benefits, the plan calls for the compulsory arbitration of all liability claims under $3,000 and an intercompany arbitration system to handle all subrogation matters.

The guranateed protection plan sets an objective standard for determining general damages—those damages which go beyond the accident victim's out-of-pocket economic losses.

Payment for these damages would be limited to a proportion o: medical and hospital expenses incurred. Such limits are intended t curb nuisance claims and to offset the cost of extending the basic no fault benefits to accident victims generally.

These limits do not apply in cases involving death, permanent dis figurement, dismemberment, permanent impairment, and in other ex ceptional circumstances where the court or jury finds such a limitatio to be unjust.

In addition, the plan would require the adoption by the States o comparative negligence laws. To the extent that the operation of th contributory negligence rules sometimes produce a harsh, unjust re

sult in individual cases, the proposed reform would eliminate these inequities.

To reduce excessive attorney fees our plan calls for placing a limitation of 25 percent on such fees where they are contingent on the amount awarded the person represented by the attorney.

To protect car owners against unwarranted cancellations of their auto insurance the guaranteed protection plan calls for passage of legislation limiting permissible reasons for cancellation of private passenger auto insurance policies to nonpayment of premium or suspension of driver's license or vehicle registrations.

In addition, specific requirements with respect to the insurer's intention to cancel or not renew are provided in the plan.

GUARANTEED PROTECTION PLAN: COMPATIBILITY WITH DOT RECOMMENDATIONS

There are many points of similarity between the insurance reform portion of the guaranteed protection plan and the program recommended by the Department of Transportation. There are, also, some basic differences between the two approaches. Let me briefly outline these for you.

We agree with Secretary Volpe that the States should move promptly to experiment with reform plans extending to auto accident victims—on a first-party, contractual basis—basic benefits to be paid to all accident victims without regard to fault.

The benefits paid under the guaranteed protection plan would cover in full the wage and medical losses incurred in more than 95 percent of all auto crashes.

The alliance proposal is consistent with the Secretary's suggestion that the States might want to experiment initially with the reform plan that would offset the cost of first-party coverages by the savings achieved in revising the rules on general damages.

Under our plan, such cost savings would be produced by imposing limits on the amount of general damages that could be collected for injuries not involving death, disfigurement, or permanent impairment.

We specifically endorse the administration's findings that the Federal assumption of the regulation of the automobile insurance business is highly undesirable.

Our differences with Mr. Volpe have to do primarily with matters of timing, and of defining what constitutes radical, irreversible change.

Mr. Volpe argues persuasively in his testimony that there is an urgent need for experimentation at the State level to clear up major uncertainties about the cost, workability, and public acceptance of any new system.

Having established that major uncertainties exist, very little credibility can be given to the DOT's proposal since it goes beyond the point of no return in the first stage of implementation.

We believe that the guaranteed protection plan offers crash victims betters benefits and would allow for a more orderly testing of public sentiment than the Administration's program.

The people affected by changes in the reparations system need to be able to see and make judgments about what they would gain and lose as the balance is shifted towards greater use of no-fault coverages.

GUARANTEED PROTECTION PLAN: COMPATIBILITY WITH MOTOR VEHICLE INFORMATION ACT

For the past few years the alliance has supported State legislation bumpers. We believe, however, that minimum Federal standards in this area would be desirable. Accordingly, we strongly endorse Federal legislation which would give the Department of Transportation authority to issue standards aimed at making cars more crashworthy.

We question, however, the desirability of section 5(c) of S. 976. We find it very difficult to understand delaying action until 1975. Each year's delay in enacting adequate standards penalizes the insurance cost for a whole generation.

Since the average life of a car is about 10 years, it would not be until 1985 that all cars on the road would be equipped with adequate bumpers if this section is allowed to stand as it is.

We believe that there is every expectation that the Congress should require a total vehicle design capable of withstanding rear and front impacts at 5 miles per hour into a solid barrier by 1973. Unless this is done, the Federal law will invalidate stronger State laws already on the books in Florida and Maryland and will give auto manufacturers a 2½-year umbrella during which time they need do nothing about providing adequate bumpers and more damage resistant car designs.

We support the requirement that auto manufacturers test their new models for crash resistance and publish the data so that potential purchasers can use this information in their buying decisions. This would encourage insurers to rate the various makes and models on the basis of their damageability and ease of repair.

We urge the enactment of legislation calling for periodic inspection and reinspection of damaged vehicles. The finds of the recently released California Highway Patrol's investigation of fatal single-car crashes makes such inspections imperative.

The reinspection of automobiles following crashes may bring about some additional insurance cost, since insurers will not be entirely successful in sorting out the maintenance repairs from the crash damage. However, we feel that such costs would be justified by the ensuing increase in safety.

We also support the uniform title registration program covered under title V of the bill. Over the years we have urged the States to adopt the auto title registration program of the National Committee on Uniform Traffic Laws and Ordinances.

Statistics clearly indicate that in States which have adopted this program, fewer automobiles are stolen and more stolen cars are recovered. Obviously, a substantial reduction in thefts or a substantial increase in the recovery rate would be reflected by a reduction in premium rates for theft insurance.

We want to stress our basic endorsement of the purpose of S. 976. Although our specific objections are substantive, we believe that with suitable amendments this bill can be of major assistance in bringing under control the excessively high price now paid by consumers for auto crashes and for the insurance coverages they pay for crash damage.

GUARANTEED PROTECTION PLAN: COMPATIBILITY WITH CONSUMER ATTITUDES

One of the major considerations involved in assessing the practical and political feasibility of any new automobile reparations system is public acceptability.

In designing the guaranteed protection plan, the Alliance has conducted major research on public attitudes and has tailored its various proposals accordingly. All of the available evidence indicates that the American public attaches considerable importance to the concept of driver responsibility for injury done another.

This was demonstrated in a major national study of the attitudes and feelings of people who buy auto insurance, conducted by Market Facts, Inc., largest consumer survey organization in the Nation. The survey is described in detail in our prepared statement. Let me just cite a few of the pertinent findings.

1. Auto accident victims who have been injured by a negligent driver are unwilling to give up the legal right to collect for general damages.

2. Six out of ten consumers are opposed to pure no-fault auto insurance. Among those who have had experience with the existing claim payments system, almost two out of three were opposed.

3. About two-thirds of the consumers interviewed felt that making automobile insurance excess over other benefits would not be too good an idea.

In addition to this public attitude survey, the Alliance conducted an actual field experiment over a 12-month period in the Syracuse-Rochester areas of New York and in several counties on the western edge of Chicago.

The objective was to test injured claimants' receptivity to a program guaranteeing them prompt but reduced benefits.

The 16 participating companies, representing a broad section of the auto insurance business, offered third-party bodily injury liability claimants a choice of collecting all of their medical expenses up to $5,000, plus wage benefits equal to 105 percent of their losses, to be paid promptly as their losses accrued. Or they could reject this alternative and pursue a regular liability claim.

The major finding of this experiment was that, given a choice between a guaranteed offer and the payment available under the existing auto liability system, only 25 percent of the eligible claimants elected to accept the alternative benefits in Illinois, and 15 percent in New York.

Confirming this apparent public attachment to the present liability system is the response found to a question in DOT's own public opinion survey. The question was: "In your opinion, is there a need to change the system? In what ways?"

More than two-thirds—78 percent of all respondents—did not express a preference that the system be changed. See pages 6 of exhibit 3.

UNIFORM MOTOR VEHICLE INSURANCE ACT

One of the important shortcomings of this proposal is its incompleteness. The bill leaves many questions unanswered. The public is not being well served by being left in the dark by these unresolved issues.

There is wide appeal to a plan which seemingly offers something for everybody with no controversy. But, it is the responsibility of this committee not only to examine these promises but also to examine the unresolved problems created by the proposal.

For instance, what rates would be charged for the compulsory coverages? What additional coverages would be needed and what would they cost? What cost would have to be paid out of the pockets of accident victims and which claims would not be paid under the proposed new form of insurance?

We know that 55 percent of the persons injured in auto crashes are not wage earners at the time of the accident. Many of these persons expect to enter or reenter the work force at some future date.

Under the Uniform Motor Vehicle Insurance Act these people would have no way to collect for any harmful effects an auto injury might have on future earning capabilities unless they sustain catastrophic harm. This inequity is even more severe in the case of the unemployed.

The bill does not state how disability is to be defined. Nor how the extent and duration of this disability is to be measured. And, what is meant by "disfigurement"?

The bill will fall far short of its sponsors' expectation of providing "almost total compensation" for the seriously injured. Although the bill preserves the right of total recovery for those who are more than 70 percent disabled, this remedy is made largely meaningless by other provisions of the bill which would prohibit the States from requiring drivers to carry any form of liability insurance to pay for such losses.

Additionally, the bill creates serious inequity for the much larger group of seriously injured crash victims who suffer permanent disabilities below the 70 percent level. These victims would receive no compensation at all for going through life with some rather serious impairments.

It is argued that general damages should be excluded from compensation because they are subjective in nature and are not susceptible of precise measurement in dollars. Yet the same thing is true of a great many things in this world.

What is a man's time worth, and how is its value determined? How do we determine the value of a piece of real estate condemned for a highway?

All these things are subjective in nature. Yet we manage to translate them into dollar amounts by the process of bargaining and compromise.

In fact, under the Uniform Motor Vehicle Insurance Act, very large numbers of auto accident victims would receive nothing at all even from the compulsory personal injury coverages. Nobody would collect for damages inflicted on his automobile under the statutory coverages. Many of those who have wage continuation plans, health insurance protection, et cetera, would not collect anything for their wage and medical losses, either.

No doubt it will be argued that these losses are covered by other benefit systems. But the same argument can be made today.

The point is, both the present statutory auto insurance coverages and those proposed under this Federal bill are designed deliberately to leave out certain categories of claimants. And the group left out is

much larger under the Federal proposal than under the present system or under the guaranteed protection plan.

Another unfortunate shortcoming of the Uniform Motor Vehicle Insurance Act is the damage it would do to one of the Nation's major industries by abolishing State regulation of insurance and superimposing a system of Federal regulation under the Secretary of Transportation.

There is nothing in the history of the Federal regulatory system to instill confidence that the Federal regulation of insurance would be, on the whole, more efficient than the present State regulatory system.

The *Congressional Record* is full of official and unofficial criticism of Federal regulatory agencies for dilatory procedures, their inflexibility, their lack of independence and competency.

Insurance remains one of the most diverse businesses in the Nation. In most respects it is still a local business, built on local bases and solving local needs. The alliance believes that the regulation of insurance must recognize and respond to this diversity.

One of the politically popular features of the Uniform Motor Vehicle Protection Act is the provision which would require auto insurers to accept all applicants for coverage, provided they have a valid driver's license and are willing to pay the premiums.

The most likely result of this would be to increase the cost of insurance for a vast majority of drivers who now enjoy preferred rates, since companies which attempt to set their rates at a lower level to attract such drivers would be inundated by high-risk drivers.

The guaraneed protection plan deals with the problem of insurance availability in a more reasonable fashion. It calls for an expansion of the present automobile insurance plans so as to guarantee reasonable limits of protection for both liability and auto insurance coverages to every licensed driver.

CONCLUSION

The problems generated by automobile crashes are far more complex than was generally realized when the reform issue first came to the general public's notice.

We believe that the ensuing research, debate, and soul searching has been productive, and has produced something close to a consensus on the steps that must now be taken to bring about a reformed system and to bring under control the excessive losses.

The alliance has been privileged to play a major role in the search for reform. We pledge to you and to the public our sincere efforts to accomplish these objectives.

This, Mr. Chairman, completes my oral statement.

Senator HART. Thank you very much, particularly for the skill you used in summarizing a very long and useful paper.

I would want to comment about that bumper standard section of S. 976. We will want to take a look at that language, I agree with you. Whether it prevents anybody establishing the standards before the date required, January 1975, it was not intended to do so.

Mr. MAISONPIERRE. That is right, sir.

Senator HART. You cite public opinion surveys to establish the proposition that with respect to the elimination of pain and suffering

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92-18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, Chairman

JOHN O. PASTORE, Rhode Island
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
WILLIAM B. SPONG, Jr., Virginia

NORRIS COTTON, New Hampshire
WINSTON PRENTISS, Vermont
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan
HOWARD H. BAKER, Jr., Tennessee
MARLOW W. COOK, Kentucky
MARK O. HATFIELD, Oregon
TED STEVENS, Alaska

FREDERICK J. LORDAN, *Staff Director*
MICHAEL PERTSCHUK, *Chief Counsel*
S. LYNN SCHOFFIELD, *Staff Counsel*
ARTHUR PANKOPF, Jr., *Minority Staff Director*
PETER POWELL, *Minority Professional Staff*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
WILLIAM B. SPONG, Jr., Virginia

NORRIS COTTON, New Hampshire
WINSTON PROUTY, Vermont
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan
HOWARD H. BAKER, Jr., Tennessee
MARLOW W. COOK, Kentucky
MARK O. HATFIELD, Oregon
TED STEVENS, Alaska

FREDERICK J. LORDAN, *Staff Director*
MICHAEL PERTSCHUK, *Chief Counsel*
S. LYNN SUTCLIFFE, *Staff Counsel*
ARTHUR PANKOPF, Jr., *Minority Staff Director*
PETER POWELL, *Minority Professional Staff*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

THURSDAY, MAY 6, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 11 a.m., pursuant to recess, in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman of the Committee) presiding.

Present: Senators Magnuson and Hart.

The CHAIRMAN. The committee will resume its hearings on the insurance bills. Robert Joost is the next witness.

We will be glad to hear from you. I understand that you are employed by the American Trial Lawyers Association, is that correct?

STATEMENT OF ROBERT H. JOOST

Mr. JOOST. I am from the American Trial Lawyers.

My name is Robert H. Joost. I am a lawyer, and I am employed by the American Trial Lawyers Association at its headquarters in Cambridge, Mass.

I am submitting this statement for the record in favor of pending legislation in the Congress to establish on a nationwide basis a system of compensation of victims of automobile accident regardless of fault.

Since the American Trial Lawyers Association opposes no-fault automobile insurance legislation, I am submitting this statement for myself only and not for the association.

The CHAIRMAN. Can I interrupt just a minute. Do we have a formal statement in opposition from the Trial Lawyers Association?

Senator HART. They testified yesterday in very strong opposition.

Mr. JOOST. First to establish my own professional credentials, I am a graduate, magna cum laude, of the Harvard Law School, where I was an editor of volumes 72 and 73 of the Harvard Law Review, and I am a graduate, magna cum laude, of Yale College, where I was a member of Phi Beta Kappa. I have also studied at Columbia University as a graduate student in economics.

In addition to my professional work from 1962 to the present for the American Trial Lawyers Association—until 1964 it was called the NACCA Bar Association—I have been heavily involved in two major statutory reform efforts in Massachusetts. I participated in the molding and remodeling of the new Massachusetts mental health code, which goes into effect July 1, as a member of the legal studies staff of the Massachusetts Special Commission on Mental Health and as a member of the Attorney General's Committee on Commitment Law Revision, and since 1968 I have been a reporter for the Criminal Law Revision

Staff member assigned to these hearings: S. Lynn Sutcliffe.

Commission of Massachusetts which is engaged in revision of the substantive criminal law of the State.

Also, from 1967 to 1971 I was a part-time law professor at the New England School of Law in Boston. I have published articles and comments on a variety of legal subjects, the most recent being a piece called "Housing and the Law: An Overview," published in 6 New England Law Review 1971.

I am a member of the Massachusetts bar, and a member of the American, Massachusetts, and Boston Bar Associations, the American Trial Lawyers Association, and the American Judicature Society.

My present post with the American Trial Lawyers Association is assistant to the chairman of the legislative section, which I have held since 1969. For a period I was called special counsel, but the title was changed to assistant to the chairman in 1969.

I am also managing editor of Trial magazine, the bimonthly national legal news magazine published by ATL. As a matter of fact, I am the only lawyer on the editorial staff of this magazine. Copies of letterhead stationery which indicate my position are attached to my formal statement.

I was first employed by the trial lawyers in 1962, as assistant to the editor of the NACCA Law Journal, which is now called the Journal of the American Trial Lawyers. In that capacity, between 1962 and 1964, I wrote a substantial percentage of the articles published in volumes 29, 30, and 31 of the journal. From 1964 to 1967, I worked for the association on a part-time basis as the paid author of a regular column in Trial magazine entitled "A Brief Sweep" in which I synopsized current law-review articles of interest. I accepted a full-time position as an editor of Trial in September of 1967.

In addition to almost a decade with the trial lawyers association itself, I also practiced law for 2 years with a law firm in Boston that concentrates on automobile negligence work—Sheff & McGarry; one of the partners was then a member of the board of governors of the American trial lawyers. The firm is typical of many such law firms across the Nation.

As an ATL staff member, I have attended numerous national meetings of the trial lawyers—two in Denver, one here in Washington D.C., one in Las Vegas, one in San Francisco, and one in the Bahamas In 1970, I arranged and attended regional meetings of Key Men—that is, members interested in influencing legislative action—in Cambridge, Las Vegas, Atlanta, Chicago, and Denver.

In 1971 to date, I have been to two such Key Men meetings; the 1971 meetings were devoted exclusively to how to defeat no-fault—completely—at both State and Federal levels.

This statement is thus based on long personal involvement with and observation of the principal opponents of legislation aimed at compensating automobile accident victims regardless of fault—the trial lawyers.

I am submitting this statement in support of the Hart-Magnuson bill as an act of conscience, as an attorney, and as a citizen. It is also submitted with sadness for I had hoped that the association itself would see and would accept the fact that we lawyers must put aside our personal pocketbook interest where the public interest conflicts.

Unfortunately, the group in control of ATL has refused to concede that there is such a conflict and has refused to accept that a profe

sional association of attorneys has a higher obligation than maintenance of personal income.

As a matter of fact, the group in control has never even polled the membership on no-fault versus negligence because no-fault is viewed as putting them out of business.

I myself have been in favor of no-fault automobile insurance, at least in part, for some time, I reviewed the trialblazing book by Profs. Robert E. Keeton and Jeffrey O'Connell, "Basic Protection for the Traffic Victim," in the spring 1966 issue of the Portia Law Journal, at pages 266 to 267. In that review, I called the book a "pathfinder in a difficult area," and as to the no-fault plan advocated by the authors, I concluded:

> The proposed statute is a careful attempt at reform. If substantially enacted, it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

A copy of that review is attached to my statement.

I attach also a copy of a letter to the editor of the Boston Globe published December 6, 1966, in which I criticized then Gov. John A. Volpe for his opposition at the time to the no-fault concept. In this letter, I declared in conclusion:

> The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried.

I am pleased personally that in 1970 Massachusetts, under the leadership of Michael Dukakis, a Democrat, and Francis Sargent, a Republican, did seriously consider and enact into law a no-fault automobile insurance law. As both Governor Sargent and Mr. Dukakis have testified to a subcommittee of the House of Representatives, the results in Massachusetts, so far, exceed the most sanguine expectations of the proponents.

I attach a letter by Mr. Dukakis published in the Boston Globe of April 30, 1971, in which he calls for extending these benefits to all the people through a national no-fault system.

When I was hired by the American trial lawyers on a full-time basis in 1967, I had to agree to make no public statements in opposition to the position of the association. My personal views, however, did not change.

The CHAIRMAN. Mr. Joost, do the American trial lawyers have their national headquarters here in town?

Mr. JOOST. No, in Cambridge, Mass. We have a Washington representative, but the headquarters are in Cambridge across the Cambridge common from the Harvard Law School.

To reiterate, my personal views did not change. As a matter of fact, my enthusiasm for the no-fault approach to automobile reparations increased. While my original decision to favor the Keeton-O'Connell plan might have stemmed, at least in part, from the fact that I studied torts from its principal author, Professor Keeton, and because Mr. Keeton was instrumental in getting me my first job with NACCA in 1962, my editorial position with *Trial* starting in September 1967 gave me the time and the access to books and reports which were necessary to a true appreciation of all the issues involved.

Let me state formally for the record: In my judgment, based on my years of study, thought, and observation, I believe that a system of automobile reparations based on compensation of all the tangible losses

of all victims of automobile accidents in the United States without regard to fault would be a much better system than the present one based on compensation of all the tangible and intangible losses of victims but only if the victim proves that a financially solvent defendant by his negligence proximately caused his injuries and only if he proves fault and damages by a preponderance of the evidence in a trial before a court or jury.

Under no-fault, the public, the beneficiaries, and consumers of automobile insurance would get better protection for the premium dollars spent and at lower annual cost.

In addition, the hard-pressed judicial systems of the Federal and State governments would get some relief. The problems of the courts of America today are largely on the criminal docket rather than the civil docket side, but it is my judgment that no-fault, by lifting out of the courts a substantial volume of cases, would free up enough judge time, enough judicial man-hours to make it possible to try every criminal defendant in this country within 60 days from date of arrest, or at least within 6 months. It is by no means the complete answer to the crisis of our courts, but it is a part of the solution, and a part, incidentally, that does not require the expenditure of additional taxpayer money.

Finally, no-fault is a much more efficient system than the present one. The present one was not developed for a nation with 100 million registered motor vehicles and a multibillion dollar insurance industry; it was developed for a horse and carriage society, in another country, in another century, in the pre-liability-insurance era.

Since 1932 and the Columbia University study, it has been apparent to anyone who has studied the literature closely that something better than the automobile negligence liability-insurance system was available. The success of the Saskatchewan plan in one of the provinces of Canada confirmed this point.

However, for almost 40 years, the people of the United States were denied this "something better" because the individuals who feed off and earn their livelihood from the automobile negligence system happen also to possess a great deal of political clout.

They had, in fact, enough political muscle to snuff out the idea before it could even be tried in any State of the Union until the Commonwealth of Massachusetts in 1970 enacted a no-fault law. The Massachusetts statutes, however, came about as a result of rather unique circumstances which are unlikely to be duplicated in many other States: A very strong proponent in each political party; the highest premium rates in the Nation; a weak statewide organization of trial lawyers; and a State legislative tradition of being innovative.

Since there has never been any question as to my personal preference for no-fault, I confess that I did speak, my true feelings with some discreet friends. About a month ago, I received a telephone call from a congressional aide. He asked if I would testify before Congress on no-fault legislation. Apparently, one of my "discreet" friends hadn't been so discreet, and the congressional aide had learned that there was a lawyer who worked for the American Trial Lawyers Association, a trial lawyers' lawyer, who didn't agree with the party line.

I told him no because I wasn't myself convinced that automobile insurance was a proper subject for Federal rather than State legislation. I told him that I leaned toward the view that the States should be given every opportunity to act before the Federal Government comes in, in whole or in part.

Since that surprise telephone call, I have agonized and pondered. Finally, after a recent meeting of key men in Chicago, I concluded that I had to testify. If Congress is to execute its duty, which is to all the people of the United States and not just to the trial lawyers, it should get the views of one who has studied and thought hard about this no-fault business for many years, and who has been a trial lawyers' lawyer.

In my judgment, the only way in which this Nation is going to get real justice, opportunity and environmental health is if the Congress and the State legislatures authorize the private and independent trial lawyers of America to become "private attorneys general" on behalf of private citizens and to authorize the trial lawyers to bring private-remedy actions for injunctions, court orders to perform, and damages against those who pollute, against those who discriminate, against those who rent substandard housing and against those who take advantage of consumers—in return for a reasonable attorney's fee and true costs, fixed by the court and paid by the defendant found by the courts to be in violation.

The fact is, therefore, that the enactment of the Hart-Magnuson legislation will not wipe out the trial bar for there are so many wrongs that need to be litigated and righted in our courts of justice. But the courts today are so chock-a-block full of existing business that they can't really take on big new workloads, even if class actions, treble-damage suits and all the rest were authorized in all the areas in which adequate enforcement of existing law is important.

The fact is, Mr. Chairman, that the trial lawyers of America, who should be out there litigating for America, a better America, are vegetating in the pork barrel of automobile negligence work.

The fact is that the only thing that will get the private and independent litigation experts en masse into environmental litigation, consumer protection litigation, inadequate housing litigation, antisnooping litigation and all the other things that lawyers can do in court which this country needs to have done is for the Congress of the United States to push them out of their present overstuffed and overpaid womb.

As I mentioned, until recently I leaned toward the position that, I now believe firmly that a decision to leave it to the States is, in fact, a State level before the Federal Government acts. I no longer do. I now believe firmly that a decision to leave it to the States is, in fact, a decision to retain the automobile negligence system with all its waste, all its excessive administrative costs, all its duplication, all its slow pace of operation.

If the Congress declines to act now, there will be some automobile insurance legislation passed by a few States in addition to my own. The legislation will even be called no-fault. But the terminology will be designed for one reason, to keep the Congress out. In reality, these State laws will continue the waste and the inefficiency of the present negligence liability-insurance system while ameliorating some of its bad effects.

Moreover, they will add the new problem which Gov. Francis Sargent of Massachusetts pointed to in a recent speech—the problem of excessive profits by the insurance industry. I have attached to this statement an article summarizing a recent speech on this subject by the Governor.

In Chicago on April 24th, I heard the ATL key men from Ohio and Illinois make such strong assertions of control of their State legislaturs, in whole or in part, that I was absolutely and totally disabused of my States-first leaning. I heard also that the trial lawyers have been increasing their power and their strength in State legislatures.

For example, the Texas Trial Lawyers Association has been running a program they call LIFT, under which subscribers contribute a minimum of $10 a month to what amounts to a campaign fund for candidates for the legislature. More than 600 Texas trial lawyers now subscribe, according to what I learned at the Chicago meeting.

Every election year, the funds accumulated by LIFT are divided among protrial lawyer candidates for the Texas Legislature. Let me read the text of an item that was published in the June 23, 1970, issue of the El Paso, Texas Trial Lawyers Association newsletter, "Ready for the Plaintiff." (Vol. VI, No. 5.) (The editor of the newsletter is attorney Richard T. Marshall, who was then national secretary of the American Trial Lawyers Association.)

UP, UP AND AWAY!!

LIFT is the latest effort of Texas Trial Lawyers Association. It stands for Lawyers Involved for Texas, and it's a runaway success . . . The *El Paso Times* reported in its Capital Column June 14th, that *LIFT was responsible* for the Democratic nomination in this year's primaries of six of the eight candidates it backed for the *State Senate*.

LIFT is a legislative kitty which is paying off. Most of your officers are contributing $10 per month on a bank draft authority to LIFT.

If you want to be a part of the movement for *comparative negligence* in Texas, for statutory authority to let jurors know what they are doing in *special issue* verdicts, and for a successful rejection of *Keeton-O'Connell* schemes, in other words, if you want your practice to survive, better get with it.

Send a check, any amount, to *LIFT, 201 Westgate Building, Austin!*

A more complete description of LIFT, published in an ATL 1970 publication called "A Trial Lawyer's Legislative Workbook" and taken from a letter dated January 7, 1970, by Attorney William R. Edwards of Corpus Christi, Tex., to the vice chairman of ATL's legislative section with a copy to me as assistant to the chairman of the legislative section is attached to this statement.

It may be of interest to this committee to know that the Texas Trial Lawyers Association, which promotes LIFT as its "latest effort . . . a legislative kitty which is paying off" is itself a tax-exempt organization. I attach also from the Trial Lawyer's Workbook a copy of letters the Texas affiliate received from tax attorneys supporting their exempt status and advising them how to keep it.

What this means, of course, is that in at least one State the Federal Government, by tax preference, is subsidizing political opposition to the Keeton-O'Connell plan and other no-fault proposals, at the same time that Federal Government officials argue that the States can and will pass good no-fault laws.

Mr. Chairman, how many State senators or State representatives in Texas are going to vote for meaningful automobile insurance reform,

when they know that if they do attract candidates, good speakers, with money from LIFT and campaign help from the trial lawyers are going to run against them in the next primary or the next general election?

What real chance do the people of Texas have to receive the benefits of the no-fault system of automobile reparations—unless this Congress passes Federal no-fault legislation?

At the Key Men meeting on April 24, I heard that the LIFT program has been adopted by at least one additional State. According to Attorney Thomas A. Heffernan of Cleveland, Ohio—I believe his law partner, Mr. Craig Spangenberg, addressed this committee the other day—the Ohio Academy of Trial Lawyers is now enrolling subscribers to its version which bears the acronym ADOPT. This attorney predicted flatly, unequivocally, and totally that the Ohio Legislature will never enact any no-fault automobile insurance legislation in any form.

At that meeting, the chairman of ATL's legislative section, Attorney Jerry Finn of Newark, N.J., summed up the discussion by saying: "Let's all ADOPT LIFT." No one objected.

More direct fundraising methods are also used by trial-lawyer groups. According to Attorney Jon Carlson of Belleville, Ill., who spoke at the meeting, every member of the St. Clair, County, Ill., Bar Association has been assessed $100 for a fund to fight Governor Ogilvie's insurance reform legislation.

Incidentally, Mr. Carlson and Attorney Leonard Ring of Chicago both asserted at this meeting that Ogilvie's bill doesn't have "a chance" to become law in Illinois. In Mr. Ring's words: "We control the Senate, Ogilvie controls the House; it's a standoff."

Mr. Chiarman, again, what chance do the consumers of automobile insurance in Illinois have to secure the benefits of no-fault unless the Congress acts?

At another "key men" meeting, this one held for representatives from the northeast region, on April 17, in the offices of the American Trial Lawyers Association in Cambridge, Mass., several of the representatives suggested that defense lawyers, that is, personal injury lawyers who are retained by insurance companies to defend against automobile negligence claims, are a good source for funds to finance the fight against no-fault.

The key men were urged to form general anti-no-fault lawyers' groups and citizens' groups and resign themselves to the fact that defense lawyers were afraid to let their names be used since many of them are retained by insurance companies which are in favor of no-fault auto insurance. I believe it was Attorney Daniel H. Mahoney of Albany, N.Y., who mentioned that such a citizen's committee was functioning in New York State and had purchased newspaper advertising in several papers against the Gordon bill in the New York State Legislature (the Gordon bill is patterned after the Massachusetts law).

It was stated that the advertisements should become punchier. I notice the recent ones just say no-fault is a hoax.

Another Key Man, and a former Connecticut State legislator, Attorney Leon Riscassi of Hartford, mentioned that the Connecticut trial lawyers had also had good luck in raising funds from the sheriffs and constables of the State of Connecticut. Apparently, the deputies

are paid on a fee basis: they were convinced that no-fault would mean fewer legal papers to serve and, therefore, lower incomes for themselves.

The committee may also be interested in another method that has been used for more than 3 years to fight no-fault. Since late in 1967, the association has been arranging for large fees to be paid by one or another trial lawyer group to a supposedly neutral academic, Prof. David Sargent of Suffolk University Law School in Boston, in return for his speaking, appearing, and testifying before private and legislative groups all around the country.

I see no objection to the appearances or to his being paid—Dave Sargent is a very able law professor; he has a viewpoint, and the subject matter demands the most careful and complete discussion—but I do find it less than honorable that Professor Sargent appears wearing his Suffolk University hat rather than his trial lawyers mantle, and that his audiences are not told who is paying him or how much.

As a matter of fact, at one of the recent Key Men meetings, somebody was complaining that Professor Sargent's rates were going up. The delegates said that he is now asking $500 an appearance plus expenses—for 1 day.

As the committee may know, this morning in Boston the supreme judicial court of Massachusetts heard oral argument in a suit challenging the constitutionality of the Massachusetts no-fault statute. The action has been brought by the immediate past president of the Massachusetts chapter of the American Trial Lawyers, Attorney Robert Cohen.

There was a short news item in the Boston Sunday Globe for April 25, 1971, page A-5, on one of the methods used to finance this constitutional-challenge litigation. According to the Globe's account:

> Attorneys are wondering about a couple of ethical questions raised by the activities of the lawyers bringing the test case of no-fault auto insurance law. The lawyers, Robert Cohen and Alexander Cella, have sent other attorneys a mimeographed form offering for sale at $50 per set the two-volume brief ($45) they have prepared on the case and the appendices ($5) . . . Fellow lawyers say (1) they've never heard of a lawyer openly selling a brief . . . and (2) the appendix consists of court records, which may not be theirs to sell.

To summarize and reiterate, it is my considered judgment that the trial lawyers will probably prevent any meaningful no-fault legislation from being enacted in any of the State legislatures, with a few possible exceptions. It is naive to argue that there is a choice between Federal legislation and legislation in the other 49 State capitals. The only choice is between Federal no-fault legislation or maintenance of the present negligence system, the system which the Department of Transportation's $2 million study so carefully and painstakingly criticized.

There is, I might add, a second reason why I believe Congress must act. If the trial lawyers have a stronghold on the State legislatures how does one find words to describe the power position of the insurance industry and its armies of lobbyists in all statehouses? There is at this time in my opinion absolutely no justification in experience or policy for the present exemption of the insurance industry from meaningful Federal regulation.

According to Attorney Heffernan of Cleveland, again, the trial lawyers have one lobbyist in the Ohio Legislature and the insurance

companies between them have 30. If the ATL people can make the assertions they make with their one lobbyist and ADOPT/LIFT, think what assertions the insurance companies can make in their private conclaves.

The objective of the insurance industry, according to the best information and intelligence the trial lawyers have been able to acquire, is maximum profit. Rest assured, there are enormous profit possibilities in no-fault automobile insurance unless it is tightly audited and regulated.

The reason for this is that a no-fault policy basically is a combined medical, accident-and-health and income-replacement policy which pays benefits in case of motor vehicle caused injury.

But the rates in Massachusetts, after the no-fault statute was passed, were not set on the basis of experience with accident and health and income replacement coverage, but rather on the basis of reductions from current automobile personal injury liability insurance rates. It is going to take a considerable number of reductions before one gets down to the accident and health premium level, and in the interim, rather enormous profit potential is available to the industry.

S. 945, the Uniform Motor Vehicle Insurance Act, represents new coverage by a new system. Since there are not now any Federal personal injury liability insurance rates, rates won't be set—they couldn't be set—by reductions from existing Federal rates. They will have to be set afresh from the new perspective, and that is what is appropriate when the subject is a new and different kind of coverage.

In my opinion, only the Federal Government has the strength and the capability to tightly audit and regulate no-fault automobile insurance coverage. If profits in excess of a reasonable return are to be prevented, no-fault must be legislated by the Federal Congress. Any other course would just mean the substitution of one form of consumer abuse with another.

I urge the passage of the Hart-Magnuson legislation.

Now, while this concludes my prepared statement, I would like to add a summary of what has happened since I mailed this statement to the Congress.

I was informed on Monday, April 26, after I mailed my statement to Washington, of the decisions reached at another trial lawyers' meeting in Chicago on April 24. At that meeting, the executive committee of the American Trial Lawyers Association unanimously approved a resolution creating a completely new department—the department of Federal-State relations—with a proposed budget of $322,200 for the fiscal year which begins August 1.

The executive committee voted to finance the budget for this new department by (1) reducing the budget of the department of public affairs and education (which edits and publishes *Trial*) by $112,000, and by (2) dues increases expected to net an additional $200,000.

As part of the cutback in the public affairs and education department, its director was ordered to dismiss me, the only lawyer, at the end of the fiscal year, as well as several additional staff members.

In view of the statement I had mailed to Washington, I told the department head, the editor of *Trial*, that I would leave after the 2-week notice period which means I cease to be an employee tomorrow, May 7.

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
WILLIAM B. SPONG, JR., Virginia

NORRIS COTTON, New Hampshire
WINSTON PROUTY, Vermont
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan
HOWARD H. BAKER, JR., Tennessee
MARLOW W. COOK, Kentucky
MARK O. HATFIELD, Oregon
TED STEVENS, Alaska

FREDERICK J. LORDAN, *Staff Director*
MICHAEL PERTSCHUK, *Chief Counsel*
S. LYNN SUTCLIFFE, *Staff Counsel*
ARTHUR PANKOPF, Jr., *Minority Staff Director*
PETER POWELL, *Minority Professional Staff*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

THURSDAY, MAY 6, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 11 a.m., pursuant to recess, in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman of the Committee) presiding.

Present: Senators Magnuson and Hart.

The CHAIRMAN. The committee will resume its hearings on the insurance bills. Robert Joost is the next witness.

We will be glad to hear from you. I understand that you are employed by the American Trial Lawyers Association, is that correct?

STATEMENT OF ROBERT H. JOOST

Mr. JOOST. I am from the American Trial Lawyers.

My name is Robert H. Joost. I am a lawyer, and I am employed by the American Trial Lawyers Association at its headquarters in Cambridge, Mass.

I am submitting this statement for the record in favor of pending legislation in the Congress to establish on a nationwide basis a system of compensation of victims of automobile accident regardless of fault.

Since the American Trial Lawyers Association opposes no-fault automobile insurance legislation, I am submitting this statement for myself only and not for the association.

The CHAIRMAN. Can I interrupt just a minute. Do we have a formal statement in opposition from the Trial Lawyers Association?

Senator HART. They testified yesterday in very strong opposition.

Mr. JOOST. First to establish my own professional credentials, I am a graduate, magna cum laude, of the Harvard Law School, where I was an editor of volumes 72 and 73 of the Harvard Law Review, and I am a graduate, magna cum laude, of Yale College, where I was a member of Phi Beta Kappa. I have also studied at Columbia University as a graduate student in economics.

In addition to my professional work from 1962 to the present for the American Trial Lawyers Association—until 1964 it was called the NACCA Bar Association—I have been heavily involved in two major statutory reform efforts in Massachusetts. I participated in the molding and remodeling of the new Massachusetts mental health code, which goes into effect July 1, as a member of the legal studies staff of the Massachusetts Special Commission on Mental Health and as a member of the Attorney General's Committee on Commitment Law Revision, and since 1968 I have been a reporter for the Criminal Law Revision

Staff member assigned to these hearings: S. Lynn Sutcliffe.

Commission of Massachusetts which is engaged in revision of the sub stantive criminal law of the State.

Also, from 1967 to 1971 I was a part-time law professor at the Nev England School of Law in Boston. I have published articles and com ments on a variety of legal subjects, the most recent being a piec called "Housing and the Law: An Overview," published in 6 Nev England Law Review 1 (1970).

I am a member of the Massachusetts bar, and a member of the Amer ican, Massachusetts, and Boston Bar Associations, the American Tria Lawyers Association, and the American Judicature Society.

My present post with the American Trial Lawyers Association i assistant to the chairman of the legislative section, which I have hel since 1968. For a period I was called special counsel but the title wa changed to assistant to the chairman in 1969.

I am also consulting editor of Trial magazine, the bimonthly na tional legal news magazine published by ATL. As a matter of fact, am the only lawyer on the editorial staff of this magazine. Copies o letterhead stationery which indicate my position are attached to m formal statement.

I was first employed by the trial lawyers in 1962, as assistant to th editor of the NACCA Law Journal, which is now called the Journa of the American Trial Lawyers. In that capacity, between 1962 an 1964, I wrote a substantial percentage of the articles published in vo umes 29, 30, and 31 of the journal. From 1964 to 1967, I worked for th association on a part-time basis as the paid author of a regular colum in Trial magazine entitled "A Brief Sweep" in which I synopsize current law-review articles of interest. I accepted a full-time positio as an editor of Trial in September of 1967.

In addition to almost a decade with the trial lawyers associatio itself, I also practiced law for 2 years with a law firm in Boston th concentrates on automobile negligence work—Sheff & McGarry; or of the partners was then a member of the board of governors of tl American trial lawyers. The firm is typical of many such law firn across the Nation.

As an ATL staff member, I have attended numerous national mee ings of the trial lawyers—two in Denver, one here in Washingto D.C., one in Las Vegas, one in San Francisco, and one in the Bahama In 1970, I arranged and attended regional meetings of Key Men- that is, members interested in influencing legislative action—in Car bridge, Las Vegas, Atlanta, Chicago, and Denver.

In 1971 to date, I have been to two such Key Men meetings; tl 1971 meetings were devoted exclusively to how to defeat no-fault- completely—at both State and Federal levels.

This statement is thus based on long personal involvement with ar observation of the principal opponents of legislation aimed at cor pensating automobile accident victims regardless of fault—the tri lawyers.

I am submitting this statement in support of the Hart-Magnus bill as an act of conscience, as an attorney, and as a citizen. It is al submitted with sadness for I had hoped that the association itse would see and would accept the fact that we lawyers must put asi our personal pocketbook interest where the public interest conflicts.

Unfortunately, the group in control of ATL has refused to conce that there is such a conflict and has refused to accept that a prof

sional association of attorneys has a higher obligation than maintenance of personal income.

As a matter of fact, the group in control has never even polled the membership on no-fault versus negligence because no-fault is viewed as putting them out of business.

I myself have been in favor of no-fault automobile insurance, at least in part, for some time, I reviewed the trialblazing book by Profs. Robert E. Keeton and Jeffrey O'Connell, "Basic Protection for the Traffic Victim," in the spring 1966 issue of the Portia Law Journal, at pages 266 to 267. In that review, I called the book a "pathfinder in a difficult area," and as to the no-fault plan advocated by the authors, I concluded:

> The proposed statute is a careful attempt at reform. If substantially enacted, it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

A copy of that review is attached to my statement.

I attach also a copy of a letter to the editor of the Boston Globe published December 6, 1966, in which I criticized then Gov. John A. Volpe for his opposition at the time to the no-fault concept. In this letter, I declared in conclusion:

> The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried.

I am pleased personally that in 1970 Massachusetts, under the leadership of Michael Dukakis, a Democrat, and Francis Sargent, a Republican, did seriously consider and enact into law a no-fault automobile insurance law. As both Governor Sargent and Mr. Dukakis have testified to a subcommittee of the House of Representatives, the results in Massachusetts, so far, exceed the most sanguine expectations of the proponents.

I attach a letter by Mr. Dukakis published in the Boston Globe of April 30, 1971, in which he calls for extending these benefits to all the people through a national no-fault system.

When I was hired by the American trial lawyers on a full-time basis in 1967, I had to agree to make no public statements in opposition to the position of the association. My personal views, however, did not change.

The CHAIRMAN. Mr. Joost, do the American trial lawyers have their national headquarters here in town?

Mr. JOOST. No, in Cambridge, Mass. We have a Washington representative, but the headquarters are in Cambridge across the Cambridge common from the Harvard Law School.

To reiterate, my personal views did not change. As a matter of fact, my enthusiasm for the no-fault approach to automobile reparations increased. While my original decision to favor the Keeton-O'Connell plan might have stemmed, at least in part, from the fact that I studied torts from its principal author, Professor Keeton, and because Mr. Keeton was instrumental in getting me my first job with NACCA in 1962, my editorial position with *Trial* starting in September 1967 gave me the time and the access to books and reports which were necessary to a true appreciation of all the issues involved.

Let me state formally for the record: In my judgment, based on my years of study, thought, and observation, I believe that a system of automobile reparations based on compensation of all the tangible losses

of all victims of automobile accidents in the United States without regard to fault would be a much better system than the present one based on compensation of all the tangible and intangible losses of victims but only if the victim proves that a financially solvent defendant by his negligence proximately caused his injuries and only if he proves fault and damages by a preponderance of the evidence in a trial before a court or jury.

Under no-fault, the public, the beneficiaries, and consumers of automobile insurance would get better protection for the premium dollars spent and at lower annual cost.

In addition, the hard-pressed judicial systems of the Federal and State governments would get some relief. The problems of the courts of America today are largely on the criminal docket rather than the civil docket side, but it is my judgment that no-fault, by lifting out of the courts a substantial volume of cases, would free up enough judge time, enough judicial man-hours to make it possible to try every criminal defendant in this country within 60 days from date of arrest, or at least within 6 months. It is by no means the complete answer to the crisis of our courts, but it is a part of the solution, and a part, incidentally, that does not require the expenditure of additional taxpayer money.

Finally, no-fault is a much more efficient system than the present one. The present one was not developed for a nation with 100 million registered motor vehicles and a multibillion dollar insurance industry; it was developed for a horse and carriage society, in another country, in another century, in the pre-liability-insurance era.

Since 1932 and the Columbia University study, it has been apparent to anyone who has studied the literature closely that something better than the automobile negligence liability-insurance system was available. The success of the Saskatchewan plan in one of the provinces of Canada confirmed this point.

However, for almost 40 years, the people of the United States were denied this "something better" because the individuals who feed off and earn their livelihood from the automobile negligence system happen also to possess a great deal of political clout.

They had, in fact, enough political muscle to snuff out the idea before it could even be tried in any State of the Union until the Commonwealth of Massachusetts in 1970 enacted a no-fault law. The Massachusetts statutes, however, came about as a result of rather unique circumstances which are unlikely to be duplicated in many other States: A very strong proponent in each political party; the highest premium rates in the Nation; a weak statewide organization of trial lawyers; and a State legislative tradition of being innovative.

Since there has never been any question as to my personal preference for no-fault, I confess that I did speak, my true feelings with some discreet friends. About a month ago, I received a telephone call from a congressional aide. He asked if I would testify before Congress on no-fault legislation. Apparently, one of my "discreet" friends hadn't been so discreet, and the congressional aide had learned that there was a lawyer who worked for the American Trial Lawyers Association, a trial lawyers' lawyer, who didn't agree with the party line.

I told him no because I wasn't myself convinced that automobile insurance was a proper subject for Federal rather than State legislation. I told him that I leaned toward the view that the States should be given every opportunity to act before the Federal Government comes in, in whole or in part.

Since that surprise telephone call, I have agonized and pondered.

Finally, after a recent meeting of key men in Chicago, I concluded that I had to testify. If Congress is to execute its duty, which is to all the people of the United States and not just to the trial lawyers, it should get the views of one who has studied and thought hard about this no-fault business for many years, and who has been a trial lawyers' lawyer.

In my judgment, the only way in which this Nation is going to get real justice, opportunity and environmental health is if the Congress and the State legislatures authorize the private and independent trial lawyers of America to become "private attorneys general" on behalf of private citizens and to authorize the trial lawyers to bring private-remedy actions for injunctions, court orders to perform, and damages against those who pollute, against those who discriminate, against those who rent substandard housing and against those who take advantage of consumers—in return for a reasonable attorney's fee and true costs, fixed by the court and paid by the defendant found by the courts to be in violation.

The fact is, therefore, that the enactment of the Hart-Magnuson legislation will not wipe out the trial bar for there are so many wrongs that need to be litigated and righted in our courts of justice. But the courts today are so chock-a-block full of existing business that they can't really take on big new workloads, even if class actions, treble-damage suits and all the rest were authorized in all the areas in which adequate enforcement of existing law is important.

The fact is, Mr. Chairman, that the trial lawyers of America, who should be out there litigating for America, a better America, are vegetating in the pork barrel of automobile negligence work.

The fact is that the only thing that will get the private and independent litigation experts en masse into environmental litigation, consumer protection litigation, inadequate housing litigation, antisnooping litigation and all the other things that lawyers can do in court which this country needs to have done is for the Congress of the United States to push them out of their present overstuffed and overpaid womb.

As I mentioned, until recently I leaned toward the position that, I now believe firmly that a decision to leave it to the States is, in fact, a State level before the Federal Government acts. I no longer do. I now believe firmly that a decision to leave it to the States is, in fact, a decision to retain the automobile negligence system with all its waste, all its excessive administrative costs, all its duplication, all its slow pace of operation.

If the Congress declines to act now, there will be some automobile insurance legislation passed by a few States in addition to my own. The legislation will even be called no-fault. But the terminology will be designed for one reason, to keep the Congress out. In reality, these State laws will continue the waste and the inefficiency of the present negligence liability-insurance system while ameliorating some of its bad effects.

Moreover, they will add the new problem which Gov. Francis Sargent of Massachusetts pointed to in a recent speech—the problem of excessive profits in the insurance industry. I have attached to this statement an article summarizing a recent speech on this subject by the Governor.

In Chicago on April 24th I heard the ATL key men from Ohio and Illinois make such strong assertions of control of their State legislatures, in whole or in part, that I was absolutely and totally disabused of my States-first leaning. I heard also that the trial lawyers have been increasing their power and their strength in State legislatures.

For example, the Texas Trial Lawyers Association has been running a program they call LIFT, under which subscribers contribute a minimum of $10 a month to what amounts to a campaign fund for candidates for the legislature. More than 600 Texas trial lawyers now subscribe, according to what I learned at the Chicago meeting.

Every election year, the funds accumulated by LIFT are divided among pro-trial lawyer candidates for the Texas Legislature. Let me read the text of an item that was published in the June 23, 1970, issue of the El Paso Texas Trial Lawyers Association newsletter, "Ready for the Plaintiff." (Vol. VI, No. 5.) (The editor of the newsletter is attorney Richard T. Marshall, who was then national secretary of the American Trial Lawyers Association.)

UP, UP AND AWAY!!

LIFT is the latest effort of Texas Trial Lawyers Association. It stands for Lawyers Involved for Texas, and it's a runaway success . . . The *El Paso Times* reported in its Capital Column June 14th, that *LIFT was responsible* for the Democratic nomination in this year's primaries of six of the eight candidates it backed for the *State Senate*.

LIFT is a legislative kitty which is paying off. Most of your officers are contributing $10 per month on a bank draft authority to LIFT.

If you want to be a part of the movement for *comparative negligence* in Texas for statutory authority to let jurors know what they are doing in *special issue* verdicts, and for a successful rejection of *Keeton-O'Connell* schemes, in other words, if you want your practice to survive, better get with it.

Send a check, any amount, to *LIFT, 201 Westgate Building, Austin!*

A more complete description of LIFT, published in an ATL 1970 publication called "A Trial Lawyer's Legislative Workbook" and taken from a letter dated January 7, 1970, by Attorney William F. Edwards of Corpus Christi, Tex., to the vice chairman of ATL's legislative section with a copy to me as assistant to the chairman of the legislative section is attached to this statement.

It may be of interest to this committee to know that the Texas Trial Lawyers Association, which promotes LIFT as its "latest effort . . . a legislative kitty which is paying off" is itself a tax-exempt organization. I attach also from the Trial Lawyer's Workbook a copy of letter the Texas affiliate received from tax attorneys supporting their exempt status and advising them how to keep it.

What this means, of course, is that in at least one State the Federal Government, by tax preference, is subsidizing political opposition to the Keeton-O'Connell plan and other no-fault proposals, at the same time that Federal Government officials argue that the States can and will pass good no-fault laws.

Mr. Chairman, how many State senators or State representatives in Texas are going to vote for meaningful automobile insurance reform

when they know that if they do attract candidates, good speakers, with money from LIFT and campaign help from the trial lawyers are going to run against them in the next primary or the next general election?

What real chance do the people of Texas have to receive the benefits of the no-fault system of automobile reparations—unless this Congress passes Federal no-fault legislation?

At the Key Men meeting on April 24, I heard that the LIFT program has been adopted by at least one additional State. According to Attorney Thomas A. Heffernan of Cleveland, Ohio—I believe his law partner, Mr. Craig Spangenberg, addressed this committee the other day—the Ohio Academy of Trial Lawyers is now enrolling subscribers to its version which bears the acronym ADOPT. This attorney predicted flatly, unequivocally, and totally that the Ohio Legislature will never enact any no-fault automobile insurance legislation in any form.

At that meeting, the chairman of ATL's legislative section, Attorney Jerry Finn of Newark, N.J., summed up the discussion by saying: "Let's all ADOPT LIFT." No one objected.

More direct fundraising methods are also used by trial-lawyer groups. According to Attorney Jon Carlson of Belleville, Ill., who spoke at the meeting, every member of the St. Clair, County, Ill., Bar Association has been assessed $100 for a fund to fight Governor Ogilvie's insurance reform legislation.

Incidentally, Mr. Carlson and Attorney Leonard Ring of Chicago both asserted at this meeting that Ogilvie's bill doesn't have "a chance" to become law in Illinois. In Mr. Ring's words: "We control the Senate, Ogilvie controls the House; it's a standoff."

Mr. Chiarman, again, what chance do the consumers of automobile insurance in Illinois have to secure the benefits of no-fault unless the Congress acts?

At another "key men" meeting, this one held for representatives from the northeast region, on April 17, in the offices of the American Trial Lawyers Association in Cambridge, Mass., several of the representatives suggested that defense lawyers, that is, personal injury lawyers who are retained by insurance companies to defend against automobile negligence claims, are a good source for funds to finance the fight against no-fault.

The key men were urged to form general anti-no-fault lawyers' groups and citizens' groups and resign themselves to the fact that defense lawyers were afraid to let their names be used since many of them are retained by insurance companies which are in favor of no-fault auto insurance. I believe it was Attorney Daniel H. Mahoney of Albany, N.Y., who mentioned that such a citizen's committee was functioning in New York State and had purchased newspaper advertising in several papers against the Gordon bill in the New York State Legislature (the Gordon bill is patterned after the Massachusetts law).

It was stated that the advertisements should become punchier. I notice the recent ones just say no-fault is a hoax.

Another Key Man, and a former Connecticut State legislator, Attorney Leon Riscassi of Hartford, mentioned that the Connecticut trial lawyers had also had good luck in raising funds from the sheriffs and constables of the State of Connecticut. Apparently, the deputies

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, Chairman

JOHN O. PASTORE, Rhode Island	NORRIS COTTON, New Hampshire
VANCE HARTKE, Indiana	WINSTON PRESCOTT, Vermont
PHILIP A. HART, Michigan	JAMES B. PEARSON, Kansas
HOWARD W. CANNON, Nevada	ROBERT P. griffin, Michigan
RUSSELL B. LONG, Louisiana	HOWARD H. BAKER, Jr., Tennessee
FRANK E. MOSS, Utah	MARLOW W. COOK, Kentucky
ERNEST F. HOLLINGS, South Carolina	MARK O. HATFIELD, Oregon
DANIEL K. INOUYE, Hawaii	TED STEVENS, Alaska
WILLIAM B. SPONG, Jr., Virginia	

FREDERICK J. LORDAN, Staff Director
MICHAEL PERTSCHUK, Chief Counsel
S. LYNN SUTCLIFFE, Staff Counsel
ARTHUR PANKOPF, Jr., Minority Staff Director
PETER POWELL, Minority Professional Staff

II

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

THURSDAY, MAY 6, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 11 a.m., pursuant to recess, in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman of the Committee) presiding.

Present: Senators Magnuson and Hart.

The CHAIRMAN. The committee will resume its hearings on the insurance bills. Robert Joost is the next witness.

We will be glad to hear from you. I understand that you are employed by the American Trial Lawyers Association, is that correct?

STATEMENT OF ROBERT H. JOOST

Mr. JOOST. I am from the American Trial Lawyers.

My name is Robert H. Joost. I am a lawyer, and I am employed by the American Trial Lawyers Association at its headquarters in Cambridge, Mass.

I am submitting this statement for the record in favor of pending legislation in the Congress to establish on a nationwide basis a system of compensation of victims of automobile accident regardless of fault.

Since the American Trial Lawyers Association opposes no-fault automobile insurance legislation, I am submitting this statement for myself only and not for the association.

The CHAIRMAN. Can I interrupt just a minute. Do we have a formal statement in opposition from the Trial Lawyers Association?

Senator HART. They testified yesterday in very strong opposition.

Mr. JOOST. First to establish my own professional credentials, I am a graduate, magna cum laude, of the Harvard Law School, where I was an editor of volumes 72 and 73 of the Harvard Law Review, and I am a graduate, magna cum laude, of Yale College, where I was a member of Phi Beta Kappa. I have also studied at Columbia University as a graduate student in economics.

In addition to my professional work from 1962 to the present for the American Trial Lawyers Association—until 1964 it was called the NACCA Bar Association—I have been heavily involved in two major statutory reform efforts in Massachusetts. I participated in the molding and remodeling of the new Massachusetts mental health code, which goes into effect July 1, as a member of the legal studies staff of the Massachusetts Special Commission on Mental Health and as a member of the Attorney General's Committee on Commitment Law Revision, and since 1968 I have been a reporter for the Criminal Law Revision

Staff member assigned to these hearings: S. Lynn Sutcliffe.

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

THURSDAY, MAY 6, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 11 a.m., pursuant to recess, in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman of the Committee) presiding.

Present: Senators Magnuson and Hart.

The CHAIRMAN. The committee will resume its hearings on the insurance bills. Robert Joost is the next witness.

We will be glad to hear from you. I understand that you are employed by the American Trial Lawyers Association, is that correct?

STATEMENT OF ROBERT H. JOOST

Mr. JOOST. I am from the American Trial Lawyers.

My name is Robert H. Joost. I am a lawyer, and I am employed by the American Trial Lawyers Association at its headquarters in Cambridge, Mass.

I am submitting this statement for the record in favor of pending legislation in the Congress to establish on a nationwide basis a system of compensation of victims of automobile accident regardless of fault.

Since the American Trial Lawyers Association opposes no-fault automobile insurance legislation, I am submitting this statement for myself only and not for the association.

The CHAIRMAN. Can I interrupt just a minute. Do we have a formal statement in opposition from the Trial Lawyers Association?

Senator HART. They testified yesterday in very strong opposition.

Mr. JOOST. First to establish my own professional credentials, I am a graduate, magna cum laude, of the Harvard Law School, where I was an editor of volumes 72 and 73 of the Harvard Law Review, and I am a graduate, magna cum laude, of Yale College, where I was a member of Phi Beta Kappa. I have also studied at Columbia University as a graduate student in economics.

In addition to my professional work from 1962 to the present for the American Trial Lawyers Association—until 1964 it was called the NACCA Bar Association—I have been heavily involved in two major statutory reform efforts in Massachusetts. I participated in the molding and remodeling of the new Massachusetts mental health code, which goes into effect July 1, as a member of the legal studies staff of the Massachusetts Special Commission on Mental Health and as a member of the Attorney General's Committee on Commitment Law Revision, and since 1968 I have been a reporter for the Criminal Law Revision

Staff member assigned to these hearings: S. Lynn Sutcliffe.

Commission of Massachusetts which is engaged in revision of the sub stantive criminal law of the State.

Also, from 1967 to 1971 I was a part-time law professor at the Ne England School of Law in Boston. I have published articles and com ments on a variety of legal subjects, the most recent being a piec called "Housing and the Law: An Overview," published in 6 Ne England Law Review 1 (1970).

I am a member of the Massachusetts bar, and a member of the Amei ican, Massachusetts, and Boston Bar Associations, the American Tri Lawyers Association, and the American Judicature Society.

My present post with the American Trial Lawyers Association assistant to the chairman of the legislative section, which I have hel since 1968. For a period I was called special counsel but the title w changed to assistant to the chairman in 1969.

I am also consulting editor of Trial magazine, the bimonthly n tional legal news magazine published by ATL. As a matter of fact, am the only lawyer on the editorial staff of this magazine. Copies letterhead stationery which indicate my position are attached to n formal statement.

I was first employed by the trial lawyers in 1962, as assistant to t editor of the NACCA Law Journal, which is now called the Journ of the American Trial Lawyers. In that capacity, between 1962 a 1964, I wrote a substantial percentage of the articles published in v umes 29, 30, and 31 of the journal. From 1964 to 1967, I worked for t association on a part-time basis as the paid author of a regular colun in Trial magazine entitled "A Brief Sweep" in which I synopsiz current law-review articles of interest. I accepted a full-time positi as an editor of Trial in September of 1967.

In addition to almost a decade with the trial lawyers associati itself, I also practiced law for 2 years with a law firm in Boston t concentrates on automobile negligence work—Sheff & McGarry; o of the partners was then a member of the board of governors of t American trial lawyers. The firm is typical of many such law fir across the Nation.

As an ATL staff member, I have attended numerous national me ings of the trial lawyers—two in Denver, one here in Washingt D.C., one in Las Vegas, one in San Francisco, and one in the Baham In 1970, I arranged and attended regional meetings of Key Me that is, members interested in influencing legislative action—in Ca bridge, Las Vegas, Atlanta, Chicago, and Denver.

In 1971 to date, I have been to two such Key Men meetings; 1971 meetings were devoted exclusively to how to defeat no-faul completely—at both State and Federal levels.

This statement is thus based on long personal involvement with a observation of the principal opponents of legislation aimed at co pensating automobile accident victims regardless of fault—the t lawyers.

I am submitting this statement in support of the Hart-Magnu bill as an act of conscience, as an attorney, and as a citizen. It is a submitted with sadness for I had hoped that the association it would see and would accept the fact that we lawyers must put as our personal pocketbook interest where the public interest conflict

Unfortunately, the group in control of ATL has refused to con that there is such a conflict and has refused to accept that a pro

sional association of attorneys has a higher obligation than maintenance of personal income.

As a matter of fact, the group in control has never even polled the membership on no-fault versus negligence because no-fault is viewed as putting them out of business.

I myself have been in favor of no-fault automobile insurance, at least in part, for some time, I reviewed the trialblazing book by Profs. Robert E. Keeton and Jeffrey O'Connell, "Basic Protection for the Traffic Victim," in the spring 1966 issue of the Portia Law Journal, at pages 266 to 267. In that review, I called the book a "pathfinder in a difficult area," and as to the no-fault plan advocated by the authors, I concluded:

> The proposed statute is a careful attempt at reform. If substantially enacted, it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

A copy of that review is attached to my statement.

I attach also a copy of a letter to the editor of the Boston Globe published December 6, 1966, in which I criticized then Gov. John A. Volpe for his opposition at the time to the no-fault concept. In this letter, I declared in conclusion:

> The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried.

I am pleased personally that in 1970 Massachusetts, under the leadership of Michael Dukakis, a Democrat, and Francis Sargent, a Republican, did seriously consider and enact into law a no-fault automobile insurance law. As both Governor Sargent and Mr. Dukakis have testified to a subcommittee of the House of Representatives, the results in Massachusetts, so far, exceed the most sanguine expectations of the proponents.

I attach a letter by Mr. Dukakis published in the Boston Globe of April 30, 1971, in which he calls for extending these benefits to all the people through a national no-fault system.

When I was hired by the American trial lawyers on a full-time basis in 1967, I had to agree to make no public statements in opposition to the position of the association. My personal views, however, did not change.

The CHAIRMAN. Mr. Joost, do the American trial lawyers have their national headquarters here in town?

Mr. JOOST. No, in Cambridge, Mass. We have a Washington representative, but the headquarters are in Cambridge across the Cambridge common from the Harvard Law School.

To reiterate, my personal views did not change. As a matter of fact, my enthusiasm for the no-fault approach to automobile reparations increased. While my original decision to favor the Keeton-O'Connell plan might have stemmed, at least in part, from the fact that I studied it from its principal author, Professor Keeton, and because Mr. Keeton was instrumental in getting me my first job with NACCA in 1[illegible], my editorial position with *Trial* starting in September 1967 gave me the time and the access to books and reports which were necessary to a true appreciation of all the issues involved.

Let me state formally for the record: In my judgment, based on my years of study, thought, and observation, I believe that a system of automobile reparations based on compensation of all the tangible losses

Commission of Massachusetts which is engaged in revision of the substantive criminal law of the State.

Also, from 1967 to 1971 I was a part-time law professor at the New England School of Law in Boston. I have published articles and comments on a variety of legal subjects, the most recent being a piece called "Housing and the Law: An Overview," published in 6 New England Law Review 1 (1970).

I am a member of the Massachusetts bar, and a member of the American, Massachusetts, and Boston Bar Associations, the American Trial Lawyers Association, and the American Judicature Society.

My present post with the American Trial Lawyers Association is assistant to the chairman of the legislative section, which I have held since 1968. For a period I was called special counsel but the title was changed to assistant to the chairman in 1969.

I am also consulting editor of Trial magazine, the bimonthly national legal news magazine published by ATL. As a matter of fact, I am the only lawyer on the editorial staff of this magazine. Copies of letterhead stationery which indicate my position are attached to my formal statement.

I was first employed by the trial lawyers in 1962, as assistant to the editor of the NACCA Law Journal, which is now called the Journal of the American Trial Lawyers. In that capacity, between 1962 and 1964, I wrote a substantial percentage of the articles published in volumes 29, 30, and 31 of the journal. From 1964 to 1967, I worked for the association on a part-time basis as the paid author of a regular column in Trial magazine entitled "A Brief Sweep" in which I synopsized current law-review articles of interest. I accepted a full-time position as an editor of Trial in September of 1967.

In addition to almost a decade with the trial lawyers association itself, I also practiced law for 2 years with a law firm in Boston that concentrates on automobile negligence work—Sheff & McGarry; one of the partners was then a member of the board of governors of the American trial lawyers. The firm is typical of many such law firms across the Nation.

As an ATL staff member, I have attended numerous national meetings of the trial lawyers—two in Denver, one here in Washington, D.C., one in Las Vegas, one in San Francisco, and one in the Bahamas. In 1970, I arranged and attended regional meetings of Key Men—that is, members interested in influencing legislative action—in Cambridge, Las Vegas, Atlanta, Chicago, and Denver.

In 1971 to date, I have been to two such Key Men meetings; the 1971 meetings were devoted exclusively to how to defeat no-fault—completely—at both State and Federal levels.

This statement is thus based on long personal involvement with an observation of the principal opponents of legislation aimed at compensating automobile accident victims regardless of fault—the trial lawyers.

I am submitting this statement in support of the Hart-Magnuson bill as an act of conscience, as an attorney, and as a citizen. It is also submitted with sadness for I had hoped that the association itself would see and would accept the fact that we lawyers must put aside our personal pocketbook interest where the public interest conflicts.

Unfortunately, the group in control of ATL has refused to concede that there is such a conflict and has refused to accept that a profe

sional association of attorneys has a higher obligation than maintenance of personal income.

As a matter of fact, the group in control has never even polled the membership on no-fault versus negligence because no-fault is viewed as putting them out of business.

I myself have been in favor of no-fault automobile insurance, at least in part, for some time, I reviewed the trialblazing book by Profs. Robert E. Keeton and Jeffrey O'Connell, "Basic Protection for the Traffic Victim," in the spring 1966 issue of the Portia Law Journal, at pages 266 to 267. In that review, I called the book a "pathfinder in a difficult area," and as to the no-fault plan advocated by the authors, I concluded:

> The proposed statute is a careful attempt at reform. If substantially enacted, it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

A copy of that review is attached to my statement.

I attach also a copy of a letter to the editor of the Boston Globe published December 6, 1966, in which I criticized then Gov. John A. Volpe for his opposition at the time to the no-fault concept. In this letter, I declared in conclusion:

> The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried.

I am pleased personally that in 1970 Massachusetts, under the leadership of Michael Dukakis, a Democrat, and Francis Sargent, a Republican, did seriously consider and enact into law a no-fault automobile insurance law. As both Governor Sargent and Mr. Dukakis have testified to a subcommittee of the House of Representatives, the results in Massachusetts, so far, exceed the most sanguine expectations of the proponents.

I attach a letter by Mr. Dukakis published in the Boston Globe of April 30, 1971, in which he calls for extending these benefits to all the people through a national no-fault system.

When I was hired by the American trial lawyers on a full-time basis in 1967, I had to agree to make no public statements in opposition to the position of the association. My personal views, however, did not change.

The CHAIRMAN. Mr. Joost, do the American trial lawyers have their national headquarters here in town?

Mr. JOOST. No, in Cambridge, Mass. We have a Washington representative, but the headquarters are in Cambridge across the Cambridge common from the Harvard Law School.

To reiterate, my personal views did not change. As a matter of fact, my enthusiasm for the no-fault approach to automobile reparations increased. While my original decision to favor the Keeton-O'Connell plan might have stemmed, at least in part, from the fact that I studied torts from its principal author, Professor Keeton, and because Mr. Keeton was instrumental in getting me my first job with NACCA in 1962, my editorial position with *Trial* starting in September 1967 gave me the time and the access to books and reports which were necessary to a true appreciation of all the issues involved.

Let me state formally for the record: In my judgment, based on my years of study, thought, and observation, I believe that a system of automobile reparations based on compensation of all the tangible losses

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
WILLIAM B. SPONG, Jr., Virginia

NORRIS COTTON, New Hampshire
WINSTON PROUTY, Vermont
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan
HOWARD H. BAKER, Jr., Tennessee
MARLOW W. COOK, Kentucky
MARK O. HATFIELD, Oregon
TED STEVENS, Alaska

FREDERICK J. LORDAN, *Staff Director*
MICHAEL PRETSCHUK, *Chief Counsel*
S. LYNN SUTCLIFFE, *Staff Counsel*
ARTHUR PANKOPF, Jr., *Minority Staff Director*
PETER POWELL, *Minority Professional Staff*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

THURSDAY, MAY 6, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 11 a.m., pursuant to recess, in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman of the Committee) presiding.

Present: Senators Magnuson and Hart.

The CHAIRMAN. The committee will resume its hearings on the insurance bills. Robert Joost is the next witness.

We will be glad to hear from you. I understand that you are employed by the American Trial Lawyers Association, is that correct?

STATEMENT OF ROBERT H. JOOST

Mr. JOOST. I am from the American Trial Lawyers.

My name is Robert H. Joost. I am a lawyer, and I am employed by the American Trial Lawyers Association at its headquarters in Cambridge, Mass.

I am submitting this statement for the record in favor of pending legislation in the Congress to establish on a nationwide basis a system of compensation of victims of automobile accident regardless of fault.

Since the American Trial Lawyers Association opposes no-fault automobile insurance legislation, I am submitting this statement for myself only and not for the association.

The CHAIRMAN. Can I interrupt just a minute. Do we have a formal statement in opposition from the Trial Lawyers Association?

Senator HART. They testified yesterday in very strong opposition.

Mr. JOOST. First to establish my own professional credentials, I am a graduate, magna cum laude, of the Harvard Law School, where I was an editor of volumes 72 and 73 of the Harvard Law Review, and I am a graduate, magna cum laude, of Yale College, where I was a member of Phi Beta Kappa. I have also studied at Columbia University as a graduate student in economics.

In addition to my professional work from 1962 to the present for the American Trial Lawyers Association—until 1964 it was called the NACCA Bar Association—I have been heavily involved in two major statutory reform efforts in Massachusetts. I participated in the molding and remodeling of the new Massachusetts mental health code, which goes into effect July 1, as a member of the legal studies staff of the Massachusetts Special Commission on Mental Health and as a member of the Attorney General's Committee on Commitment Law Revision, and since 1968 I have been a reporter for the Criminal Law Revision

Staff member assigned to these hearings: S. Lynn Sutcliffe.

Commission of Massachusetts which is engaged in revision of the substantive criminal law of the State.

Also, from 1967 to 1971 I was a part-time law professor at the New England School of Law in Boston. I have published articles and comments on a variety of legal subjects, the most recent being a piece entitled "Housing and the Law: An Overview," published in 6 New England Law Review 1 (1971).

I am a member of the Massachusetts bar, and a member of the American, Massachusetts, and Boston Bar Associations, the American Trial Lawyers Association, and the American Judicature Society.

My present post with the American Trial Lawyers Association is assistant to the chairman of the legislative section, which I have held since 1968. For a period I was called special counsel, but the title was changed to assistant to the chairman in 1969.

I am also managing editor of Trial magazine, the bimonthly national legal news magazine published by ATL. As a matter of fact, I am the only lawyer on the editorial staff of this magazine. Copies of editorial statements which indicate my position are attached to my formal statement.

I was first employed by the trial lawyers in 1968, as assistant to the editor of the NACDL Law Journal, which is now called the Journal of the American Trial Lawyers. In that capacity, between 1968 and 1969, I wrote a substantial percentage of the articles published in volumes 20 (b) and 21 of the Journal. From 1969 to 1971, I worked for the association on a part-time basis as the paid author of a regular column in Trial magazine entitled "A Brief Sweep" in which I synopsized current law-review articles of interest. I accepted a full-time position as an editor of Trial in September of 1971.

In addition to almost a decade with the trial lawyers association itself, I also practiced law for 3 years with a law firm in Boston that specializes in automobile negligence work—Sheff & McGarry; one of the partners was then a member of the board of governors of the American trial lawyers. The firm is typical of many such law firms across the Nation.

As an ATL staff member, I have attended numerous national meetings of the trial lawyers—two in Denver, one here in Washington, D.C., one in Las Vegas, one in San Francisco, and one in the Bahamas in 1971. I arranged and attended regional meetings of Key Men—that is, members interested in influencing legislative action—in Cambridge, Las Vegas, Atlanta, Chicago, and Denver.

In 1971 to date, I have been to two such Key Men meetings; the 1971 meetings were devoted exclusively to how to defeat no-fault—totally—at both State and Federal levels.

This statement is thus based on long personal involvement with and observation of the principal opponents of legislation aimed at compensating automobile accident victims regardless of fault—the trial lawyers.

I am submitting this statement in support of the Hart-Magnuson bill as an act of conscience, as an attorney, and as a citizen. It is also submitted with sadness for I had hoped that the association itself would see and would accept the fact that we lawyers must put aside our personal pocketbook interest where the public interest conflicts.

Unfortunately, the group in control of ATL has refused to concede that there is such a conflict and has refused to accept that a profe

sional association of attorneys has a higher obligation than maintenance of personal income.

As a matter of fact, the group in control has never even polled the membership on no-fault versus negligence because no-fault is viewed as putting them out of business.

I myself have been in favor of no-fault automobile insurance, at least in part, for some time, I reviewed the trialblazing book by Profs. Robert E. Keeton and Jeffrey O'Connell, "Basic Protection for the Traffic Victim," in the spring 1966 issue of the Portia Law Journal, at pages 266 to 267. In that review, I called the book a "pathfinder in a difficult area," and as to the no-fault plan advocated by the authors, I concluded:

> The proposed statute is a careful attempt at reform. If substantially enacted, it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

A copy of that review is attached to my statement.

I attach also a copy of a letter to the editor of the Boston Globe published December 6, 1966, in which I criticized then Gov. John A. Volpe for his opposition at the time to the no-fault concept. In this letter, I declared in conclusion:

> The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried.

I am pleased personally that in 1970 Massachusetts, under the leadership of Michael Dukakis, a Democrat, and Francis Sargent, a Republican, did seriously consider and enact into law a no-fault automobile insurance law. As both Governor Sargent and Mr. Dukakis have testified to a subcommittee of the House of Representatives, the results in Massachusetts, so far, exceed the most sanguine expectations of the proponents.

I attach a letter by Mr. Dukakis published in the Boston Globe of April 30, 1971, in which he calls for extending these benefits to all the people through a national no-fault system.

When I was hired by the American trial lawyers on a full-time basis in 1967, I had to agree to make no public statements in opposition to the position of the association. My personal views, however, did not change.

The CHAIRMAN. Mr. Joost, do the American trial lawyers have their national headquarters here in town?

Mr. JOOST. No, in Cambridge, Mass. We have a Washington representative, but the headquarters are in Cambridge across the Cambridge common from the Harvard Law School.

To reiterate, my personal views did not change. As a matter of fact, my enthusiasm for the no-fault approach to automobile reparations increased. While my original decision to favor the Keeton-O'Connell plan might have stemmed, at least in part, from the fact that I studied torts from its principal author, Professor Keeton, and because Mr. Keeton was instrumental in getting me my first job with NACCA in 1962, my editorial position with *Trial* starting in September 1967 gave me the time and the access to books and reports which were necessary to a true appreciation of all the issues involved.

Let me state formally for the record: In my judgment, based on my years of study, thought, and observation, I believe that a system of automobile reparations based on compensation of all the tangible losses

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92-18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
WILLIAM B. SPONG, Jr., Virginia

NORRIS COTTON, New Hampshire
WINSTON PROUTY, Vermont
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan
HOWARD H. BAKER, Jr., Tennessee
MARLOW W. COOK, Kentucky
MARK O. HATFIELD, Oregon
TED STEVENS, Alaska

FREDERICK J. LORDAN, *Staff Director*
MICHAEL PERTSCHUK, *Chief Counsel*
S. LYNN SUTCLIFFE, *Staff Counsel*
ARTHUR PANKOPF, Jr., *Minority Staff Director*
PETER POWELL, *Minority Professional Staff*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

THURSDAY, MAY 6, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 11 a.m., pursuant to recess, in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman of the Committee) presiding.

Present: Senators Magnuson and Hart.

The CHAIRMAN. The committee will resume its hearings on the insurance bills. Robert Joost is the next witness.

We will be glad to hear from you. I understand that you are employed by the American Trial Lawyers Association, is that correct?

STATEMENT OF ROBERT H. JOOST

Mr. JOOST. I am from the American Trial Lawyers.

My name is Robert H. Joost. I am a lawyer, and I am employed by the American Trial Lawyers Association at its headquarters in Cambridge, Mass.

I am submitting this statement for the record in favor of pending legislation in the Congress to establish on a nationwide basis a system of compensation of victims of automobile accident regardless of fault.

Since the American Trial Lawyers Association opposes no-fault automobile insurance legislation, I am submitting this statement for myself only and not for the association.

The CHAIRMAN. Can I interrupt just a minute. Do we have a formal statement in opposition from the Trial Lawyers Association?

Senator HART. They testified yesterday in very strong opposition.

Mr. JOOST. First to establish my own professional credentials, I am a graduate, magna cum laude, of the Harvard Law School, where I was an editor of volumes 72 and 73 of the Harvard Law Review, and I am a graduate, magna cum laude, of Yale College, where I was a member of Phi Beta Kappa. I have also studied at Columbia University as a graduate student in economics.

In addition to my professional work from 1962 to the present for the American Trial Lawyers Association—until 1964 it was called the NACCA Bar Association—I have been heavily involved in two major statutory reform efforts in Massachusetts. I participated in the molding and remodeling of the new Massachusetts mental health code, which goes into effect July 1, as a member of the legal studies staff of the Massachusetts Special Commission on Mental Health and as a member of the Attorney General's Committee on Commitment Law Revision, and since 1968 I have been a reporter for the Criminal Law Revision

Staff member assigned to these hearings: S. Lynn Sutcliffe.

Commission of Massachusetts which is engaged in revision of the substantive criminal law of the State.

Also, from 1967 to 1971 I was a part-time law professor at the New England School of Law in Boston. I have published articles and comments on a variety of legal subjects, the most recent being a piece called "Housing and the Law: An Overview," published in 6 New England Law Review 1 (1970).

I am a member of the Massachusetts bar, and a member of the American, Massachusetts, and Boston Bar Associations, the American Trial Lawyers Association, and the American Judicature Society.

My present post with the American Trial Lawyers Association is assistant to the chairman of the legislative section, which I have held since 1968. For a period I was called special counsel but the title was changed to assistant to the chairman in 1969.

I am also consulting editor of Trial magazine, the bimonthly national legal news magazine published by ATL. As a matter of fact, I am the only lawyer on the editorial staff of this magazine. Copies of letterhead stationery which indicate my position are attached to my formal statement.

I was first employed by the trial lawyers in 1962, as assistant to the editor of the NACCA Law Journal, which is now called the Journal of the American Trial Lawyers. In that capacity, between 1962 and 1964, I wrote a substantial percentage of the articles published in volumes 29, 30, and 31 of the journal. From 1964 to 1967, I worked for the association on a part-time basis as the paid author of a regular column in Trial magazine entitled "A Brief Sweep" in which I synopsized current law-review articles of interest. I accepted a full-time position as an editor of Trial in September of 1967.

In addition to almost a decade with the trial lawyers association itself, I also practiced law for 2 years with a law firm in Boston that concentrates on automobile negligence work—Sheff & McGarry; one of the partners was then a member of the board of governors of the American trial lawyers. The firm is typical of many such law firms across the Nation.

As an ATL staff member, I have attended numerous national meetings of the trial lawyers—two in Denver, one here in Washington, D.C., one in Las Vegas, one in San Francisco, and one in the Bahamas. In 1970, I arranged and attended regional meetings of Key Men—that is, members interested in influencing legislative action—in Cambridge, Las Vegas, Atlanta, Chicago, and Denver.

In 1971 to date, I have been to two such Key Men meetings; the 1971 meetings were devoted exclusively to how to defeat no-fault—completely—at both State and Federal levels.

This statement is thus based on long personal involvement with and observation of the principal opponents of legislation aimed at compensating automobile accident victims regardless of fault—the trial lawyers.

I am submitting this statement in support of the Hart-Magnuson bill as an act of conscience, as an attorney, and as a citizen. It is also submitted with sadness for I had hoped that the association itself would see and would accept the fact that we lawyers must put aside our personal pocketbook interest where the public interest conflicts.

Unfortunately, the group in control of ATL has refused to concede that there is such a conflict and has refused to accept that a profes-

sional association of attorneys has a higher obligation than maintenance of personal income.

As a matter of fact, the group in control has never even polled the membership on no-fault versus negligence because no-fault is viewed as putting them out of business.

I myself have been in favor of no-fault automobile insurance, at least in part, for some time, I reviewed the trialblazing book by Profs. Robert E. Keeton and Jeffrey O'Connell, "Basic Protection for the Traffic Victim," in the spring 1966 issue of the Portia Law Journal, at pages 266 to 267. In that review, I called the book a "pathfinder in a difficult area," and as to the no-fault plan advocated by the authors, I concluded:

> The proposed statute is a careful attempt at reform. If substantially enacted, it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

A copy of that review is attached to my statement.

I attach also a copy of a letter to the editor of the Boston Globe published December 6, 1966, in which I criticized then Gov. John A. Volpe for his opposition at the time to the no-fault concept. In this letter, I declared in conclusion:

> The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried.

I am pleased personally that in 1970 Massachusetts, under the leadership of Michael Dukakis, a Democrat, and Francis Sargent, a Republican, did seriously consider and enact into law a no-fault automobile insurance law. As both Governor Sargent and Mr. Dukakis have testified to a subcommittee of the House of Representatives, the results in Massachusetts, so far, exceed the most sanguine expectations of the proponents.

I attach a letter by Mr. Dukakis published in the Boston Globe of April 30, 1971, in which he calls for extending these benefits to all the people through a national no-fault system.

When I was hired by the American trial lawyers on a full-time basis in 1967, I had to agree to make no public statements in opposition to the position of the association. My personal views, however, did not change.

The CHAIRMAN. Mr. Joost, do the American trial lawyers have their national headquarters here in town?

Mr. JOOST. No, in Cambridge, Mass. We have a Washington representative, but the headquarters are in Cambridge across the Cambridge common from the Harvard Law School.

To reiterate, my personal views did not change. As a matter of fact, my enthusiasm for the no-fault approach to automobile reparations increased. While my original decision to favor the Keeton-O'Connell plan might have stemmed, at least in part, from the fact that I studied torts from its principal author, Professor Keeton, and because Mr. Keeton was instrumental in getting me my first job with NACCA in 1962, my editorial position with *Trial* starting in September 1967 gave me the time and the access to books and reports which were necessary to a true appreciation of all the issues involved.

Let me state formally for the record: In my judgment, based on my years of study, thought, and observation, I believe that a system of automobile reparations based on compensation of all the tangible losses

of all victims of automobile accidents in the United States without regard to fault would be a much better system than the present one based on compensation of all the tangible and intangible losses of victims but only if the victim proves that a financially solvent defendant by his negligence proximately caused his injuries and only if he proves fault and damages by a preponderance of the evidence in a trial before a court or jury.

Under no-fault, the public, the beneficiaries, and consumers of automobile insurance would get better protection for the premium dollars spent and at lower annual cost.

In addition, the hard-pressed judicial systems of the Federal and State governments would get some relief. The problems of the courts of America today are largely on the criminal docket rather than the civil docket side, but it is my judgment that no-fault, by lifting out of the courts a substantial volume of cases, would free up enough judge time, enough judicial man-hours to make it possible to try every criminal defendant in this country within 60 days from date of arrest, or at least within 6 months. It is by no means the complete answer to the crisis of our courts, but it is a part of the solution, and a part, incidentally, that does not require the expenditure of additional taxpayer money.

Finally, no-fault is a much more efficient system than the present one. The present one was not developed for a nation with 100 million registered motor vehicles and a multibillion dollar insurance industry; it was developed for a horse and carriage society, in another country, in another century, in the pre-liability-insurance era.

Since 1968 and the Columbia University study, it has been apparent to anyone who has studied the literature closely that something better than the automobile negligence liability-insurance system was available. The success of the Saskatchewan plan in one of the provinces of Canada confirmed this point.

However, for almost 40 years, the people of the United States were denied this "something better" because the individuals who feed off and earn their livelihood from the automobile negligence system happen also to possess a great deal of political clout.

They had, in fact, enough political muscle to snuff out the idea before it could even be tried in any State of the Union until the Commonwealth of Massachusetts in 1970 enacted a no-fault law. The Massachusetts statutes, however, came about as a result of rather unique circumstances which are unlikely to be duplicated in many other States: A very strong proponent in each political party; the highest premium rates in the Nation; a weak statewide organization of trial lawyers; and a State legislative tradition of being innovative.

Since there has never been any question as to my personal preference for no-fault, I confess that I did speak, my true feelings with some discreet friends. About a month ago, I received a telephone call from a congressional aide. He asked if I would testify before Congress on no-fault legislation. Apparently, one of my "discreet" friends hadn't been so discreet, and the congressional aide had learned that there was a lawyer who worked for the American Trial Lawyers Association, a trial lawyers' lawyer, who didn't agree with the party line.

I told him no because I wasn't myself convinced that automobile insurance was a proper subject for Federal rather than State legislation. I told him that I leaned toward the view that the States should be given every opportunity to act before the Federal Government comes in, in whole or in part.

Since that surprise telephone call, I have agonized and pondered. Finally, after a recent meeting of key men in Chicago, I concluded that I had to testify. If Congress is to execute its duty, which is to all the people of the United States and not just to the trial lawyers, it should get the views of one who has studied and thought hard about this no-fault business for many years, and who has been a trial lawyers' lawyer.

In my judgment, the only way in which this Nation is going to get real justice, opportunity and environmental health is if the Congress and the State legislatures authorize the private and independent trial lawyers of America to become "private attorneys general" on behalf of private citizens and to authorize the trial lawyers to bring private-remedy actions for injunctions, court orders to perform, and damages against those who pollute, against those who discriminate, against those who rent substandard housing and against those who take advantage of consumers—in return for a reasonable attorney's fee and true costs, fixed by the court and paid by the defendant found by the courts to be in violation.

The fact is, therefore, that the enactment of the Hart-Magnuson legislation will not wipe out the trial bar for there are so many wrongs that need to be litigated and righted in our courts of justice. But the courts today are so chock-a-block full of existing business that they can't really take on big new workloads, even if class actions, treble-damage suits and all the rest were authorized in all the areas in which adequate enforcement of existing law is important.

The fact is, Mr. Chairman, that the trial lawyers of America, who should be out there litigating for America, a better America, are vegetating in the pork barrel of automobile negligence work.

The fact is that the only thing that will get the private and independent litigation experts en masse into environmental litigation, consumer protection litigation, inadequate housing litigation, antisnooping litigation and all the other things that lawyers can do in court which this country needs to have done is for the Congress of the United States to push them out of their present overstuffed and overpaid womb.

As I mentioned, until recently I leaned toward the position that, I now believe firmly that a decision to leave it to the States is, in fact, a State level before the Federal Government acts. I no longer do. I now believe firmly that a decision to leave it to the States is, in fact, a decision to retain the automobile negligence system with all its waste, all its excessive administrative costs, all its duplication, all its slow pace of operation.

If the Congress declines to act now, there will be some automobile insurance legislation passed by a few States in addition to my own. The legislation will even be called no-fault. But the terminology will be designed for one reason, to keep the Congress out. In reality, these State laws will continue the waste and the inefficiency of the present negligence liability-insurance system while ameliorating some of its bad effects.

Moreover, they will add the new problem which Gov. Francis Sargent of Massachusetts pointed to in a recent speech—the problem of excessive profits by the insurance industry. I have attached to this statement an article summarizing a recent speech on this subject by the Governor.

In Chicago on April 24th, I heard the ATL key men from Ohio and Illinois make such smug associations of control of their State legislaturs, in whole or in part, that I was absolutely and totally disabused of my States-first leaning. I heard also that the trial lawyers have been increasing their power and their strength in State legislatures.

For example, the Texas Trial Lawyers Association has been running a program they call LIFT, under which subscribers contribute a minimum of $10 a month to what amounts to a campaign fund for candidates for the legislature. More than 600 Texas trial lawyers now subscribe, according to what I learned at the Chicago meeting.

Every election year, the funds accumulated by LIFT are divided among protrial lawyer candidates for the Texas Legislature. Let me read the text of an item that was published in the June 23, 1970, issue of the El Paso, Texas Trial Lawyers Association newsletter, "Ready for the Plaintiff." (Vol. VI, No. 3) (The editor of the newsletter is attorney Richard T. Marshall, who was then national secretary of the American Trial Lawyers Association.)

UP, UP AND AWAY!!

LIFT is the latest effort of Texas Trial Lawyers Association. It stands fo Lawyers Involved for Texas, and it's a runaway success . . . The *El Paso Time* reported in its Capital Column June 14th, that *LIFT was responsible* for th Democratic nomination in this year's primaries of six of the eight candidates i backed for the *State Senate*.

LIFT is a legislative kitty which is paying off. Most of your officers are co tributing $10 per month on a bank draft authority to LIFT.

If you want to be a part of the movement for *comparative negligence* in Texa for statutory authority to let jurors know what they are doing in *special iss* verdicts, and for a successful rejection of *Keeton-O'Connell* schemes, in othe words, if you want your practice to survive, better get with it.

Send a check, any amount, to *LIFT, 201 Westgate Building, Austin!*

A more complete description of LIFT, published in an ATL 197 publication called "A Trial Lawyer's Legislative Workbook" an taken from a letter dated January 7, 1970, by Attorney William I Edwards of Corpus Christi, Tex., to the vice chairman of ATL's leg islative section with a copy to me as assistant to the chairman of th legislative section is attached to this statement.

It may be of interest to this committee to know that the Texas Tri Lawyers Association, which promotes LIFT as its "latest effort . . a legislative kitty which is paying off" is itself a tax-exempt organiz tion. I attach also from the Trial Lawyer's Workbook a copy of lette the Texas affiliate received from tax attorneys supporting their exem status and advising them how to keep it.

What this means, of course, is that in at least one State the Feder Government, by tax preference, is subsidizing political opposition the Keeton-O'Connell plan and other no-fault proposals, at the san time that Federal Government officials argue that the States can a will pass good no-fault laws.

Mr. Chairman, how many State senators or State representatives Texas are going to vote for meaningful automobile insurance refor

when they know that if they do attract candidates, good speakers, with money from LIFT and campaign help from the trial lawyers are going to run against them in the next primary or the next general election?

What real chance do the people of Texas have to receive the benefits of the no-fault system of automobile reparations—unless this Congress passes Federal no-fault legislation?

At the Key Men meeting on April 24, I heard that the LIFT program has been adopted by at least one additional State. According to Attorney Thomas A. Heffernan of Cleveland, Ohio—I believe his law partner, Mr. Craig Spangenberg, addressed this committee the other day—the Ohio Academy of Trial Lawyers is now enrolling subscribers to its version which bears the acronym ADOPT. This attorney predicted flatly, unequivocally, and totally that the Ohio Legislature will never enact any no-fault automobile insurance legislation in any form.

At that meeting, the chairman of ATL's legislative section, Attorney Jerry Finn of Newark, N.J., summed up the discussion by saying: "Let's all ADOPT LIFT." No one objected.

More direct fundraising methods are also used by trial-lawyer groups. According to Attorney Jon Carlson of Belleville, Ill., who spoke at the meeting, every member of the St. Clair, County, Ill., Bar Association has been assessed $100 for a fund to fight Governor Ogilvie's insurance reform legislation.

Incidentally, Mr. Carlson and Attorney Leonard Ring of Chicago both asserted at this meeting that Ogilvie's bill doesn't have "a chance" to become law in Illinois. In Mr. Ring's words: "We control the Senate. Ogilvie controls the House; it's a standoff."

Mr. Chiarman, again, what chance do the consumers of automobile insurance in Illinois have to secure the benefits of no-fault unless the Congress acts?

At another "key men" meeting, this one held for representatives from the northeast region, on April 17, in the offices of the American Trial Lawyers Association in Cambridge, Mass., several of the representatives suggested that defense lawyers, that is, personal injury lawyers who are retained by insurance companies to defend against automobile negligence claims, are a good source for funds to finance the fight against no-fault.

The key men were urged to form general anti-no-fault lawyers' groups and citizens' groups and resign themselves to the fact that defense lawyers were afraid to let their names be used since many of them are retained by insurance companies which are in favor of no-fault auto insurance. I believe it was Attorney Daniel H. Mahoney of Albany, N.Y., who mentioned that such a citizen's committee was functioning in New York State and had purchased newspaper advertising in several papers against the Gordon bill in the New York State Legislature (the Gordon bill is patterned after the Massachusetts law).

It was stated that the advertisements should become punchier. I notice the recent ones just say no-fault is a hoax.

Another Key Man, and a former Connecticut State legislator, Attorney Leon Riscassi of Hartford, mentioned that the Connecticut trial lawyers had also had good luck in raising funds from the sheriffs and constables of the State of Connecticut. Apparently, the deputies

are paid on a fee basis; they were convinced that no-fault would mean fewer legal papers to serve and, therefore, lower incomes for themselves.

The committee may also be interested in another method that has been used for more than 3 years to fight no-fault. Since late in 1967, the association has been arranging for large fees to be paid by one or another trial lawyer group to a supposedly neutral academic, Prof. David Sargent of Suffolk University Law School in Boston, in return for his speaking, appearing, and testifying before private and legislative groups all around the country.

I see no objection to the appearances or to his being paid—Dave Sargent is a very able law professor; he has a viewpoint, and the subject matter demands the most careful and complete discussion—but I do find it less than honorable that Professor Sargent appears wearing his Suffolk University hat rather than his trial lawyers mantle, and that his audiences are not told who is paying him or how much.

As a matter of fact, at one of the recent Key Men meetings, somebody was complaining that Professor Sargent's rates were going up. The delegates said that he is now asking $500 an appearance plus expenses—for 1 day.

As the committee may know, this morning in Boston the supreme judicial court of Massachusetts heard oral argument in a suit challenging the constitutionality of the Massachusetts no-fault statute. The action has been brought by the immediate past president of the Massachusetts chapter of the American Trial Lawyers, Attorney Robert Cohen.

There was a short news item in the Boston Sunday Globe for April 25, 1971, page A-5, on one of the methods used to finance this constitutional-challenge litigation. According to the Globe's account:

> Attorneys are wondering about a couple of ethical questions raised by the activities of the lawyers bringing the test case of no-fault auto insurance law. The lawyers, Robert Cohen and Alexander Cella, have sent other attorneys a mimeographed form offering for sale at $50 per set the two-volume brief ($45) they have prepared on the case and the appendices ($5) . . . Fellow lawyers say (1) they've never heard of a lawyer openly selling a brief . . . and (2) the appendix consists of court records, which may not be theirs to sell.

To summarize and reiterate, it is my considered judgment that the trial lawyers will probably prevent any meaningful no-fault legislation from being enacted in any of the State legislatures, with a few possible exceptions. It is naive to argue that there is a choice between Federal legislation and legislation in the other 49 State capitals. The only choice is between Federal no-fault legislation or maintenance of the present negligence system, the system which the Department of Transportation's $2 million study so carefully and painstakingly criticized.

There is, I might add, a second reason why I believe Congress must act. If the trial lawyers have a stronghold on the State legislatures, how does one find words to describe the power position of the insurance industry and its armies of lobbyists in all statehouses? There is at this time in my opinion absolutely no justification in experience or policy for the present exemption of the insurance industry from meaningful Federal regulation.

According to Attorney Heffernan of Cleveland, again, the trial lawyers have one lobbyist in the Ohio Legislature and the insurance

companies between them have 30. If the ATL people can make the assertions they make with their one lobbyist and ADOPT/LIFT, think what assertions the insurance companies can make in their private conclaves.

The objective of the insurance industry, according to the best information and intelligence the trial lawyers have been able to acquire, is maximum profit. Rest assured, there are enormous profit possibilities in no-fault automobile insurance unless it is tightly audited and regulated.

The reason for this is that a no-fault policy basically is a combined medical, accident-and-health and income-replacement policy which pays benefits in case of motor vehicle caused injury.

But the rates in Massachusetts, after the no-fault statute was passed, were not set on the basis of experience with accident and health and income replacement coverage, but rather on the basis of reductions from current automobile personal injury liability insurance rates. It is going to take a considerable number of reductions before one gets down to the accident and health premium level, and in the interim, rather enormous profit potential is available to the industry.

S. 945, the Uniform Motor Vehicle Insurance Act, represents new coverage by a new system. Since there are not now any Federal personal injury liability insurance rates, rates won't be set—they couldn't be set—by reductions from existing Federal rates. They will have to be set afresh from the new perspective, and that is what is appropriate when the subject is a new and different kind of coverage.

In my opinion, only the Federal Government has the strength and the capability to tightly audit and regulate no-fault automobile insurance coverage. If profits in excess of a reasonable return are to be prevented, no-fault must be legislated by the Federal Congress. Any other course would just mean the substitution of one form of consumer abuse with another.

I urge the passage of the Hart-Magnuson legislation.

Now, while this concludes my prepared statement, I would like to add a summary of what has happened since I mailed this statement to the Congress.

I was informed on Monday, April 26, after I mailed my statement to Washington, of the decisions reached at another trial lawyers' meeting in Chicago on April 24. At that meeting, the executive committee of the American Trial Lawyers Association unanimously approved a resolution creating a completely new department—the department of Federal-State relations—with a proposed budget of $322,200 for the fiscal year which begins August 1.

The executive committee voted to finance the budget for this new department by (1) reducing the budget of the department of public affairs and education (which edits and publishes *Trial*) by $112,000, and by (2) dues increases expected to net an additional $200,000.

As part of the cutback in the public affairs and education department, its director was ordered to dismiss me, the only lawyer, at the end of the fiscal year, as well as several additional staff members.

In view of the statement I had mailed to Washington, I told the department head, the editor of *Trial*, that I would leave after the 2-week notice period which means I cease to be an employee tomorrow, May 7.

The director of the new department of Federal and State relations—a department incidentally which goes from nonexistence to being the largest department, consuming 25 percent of the association's total budget—the director will be Mr. Alan Locke. Mr. Locke is not a lawyer, but his brother, Barry Locke, is an aide to Secretary Volpe.

As part of that one-third-of-a-million-dollar budget, the association has contracted with a professional public relations firm to fight "no-fault—the firm of Edelman & Co. of Chicago.

Thank you.

The CHAIRMAN. Thank you for your very potent statement.

I am going to have to leave in a minute, but I just want to point out that I, like yourself, in the beginning was hesitant about proceeding on the Federal level, thinking we could encourage States to get at this matter. I mentioned that sometime ago—3 or 4 years ago. But I have found from practical experience that it just doesn't seem to be moving.

Now inaction may result from some of the things you are talking about—I suppose they are factors—but even in my own State, and I am quite close to the legislature there, having served in it at one time, I find a lot of opposition to the concept of no-fault by legislators who I guess have never sought out to lawyers or insurance companies or anybody else. But when no-fault is proposed to them, then they will ask someone like an insurance man that they know of or a trial lawyer who just about convince them that no-fault isn't a good system. And there is no rebuttal. There is no chance for the premium payer or the consumer of automobile insurance to get their word in.

The result is there is just no action. I can conceive that, if we did something here that would allow the States to try and do something in a reasonable time, it would just not happen. We have run into that in all kinds of safety legislation. We tried to compel the States to have auto safety laws and it didn't happen until we passed a Federal bill. Sometimes, when we begin hearings on Federal legislation, it wakes some people up and they start to get busy. But when you are talking about 50 States, that isn't true; it is going to be a long, long time.

So, I am appreciative of your testimony, and being a lawyer myself I understand how they operate sometimes, although I am a little rusty at the practice of law now.

This is a very potent testimony because I think there are two things that plague every home in the United States. There are a lot of other things, but these are two things we know plague every home, financially, emotionally, and every other way. One is health insurance and the other is auto insurance. They affect every home, not only because of the money involved but because of the kinds of things that happen. When insurance companies are canceling contracts, when rates go up for insurance, people are afraid to go to the hospital or make an auto claim. They don't know if they can afford to take such action. And this is true in every home. I have said many times in the past 3 or 4 years that auto insurance and health insurance are two things that Congress ought to set itself to.

I am so glad that there is so much interest in this no-fault bill of Senator Hart's and myself, and we are hopeful to move along. And your testimony here is quite potent, and I appreciate it.

Now you will have to excuse me. I have to go down and discuss some maritime matters.

Senator HART (presiding). Mr. Joost, I think "potent" is an excellent word to describe your testimony, and I would think that it would move this legislation along.

Mr. JOOST. I hope so.

Senator HART. It should. We will see if it will.

Now, I made so many notes as you went along that I don't know where to begin, but there are several points that I would like either to have you clarify or by a question, underscore.

Mr. JOOST. Certainly.

Senator HART. Before I get to that, let me comment. On the very first page you describe your professional qualifications. I have met a magna cum laude man from Harvard law, and I have known Harvard Law Review editors. I am not sure if I ever met a magna cum laude graduate from Yale. I have met Phi Beta Kappas. But this is the first time I have met all of them at once. Do you understand my reluctance to ask you questions?

Frankly, I was tempted on other days in these hearings we have had witnesses speak against the bill to suggest the high level of self-interest which inevitably would operate on their judgment. I didn't. You are pretty blunt about it. I guess the reason I didn't is my belief—my hope—that in the legislative considerations of these proposals, intelligent men will be able to evaluate the background from which on any of these witnesses speak. It was not that I was unconscious.

Mr. JOOST. I hope your claim has merit.

Senator HART. Here is one I will have to ask you to clarify. We opened these hearings with Secretary Volpe as the witness, and I haven't reread the testimony—maybe my memory is faulty—I though he was one of the great fighters for the Massachusetts no-fault plan. I get the impression that he knows the fight: you can wait for the States and give them a try. Your vision of his role is sharply different from my impression.

Is my impression wrong?

Mr. JOOST. Your impression is wrong, sir.

As you know, Massachusetts has had a compulsory-automobile-liability-insurance law since 1927. There have been problems under this law, including the fact that it helped to put Massachusetts in the untenable position of being the State with the highest auto-insurance premiums in the country. In 1966 or 1967, shortly after John Volpe's election to the first 4-year term as Governor of Massachusetts, shortly after that election, the Governor filed legislation to end the compulsory-liability-insurance system and enact a financial-responsibility law and also to establish a fraudulent-claims bureau.

Now, financial-responsibility laws exist in 47 of the 50 States. Only three States, Massachusetts, New York and North Carolina, have compulsory automobile-insurance laws. Financial-responsibility laws are a little like the dog-bite laws; you may get the "first bite" free, but after that you have to have liability insurance.

Governor Volpe pushed for "financial responsibility," even though it has never really worked, because "financial responsibility" means there will always be some totally uncompensated victims. If you get hit by an automobile, and if the person who hits you doesn't have liability insurance or private wealth or substantial property subject

84-345 O - 71 - pt. 3 -- 2

to attachment. "financial responsibility" means you are totally without protection in case of injury.

I have heard of cases in states with financial-responsibility laws where hospitals wouldn't even admit an automobile accident victim until they received proof that either he had a Blue Cross certificate or that the person who hit him was insured or highly solvent.

Despite all this, Governor Volpe introduced a financial-responsibility bill. Mike Dukakis, who was a classmate of mine at Harvard Law School and a very active Democratic Member of the House of Representatives, decided that the Democrats had to come up with an insurance program also. He decided that it should be a real reform program, and thus he filed the "no-fault" legislation that had been drawn by Professor Keeton at Harvard.

Governor Volpe did not support him. Mike got it through the House of Representatives on a hot summer day when there weren't too many people there; he moved substitution on the floor, and the Keeton-O'Connell plan passed. Lo and behold, the trial lawyers panicked. There was an emergency return of employees on vacation. All kinds of things happened. People scurried all over the place.

Finally, there was a day of great jubilation when somebody persuaded the head of the Teamsters Union in Massachusetts, I think his name was Nick Morrisey, to agree to run full-page ads by the Teamsters opposing no-fault, provided the trial lawyers would pay for them all. With this kind of support, "no fault" was killed in the State senate.

Governor Volpe never made a statement in support of "no fault." He never had to act, of course, since the bill was prevented from coming to his desk as Governor. The same thing happened again in 1968. Governor Volpe never endorsed the concept while he was Governor.

Senator HART. My question might appear to be critical of the Secretary. I was asking for clarification. I react this way. Sort of the Biblical welcome-home thing. If in fact once he was opposed or not helpful, he now has moved to the point of urging the adoption of no-fault across the country, but says—and I sense rather reluctantly—that we ought to wait, you know, pass a resolution and encourage the States to do it. In any event he does, you will be glad to know, support no-fault.

Mr. JOOST. I think one reason for his support now is the fact that his Lieutenant Governor, now Governor, Francis Sargent, has found that the "no-fault" thing works. You know, there is nothing like trying something—try it and see if it works. The Massachusetts law is really not a very good law technically. I have drafted a lot of statutes for the criminal law commission, and believe me, the Massachusetts no-fault law is technically very poor.

The first sentence is 567 words long. The second sentence is 14[illegible] words. The guts of the statute are contained in a definitions section, the definition of PIP, personal injury protection. With all, it is a weak and limited bill, but the important thing is that it is working. The premium rates are coming down, although they have got to come down much more.

Senator HART. Governor Sargent filed a statement with us yesterday complaining about the failure of the Massachussetts plan to reflect the savings that were accruing to the insurance carriers.

I won't ask you to describe in fuller detail how your vacation was interrupted, but I am intrigued by the passing comment that you made about it.

Do you know whether the Internal Revenue Service has reviewed any of these programs or war chests, or whatever you want to call them, specifically the one in Texas?

Mr. JOOST. I just don't know. The letter from tax counsel which I attach to this statement states the facts—in other words, you have told us thus and so. The LIFT program is not in that statement of facts. So I can't blame tax counsel. I have no way of knowing what Internal Revenue has or has not done.

Senator HART. Some place in here you describe a county bar association assessing a sum.

Mr. JOOST. $100.

Senator HART. That was on each member to generate moneys to fight the Ogilvie plan in Illinois County? Could they fog that up in such a fashion as to make it a deductible business expense?

Mr. JOOST. Again, I am not a tax lawyer, and I think I had better stay out of that can of worms.

Senator HART. The group which files and obtains a tax exempt status nonetheless may not use moneys in legislative lobbying unless it wants to forfeit its exemption. I am not a tax lawyer either, but isn't that a correct statement?

Mr. JOOST. That is correct. I think the reasons for it are terribly important public-policy reasons. We cannot permit special-interest groups, particularly special-interest economic groups, to be both tax exempt and free to lobby. When you come right down to it the bar associations, at least the American Trial Lawyers Association, is nothing more, nothing less than a trade association. If groups like this are subsidized by the Federal Government to pursue lobbying and legislative activities aimed, not at the best interest of the Federal Government or the best interest of the people, but at their own personal best interest, their own personal pocketbook interest, then the public is deceived.

The trial lawyers speak in terms of "offensive" legislative activity, which means persuading States to enact new provisions such as comparative negligence as a replacement to the rule of contributory negligence, and "defensive" legislative activity, which means preventing the passage of "things we can't live with"—preeminently no-fault auto insurance.

I think the reasons why Congress continually has said, in all its revision of the Federal Tax Code, that you can't be both tax exempt and lobby, are good. There are particular situations, I know, where the prohibition hurts, but I think the reasons in favor are overwhelming and clear. Personally, I think that the tax law on exemptions for trade associations and such groups should be tightened.

Senator HART. The fact that you have advised us with respect to the activities which you, as a result of sitting with the "Key Men" meetings, know are included in the agenda of these groups would, I think, put the Internal Revenue Service on notice. I am not suggesting that it is or isn't an abuse, I don't know. But certainly you have raised the question. As you say, it is a basic public policy concern that that kind of activity not be subsidized.

Incidentally, you describe the political muscle of the trial lawyers groups in the States. From the little experience I had at Lansing, which is the State capital of Michigan, I would think that opposition to no-fault in those states is getting more political muscle when they enlis the sheriffs and constables as alluded to in your testimony. As for thi business of the politicians in Suffolk testifying, speaking, and draw ing fees from the association, this practice probably will be with u as long as we have this kind of society, I suppose. I don't know how you can get a handhold on that. The politicians should be most consciou of the professions in which they even refer to hiring someone else to do it in person, or some do. Some refer to groups and they ar then compensated. I am always struck by the fact that the group t which the politician is referring knows infinitely more about the sub ject matter than the politician for the group pays him.

Mr. JOST. That is not always true. The thing that disturbs me per sonally about the university situation is that the scholar, the teacher does not himself do it in his students, if to do for else, as a certain sor of person. We have been having a certain amount of trouble in our uni versities because not all students agree all faculty members are i that position. But I would like to believe, myself, that those who choos to work in academia, who choose to become professors, will in fac pursue the truth in the old Socratic manner.

All the law schools say they have the Socratic method of teaching The goal of Socrates' method at least as I recall it from my limite memory of philosophy courses, was the pursuit of truth. I don't thin you can pursue truth and at the same time accept stipends, which yo do not disclose, from groups who frankly do not care about the argu ment so long as they get the desired results.

Senator HART. Perhaps disclosure for academics is what we shoul recommend just as we recommend disclosure for the political lecture

Mr. JOST. I think you find academics recommend disclosure for poli ticians much more than they recommend it for themselves.

Senator HART. Drawing on your background, in the course of ou hearings, questions have been raised about the basic constitutionalit of the Hart-Magnuson proposal and more acutely about State no-fau legislation.

Now, first, on the question of the Massachusetts no-fault law, wha is your opinion with respect to its constitutionality?

Mr. JOST. Well, obviously, I cannot outguess the Supreme Jud cial Court of Massachusetts, but my feeling is it may in fact—a ke part of it may in fact—be held unconstitutional on the grounds th it is an arbitrary, capricious classification.

Now, the Massachusetts law works on what may be called the thre hold concept. If you have $500 of medical and hospital bills, and the are reasonable, then you can get a tort lawyer, go to court, get a jur trial, and you are entitled to and can recover a verdict that includ general damages for intangible losses—pain, suffering, inconvenienc emotional hurt, and all the rest.

But, if your medical bills are less than $500—there is a whole li of things, prosthetic devices, ambulance charges, and so forth th are includible—if they are less than $500 you cannot get gener damages; you cannot recover for pain and suffering; you cannot g a jury trial.

The Supreme Court of the United States in a line of cases—I don't have the citations here—has spoken of the necessity for reasonable classifications, reasonable categories which bear some logical relationship to the subject matter. Now, I think it is possible that the SJC of Massachusetts will conclude that this $500 business is an unreasonable classification. It has no relation to what kind of an automobile accident it is or what the injuries are, it has no relation to any of the findings of the DOT studies; nobody says that $500 is the magic cutoff between serious and trivial accidents. I don't know where the threshold cutoff came from in the legislative hurly-burly on this law but it came and the number picked was $500.

I think it is quite possible that this could be called arbitrary. If it is arbitrary and capricious, the provision could be wiped out as unconstitutional. I would like to contrast this $500 clause with the related provision in your own bill, Senator Hart. In section 4, your bill says that you can recover general damages in a tort suit if there is a "catastrophic harm," as defined. Now catastrophic harm strikes me as being a very reasonable category. We can distinguish rationally between catastrophic harm, which is defined, and all the rest, which is noncatastrophic harm. That is reasonable classification. I think it fits what was meant by the great justices who have declared that due process means a "scheme of ordered liberty," "the American scheme of justice." Due process requires reasonable classifications, not cutoffs plucked out of thin air. Otherwise, there is a denial of equal protection. Catastrophic harm is a very good dividing point, and certainly it is within the legislative province to define it.

As to the Hart-Magnuson bill itself, I see no constitutional problems. If anything is clear from the original documents on the founding of this Republic, the one power that everyone agreed should go to the Federal Government was the power to regulate interstate commerce. I think that automobiles today—automobile driving today—is the single biggest kind of interstate commerce we have.

Now, the members of the Constitutional Convention of 1789 didn't say everything that was interstate had to be regulated by Congress. But I think it was their understanding that the important things should be centrally regulated if this was to be a viable Federal Union. I believe that automobile driving is so interstate today that all its aspects—the manufacture in terms of safety and environmental controls, the compensation of the people injured, the insurance against losses caused—all belong under Federal regulation. It is preeminently, not marginally, interstate commerce.

The Federal Government regulates many things. There are also a lot of Federal criminal statutes that use the interstate commerce power as a threshold, a kickoff to establish Federal jurisdiction. Automobile operation involves much more interstate commerce than many of these things now governed by Federal law.

There is a real practical necessity for uniform automobile compensation law. If there were 50 different State laws on auto insurance, there would be tremendous confusion. I think the insurance companies would find that even their computers would get tired figuring exactly how the system works in each State and what the applicable law is.

So it is clearly interstate commerce. The subject is clearly within the competence of the Congress. It is clear under the necessary and

proper cause that when the Congress enters an area which is within its constitutional authority, it has legislate in its wisdom and discretion fit are.

The argument has been raised that the Hart-Magnuson bill violates the seventh amendment with respect to jury trial. I do not believe that argument has merit. The Supreme Court, over the years, has rather carefully, and I think rather deliberately, refrained from including the seventh amendment right to jury trial in any of the dicta discussing or defining what is meant by due process.

Senator HART. I have not heard it developed really to the end of a paragraph, but I sense some concern, perhaps among some Members of the Congress, that goes this way: If we legislate, wipe out what they would describe as everybody's right to proceed in a tort case to establish and recover for any injury, I don't proceed quite that way but I think that it is out of that question that comes their wonder about the extent of a State's ability to act. In other words, I guess they would say what you are doing is by a Federal act washing out an individual's States rights to use a State court system to recover for what ever he can establish was wrongfully caused.

Mr. JOOST. There are precedents for this. I have taught at the New England School of Law. I taught labor law. I think labor law is a prime example of an area in which the States and the State courts had major authority. The States defined and enforced the rights of management and of labor, of owners and of strikers. But then came Federal acts—the Norris-LaGuardia Act and the Wagner Act in the 1930's, as amended by the Taft-Hartley Act, as amended by the Landrum-Griffin Act—and no longer was a factory owner able to use his State court system to enforce "yellow dog" contracts or convict strikers or enjoin union activity.

Prior to the 1930's, the Federal Government had no great involvement in labor matters. But the U.S. Supreme Court upheld the National Labor Relations Act in the 1930's when its constitutionality was challenged on the ground that Congress could not take these powers from the States. The Court sustained the Wagner Act because it clearly involved the regulating of interstate commerce.

The rationale for a Federal Union demands that there be a customs union, a "common market" to stimulate the commercial intercourse which is necessary so that every component can benefit to the greatest possible extent. There has to be central regulation of the things that are really central. I would argue that transportation matters such as automobiles and the driving of automobiles must, like labor matters, be regulated by the central authority. I think this is what the founders had in mind when they gave Congress the power "to regulate commerce * * * among the several States."

Senator HART. You said in your prepared testimony that there were many rewarding jobs open to the trial lawyers of this country—exciting jobs. What has happened to the trial bar in Massachusetts now that they are operating under this no-fault program there? Have they gone to the environmental protection field or are they still busy with insurance law?

Mr. JOOST. Well, just yesterday I heard on the news that the Massachusetts State Senate had given final approval to a bill to permit private citizens to sue those who are alleged to cause damage to the environment.

I believe that it is a better bill than the one that Michigan passed last year on the same subject. It has also passed the House and it has gone to a conference committee. According to the radio broadcast, the Associated Industries of Massachusetts are preparing a last ditch effort to defeat this bill which would permit individual citizens to sue to enforce the pollution—control statutes and regulations which are already law, but we believe that it will survive the conference committee and Governor Francis Sargent has indicated he personally believes private-remedy suits represent a very important approach to environmental protection.

Congress last year year passed a provision authorizing "Citizens Suits" as one of the amendments to the Clean Air Act. The Federal law provides for reasonable attorney's fees to be paid by violators. This is proper—I think the lawyer should receive a fair compensation for what he does—but that is very different from the frequently exorbitant fees earned in the automobile—negligence business.

Senator HART. The Ogilvie bill in Illinois, is it a Massachusetts no-fault bill?

Mr. JOOST. No, it is not. It is a different kind.

I would say, first, it is a misnomer to call the Ogilvie bill a nofault bill. In fact, a headline in the *Wall Street Journal* declared that the "Ogilvie System Would Bypass No-Fault Concept."

"Others have agrued" that the Ogilvie bill is a no-fault system and one which, if enacted, will make it— unnecessary for the Congress to act.

When you break it down and look at the Ogilvie bill, you see that it is really not a system, it is not a plan. As a result of my work with statutory recodification and revision efforts, I very much believe that the legislative bodies should not try to copy the courts and decide things on a case-by-case basis, a little thing here and a little thing there. Rather, they should try to create systems that make sense and leave it to the courts to fill in the bits and pieces. The Ogilvie plan is not such a system. It is a hodgepodge collection of 13 different bills on different points. The 13 bills don't add up to a system, no-fault or otherwise.

In substance, the Ogilvie bills involve a scaling down, a reduction of the amount of money that would be paid by insurers to motor vehicle accident victims who bring tort suits. That reduction in payout makes two things possible: A reduction in auto insurance premiums which looks good, and a package of first-party-benefits. The first-party-benefits package would pay a maximum of $2,000 per victim in medical, hospital, and funeral benefits plus a maximum of 52 weeks of wage loss up to $150 a week in income continuation benefits.

What this amounts to is adding some no-fault frosting onto the same old negligence cake. The cake itself won't be changed except to scale it down in size.

The most important section of the bill is the section called "General Damages." It states that damages for pain, suffering, mental anguish, and inconvenience shall not exceed the total of a sum equal to 50 percent of the reasonable medical treatment expenses * * * if * * * the total of such * * * expenses is $500 or less, and a sum equal to the amount of such reasonable expenses, if any, in excess of $500."

What this bill does is to say, sure, you can have a jury trial and you can get general damages for pain and suffering, but the jury cannot

find as a fact that your general damages are worth any more than your medical expenses if your medical expenses are over $500, and the jury can't find—they will be in reversible error if they do—that your pain and suffering is worth more than 50 percent of your medical bills if they are less than $500.

Now, I think this restriction represents unwise tampering with the jury. I think that if you give the right to trial by jury in a negligence case, you must really give the plaintiff that right.

The Ogilvie plan keeps the automobile jury, but puts it into a straightjacket so far as damages is concerned. Let's assume the plaintiff is a violinist and something happens to his hand: in the auto accident he breaks a finger, it is put in a cast, the total medical bill is $200. However, for an entire season he cannot play with the Chicago Symphony Orchestra. What Governor Ogilvie is saying is that this particular violinist's pain and suffering and inconvenience for not being able to play with the Chicago Symphony for an entire season shall not exceed $150. This bill is doing something that makes me very uncomfortable: you give or retain a right, you "press-release" it as a right, but you take away its substance.

There is another provision in the Ogilvie package that I would like to take the time to comment on. The section is called "Fraudulent Claims," and it is a substantive criminal law, not an insurance law. Just looking at it technically—and for 3 years I have been drafting and analyzing criminal statutes—this is a bad bill.

The criminal law can take on just so much. It is a little bit like the Great Lakes; it looks enormous, but in fact you can dump only a certain amount of indigestible material into it; dump too much and it ceases to live.

Now, what the provision says is that:

> Any person who . . . indirectly . . . acts in concert with a person seeking to falsely and fraudulently represent . . . or exaggerate the nature and extent of motor-vehicle-caused injury or damage to property shall, if the sum so obtained or attempted to be obtained is less than $100, be sentenced to not more than one-year imprisonment, or if the sum exceeds $100, shall be imprisoned not more than 10 years.

Now, this is silly. First of all, there is no sure method of obeying it. All that is necessary for a criminal conviction is to prove the defendant acted in concert with someone who was trying to exaggerate a claim. You don't have to do it intentionally, you don't have to do it knowingly or recklessly or negligently; it is enough that it happens.

You can imagine the lawyer, whose client never tells him honestly what happened, who puts on evidence which in fact exaggerates by $101 the extent of the client's injury.

That attorney could go to jail for 10 years.

Now, I think this is foolish. All that the section is going to do is to make lawyers reluctant to talk to their clients lest they be accused of acting "in concert" with one who exaggerates; it will thus have a "chilling effect" on the attorney-client relationship; as a practical matter it will not work. People are not going to be prosecuted for this, not in the present state of the criminal courts. The fraudulent claims bit—in so many cases it is not fraud—it is rather something which is built right into the negligence/liability insurance system. Assume you are paying $300 a year in auto-insurance premiums, and

you don't have an accident for 10 years, and then something happens. You know how you paid in $3,000 and you know it is so much that I think that you really do feel a pain in your head.

Mr. SUTCLIFFE. In discussions with Mr. Markus and the trial lawyers yesterday the subject of the Federal-State fund was raised. It was explained to us that that fund would be used to create liaison with Congress in order to facilitate our efforts in considering legislation. You have now told us that you, an expert, as demonstrated in these hearings, have been relieved of your position with the trial lawyers. Can you tell us who will be talking to Congress to help us in our reform of the automobile compensation system?

Mr. JOOST. I think I mentioned that the head of this department will be a nonlawyer, Mr. Alan Locke, whose brother I believe is press secretary to the Department of Transportation, and he will have at his command a Washington representative, Mr. Wayne Smith, who is also not a lawyer, and the services of Edelman & Co., a public relations firm in Chicago, with a New York branch, which will handle the account from a Hartford office.

So I think the help that the Congress will be getting—well, you can weigh yourself what contribution such a group of experts will make to the solution of the problem.

Mr. SUTCLIFFE. One more comment that is taken from yesterday's hearing transcript. This is a response of Mr. Markus to questions about LIFT and ADOPT. He said:

> I might say the items you are describing, frankly I wish they were stronger and more effective. These items represent a very minuscule percentage of the amount the insurance industry is now spending in this area. We have reason to believe it is many millions of dollars.

From your vantage point, does that seem to be an accurate statement?

Mr. JOOST. I will have to answer "Yes," "No," and "I don't know." I do not know what the total figures are, either for LIFT or "for the insurance industry, but I do know that the LIFT ideas is on a curve of rising expectations. The State chapters and affiliates will be stimulated by this well-financed Department of Federal-State Relations which will send people around to show the local groups "how to do it," how to act effectively politically. LIFT and ADOPT programs—every State will have its own acronym—will probably be started in a majority of the States within a very short period of time.

Perhaps I overstressed the financial aspect of LIFT, the fact that it was called "a legislative kitty which is paying off." I do not think that money is the sole source of political and lobbying strength. The real strength comes from the fact that the trial lawyer has many skills, skills which can also make him an attractive political candidate or an effective campaign manager. He is accustomed to speaking. He is accustomed to responding to questions. He is not afraid to appear in public. He is accustomed to hostile questioning. He knows how to get information. He has a lot of friends and a lot of contacts. If he has been an able lawyer for 10 years or so, he knows an awful lot of people who think he is pretty good. If he goes in with this expertise and this ability and really takes to the stump to support and help a candidate with speeches and letters and phone calls, telling people what a great guy "Honest" Joe Doakes is, then Joe Doakes has a lot going for him beyond the, say, $10,000 campaign contribution from LIFT.

You have to bear in mind that campaigns for State legislatures are much less expensive than campaigns for Congress. It does not take that much money. Millions of dollars could easily be wasted by insurance companies while tens of thousands precisely placed by trial lawyers on a particular race could mean veto-power control over a particular State legislature. The important thing is not just how much money a political fund raises and spends: it is also the way in which the money is placed, the way in which it is spent, that counts. For this reason, any comparison of lobbying expenditures between lawyers and insurance companies is of limited value.

Again, this is a very subtle way, and I think, therefore, a very effective way to influence legislation. You do not go after legislation; you go at the person who has a right to vote on legislation, namely, the person who sits in the State legislature. If a legislator votes "wrong," you find a strong opponent, the most attractive person in the district who will run, you fund him, you back him up, you have people prepare programs for him, literature for him, professionally advise him. Thus supported, he is going to have a good chance to defeat the "bad" legislator.

So I am not surprised at these 1970 results in Texas, that out of eight candidates backed in the Democratic primary for the State senate, six won. LIFT's first year, 1970, was their dry run. They can probably get a higher percentage than six out of eight in the future, but even 0.750 is a pretty good batting average.

Again, you see why it is difficult to answer your question.

Mr. SUTCLIFFE. I recognize that and appreciate your response.

The committee would like to draw for a moment, if you will permit us, upon your technical knowledge of the Massachusetts plan. You have mentioned the Illinois plan with the first-party overlay over the existing tort system. In Massachusetts they ostensibly have a first-party coverage for tangible losses as between the policyholder and his insurance company, but in that plan they created a subrogation-like arrangement so that the insurance companies of the policyholders have to get together to determine which of their policyholders was at fault. Then through arbitration the company whose policyholder is found to be at fault reimburses the other company for the amount of his first-party payments to his own policyholder as well as its claims costs.

Mr. JOOST. It is something like that. I think they have a 400-word sentence.

Mr. SUTCLIFFE. I hope I got by with a 200-word explanation. What impact will this procedure have on the efficiency of the no-fault system in Massachusetts, and if you will, address yourself to what kind of inconvenience it will create for the consumer who has to have his insurance company talk to him pretty thoroughly about the accident and maybe even have his insurance company ask to come before an arbitrator to explain what happened?

Mr. JOOST. If this is in fact what is finally held to be the meaning of the Massachusetts statute, it will be yet another way in which consumers lose out. I have the laws here—Acts of 1970, chapter 67 and chapter 744. I pasted the two statutes together to determine what the law really says, but that doesn't help with internal questions. It is really very hard to know exactly what the Massachusetts no-fau

law means on many points. It has, conservatively, about 30 ambiguities, one thing in one sentence, another thing in another section.

To give you an example, there is a merit-rating provision. If you are claims-free for a year, you are entitled to a 2-percent discount on your insurance premium. But no one knows whether the discount is 2 percent per year cumulatively, intermittently, or totally. If you go 3 years without an accident, file a claim in the fourth year, and then you are accident-free in the fifth, and sixth years, do you then get a 10-percent reduction, a 4-percent reduction or a 2-percent reduction?

There are so many ambiguities and technicalities, that frankly I am not prepared to comment on the retention of subrogation, except to say that I believe your summary is accurate.

Mr. SUTCLIFFE. Do you know why it was done? What is the rationale for this kind of an arrangement?

Let me read one thing and see if you might concur in it. This is in the Massachusetts Association of Independent Insurance Agents and Brokers' booklet entitled "Special Report on Massachusetts Auto Insurance."

On page 13 they talk about what they entitle the "Inter-Insurer Subrogation." They conclude: "In practical effect this means that the liability exposure of companies remains essentially as good or as bad as it was before."

Is this provision included in there only to allow those companies who have all the good risks right now to keep them and to benefit from them?

Mr. JOOST. I think it is clear that subrogation between insurance companies is completely contrary to the theory of no-fault. Basically, the theory of no-fault insurance is that we let the loss stay where it falls but reimburse the victim for that loss from the insurance pool to which he and all other motorists have contributed. To subrogate on a case-by-case basis, to shift money back and forth between insurance companies on the basis of which company's policyholder was at fault, whether it is done by arbitrators or whether it is done by a court, involves a waste of time, a waste of people, a waste of money for hearings, for preparation, for salaries. The cost of waste is eventually paid for by the consumer in the form of higher-than-necessary premiums.

In most cases, the claims of A company vs. B balance out against the claims of B company vs. A in a rather constant ratio. If the law permits this back-to-forth subrogation, then the administrative costs of the system will be excessive. If the law permits this back-and-forth subrogation, then the administrative costs of the system will be excessive. If that agent's association brochure states that this is the Massachusetts law, it probably is, because the genesis of our no-fault it law was a bill, I think it was S. 500, that was filed on behalf of the Massachusetts Agents and Brokers Association.

That original bill was changed enormously. Already two parts of the law have been held unconstitutional by the Supreme Judicial Court of Massachusetts. The trial lawyers' strategy was to make the bill into a Christmas tree when they saw that the votes were there in 1970 to pass no-fault—to put on so many goodies that the whole thing would fall because the Governor would be compelled to veto it because otherwise the insurance companies would yell too much.

They put in a provision that there should be a 15-percent rate reduc tion, not only for personal-injury policies but also for property lia bility and collision-insurance policies. There were other things tha were put in also. Notwithstanding, the Governor in fact signed the fina product. The legislature then amended some of the extras, and i November our Supreme Judicial Court voided the unrelated rate re ductions. The insurance companies did in fact yell that they would n longer do business in Massachusetts, but they are all still there an doing handsomely.

There will have to be a great many appellate decisions in Massachu setts to finally determine all the parts of this law. In that context, would like to command all the people who had anything to do with th drafting of S. 945. I think it is a very well-written bill. It is eve better than the one that Senator Hart filed last year. Technically, the are fewer ambiguities. As a matter of fact, I talked with a person friend just a couple of days before I came down here, a professor Yale who has written a book on the subject, "The Costs of Accidents and he says it is the best-written no-fault bill that he has seen filed an where this year.

Perhaps I overstress the importance of the draftsmanship, but wh so many people are going to have to use a law, live with a law, opera under it, the language should be comprehensible to the layman. T law is not just for the lawyers, it is not our private property. It shou not be expressed in archaic or arcane terminology, difficult for the la man to follow. If it applies to all, be it the criminal law or the aut mobile law, it should be comprehensible by all.

I think your proposed statute, while it could be improved some mo I think it is really very good.

Mr. SUTCLIFFE. That is all the questions I have. Thank you.

Senator HART. Thank you for the last comment which I can ta with good grace because, as you suspect, the Members of the Sena rarely do the drafting, and I certainly had nothing to do with wh you said was a good product, but I am delighted that you said wh you did, because it will permit me to go to those who did draft it a indicate your judgment on the quality of it.

One last question because I have it thrown at me by some of my c leagues; and it is not the result of a trial lawyer lobbying my c leagues. It is just their preliminary reaction to this proposal. In sho they say I know we have got to do something about automobile ins ance; I am for you; except you have gone too far. I do not want to ha to pay to fix up some bum that drives with inexcusable carelessne Can't you take care of that problem for me? That is the end of question. How do you respond to that?

Mr. JOOST. Speaking personally, regardless of philosophy, I afraid you are going to have to pay to take care of that inexcusa bum. The only question is how. We might, for example, have to for him or his dependents through welfare. We must face the fact t we pay because that man—that really bad driver, drunken driver— more than a bum on the highway. That is only one part of him. may also be a skilled craftsman in a machine-tool company. When is all banged up and does not get rehabilitation and does not get g medical service and cannot come back to work for a long time, Nation—not just the company—is deprived of his economic input i

the total goods and services of this Nation. We are paying, we do pay, every time someone is really hurt in an accident. The only question is how—out of general revenues or an automobile insurance pool into which the "bum" pays premiums which cover the risk?

I think the most commendable feature of your legislation—whether you did this consciously or not—is that you accept the fact that we are paying and say how do we best get auto victims back in business. I think that by giving the victim basically unlimited medical benefits plus unlimited rehabilitation benefits plus compensation for loss of earnings for a period up to 2½ years, you do everything that reasonable men can do to get that automobile victim back in business, be he a student or a housewife or a production worker or an architect or what have you. In my judgment, this emphasis-on-the-future is much more important; much more just; much more compelling than anything trial lawyers may say about the importance of pain and suffering and the dignity of a jury trial.

I think the Supreme Court will consider the seventh amendment argument in light of that essential justice and compassion. The bill's purpose is so terribly important that the Congress should act without delay.

Senator HART. Thank you.

Let me make one last comment. Normally when this comment is made it reflects a feeling that because of some act of individual courage and sensitive conscience somebody has put himself into the army of the unemployed by coming in here and testifying. With your extraordinary talents there would never be the danger that your services would not be sought. So I know that when you decided, as you put it here, "finally I concluded I had to accept the call to testify," that you did not face economic deprivation from the decision, but that really is not the most difficult part of stepping up and speaking hard truths. Lots of people who are the beneficiaries of enormous trust income never speak.

The fact that you would come as you have to as one who has been a trial lawyers' lawyer and told us that no-fault is the answer is an act, I think, of considerable courage, and I am sure that Senator Magnuson, had he been able to stay, would have joined me in that expression.

Mr. JOOST. Thank you, sir.

(The articles referred to earlier follow:)

[Vol. 1, No. 2 (Spring 1966)]

PORTIA LAW JOURNAL

Basic Protection for the Traffic Victim—*A Blueprint for Reforming Automobile Insurance*. By Robert E. Keeton[1] and Jeffrey O'Connell.[2] Boston, Toronto: Little, Brown and Company. 1965. Pp. xv, 624. $13.50.

A brief review can scarcely do justice to the complexity, intricacy, and thousands of hours of research, thought, analysis, discussion, and consultation that lie behind this ingenious and creative work. It is a pathfinder in a difficult area. Whether the proposed new basic automobile insurance system, based essentially upon strict rather than negligence liability, *should* be adopted is a question that lies within the responsibility and expertise of the legislatures. Clearly, however, each state legislature and even the Congress (what is more inter-state

[1] Professor of Law, Harvard Law School.
[2] Professor of Law, University of Illinois Law School.

commerce these days than automobile driving?) should study carefully this proposed reform and the justifications advanced for it.

The authors state that five major shortcomings affect the present system of compensation for automobile accidents in each of the states: (1) many injured persons receive no compensation and others receive less than their economic losses because the other driver hasn't enough insurance or assets, or because the victim must show the other person was at fault and he was legally blameless. Proof, at times is hard to get, *e.g.* if the accident was hit-and-run; (2) the present system is extraordinarily slow and cumbersome, what with delay in the courts, and the impecunious victim, with his back against the wall financially, may settle for less than his just deserts; (3) there is too much unfairness, as a practical mater, with some people getting more than they deserve and others less; (4) the fault system is extraordinarily expensive to administer and this heavy administrative cost is added to the premium bill each car owner pays; (5) the present system is a constant temptation to dishonesty—"inducements to exaggeration and invention strike at the integrity of driver and injured alike, all too often corrupting both and leaving the latter twice a victim—injured and debased." Substantial documentation is advanced to support each of these assertions.

The basic corrective advanced is absolute basic compulsory automobile insurance. Under such a system, *anytime* a driver is in an accident *his own insurance company* shall compensate him or his guest, for their "loss," which shall not include pain, suffering and inconvenience. Benefits would be paid monthly as the loss accrues. Tort liability would remain, but only in major cases (where damage for pain and suffering exceeds $5,000 and other tort damages exceed $10,000).

The proposed statute is a careful attempt at reform. If substantially enacted, it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

One question that arises, however, that the authors do not consider, is whether one can ever truly compensate an automobile accident victim in *dollars; e.g.* a man who loses his legs or a child who no longer has a father? No one has said that *all* auto injuries and deaths can be eliminated, but many have suggested that if automobiles were designed with safety rather than sex-appeal as the first order of business, the staggering highway toll would be reduced. The most "Basic Protection for the Traffic Victim" would seem to be that the government do everything possible to protect a man from ever becoming a traffic victim in the first place, through enforcing higher standards for driver skill and demanding a tank-like' approach to auto design.

ROBERT H. JOOST.[3]

[From the Boston Globe, Tuesday, Dec. 6, 1966]

LETTERS TO THE EDITOR

KEEP THE COMPULSORY

. . . With all due respect to the governor of the commonwealth, the leader in Massachusetts of the party which I personally support, the financial responsibility law idea is an irresponsible "solution" to the problem of automobile insurance. Compulsory insurance must be retained. But the rates must also be cut significantly. The Dukakis bill is based upon the results of long and painstaking research by a group under two highly regarded professors of law and tort law authorities. The Dukakis/Keeton-O'Connell plan will not eliminate the right to trial by jury, as some responsible lawyers unfamiliar with the details seem to be afraid. Insurance companies will not lose money, nor will the plaintiff's personal injury lawyer, whose livelihood rests on a contingent fee, suffer unduly.

The political parties and their representatives in the Legislature and executive and the members of the bar who are all "officers of the court" have a responsibility to the people and to the commonwealth that shou'd rule out self-interest, personal pocketbook considerations, and partisanship on an issue so basic and vital: the right to be sure of compensation for automobile injuries (hence the need for compulsory insurance) and the right to drive a car, which often equals the right to employment in today's world (hence the need for significant reduc

---

[3] Member of the Massachusetts Bar; former assistant to the Editor, Journal of the American Trial Lawyers.

tions, not increases, in automobile liability rates). The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried. The problem is critical—nay-sayers are not enough.

ROBERT H. JOOST.

[From the Boston Globe, Friday, Apr. 30, 1971]

LETTERS TO THE EDITOR

NATIONAL NO-FAULT

I was puzzled by your editorial on no-fault auto insurance entitled "Volpe's Wise Proposal" (April 19).

The editorial is puzzling primarily because it is no secret in Washington that Volpe was prepared to recommend national no-fault auto insurance legislation and that his recommendation was sabotaged by White House action.

The Globe may be right in arguing that a rigid national system of no-fault auto insurance would not be a sensible course at this time. On the other hand, if no-fault makes sense in Massachusetts, I see no reason why it does not make sense for the nation as a whole.

Legislating on a national basis on the subject of motor vehicles is hardly a novel proposition. I doubt that anyone would seriously suggest today that we should not have national standards for motor vehicle safety. Congress has also acted to impose auto emission controls on a national basis. In fact, it has gone so far as to deny states jurisdiction of any kind over auto emission controls.

Accordingly, the case for national no-fault auto insurance in some form is a strong one. Simplicity and uniformity of treatment are essential in a nation where so many of us cross state lines in motor vehicles every day. It would be tragic, in my opinion, to encourage a situation in which a crazy quilt of state no-fault laws emerges which results in changes in basic rules or gaps in coverage simply because a motorist leaves his home state.

There may be a sensible compromise between the no-action position of the Nixon Administration and the advocates of comprehensive national no-fault insurance. Congress could pass legislation this year requiring the states to enact no-fault laws within the next two years. The Secretary of Transportation would be given the authority to approve each plan but every state would have some latitude in developing its details so long as the state plan met certain basic criteria.

Such a course may be the one which Congress ultimately takes this year. It is, in my view, the minimum required if we are not to subject the motorists of the nation to a hodge-podge of conflicting laws and insurance policies in the years to come.

MICHAEL S. DUKAKIS.

[From the Journal of Commerce, Apr. 26, 1971]

BAY STATE'S INSURANCE INDUSTRY HIT

GOVERNOR CHARGES PROFITS ARE NOT PASSED TO CONSUMER

BOSTON, April 25.—The auto insurance industry was bitterly criticized here today by the Commonwealth's governor for failing to pass onto consumers the substantial savings the companies have incurred from the Bay State's three-month old no-fault auto insurance system.

Gov. Francis W. Sargent said that during the first three months of this year, the underwriters have seen their claim costs drop by over 35 percent but have not come forward with plans to lower premiums.

The governor also alleged that many insurers have tried to obscure the options in the no-fault program which would lower their auto insurance rates.

"The average paid claim cost in the first quarter of last year was $205," Gov. Sargent said. "The average paid claim cost in the first quarter of this year is $131. The total amount of paid losses in the first quarter of last year were $359,590—this year they are $229,479.

commerce these days than automobile driving?) should study carefully thi proposed reform and the justifications advanced for it.

The authors state that five major shortcomings affect the present system c compensation for automobile accidents in each of the states: (1) many injure persons receive no compensation and others receive less than their economi losses because the other driver hasn't enough insurance or assets, or becaus the victim must show the other person was at fault and he was legally blame less. Proof, at times is hard to get, *e.g.* if the accident was hit-and-run; (2) th present system is extraordinarily slow and cumbersome, what with delay in th courts, and the impecunious victim, with his back against the wall financially may settle for less than his just deserts; (3) there is too much unfairness, a a practical mater, with some people getting more than they deserve and other less; (4) the fault system is extraordinarily expensive to administer and thi heavy administrative cost is added to the premium bill each car owner pays (5) the present system is a constant temptation to dishonesty—"inducement to exaggeration and invention strike at the integrity of driver and injured alik all too often corrupting both and leaving the latter twice a victim—injure and debased." Substantial documentation is advanced to support each of thes assertions.

The basic corrective advanced is absolute basic compulsory automobile in surance. Under such a system, *anytime* a driver is in an accident *his own in surance company* shall compensate him or his guest, for their "loss," whic shall not include pain, suffering and inconvenience. Benefits would be pai monthly as the loss accrues. Tort liability would remain, but only in majo cases (where damage for pain and suffering exceeds $5,000 and other tort dan ages exceed $10,000).

The proposed statute is a careful attempt at reform. If substantially enacte it would provide a fairer and more sensible solution to the grave national prob lem of compensating automobile accident victims.

One question that arises, however, that the authors do not consider, is whethe one can ever truly compensate an automobile accident victim in *dollars; e.g.* man who loses his legs or a child who no longer has a father? No one has sai that *all* auto injuries and deaths can be eliminated, but many have suggeste that if automobiles were designed with safety rather than sex-appeal as the firs order of business, the staggering highway toll would be reduced. The most "Basi Protection for the Traffic Victim" would seem to be that the government do every thing possible to protect a man from ever becoming a traffic victim in the firs place, through enforcing higher standards for driver skill and demanding tank-like' approach to auto design.

ROBERT H. JOOST.[3]

[From the Boston Globe, Tuesday, Dec. 6, 1966]

LETTERS TO THE EDITOR

KEEP THE COMPULSORY

. . . With all due respect to the governor of the commonwealth, the leader i Massachusetts of the party which I personally support, the financial responsibilit law idea is an irresponsible "solution" to the problem of automobile insuranc Compulsory insurance must be retained. But the rates must also be cut signif cantly. The Dukakis bill is based upon the results of long and painstaking re search by a group under two highly regarded professors of law and tort law au thorities. The Dukakis/Keeton-O'Connell plan will not eliminate the right to tri by jury, as some responsible lawyers unfamiliar with the details seem to b afraid. Insurance companies will not lose money, nor will the plaintiff's persona injury lawyer, whose livelihood rests on a contingent fee, suffer unduly.

The political parties and their representatives in the Legislature and executiv and the members of the bar who are all "officers of the court" have a respon sibility to the people and to the commonwealth that shou'd rule out self-interes personal pocketbook considerations, and partisanship on an issue so basic an vital: the right to be sure of compensation for automobile injuries (hence th need for compulsory insurance) and the right to drive a car, which often equal the right to employment in today's world (hence the need for significant reduc

---

[3] Member of the Massachusetts Bar; former assistant to the Editor, Journal of th American Trial Lawyers.

tions, not increases, in automobile liability rates). The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried. The problem is critical—nay-sayers are not enough.

ROBERT H. JOOST.

[From the Boston Globe, Friday, Apr. 30, 1971]

LETTERS TO THE EDITOR

NATIONAL NO-FAULT

I was puzzled by your editorial on no-fault auto insurance entitled "Volpe's Wise Proposal" (April 19).

The editorial is puzzling primarily because it is no secret in Washington that Volpe was prepared to recommend national no-fault auto insurance legislation and that his recommendation was sabotaged by White House action.

The Globe may be right in arguing that a rigid national system of no-fault auto insurance would not be a sensible course at this time. On the other hand, if no-fault makes sense in Massachusetts, I see no reason why it does not make sense for the nation as a whole.

Legislating on a national basis on the subject of motor vehicles is hardly a novel proposition. I doubt that anyone would seriously suggest today that we should not have national standards for motor vehicle safety. Congress has also acted to impose auto emission controls on a national basis. In fact, it has gone so far as to deny states jurisdiction of any kind over auto emission controls.

Accordingly, the case for national no-fault auto insurance in some form is a strong one. Simplicity and uniformity of treatment are essential in a nation where so many of us cross state lines in motor vehicles every day. It would be tragic, in my opinion, to encourage a situation in which a crazy quilt of state no-fault laws emerges which results in changes in basic rules or gaps in coverage simply because a motorist leaves his home state.

There may be a sensible compromise between the no-action position of the Nixon Administration and the advocates of comprehensive national no-fault insurance. Congress could pass legislation this year requiring the states to enact no-fault laws within the next two years. The Secretary of Transportation would be given the authority to approve each plan but every state would have some latitude in developing its details so long as the state plan met certain basic criteria.

Such a course may be the one which Congress ultimately takes this year. It is, in my view, the minimum required if we are not to subject the motorists of the nation to a hodge-podge of conflicting laws and insurance policies in the years to come.

MICHAEL S. DUKAKIS.

[From the Journal of Commerce, Apr. 26, 1971]

BAY STATE'S INSURANCE INDUSTRY HIT

GOVERNOR CHARGES PROFITS ARE NOT PASSED TO CONSUMER

BOSTON, April 25.—The auto insurance industry was bitterly criticized here today by the Commonwealth's governor for failing to pass onto consumers the substantial savings the companies have incurred from the Bay State's three-month old no-fault auto insurance system.

Gov. Francis W. Sargent said that during the first three months of this year, the underwriters have seen their claim costs drop by over 35 percent but have not come forward with plans to lower premiums.

The governor also alleged that many insurers have tried to obscure the options in the no-fault program which would lower their auto insurance rates.

"The average paid claim cost in the first quarter of last year was $205," Gov. Sargent said. "The average paid claim cost in the first quarter of this year is $131. The total amount of paid losses in the first quarter of last year were $359,590—this year they are $229,479.

commerce these days than automobile driving?) should study carefully this proposed reform and the justifications advanced for it.

The authors state that five major shortcomings affect the present system of compensation for automobile accidents in each of the states: (1) many injured persons receive no compensation and others receive less than their economic losses because the other driver hasn't enough insurance or assets, or because the victim must show the other person was at fault and he was legally blameless. Proof, at times is hard to get, *e.g.* if the accident was hit-and-run; (2) the present system is extraordinarily slow and cumbersome, what with delay in the courts, and the impecunious victim, with his back against the wall financially may settle for less than his just deserts; (3) there is too much unfairness, as a practical mater, with some people getting more than they deserve and others less; (4) the fault system is extraordinarily expensive to administer and this heavy administrative cost is added to the premium bill each car owner pays (5) the present system is a constant temptation to dishonesty—"inducements to exaggeration and invention strike at the integrity of driver and injured alike all too often corrupting both and leaving the latter twice a victim—injured and debased." Substantial documentation is advanced to support each of these assertions.

The basic corrective advanced is absolute basic compulsory automobile insurance. Under such a system, *anytime* a driver is in an accident *his own insurance company* shall compensate him or his guest, for their "loss," which shall not include pain, suffering and inconvenience. Benefits would be paid monthly as the loss accrues. Tort liability would remain, but only in major cases (where damage for pain and suffering exceeds $5,000 and other tort damages exceed $10,000).

The proposed statute is a careful attempt at reform. If substantially enacted it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

One question that arises, however, that the authors do not consider, is whether one can ever truly compensate an automobile accident victim in *dollars; e.g.* a man who loses his legs or a child who no longer has a father? No one has said that *all* auto injuries and deaths can be eliminated, but many have suggested that if automobiles were designed with safety rather than sex-appeal as the first order of business, the staggering highway toll would be reduced. The most "Basic Protection for the Traffic Victim" would seem to be that the government do every thing possible to protect a man from ever becoming a traffic victim in the first place, through enforcing higher standards for driver skill and demanding a tank-like' approach to auto design.

ROBERT H. JOOST.[3]

[From the Boston Globe, Tuesday, Dec. 6, 1966]

LETTERS TO THE EDITOR

KEEP THE COMPULSORY

. . . With all due respect to the governor of the commonwealth, the leader in Massachusetts of the party which I personally support, the financial responsibility law idea is an irresponsible "solution" to the problem of automobile insurance. Compulsory insurance must be retained. But the rates must also be cut significantly. The Dukakis bill is based upon the results of long and painstaking research by a group under two highly regarded professors of law and tort law authorities. The Dukakis/Keeton-O'Connell plan will not eliminate the right to trial by jury, as some responsible lawyers unfamiliar with the details seem to be afraid. Insurance companies will not lose money, nor will the plaintiff's personal injury lawyer, whose livelihood rests on a contingent fee, suffer unduly.

The political parties and their representatives in the Legislature and executive and the members of the bar who are all "officers of the court" have a responsibility to the people and to the commonwealth that shou'd rule out self-interest personal pocketbook considerations, and partisanship on an issue so basic and vital: the right to be sure of compensation for automobile injuries (hence the need for compulsory insurance) and the right to drive a car, which often equals the right to employment in today's world (hence the need for significant reduc

---

[3] Member of the Massachusetts Bar; former assistant to the Editor, Journal of the American Trial Lawyers.

tions, not increases, in automobile liability rates). The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried. The problem is critical—nay-sayers are not enough.

ROBERT H. JOOST.

[From the Boston Globe, Friday, Apr. 30, 1971]

LETTERS TO THE EDITOR

NATIONAL NO-FAULT

I was puzzled by your editorial on no-fault auto insurance entitled "Volpe's Wise Proposal" (April 19).

The editorial is puzzling primarily because it is no secret in Washington that Volpe was prepared to recommend national no-fault auto insurance legislation and that his recommendation was sabotaged by White House action.

The Globe may be right in arguing that a rigid national system of no-fault auto insurance would not be a sensible course at this time. On the other hand, if no-fault makes sense in Massachusetts, I see no reason why it does not make sense for the nation as a whole.

Legislating on a national basis on the subject of motor vehicles is hardly a novel proposition. I doubt that anyone would seriously suggest today that we should not have national standards for motor vehicle safety. Congress has also acted to impose auto emission controls on a national basis. In fact, it has gone so far as to deny states jurisdiction of any kind over auto emission controls.

Accordingly, the case for national no-fault auto insurance in some form is a strong one. Simplicity and uniformity of treatment are essential in a nation where so many of us cross state lines in motor vehicles every day. It would be tragic, in my opinion, to encourage a situation in which a crazy quilt of state no-fault laws emerges which results in changes in basic rules or gaps in coverage simply because a motorist leaves his home state.

There may be a sensible compromise between the no-action position of the Nixon Administration and the advocates of comprehensive national no-fault insurance. Congress could pass legislation this year requiring the states to enact no-fault laws within the next two years. The Secretary of Transportation would be given the authority to approve each plan but every state would have some latitude in developing its details so long as the state plan met certain basic criteria.

Such a course may be the one which Congress ultimately takes this year. It is, in my view, the minimum required if we are not to subject the motorists of the nation to a hodge-podge of conflicting laws and insurance policies in the years to come.

MICHAEL S. DUKAKIS.

[From the Journal of Commerce, Apr. 26, 1971]

BAY STATE'S INSURANCE INDUSTRY HIT

GOVERNOR CHARGES PROFITS ARE NOT PASSED TO CONSUMER

BOSTON, April 25.—The auto insurance industry was bitterly criticized here today by the Commonwealth's governor for failing to pass onto consumers the substantial savings the companies have incurred from the Bay State's three-month old no-fault auto insurance system.

Gov. Francis W. Sargent said that during the first three months of this year, the underwriters have seen their claim costs drop by over 35 percent but have not come forward with plans to lower premiums.

The governor also alleged that many insurers have tried to obscure the options in the no-fault program which would lower their auto insurance rates.

"The average paid claim cost in the first quarter of last year was $205," Gov. Sargent said. "The average paid claim cost in the first quarter of this year is $131. The total amount of paid losses in the first quarter of last year were $359,590—this year they are $229,479.

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92-18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
WILLIAM B. SPONG, Jr., Virginia

NORRIS COTTON, New Hampshire
WINSTON L. PROUTY, Vermont
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan
EDWARD H. BAKER, Jr., Tennessee
MARLOW W. COOK, Kentucky
MARK O. HATFIELD, Oregon
TED STEVENS, Alaska

FREDERICK J. LISSMAN, *Staff Director*
MICHAEL PERTSCHUK, *Chief Counsel*
S. LYNN SCHOENFELD, *Staff Counsel*
ARTHUR PANKOPF, Jr., *Minority Staff Director*
PETER POWELL, *Minority Professional Staff*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

THURSDAY, MAY 6, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 11 a.m., pursuant to recess, in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman of the Committee) presiding.

Present: Senators Magnuson and Hart.

The CHAIRMAN. The committee will resume its hearings on the insurance bills. Robert Joost is the next witness.

We will be glad to hear from you. I understand that you are employed by the American Trial Lawyers Association, is that correct?

STATEMENT OF ROBERT H. JOOST

Mr. JOOST. I am from the American Trial Lawyers.

My name is Robert H. Joost. I am a lawyer, and I am employed by the American Trial Lawyers Association at its headquarters in Cambridge, Mass.

I am submitting this statement for the record in favor of pending legislation in the Congress to establish on a nationwide basis a system of compensation of victims of automobile accident regardless of fault.

Since the American Trial Lawyers Association opposes no-fault automobile insurance legislation, I am submitting this statement for myself only and not for the association.

The CHAIRMAN. Can I interrupt just a minute. Do we have a formal statement in opposition from the Trial Lawyers Association?

Senator HART. They testified yesterday in very strong opposition.

Mr. JOOST. First to establish my own professional credentials, I am a graduate, magna cum laude, of the Harvard Law School, where I was an editor of volumes 72 and 73 of the Harvard Law Review, and I am a graduate, magna cum laude, of Yale College, where I was a member of Phi Beta Kappa. I have also studied at Columbia University as a graduate student in economics.

In addition to my professional work from 1962 to the present for the American Trial Lawyers Association—until 1964 it was called the NACCA Bar Association—I have been heavily involved in two major statutory reform efforts in Massachusetts. I participated in the molding and remodeling of the new Massachusetts mental health code, which goes into effect July 1, as a member of the legal studies staff of the Massachusetts Special Commission on Mental Health and as a member of the Attorney General's Committee on Commitment Law Revision, and since 1968 I have been a reporter for the Criminal Law Revision

Staff member assigned to these hearings: S. Lynn Sutcliffe.

Commission of Massachusetts which is engaged in revision of the substantive criminal law of the State.

Also, from 1967 to 1971 I was a part-time law professor at the New England School of Law in Boston. I have published articles and comments on a variety of legal subjects, the most recent being a piece called "Housing and the Law: An Overview," published in 6 New England Law Review 1 (1971).

I am a member of the Massachusetts bar, and a member of the American, Massachusetts, and Boston Bar Associations, the American Trial Lawyers Association, and the American Judicature Society.

My present post with the American Trial Lawyers Association is assistant to the chairman of the legislative section, which I have held since 1968. For a period I was called special counsel but the title was changed to assistant to the chairman in 1969.

I am also consulting editor of Trial magazine, the bimonthly national legal news magazine published by ATL. As a matter of fact, am the only lawyer on the editorial staff of this magazine. Copies of letterhead stationery which indicate my position are attached to m formal statement.

I was first employed by the trial lawyers in 1962 as assistant to th editor of the NACCA Law Journal, which is now called the Journ of the American Trial Lawyers. In that capacity, between 1962 an 1964, I wrote a substantial percentage of the articles published in vo umes 29, 30, and 31 of the journal. From 1964 to 1967, I worked for th association on a part-time basis as the paid author of a regular colum in Trial magazine entitled "A Brief Sweep" in which I synopsize current law review articles of interest. I accepted a full-time positic as an editor of Trial in September of 1967.

In addition to almost a decade with the trial lawyers associatic itself, I also practiced law for 2 years with a law firm in Boston th concentrates on automobile negligence work—Sheff & McGarry; o of the partners was then a member of the board of governors of t American trial lawyers. The firm is typical of many such law firm across the Nation.

As an ATL staff member, I have attended numerous national mee ings of the trial lawyers—two in Denver, one here in Washingto D.C., one in Las Vegas, one in San Francisco, and one in the Bahama In 1970, I arranged and attended regional meetings of Key Men that is, members interested in influencing legislative action—in Ca bridge, Las Vegas, Atlanta, Chicago, and Denver.

In 1971 to date, I have been to two such Key Men meetings; t 1971 meetings were devoted exclusively to how to defeat no-fault completely—at both State and Federal levels.

This statement is thus based on long personal involvement with a observation of the principal opponents of legislation aimed at co pensating automobile accident victims regardless of fault—the tri lawyers.

I am submitting this statement in support of the Hart-Magnus bill as an act of conscience, as an attorney, and as a citizen. It is al submitted with sadness for I had hoped that the association its would see and would accept the fact that we lawyers must put asi our personal pocketbook interest where the public interest conflicts.

Unfortunately, the group in control of ATL has refused to conce that there is such a conflict and has refused to accept that a profe

sional association of attorneys has a higher obligation than maintenance of personal income.

As a matter of fact, the group in control has never even polled the membership on no-fault versus negligence because no-fault is viewed as putting them out of business.

I myself have been in favor of no-fault automobile insurance, at least in part, for some time, I reviewed the trialblazing book by Profs. Robert E. Keeton and Jeffrey O'Connell, "Basic Protection for the Traffic Victim," in the spring 1966 issue of the Portia Law Journal, at pages 266 to 267. In that review, I called the book a "pathfinder in a difficult area," and as to the no-fault plan advocated by the authors, I concluded:

> The proposed statute is a careful attempt at reform. If substantially enacted, it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

A copy of that review is attached to my statement.

I attach also a copy of a letter to the editor of the Boston Globe published December 6, 1966, in which I criticized then Gov. John A. Volpe for his opposition at the time to the no-fault concept. In this letter, I declared in conclusion:

> The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried.

I am pleased personally that in 1970 Massachusetts, under the leadership of Michael Dukakis, a Democrat, and Francis Sargent, a Republican, did seriously consider and enact into law a no-fault automobile insurance law. As both Governor Sargent and Mr. Dukakis have testified to a subcommittee of the House of Representatives, the results in Massachusetts, so far, exceed the most sanguine expectations of the proponents.

I attach a letter by Mr. Dukakis published in the Boston Globe of April 30, 1971, in which he calls for extending these benefits to all the people through a national no-fault system.

When I was hired by the American trial lawyers on a full-time basis in 1967, I had to agree to make no public statements in opposition to the position of the association. My personal views, however, did not change.

The CHAIRMAN. Mr. Joost, do the American trial lawyers have their national headquarters here in town?

Mr. JOOST. No, in Cambridge, Mass. We have a Washington representative, but the headquarters are in Cambridge across the Cambridge common from the Harvard Law School.

To reiterate, my personal views did not change. As a matter of fact, my enthusiasm for the no-fault approach to automobile reparations increased. While my original decision to favor the Keeton-O'Connell plan might have stemmed, at least in part, from the fact that I studied torts from its principal author, Professor Keeton, and because Mr. Keeton was instrumental in getting me my first job with NACCA in 1962, my editorial position with *Trial* starting in September 1967 gave me the time and the access to books and reports which were necessary to a true appreciation of all the issues involved.

Let me state formally for the record: In my judgment, based on my years of study, thought, and observation, I believe that a system of automobile reparations based on compensation of all the tangible losses

of all victims of automobile accidents in the United States withou regard to fault would be a much better system than the present on based on compensation of all the tangible and intangible losses of vic tims but only if the victim proves that a financially solvent defendan by his negligence proximately caused his injuries and only if he prove fault and damages by a preponderance of the evidence in a tria before a court or jury.

Under no-fault, the public, the beneficiaries, and consumers of auto mobile insurance would get better protection for the premium dollar spent and at lower annual cost.

In addition, the hard-pressed judicial systems of the Federal an State governments would get some relief. The problems of the court of America today are largely on the criminal docket rather than th civil docket side, but it is my judgment that no-fault, by lifting ou of the courts a substantial volume of cases, would free up enoug judge time, enough judicial man-hours to make it possible to try ever criminal defendant in this country within 60 days from date of arrest or at least within 6 months. It is by no means the complete answer t the crisis of our courts, but it is a part of the solution, and a part incidentally, that does not require the expenditure of additional tax payer money.

Finally, no-fault is a much more efficient system than the presen one. The present one was not developed for a nation with 100 millio registered motor vehicles and a multibillion dollar insurance industry it was developed for a horse and carriage society, in another country, i another century, in the pre-liability-insurance era.

Since 1932 and the Columbia University study, it has been apparen to anyone who has studied the literature closely that something bette than the automobile negligence liability-insurance system was avai able. The success of the Saskatchewan plan in one of the provinces o Canada confirmed this point.

However, for almost 40 years, the people of the United States wer denied this "something better" because the individuals who feed o and earn their livelihood from the automobile negligence system hap pen also to possess a great deal of political clout.

They had, in fact, enough political muscle to snuff out the ide before it could even be tried in any State of the Union until the Com monwealth of Massachusetts in 1970 enacted a no-fault law. The Mas sachusetts statutes, however, came about as a result of rather uniqu circumstances which are unlikely to be duplicated in many othe States: A very strong proponent in each political party; the highes premium rates in the Nation; a weak statewide organization of tri lawyers; and a State legislative tradition of being innovative.

Since there has never been any question as to my personal prefe ence for no-fault, I confess that I did speak, my true feelings wit some discreet friends. About a month ago, I received a telephone ca from a congressional aide. He asked if I would testify before Congre on no-fault legislation. Apparently, one of my "discreet" frien hadn't been so discreet, and the congressional aide had learned th there was a lawyer who worked for the American Trial Lawyers A sociation, a trial lawyers' lawyer, who didn't agree with the part line.

I told him no because I wasn't myself convinced that automobile insurance was a proper subject for Federal rather than State legislation. I told him that I leaned toward the view that the States should be given every opportunity to act before the Federal Government comes in, in whole or in part.

Since that surprise telephone call, I have agonized and pondered.

Finally, after a recent meeting of key men in Chicago, I concluded that I had to testify. If Congress is to execute its duty, which is to all the people of the United States and not just to the trial lawyers, it should get the views of one who has studied and thought hard about this no-fault business for many years, and who has been a trial lawyers' lawyer.

In my judgment, the only way in which this Nation is going to get real justice, opportunity and environmental health is if the Congress and the State legislatures authorize the private and independent trial lawyers of America to become "private attorneys general" on behalf of private citizens and to authorize the trial lawyers to bring private-remedy actions for injunctions, court orders to perform, and damages against those who pollute, against those who discriminate, against those who rent substandard housing and against those who take advantage of consumers—in return for a reasonable attorney's fee and true costs, fixed by the court and paid by the defendant found by the courts to be in violation.

The fact is, therefore, that the enactment of the Hart-Magnuson legislation will not wipe out the trial bar for there are so many wrongs that need to be litigated and righted in our courts of justice. But the courts today are so chock-a-block full of existing business that they can't really take on big new workloads, even if class actions, treble-damage suits and all the rest were authorized in all the areas in which adequate enforcement of existing law is important.

The fact is, Mr. Chairman, that the trial lawyers of America, who should be out there litigating for America, a better America, are vegetating in the pork barrel of automobile negligence work.

The fact is that the only thing that will get the private and independent litigation experts en masse into environmental litigation, consumer protection litigation, inadequate housing litigation, antisnooping litigation and all the other things that lawyers can do in court which this country needs to have done is for the Congress of the United States to push them out of their present overstuffed and overpaid womb.

As I mentioned, until recently I leaned toward the position that, I now believe firmly that a decision to leave it to the States is, in fact, a State level before the Federal Government acts. I no longer do. I now believe firmly that a decision to leave it to the States is, in fact, a decision to retain the automobile negligence system with all its waste, all its excessive administrative costs, all its duplication, all its slow pace of operation.

If the Congress declines to act now, there will be some automobile insurance legislation passed by a few States in addition to my own. The legislation will even be called no-fault. But the terminology will be designed for one reason, to keep the Congress out. In reality, these State laws will continue the waste and the inefficiency of the present negligence liability-insurance system while ameliorating some of its bad effects.

Moreover, they will add the new problem which Gov. Francis Sargent of Massachusetts pointed to in a recent speech—the problem of excessive profits by the insurance industry. I have attached to this statement an article summarizing a recent speech on this subject by the Governor.

In Chicago on April 24th, I heard the ATL key men from Ohio and Illinois make such strong assertions of control of their State legislatures, in whole or in part, that I was absolutely and totally disabused of my States-first leaning. I heard also that the trial lawyers have been increasing their power and their strength in State legislatures.

For example, the Texas Trial Lawyers Association has been running a program they call LIFT, under which subscribers contribute a minimum of $10 a month to what amounts to a campaign fund for candidates for the legislature. More than 60 Texas trial lawyers now subscribe, according to what I learned at the Chicago meeting.

Every election year, the funds accumulated by LIFT are divided among protrial lawyer candidates for the Texas Legislature. Let me read the text of an item that was published in the June 23, 1970, issue of the El Paso, Texas Trial Lawyers Association newsletter, "Ready for the Plaintiff." (Vol. VI, No. 5.) The editor of the newsletter is attorney Richard T. Marshall, who was then national secretary of the American Trial Lawyers Association.)

UP, UP AND AWAY!!

LIFT is the latest effort of Texas Trial Lawyers Association. It stands for Lawyers Involved for Texas, and it's a runaway success . . . The *El Paso Times* reported in its Capital Column June 14th, that *LIFT was responsible* for the Democratic nomination in this year's primaries of six of the eight candidates it backed for the *State Senate*.

LIFT is a legislative kitty which is paying off. Most of your officers are contributing $10 per month on a bank draft authority to LIFT.

If you want to be a part of the movement for *comparative negligence* in Texas for statutory authority to let jurors know what they are doing in *special issue* verdicts, and for a successful rejection of *Keeton-O'Connell* schemes, in other words, if you want your practice to survive, better get with it.

Send a check, any amount, to *LIFT, 201 Westgate Building, Austin!*

A more complete description of LIFT, published in an ATL 1970 publication called "A Trial Lawyer's Legislative Workbook" and taken from a letter dated January 7, 1970, by Attorney William R. Edwards of Corpus Christi, Tex., to the vice chairman of ATL's legislative section with a copy to me as assistant to the chairman of the legislative section is attached to this statement.

It may be of interest to this committee to know that the Texas Trial Lawyers Association, which promotes LIFT as its "latest effort . . . a legislative kitty which is paying off" is itself a tax-exempt organization. I attach also from the Trial Lawyer's Workbook a copy of letter the Texas affiliate received from tax attorneys supporting their exempt status and advising them how to keep it.

What this means, of course, is that in at least one State the Federal Government, by tax preference, is subsidizing political opposition to the Keeton-O'Connell plan and other no-fault proposals, at the same time that Federal Government officials argue that the States can and will pass good no-fault laws.

Mr. Chairman, how many State senators or State representatives in Texas are going to vote for meaningful automobile insurance reform

when they know that if they do attract candidates, good speakers, with money from LIFT and campaign help from the trial lawyers are going to run against them in the next primary or the next general election?

What real chance do the people of Texas have to receive the benefits of the no-fault system of automobile reparations—unless this Congress passes Federal no-fault legislation?

At the Key Men meeting on April 24, I heard that the LIFT program has been adopted by at least one additional State. According to Attorney Thomas A. Heffernan of Cleveland, Ohio—I believe his law partner, Mr. Craig Spangenberg, addressed this committee the other day—the Ohio Academy of Trial Lawyers is now enrolling subscribers to its version which bears the acronym ADOPT. This attorney predicted flatly, unequivocally, and totally that the Ohio Legislature will never enact any no-fault automobile insurance legislation in any form.

At that meeting, the chairman of ATL's legislative section, Attorney Jerry Finn of Newark, N.J., summed up the discussion by saying: "Let's all ADOPT LIFT." No one objected.

More direct fundraising methods are also used by trial-lawyer groups. According to Attorney Jon Carlson of Belleville, Ill., who spoke at the meeting, every member of the St. Clair, County, Ill., Bar Association has been assessed $100 for a fund to fight Governor Ogilvie's insurance reform legislation.

Incidentally, Mr. Carlson and Attorney Leonard Ring of Chicago both asserted at this meeting that Ogilvie's bill doesn't have "a chance" to become law in Illinois. In Mr. Ring's words: "We control the Senate, Ogilvie controls the House; it's a standoff."

Mr. Chiarman, again, what chance do the consumers of automobile insurance in Illinois have to secure the benefits of no-fault unless the Congress acts?

At another "key men" meeting, this one held for representatives from the northeast region, on April 17, in the offices of the American Trial Lawyers Association in Cambridge, Mass., several of the representatives suggested that defense lawyers, that is, personal injury lawyers who are retained by insurance companies to defend against automobile negligence claims, are a good source for funds to finance the fight against no-fault.

The key men were urged to form general anti-no-fault lawyers' groups and citizens' groups and resign themselves to the fact that defense lawyers were afraid to let their names be used since many of them are retained by insurance companies which are in favor of no-fault auto insurance. I believe it was Attorney Daniel H. Mahoney of Albany, N.Y., who mentioned that such a citizen's committee was functioning in New York State and had purchased newspaper advertising in several papers against the Gordon bill in the New York State Legislature (the Gordon bill is patterned after the Massachusetts law).

It was stated that the advertisements should become punchier. I notice the recent ones just say no-fault is a hoax.

Another Key Man, and a former Connecticut State legislator, Attorney Leon Riscassi of Hartford, mentioned that the Connecticut trial lawyers had also had good luck in raising funds from the sheriffs and constables of the State of Connecticut. Apparently, the deputies

are paid on a fee basis; they were convinced that no-fault would mean fewer legal papers to serve and, therefore, lower incomes for themselves.

The committee may also be interested in another method that has been used for more than 3 years to fight no-fault. Since late in 1967, the association has been arranging for large fees to be paid by one or another trial lawyer group to a supposedly neutral academic, Prof. David Sargent of Suffolk University Law School in Boston, in return for his speaking, appearing, and testifying before private and legislative groups all around the country.

I see no objection to the appearances or to his being paid—Dave Sargent is a very able law professor: he has a viewpoint, and the subject matter demands the most careful and complete discussion—but I do find it less than honorable that Professor Sargent appears wearing his Suffolk University hat rather than his trial lawyers mantle, and that his audiences are not told who is paying him or how much.

As a matter of fact, at one of the recent Key Men meetings, somebody was complaining that Professor Sargent's rates were going up. The delegates said that he is now asking $500 an appearance plus expenses—for 1 day.

As the committee may know, this morning in Boston the supreme judicial court of Massachusetts heard oral argument in a suit challenging the constitutionality of the Massachusetts no-fault statute. The action has been brought by the immediate past president of the Massachusetts chapter of the American Trial Lawyers, Attorney Robert Cohen.

There was a short news item in the Boston Sunday Globe for April 25, 1971, page A-5, on one of the methods used to finance this constitutional-challenge litigation. According to the Globe's account:

> Attorneys are wondering about a couple of ethical questions raised by the activities of the lawyers bringing the test case of no-fault auto insurance law. The lawyers, Robert Cohen and Alexander Cella, have sent other attorneys a mimeographed form offering for sale at $50 per set the two-volume brief ($45) they have prepared on the case and the appendices ($5) . . . Fellow lawyers say (1) they've never heard of a lawyer openly selling a brief . . . and (2) the appendix consists of court records, which may not be theirs to sell.

To summarize and reiterate, it is my considered judgment that the trial lawyers will probably prevent any meaningful no-fault legislation from being enacted in any of the State legislatures, with a few possible exceptions. It is naive to argue that there is a choice between Federal legislation and legislation in the other 49 State capitals. The only choice is between Federal no-fault legislation or maintenance of the present negligence system, the system which the Department of Transportation's $2 million study so carefully and painstakingly criticized.

There is, I might add, a second reason why I believe Congress must act. If the trial lawyers have a stronghold on the State legislatures how does one find words to describe the power position of the insurance industry and its armies of lobbyists in all statehouses? There is at this time in my opinion absolutely no justification in experience or policy for the present exemption of the insurance industry from meaningful Federal regulation.

According to Attorney Heffernan of Cleveland, again, the trial lawyers have one lobbyist in the Ohio Legislature and the insurance

companies between them have 30. If the ATL people can make the assertions they make with their one lobbyist and ADOPT/LIFT, think what assertions the insurance companies can make in their private conclaves.

The objective of the insurance industry, according to the best information and intelligence the trial lawyers have been able to acquire, is maximum profit. Rest assured, there are enormous profit possibilities in no-fault automobile insurance unless it is tightly audited and regulated.

The reason for this is that a no-fault policy basically is a combined medical, accident-and-health and income-replacement policy which pays benefits in case of motor vehicle caused injury.

But the rates in Massachusetts, after the no-fault statute was passed, were not set on the basis of experience with accident and health and income replacement coverage, but rather on the basis of reductions from current automobile personal injury liability insurance rates. It is going to take a considerable number of reductions before one gets down to the accident and health premium level, and in the interim, rather enormous profit potential is available to the industry.

S. 945, the Uniform Motor Vehicle Insurance Act, represents new coverage by a new system. Since there are not now any Federal personal injury liability insurance rates, rates won't be set—they couldn't be set—by reductions from existing Federal rates. They will have to be set afresh from the new perspective, and that is what is appropriate when the subject is a new and different kind of coverage.

In my opinion, only the Federal Government has the strength and the capability to tightly audit and regulate no-fault automobile insurance coverage. If profits in excess of a reasonable return are to be prevented, no-fault must be legislated by the Federal Congress. Any other course would just mean the substitution of one form of consumer abuse with another.

I urge the passage of the Hart-Magnuson legislation.

Now, while this concludes my prepared statement, I would like to add a summary of what has happened since I mailed this statement to the Congress.

I was informed on Monday, April 26, after I mailed my statement to Washington, of the decisions reached at another trial lawyers' meeting in Chicago on April 24. At that meeting, the executive committee of the American Trial Lawyers Association unanimously approved a resolution creating a completely new department—the department of Federal-State relations—with a proposed budget of $322,200 for the fiscal year which begins August 1.

The executive committee voted to finance the budget for this new department by (1) reducing the budget of the department of public affairs and education (which edits and publishes *Trial*) by $112,000, and by (2) dues increases expected to net an additional $200,000.

As part of the cutback in the public affairs and education department, its director was ordered to dismiss me, the only lawyer, at the end of the fiscal year, as well as several additional staff members.

In view of the statement I had mailed to Washington, I told the department head, the editor of *Trial*, that I would leave after the 2-week notice period which means I cease to be an employee tomorrow, May 7.

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92-18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
WILLIAM B. SPONG, JR., Virginia

NORRIS COTTON, New Hampshire
WINSTON PROUTY, Vermont
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan
HOWARD H. BAKER, JR., Tennessee
MARLOW W. COOK, Kentucky
MARK O. HATFIELD, Oregon
TED STEVENS, Alaska

FREDERICK J. LORDAN, *Staff Director*
MICHAEL PERTSCHUK, *Chief Counsel*
S. LYNN SUTCLIFFE, *Staff Counsel*
ARTHUR PANKOPF, JR., *Minority Staff Director*
PETER POWELL, *Minority Professional Staff*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

THURSDAY, MAY 6, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 11 a.m., pursuant to recess, in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman of the Committee) presiding.

Present: Senators Magnuson and Hart.

The CHAIRMAN. The committee will resume its hearings on the insurance bills. Robert Joost is the next witness.

We will be glad to hear from you. I understand that you are employed by the American Trial Lawyers Association, is that correct?

STATEMENT OF ROBERT H. JOOST

Mr. JOOST. I am from the American Trial Lawyers.

My name is Robert H. Joost. I am a lawyer, and I am employed by the American Trial Lawyers Association at its headquarters in Cambridge, Mass.

I am submitting this statement for the record in favor of pending legislation in the Congress to establish on a nationwide basis a system of compensation of victims of automobile accident regardless of fault.

Since the American Trial Lawyers Association opposes no-fault automobile insurance legislation, I am submitting this statement for myself only and not for the association.

The CHAIRMAN. Can I interrupt just a minute. Do we have a formal statement in opposition from the Trial Lawyers Association?

Senator HART. They testified yesterday in very strong opposition.

Mr. JOOST. First to establish my own professional credentials, I am a graduate, magna cum laude, of the Harvard Law School, where I was an editor of volumes 72 and 73 of the Harvard Law Review, and I am a graduate, magna cum laude, of Yale College, where I was a member of Phi Beta Kappa. I have also studied at Columbia University as a graduate student in economics.

In addition to my professional work from 1962 to the present for the American Trial Lawyers Association—until 1964 it was called the NACCA Bar Association—I have been heavily involved in two major statutory reform efforts in Massachusetts. I participated in the molding and remodeling of the new Massachusetts mental health code, which goes into effect July 1, as a member of the legal studies staff of the Massachusetts Special Commission on Mental Health and as a member of the Attorney General's Committee on Commitment Law Revision, and since 1968 I have been a reporter for the Criminal Law Revision

Staff member assigned to these hearings: S. Lynn Sutcliffe.

Commission of Massachusetts which is engaged in revision of the substantive criminal law of the State.

Also, from 1967 to 1971 I was a part-time law professor at the New England School of Law in Boston. I have published articles and comments on a variety of legal subjects, the most recent being a piece called "Housing and the Law: An Overview," published in 6 New England Law Review 1 (1971).

I am a member of the Massachusetts bar, and a member of the American, Massachusetts, and Boston Bar Associations, the American Trial Lawyers Association, and the American Judicature Society.

My present post with the American Trial Lawyers Association is assistant to the chairman of the legislative section, which I have held since 1968. For a period I was called special counsel but the title was changed to assistant to the chairman in 1969.

I am also consulting editor of Trial magazine, the bimonthly national legal news magazine published by ATL. As a matter of fact, I am the only lawyer on the editorial staff of this magazine. Copies of letterhead stationery which indicate my position are attached to my formal statement.

I was first employed by the trial lawyers in 1962 as assistant to the editor of the NACCA Law Journal, which is now called the Journal of the American Trial Lawyers. In that capacity, between 1962 and 1964, I wrote a substantial percentage of the articles published in volumes 29, 30, and 31 of the journal. From 1964 to 1967, I worked for the association on a part-time basis as the paid author of a regular column in Trial magazine entitled "A Brief Sweep" in which I synopsized current law-review articles of interest. I accepted a full-time position as an editor of Trial in September of 1967.

In addition to almost a decade with the trial lawyers association itself, I also practiced law for 2 years with a law firm in Boston that concentrates on automobile negligence work—Sheff & McGarry; one of the partners was then a member of the board of governors of the American trial lawyers. The firm is typical of many such law firms across the Nation.

As an ATL staff member, I have attended numerous national meetings of the trial lawyers—two in Denver, one here in Washington, D.C., one in Las Vegas, one in San Francisco, and one in the Bahamas. In 1970, I arranged and attended regional meetings of Key Men—that is, members interested in influencing legislative action—in Cambridge, Las Vegas, Atlanta, Chicago, and Denver.

In 1971 to date, I have been to two such Key Men meetings; the 1971 meetings were devoted exclusively to how to defeat no-fault—completely—at both State and Federal levels.

This statement is thus based on long personal involvement with and observation of the principal opponents of legislation aimed at compensating automobile accident victims regardless of fault—the trial lawyers.

I am submitting this statement in support of the Hart-Magnuson bill as an act of conscience, as an attorney, and as a citizen. It is also submitted with sadness for I had hoped that the association itself would see and would accept the fact that we lawyers must put aside our personal pocketbook interest where the public interest conflicts.

Unfortunately, the group in control of ATL has refused to concede that there is such a conflict and has refused to accept that a profes-

sional association of attorneys has a higher obligation than maintenance of personal income.

As a matter of fact, the group in control has never even polled the membership on no-fault versus negligence because no-fault is viewed as putting them out of business.

I myself have been in favor of no-fault automobile insurance, at least in part, for some time, I reviewed the trialblazing book by Profs. Robert E. Keeton and Jeffrey O'Connell, "Basic Protection for the Traffic Victim," in the spring 1966 issue of the Portia Law Journal, at pages 266 to 267. In that review, I called the book a "pathfinder in a difficult area," and as to the no-fault plan advocated by the authors, I concluded:

> The proposed statute is a careful attempt at reform. If substantially enacted, it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

A copy of that review is attached to my statement.

I attach also a copy of a letter to the editor of the Boston Globe published December 6, 1966, in which I criticized then Gov. John A. Volpe for his opposition at the time to the no-fault concept. In this letter, I declared in conclusion:

> The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried.

I am pleased personally that in 1970 Massachusetts, under the leadership of Michael Dukakis, a Democrat, and Francis Sargent, a Republican, did seriously consider and enact into law a no-fault automobile insurance law. As both Governor Sargent and Mr. Dukakis have testified to a subcommittee of the House of Representatives, the results in Massachusetts, so far, exceed the most sanguine expectations of the proponents.

I attach a letter by Mr. Dukakis published in the Boston Globe of April 30, 1971, in which he calls for extending these benefits to all the people through a national no-fault system.

When I was hired by the American trial lawyers on a full-time basis in 1967, I had to agree to make no public statements in opposition to the position of the association. My personal views, however, did not change.

The CHAIRMAN. Mr. Joost, do the American trial lawyers have their national headquarters here in town?

Mr. JOOST. No, in Cambridge, Mass. We have a Washington representative, but the headquarters are in Cambridge across the Cambridge common from the Harvard Law School.

To reiterate, my personal views did not change. As a matter of fact, my enthusiasm for the no-fault approach to automobile reparations increased. While my original decision to favor the Keeton-O'Connell plan might have stemmed, at least in part, from the fact that I studied torts from its principal author, Professor Keeton, and because Mr. Keeton was instrumental in getting me my first job with NACCA in 1962, my editorial position with *Trial* starting in September 1967 gave me the time and the access to books and reports which were necessary to a true appreciation of all the issues involved.

Let me state formally for the record: In my judgment, based on my years of study, thought, and observation, I believe that a system of automobile reparations based on compensation of all the tangible losses

of all victims of automobile accidents in the United States without regard to fault would be a much better system than the present one based on compensation only for the negligent and ignoring the losses of victims out of fear of the tortfeasor. Under a mandatory system, defendant [illegible] proves fault and damages by a preponderance of the evidence in a trial before a court or jury.

Under no-fault, the [illegible] the insured drivers and consumers of automobile insurance would get better protection for the premium dollars spent and at lower and [illegible] cost.

In addition, the [illegible] judicial systems of the Federal and State governments would get some relief. The problems of the courts of America today are largely in the criminal dockets rather than the civil dockets side, but it is my judgment that no-fault, in lifting out of the courts a substantial volume of cases, would free up enough judge time, energy and manhours to make it possible to try every criminal defendant in this country within 4 days from date of arrest, or at least within 4 months. It is not by means the complete answer to the crisis of our courts, but it is a part of the solution, and a part, incidentally, that does not require the expenditure of additional taxpayer money.

Finally, no-fault is a much more efficient system than the present one. The present one was not designed for a nation with 100 million registered motor vehicles and a multi-billion dollar insurance industry: it was developed for a horse and buggy society, in another country, in another century, in the pre-insurance era.

Since 1961 and the Columbia University study, it has been apparent to anyone who has studied the literature that something better than the automobile negligence liability-insurance system was available. The success of the Saskatchewan plan in one of the provinces of Canada confirmed this point.

However, for almost 4½ years, the people of the United States were denied this "something better" because the individuals who feed off and earn their livelihood from the automobile negligence system happen also to possess a great deal of political clout.

They had, in fact, enough political muscle to snuff out the idea before it could even be tried in any State of the Union until the Commonwealth of Massachusetts in 1970 enacted a no-fault law. The Massachusetts statutes, however, came about as a result of rather unique circumstances which are unlikely to be duplicated in many other States: A very strong proponent in each political party; the highest premium rates in the Nation; a weak statewide organization of trial lawyers; and a State legislative tradition of being innovative.

Since there has never been any question as to my personal preference for no-fault, I confess that I did speak, my true feelings with some discreet friends. About a month ago, I received a telephone call from a congressional aide. He asked if I would testify before Congress on no-fault legislation. Apparently, one of my "discreet" friends hadn't been so discreet, and the congressional aide had learned that there was a lawyer who worked for the American Trial Lawyers Association, a trial lawyers' lawyer, who didn't agree with the party line.

I told him no because I wasn't myself convinced that automobile insurance was a proper subject for Federal rather than State legislation. I told him that I leaned toward the view that the States should be given every opportunity to act before the Federal Government comes in, in whole or in part.

Since that surprise telephone call, I have agonized and pondered.

Finally, after a recent meeting of key men in Chicago, I concluded that I had to testify. If Congress is to execute its duty, which is to all the people of the United States and not just to the trial lawyers, it should get the views of one who has studied and thought hard about this no-fault business for many years, and who has been a trial lawyers' lawyer.

In my judgment, the only way in which this Nation is going to get real justice, opportunity and environmental health is if the Congress and the State legislatures authorize the private and independent trial lawyers of America to become "private attorneys general" on behalf of private citizens and to authorize the trial lawyers to bring private-remedy actions for injunctions, court orders to perform, and damages against those who pollute, against those who discriminate, against those who rent substandard housing and against those who take advantage of consumers—in return for a reasonable attorney's fee and true costs, fixed by the court and paid by the defendant found by the courts to be in violation.

The fact is, therefore, that the enactment of the Hart-Magnuson legislation will not wipe out the trial bar for there are so many wrongs that need to be litigated and righted in our courts of justice. But the courts today are so chock-a-block full of existing business that they can't really take on big new workloads, even if class actions, treble-damage suits and all the rest were authorized in all the areas in which adequate enforcement of existing law is important.

The fact is, Mr. Chairman, that the trial lawyers of America, who should be out there litigating for America, a better America, are vegetating in the pork barrel of automobile negligence work.

The fact is that the only thing that will get the private and independent litigation experts en masse into environmental litigation, consumer protection litigation, inadequate housing litigation, antisnooping litigation and all the other things that lawyers can do in court which this country needs to have done is for the Congress of the United States to push them out of their present overstuffed and overpaid womb.

As I mentioned, until recently I leaned toward the position that, I now believe firmly that a decision to leave it to the States is, in fact, a State level before the Federal Government acts. I no longer do. I now believe firmly that a decision to leave it to the States is, in fact, a decision to retain the automobile negligence system with all its waste, all its excessive administrative costs, all its duplication, all its slow pace of operation.

If the Congress declines to act now, there will be some automobile insurance legislation passed by a few States in addition to my own. The legislation will even be called no-fault. But the terminology will be designed for one reason, to keep the Congress out. In reality, these State laws will continue the waste and the inefficiency of the present negligence liability-insurance system while ameliorating some of its bad effects.

Moreover, they will add the new problem which Gov. Francis Sargent of Massachusetts pointed out in a recent speech—the problem of excessive power in the insurance industry. I have attached to this statement an article summarizing a recent speech on this subject by the Governor.

In Chicago on April [illegible] I met the ATL key men from Ohio and Illinois [illegible] of their State legislature, in whole or in part that I was [illegible] disabused of my state-of-the-law [illegible] I learned also that the trial lawyers have been increasing their power and their strength in State legislatures.

For example, the Texas Trial Lawyers Association has been running a program they call LIFT, under which subscribers contribute a minimum of $10 a month to what amounts to a campaign fund for candidates for the legislature. More than [illegible] Texas trial lawyers now subscribe, according to what I learned at the Chicago meeting.

Every election year, the funds raised by LIFT are divided among pro-trial lawyer candidates for the Texas Legislature. Let me read the text of an item that was published in the June 23, 1970, issue of the El Paso, Texas Trial Lawyers Association newsletter, "Ready for the Plaintiff," Vol. VI, No. [illegible] The editor of the newsletter is attorney Richard T. Marshall, who was then national secretary of the American Trial Lawyers Association.

UP, UP AND AWAY!!

LIFT is the latest effort of Texas Trial Lawyers Association. It stands for Lawyers Involved for Texas, and it's a runaway success . . . The *El Paso Times* reported in its Capital Column June 14th, that *LIFT was responsible* for the Democratic nomination in this year's primaries of six of the eight candidates it backed for the *State Senate*.

LIFT is a legislative kitty which is paying off. Most of your officers are contributing $10 per month on a bank draft authority to LIFT.

If you want to be a part of the movement for *comparative negligence* in Texas, *for statutory* authority to let jurors know what they are doing in *special issue* verdicts, and for a successful rejection of *Keeton-O'Connell* schemes, in other words, if you want your practice to survive, better get with it.

Send a check, any amount, to *LIFT, 201 Westgate Building, Austin!*

A more complete description of LIFT, published in an ATL 1970 publication called "A Trial Lawyer's Legislative Workbook" and taken from a letter dated January 7, 1970, by Attorney William R. Edwards of Corpus Christi, Tex., to the vice chairman of ATL's legislative section with a copy to me as assistant to the chairman of the legislative section is attached to this statement.

It may be of interest to this committee to know that the Texas Trial Lawyers Association, which promotes LIFT as its "latest effort . . . a legislative kitty which is paying off" is itself a tax-exempt organization. I attach also from the Trial Lawyer's Workbook a copy of letters the Texas affiliate received from tax attorneys supporting their exempt status and advising them how to keep it.

What this means, of course, is that in at least one State the Federal Government, by tax preference, is subsidizing political opposition to the Keeton-O'Connell plan and other no-fault proposals, at the same time that Federal Government officials argue that the States can and will pass good no-fault laws.

Mr. Chairman, how many State senators or State representatives in Texas are going to vote for meaningful automobile insurance reform,

when they know that if they do attract candidates, good speakers, with money from LIFT and campaign help from the trial lawyers are going to run against them in the next primary or the next general election?

What real chance do the people of Texas have to receive the benefits of the no-fault system of automobile reparations—unless this Congress passes Federal no-fault legislation?

At the Key Men meeting on April 24, I heard that the LIFT program has been adopted by at least one additional State. According to Attorney Thomas A. Heffernan of Cleveland, Ohio—I believe his law partner, Mr. Craig Spangenberg, addressed this committee the other day—the Ohio Academy of Trial Lawyers is now enrolling subscribers to its version which bears the acronym ADOPT. This attorney predicted flatly, unequivocally, and totally that the Ohio Legislature will never enact any no-fault automobile insurance legislation in any form.

At that meeting, the chairman of ATL's legislative section, Attorney Jerry Finn of Newark, N.J., summed up the discussion by saying: "Let's all ADOPT LIFT." No one objected.

More direct fundraising methods are also used by trial-lawyer groups. According to Attorney Jon Carlson of Belleville, Ill., who spoke at the meeting, every member of the St. Clair, County, Ill., Bar Association has been assessed $100 for a fund to fight Governor Ogilvie's insurance reform legislation.

Incidentally, Mr. Carlson and Attorney Leonard Ring of Chicago both asserted at this meeting that Ogilvie's bill doesn't have "a chance" to become law in Illinois. In Mr. Ring's words: "We control the Senate, Ogilvie controls the House; it's a standoff."

Mr. Chiarman, again, what chance do the consumers of automobile insurance in Illinois have to secure the benefits of no-fault unless the Congress acts?

At another "key men" meeting, this one held for representatives from the northeast region, on April 17, in the offices of the American Trial Lawyers Association in Cambridge, Mass., several of the representatives suggested that defense lawyers, that is, personal injury lawyers who are retained by insurance companies to defend against automobile negligence claims, are a good source for funds to finance the fight against no-fault.

The key men were urged to form general anti-no-fault lawyers' groups and citizens' groups and resign themselves to the fact that defense lawyers were afraid to let their names be used since many of them are retained by insurance companies which are in favor of no-fault auto insurance. I believe it was Attorney Daniel H. Mahoney of Albany, N.Y., who mentioned that such a citizen's committee was functioning in New York State and had purchased newspaper advertising in several papers against the Gordon bill in the New York State Legislature (the Gordon bill is patterned after the Massachusetts law).

It was stated that the advertisements should become punchier. I notice the recent ones just say no-fault is a hoax.

Another Key Man, and a former Connecticut State legislator, Attorney Leon Riscassi of Hartford, mentioned that the Connecticut trial lawyers had also had good luck in raising funds from the sheriffs and constables of the State of Connecticut. Apparently, the deputies

are paid on a fee basis: they were convinced that no-fault would mean fewer legal papers to serve and, therefore, lower incomes for themselves.

The committee may also be interested in another method that has been used for more than 3 years to fight no-fault. Since late in 1967, the association has been arranging for large fees to be paid by one or another trial lawyer group to a supposedly neutral academic, Prof. David Sargent of Suffolk University Law School in Boston, in return for his speaking, appearing, and testifying before private and legislative groups all around the country.

I see no objection to the appearances or to his being paid—Dave Sargent is a very able law professor; he has a viewpoint, and the subject matter demands the most careful and complete discussion—but I do find it less than honorable that Professor Sargent appears wearing his Suffolk University hat rather than his trial lawyers mantle, and that his audiences are not told who is paying him or how much.

As a matter of fact, at one of the recent Key Men meetings, somebody was complaining that Professor Sargent's rates were going up. The delegates said that he is now asking $[illegible] an appearance plus expenses—for 1 day.

As the committee may know, this morning in Boston the supreme judicial court of Massachusetts heard oral argument in a suit challenging the constitutionality of the Massachusetts no-fault statute. The action has been brought by the immediate past president of the Massachusetts chapter of the American Trial Lawyers, Attorney Robert Cohen.

There was a short news item in the Boston Sunday Globe for April 25, 1971, page A–5, on one of the methods used to finance this constitutional-challenge litigation. According to the Globe's account:

> Attorneys are wondering about a couple of ethical questions raised by the activities of the lawyers bringing the test case of no-fault auto insurance law. The lawyers, Robert Cohen and Alexander Cella, have sent other attorneys a mimeographed form offering for sale at $50 per set the two-volume brief ($45) they have prepared on the case and the appendices ($5) . . . Fellow lawyers say (1) they've never heard of a lawyer openly selling a brief . . . and (2) the appendix consists of court records, which may not be theirs to sell.

To summarize and reiterate, it is my considered judgment that the trial lawyers will probably prevent any meaningful no-fault legislation from being enacted in any of the State legislatures, with a few possible exceptions. It is naive to argue that there is a choice between Federal legislation and legislation in the other 49 State capitals. The only choice is between Federal no-fault legislation or maintenance of the present negligence system, the system which the Department of Transportation's $2 million study so carefully and painstakingly criticized.

There is, I might add, a second reason why I believe Congress must act. If the trial lawyers have a stronghold on the State legislatures, how does one find words to describe the power position of the insurance industry and its armies of lobbyists in all statehouses? There is at this time in my opinion absolutely no justification in experience or policy for the present exemption of the insurance industry from meaningful Federal regulation.

According to Attorney Heffernan of Cleveland, again, the trial lawyers have one lobbyist in the Ohio Legislature and the insurance

companies between them have 30. If the ATL people can make the assertions they make with their one lobbyist and ADOPT/LIFT, think what assertions the insurance companies can make in their private conclaves.

The objective of the insurance industry, according to the best information and intelligence the trial lawyers have been able to acquire, is maximum profit. Rest assured, there are enormous profit possibilities in no-fault automobile insurance unless it is tightly audited and regulated.

The reason for this is that a no-fault policy basically is a combined medical, accident-and-health and income-replacement policy which pays benefits in case of motor vehicle caused injury.

But the rates in Massachusetts, after the no-fault statute was passed, were not set on the basis of experience with accident and health and income replacement coverage, but rather on the basis of reductions from current automobile personal injury liability insurance rates. It is going to take a considerable number of reductions before one gets down to the accident and health premium level, and in the interim, rather enormous profit potential is available to the industry.

S. 945, the Uniform Motor Vehicle Insurance Act, represents new coverage by a new system. Since there are not now any Federal personal injury liability insurance rates, rates won't be set—they couldn't be set—by reductions from existing Federal rates. They will have to be set afresh from the new perspective, and that is what is appropriate when the subject is a new and different kind of coverage.

In my opinion, only the Federal Government has the strength and the capability to tightly audit and regulate no-fault automobile insurance coverage. If profits in excess of a reasonable return are to be prevented, no-fault must be legislated by the Federal Congress. Any other course would just mean the substitution of one form of consumer abuse with another.

I urge the passage of the Hart-Magnuson legislation.

Now, while this concludes my prepared statement, I would like to add a summary of what has happened since I mailed this statement to the Congress.

I was informed on Monday, April 26, after I mailed my statement to Washington, of the decisions reached at another trial lawyers' meeting in Chicago on April 24. At that meeting, the executive committee of the American Trial Lawyers Association unanimously approved a resolution creating a completely new department—the department of Federal-State relations—with a proposed budget of $322,200 for the fiscal year which begins August 1.

The executive committee voted to finance the budget for this new department by (1) reducing the budget of the department of public affairs and education (which edits and publishes *Trial*) by $112,000, and by (2) dues increases expected to net an additional $200,000.

As part of the cutback in the public affairs and education department, its director was ordered to dismiss me, the only lawyer, at the end of the fiscal year, as well as several additional staff members.

In view of the statement I had mailed to Washington, I told the department head, the editor of *Trial*, that I would leave after the 2-week notice period which means I cease to be an employee tomorrow, May 7.

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

UTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

THURSDAY, MAY 6, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 11 a.m., pursuant to recess, in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman of the Committee) presiding.

Present: Senators Magnuson and Hart.

The CHAIRMAN. The committee will resume its hearings on the insurance bills. Robert Joost is the next witness.

We will be glad to hear from you. I understand that you are employed by the American Trial Lawyers Association, is that correct?

STATEMENT OF ROBERT H. JOOST

Mr. JOOST. I am from the American Trial Lawyers.

My name is Robert H. Joost. I am a lawyer, and I am employed by the American Trial Lawyers Association at its headquarters in Cambridge, Mass.

I am submitting this statement for the record in favor of pending legislation in the Congress to establish on a nationwide basis a system of compensation of victims of automobile accident regardless of fault.

Since the American Trial Lawyers Association opposes no-fault automobile insurance legislation, I am submitting this statement for myself only and not for the association.

The CHAIRMAN. Can I interrupt just a minute. Do we have a formal statement in opposition from the Trial Lawyers Association?

Senator HART. They testified yesterday in very strong opposition.

Mr. JOOST. First to establish my own professional credentials, I am a graduate, magna cum laude, of the Harvard Law School, where I was an editor of volumes 72 and 73 of the Harvard Law Review, and I am a graduate, magna cum laude, of Yale College, where I was a member of Phi Beta Kappa. I have also studied at Columbia University as a graduate student in economics.

In addition to my professional work from 1962 to the present for the American Trial Lawyers Association—until 1964 it was called the NACCA Bar Association—I have been heavily involved in two major statutory reform efforts in Massachusetts. I participated in the molding and remodeling of the new Massachusetts mental health code, which goes into effect July 1, as a member of the legal studies staff of the Massachusetts Special Commission on Mental Health and as a member of the Attorney General's Committee on Commitment Law Revision, and since 1968 I have been a reporter for the Criminal Law Revision

Staff member assigned to these hearings: S. Lynn Sutcliffe.

Commission of Massachusetts which is engaged in revision of the substantive criminal law of the State.

Also, from 1967 to 1971 I was a part-time law professor at the New England School of Law in Boston. I have published articles and comments on a variety of legal subjects, the most recent being a piece called "Housing and the Law: An Overview," published in 6 New England Law Review 1 (1970).

I am a member of the Massachusetts bar, and a member of the American, Massachusetts, and Boston Bar Associations, the American Trial Lawyers Association, and the American Judicature Society.

My present post with the American Trial Lawyers Association is assistant to the chairman of the legislative section, which I have held since 1968. For a period I was called special counsel but the title was changed to assistant to the chairman in 1969.

I am also consulting editor of Trial magazine, the bimonthly national legal news magazine published by ATL. As a matter of fact, I am the only lawyer on the editorial staff of this magazine. Copies of letterhead stationery which indicate my position are attached to my formal statement.

I was first employed by the trial lawyers in 1962, as assistant to the editor of the NACCA Law Journal, which is now called the Journal of the American Trial Lawyers. In that capacity, between 1962 and 1964, I wrote a substantial percentage of the articles published in volumes 29, 30, and 31 of the journal. From 1964 to 1967, I worked for the association on a part-time basis as the paid author of a regular column in Trial magazine entitled "A Brief Sweep" in which I synopsized current law-review articles of interest. I accepted a full-time position as an editor of Trial in September of 1967.

In addition to almost a decade with the trial lawyers association itself, I also practiced law for 2 years with a law firm in Boston that concentrates on automobile negligence work—Sheff & McGarry; one of the partners was then a member of the board of governors of the American trial lawyers. The firm is typical of many such law firms across the Nation.

As an ATL staff member, I have attended numerous national meetings of the trial lawyers—two in Denver, one here in Washington, D.C., one in Las Vegas, one in San Francisco, and one in the Bahamas. In 1970, I arranged and attended regional meetings of Key Men—that is, members interested in influencing legislative action—in Cambridge, Las Vegas, Atlanta, Chicago, and Denver.

In 1971 to date, I have been to two such Key Men meetings; the 1971 meetings were devoted exclusively to how to defeat no-fault—completely—at both State and Federal levels.

This statement is thus based on long personal involvement with and observation of the principal opponents of legislation aimed at compensating automobile accident victims regardless of fault—the trial lawyers.

I am submitting this statement in support of the Hart-Magnuson bill as an act of conscience, as an attorney, and as a citizen. It is also submitted with sadness for I had hoped that the association itself would see and would accept the fact that we lawyers must put aside our personal pocketbook interest where the public interest conflicts.

Unfortunately, the group in control of ATL has refused to concede that there is such a conflict and has refused to accept that a profe

sional association of attorneys has a higher obligation than maintenance of personal income.

As a matter of fact, the group in control has never even polled the membership on no-fault versus negligence because no-fault is viewed as putting them out of business.

I myself have been in favor of no-fault automobile insurance, at least in part, for some time, I reviewed the trialblazing book by Profs. Robert E. Keeton and Jeffrey O'Connell, "Basic Protection for the Traffic Victim," in the spring 1966 issue of the Portia Law Journal, at pages 266 to 267. In that review, I called the book a "pathfinder in a difficult area," and as to the no-fault plan advocated by the authors, I concluded:

> The proposed statute is a careful attempt at reform. If substantially enacted, it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

A copy of that review is attached to my statement.

I attach also a copy of a letter to the editor of the Boston Globe published December 6, 1966, in which I criticized then Gov. John A. Volpe for his opposition at the time to the no-fault concept. In this letter, I declared in conclusion:

> The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried.

I am pleased personally that in 1970 Massachusetts, under the leadership of Michael Dukakis, a Democrat, and Francis Sargent, a Republican, did seriously consider and enact into law a no-fault automobile insurance law. As both Governor Sargent and Mr. Dukakis have testified to a subcommittee of the House of Representatives, the results in Massachusetts, so far, exceed the most sanguine expectations of the proponents.

I attach a letter by Mr. Dukakis published in the Boston Globe of April 30, 1971, in which he calls for extending these benefits to all the people through a national no-fault system.

When I was hired by the American trial lawyers on a full-time basis in 1967, I had to agree to make no public statements in opposition to the position of the association. My personal views, however, did not change.

The CHAIRMAN. Mr. Joost, do the American trial lawyers have their national headquarters here in town?

Mr. JOOST. No, in Cambridge, Mass. We have a Washington representative, but the headquarters are in Cambridge across the Cambridge common from the Harvard Law School.

To reiterate, my personal views did not change. As a matter of fact, my enthusiasm for the no-fault approach to automobile reparations increased. While my original decision to favor the Keeton-O'Connell plan might have stemmed, at least in part, from the fact that I studied torts from its principal author, Professor Keeton, and because Mr. Keeton was instrumental in getting me my first job with NACCA in 1962, my editorial position with *Trial* starting in September 1967 gave me the time and the access to books and reports which were necessary to a true appreciation of all the issues involved.

Let me state formally for the record: In my judgment, based on my years of study, thought, and observation, I believe that a system of automobile reparations based on compensation of all the tangible losses

of all victims of automobile accidents in the United States without regard to fault would be a much better system than the present one based on compensation of all the tangible and intangible losses of victims but only if the victim proves that a financially solvent defendant by his negligence proximately caused his injuries and only if he proves fault and damages by a preponderance of the evidence in a trial before a court or jury.

Under no-fault, the public, the beneficiaries, and consumers of automobile insurance would get better protection for the premium dollars spent and at lower annual cost.

In addition, the hard-pressed judicial systems of the Federal and State governments would get some relief. The problems of the courts of America today are largely on the criminal docket rather than the civil docket side, but it is my judgment that no-fault, by lifting out of the courts a substantial volume of cases, would free up enough judge time, enough judicial man-hours to make it possible to try every criminal defendant in this country within 60 days from date of arrest, or at least within 6 months. It is by no means the complete answer to the crisis of our courts, but it is a part of the solution, and a part, incidentally, that does not require the expenditure of additional taxpayer money.

Finally, no-fault is a much more efficient system than the present one. The present one was not developed for a nation with 100 million registered motor vehicles and a multibillion dollar insurance industry; it was developed for a horse and carriage society, in another country, in another century, in the pre-liability-insurance era.

Since 1932 and the Columbia University study, it has been apparent to anyone who has studied the literature closely that something better than the automobile negligence liability-insurance system was available. The success of the Saskatchewan plan in one of the provinces of Canada confirmed this point.

However, for almost 40 years, the people of the United States were denied this "something better" because the individuals who feed off and earn their livelihood from the automobile negligence system happen also to possess a great deal of political clout.

They had, in fact, enough political muscle to snuff out the idea before it could even be tried in any State of the Union until the Commonwealth of Massachusetts in 1970 enacted a no-fault law. The Massachusetts statutes, however, came about as a result of rather unique circumstances which are unlikely to be duplicated in many other States: A very strong proponent in each political party; the highest premium rates in the Nation; a weak statewide organization of trial lawyers; and a State legislative tradition of being innovative.

Since there has never been any question as to my personal preference for no-fault, I confess that I did speak, my true feelings with some discreet friends. About a month ago, I received a telephone call from a congressional aide. He asked if I would testify before Congress on no-fault legislation. Apparently, one of my "discreet" friends hadn't been so discreet, and the congressional aide had learned that there was a lawyer who worked for the American Trial Lawyers Association, a trial lawyers' lawyer, who didn't agree with the party line.

I told him no because I wasn't myself convinced that automobile insurance was a proper subject for Federal rather than State legislation. I told him that I leaned toward the view that the States should be given every opportunity to act before the Federal Government comes in, in whole or in part.

Since that surprise telephone call, I have agonized and pondered.

Finally, after a recent meeting of key men in Chicago, I concluded that I had to testify. If Congress is to execute its duty, which is to all the people of the United States and not just to the trial lawyers, it should get the views of one who has studied and thought hard about this no-fault business for many years, and who has been a trial lawyers' lawyer.

In my judgment, the only way in which this Nation is going to get real justice, opportunity and environmental health is if the Congress and the State legislatures authorize the private and independent trial lawyers of America to become "private attorneys general" on behalf of private citizens and to authorize the trial lawyers to bring private-remedy actions for injunctions, court orders to perform, and damages against those who pollute, against those who discriminate, against those who rent substandard housing and against those who take advantage of consumers—in return for a reasonable attorney's fee and true costs, fixed by the court and paid by the defendant found by the courts to be in violation.

The fact is, therefore, that the enactment of the Hart-Magnuson legislation will not wipe out the trial bar for there are so many wrongs that need to be litigated and righted in our courts of justice. But the courts today are so chock-a-block full of existing business that they can't really take on big new workloads, even if class actions, treble-damage suits and all the rest were authorized in all the areas in which adequate enforcement of existing law is important.

The fact is, Mr. Chairman, that the trial lawyers of America, who should be out there litigating for America, a better America, are vegetating in the pork barrel of automobile negligence work.

The fact is that the only thing that will get the private and independent litigation experts en masse into environmental litigation, consumer protection litigation, inadequate housing litigation, antisnooping litigation and all the other things that lawyers can do in court which this country needs to have done is for the Congress of the United States to push them out of their present overstuffed and overpaid womb.

As I mentioned, until recently I leaned toward the position that, I now believe firmly that a decision to leave it to the States is, in fact, a State level before the Federal Government acts. I no longer do. I now believe firmly that a decision to leave it to the States is, in fact, a decision to retain the automobile negligence system with all its waste, all its excessive administrative costs, all its duplication, all its slow pace of operation.

If the Congress declines to act now, there will be some automobile insurance legislation passed by a few States in addition to my own. The legislation will even be called no-fault. But the terminology will be designed for one reason, to keep the Congress out. In reality, these State laws will continue the waste and the inefficiency of the present negligence liability-insurance system while ameliorating some of its bad effects.

Moreover, they will add the new problem which Gov. Francis Sargent of Massachusetts pointed to in a recent speech—the problem of excessive profits by the insurance industry. I have attached to this statement an article summarizing a recent speech on this subject by the Governor.

In Chicago on April 24th, I heard the ATL key men from Ohio and Illinois make such smug associations of control of their State legislaturs, in whole or in part, that I was absolutely and totally disabused of my States-first leaning. I heard also that the trial lawyers have been increasing their power and their strength in State legislatures.

For example, the Texas Trial Lawyers Association has been running a program they call LIFT, under which subscribers contribute a minimum of $10 a month to what amounts to a campaign fund for candidates for the legislature. More than 600 Texas trial lawyers now subscribe, according to what I learned at the Chicago meeting.

Every election year, the funds accumulated by LIFT are divided among protrial lawyer candidates for the Texas Legislature. Let me read the text of an item that was published in the June 23, 1970, issue of the El Paso, Texas Trial Lawyers Association newsletter, "Ready for the Plaintiff." (Vol. VI, No. 3) (The editor of the newsletter is attorney Richard T. Marshall, who was then national secretary of the American Trial Lawyers Association.)

UP, UP AND AWAY!!

LIFT is the latest effort of Texas Trial Lawyers Association. It stands for Lawyers Involved for Texas, and it's a runaway success . . . The *El Paso Times* reported in its Capital Column June 14th, that *LIFT was responsible* for the Democratic nomination in this year's primaries of six of the eight candidates it backed for the *State Senate*.

LIFT is a legislative kitty which is paying off. Most of your officers are contributing $10 per month on a bank draft authority to LIFT.

If you want to be a part of the movement for *comparative negligence* in Texas, for statutory authority to let jurors know what they are doing in *special issue* verdicts, and for a successful rejection of *Keeton-O'Connell* schemes, in other words, if you want your practice to survive, better get with it.

Send a check, any amount, to *LIFT, 201 Westgate Building, Austin!*

A more complete description of LIFT, published in an ATL 1970 publication called "A Trial Lawyer's Legislative Workbook" and taken from a letter dated January 7, 1970, by Attorney William R. Edwards of Corpus Christi, Tex., to the vice chairman of ATL's legislative section with a copy to me as assistant to the chairman of the legislative section is attached to this statement.

It may be of interest to this committee to know that the Texas Trial Lawyers Association, which promotes LIFT as its "latest effort . . . a legislative kitty which is paying off" is itself a tax-exempt organization. I attach also from the Trial Lawyer's Workbook a copy of letters the Texas affiliate received from tax attorneys supporting their exempt status and advising them how to keep it.

What this means, of course, is that in at least one State the Federal Government, by tax preference, is subsidizing political opposition to the Keeton-O'Connell plan and other no-fault proposals, at the same time that Federal Government officials argue that the States can and will pass good no-fault laws.

Mr. Chairman, how many State senators or State representatives in Texas are going to vote for meaningful automobile insurance reform,

when they know that if they do attract candidates, good speakers, with money from LIFT and campaign help from the trial lawyers are going to run against them in the next primary or the next general election?

What real chance do the people of Texas have to receive the benefits of the no-fault system of automobile reparations—unless this Congress passes Federal no-fault legislation?

At the Key Men meeting on April 24, I heard that the LIFT program has been adopted by at least one additional State. According to Attorney Thomas A. Heffernan of Cleveland, Ohio—I believe his law partner, Mr. Craig Spangenberg, addressed this committee the other day—the Ohio Academy of Trial Lawyers is now enrolling subscribers to its version which bears the acronym ADOPT. This attorney predicted flatly, unequivocally, and totally that the Ohio Legislature will never enact any no-fault automobile insurance legislation in any form.

At that meeting, the chairman of ATL's legislative section, Attorney Jerry Finn of Newark, N.J., summed up the discussion by saying: "Let's all ADOPT LIFT." No one objected.

More direct fundraising methods are also used by trial-lawyer groups. According to Attorney Jon Carlson of Belleville, Ill., who spoke at the meeting, every member of the St. Clair, County, Ill., Bar Association has been assessed $100 for a fund to fight Governor Ogilvie's insurance reform legislation.

Incidentally, Mr. Carlson and Attorney Leonard Ring of Chicago both asserted at this meeting that Ogilvie's bill doesn't have "a chance" to become law in Illinois. In Mr. Ring's words: "We control the Senate, Ogilvie controls the House; it's a standoff."

Mr. Chiarman, again, what chance do the consumers of automobile insurance in Illinois have to secure the benefits of no-fault unless the Congress acts?

At another "key men" meeting, this one held for representatives from the northeast region, on April 17, in the offices of the American Trial Lawyers Association in Cambridge, Mass., several of the representatives suggested that defense lawyers, that is, personal injury lawyers who are retained by insurance companies to defend against automobile negligence claims, are a good source for funds to finance the fight against no-fault.

The key men were urged to form general anti-no-fault lawyers' groups and citizens' groups and resign themselves to the fact that defense lawyers were afraid to let their names be used since many of them are retained by insurance companies which are in favor of no-fault auto insurance. I believe it was Attorney Daniel H. Mahoney of Albany, N.Y., who mentioned that such a citizen's committee was functioning in New York State and had purchased newspaper advertising in several papers against the Gordon bill in the New York State Legislature (the Gordon bill is patterned after the Massachusetts law).

It was stated that the advertisements should become punchier. I notice the recent ones just say no-fault is a hoax.

Another Key Man, and a former Connecticut State legislator, Attorney Leon Riscassi of Hartford, mentioned that the Connecticut trial lawyers had also had good luck in raising funds from the sheriffs and constables of the State of Connecticut. Apparently, the deputies

Moreover, they will add the new problem which Gov. Francis Sargent of Massachusetts pointed to in a recent speech—the problem of excessive profits by the insurance industry. I have attached to this statement an article summarizing a recent speech on this subject by the Governor.

In Chicago on April 24th, I heard the ATL key men from Ohio and Illinois make such smug associations of control of their State legislaturs, in whole or in part, that I was absolutely and totally disabused of my States-first leaning. I heard also that the trial lawyers have been increasing their power and their strength in State legislatures.

For example, the Texas Trial Lawyers Association has been running a program they call LIFT, under which subscribers contribute a minimum of $10 a month to what amounts to a campaign fund for candidates for the legislature. More than 600 Texas trial lawyers now subscribe, according to what I learned at the Chicago meeting.

Every election year, the funds accumulated by LIFT are divided among protrial lawyer candidates for the Texas Legislature. Let me read the text of an item that was published in the June 23, 1970, issue of the El Paso, Texas Trial Lawyers Association newsletter, "Ready for the Plaintiff." (Vol. VI, No. 3) (The editor of the newsletter is attorney Richard T. Marshall, who was then national secretary of the American Trial Lawyers Association.)

UP, UP AND AWAY!!

LIFT is the latest effort of Texas Trial Lawyers Association. It stands for Lawyers Involved for Texas, and it's a runaway success . . . The *El Paso Times* reported in its Capital Column June 14th, that *LIFT was responsible* for the Democratic nomination in this year's primaries of six of the eight candidates it backed for the *State Senate.*

LIFT is a legislative kitty which is paying off. Most of your officers are contributing $10 per month on a bank draft authority to LIFT.

If you want to be a part of the movement for *comparative negligence* in Texas, for statutory authority to let jurors know what they are doing in *special issue* verdicts, and for a successful rejection of *Keeton-O'Connell* schemes, in other words, if you want your practice to survive, better get with it.

Send a check, any amount, to *LIFT, 201 Westgate Building, Austin!*

A more complete description of LIFT, published in an ATL 1970 publication called "A Trial Lawyer's Legislative Workbook" and taken from a letter dated January 7, 1970, by Attorney William R. Edwards of Corpus Christi, Tex., to the vice chairman of ATL's legislative section with a copy to me as assistant to the chairman of the legislative section is attached to this statement.

It may be of interest to this committee to know that the Texas Trial Lawyers Association, which promotes LIFT as its "latest effort . . . a legislative kitty which is paying off" is itself a tax-exempt organization. I attach also from the Trial Lawyer's Workbook a copy of letters the Texas affiliate received from tax attorneys supporting their exempt status and advising them how to keep it.

What this means, of course, is that in at least one State the Federal Government, by tax preference, is subsidizing political opposition to the Keeton-O'Connell plan and other no-fault proposals, at the same time that Federal Government officials argue that the States can and will pass good no-fault laws.

Mr. Chairman, how many State senators or State representatives in Texas are going to vote for meaningful automobile insurance reform,

when they know that if they do attract candidates, good speakers, with money from LIFT and campaign help from the trial lawyers are going to run against them in the next primary or the next general election?

What real chance do the people of Texas have to receive the benefits of the no-fault system of automobile reparations—unless this Congress passes Federal no-fault legislation?

At the Key Men meeting on April 24, I heard that the LIFT program has been adopted by at least one additional State. According to Attorney Thomas A. Heffernan of Cleveland, Ohio—I believe his law partner, Mr. Craig Spangenberg, addressed this committee the other day—the Ohio Academy of Trial Lawyers is now enrolling subscribers to its version which bears the acronym ADOPT. This attorney predicted flatly, unequivocally, and totally that the Ohio Legislature will never enact any no-fault automobile insurance legislation in any form.

At that meeting, the chairman of ATL's legislative section, Attorney Jerry Finn of Newark, N.J., summed up the discussion by saying: "Let's all ADOPT LIFT." No one objected.

More direct fundraising methods are also used by trial-lawyer groups. According to Attorney Jon Carlson of Belleville, Ill., who spoke at the meeting, every member of the St. Clair, County, Ill., Bar Association has been assessed $100 for a fund to fight Governor Ogilvie's insurance reform legislation.

Incidentally, Mr. Carlson and Attorney Leonard Ring of Chicago both asserted at this meeting that Ogilvie's bill doesn't have "a chance" to become law in Illinois. In Mr. Ring's words: "We control the Senate, Ogilvie controls the House; it's a standoff."

Mr. Chiarman, again, what chance do the consumers of automobile insurance in Illinois have to secure the benefits of no-fault unless the Congress acts?

At another "key men" meeting, this one held for representatives from the northeast region, on April 17, in the offices of the American Trial Lawyers Association in Cambridge, Mass., several of the representatives suggested that defense lawyers, that is, personal injury lawyers who are retained by insurance companies to defend against automobile negligence claims, are a good source for funds to finance the fight against no-fault.

The key men were urged to form general anti-no-fault lawyers' groups and citizens' groups and resign themselves to the fact that defense lawyers were afraid to let their names be used since many of them are retained by insurance companies which are in favor of no-fault auto insurance. I believe it was Attorney Daniel H. Mahoney of Albany, N.Y., who mentioned that such a citizen's committee was functioning in New York State and had purchased newspaper advertising in several papers against the Gordon bill in the New York State Legislature (the Gordon bill is patterned after the Massachusetts law).

It was stated that the advertisements should become punchier. I notice the recent ones just say no-fault is a hoax.

Another Key Man, and a former Connecticut State legislator, Attorney Leon Riscassi of Hartford, mentioned that the Connecticut trial lawyers had also had good luck in raising funds from the sheriffs and constables of the State of Connecticut. Apparently, the deputies

are paid on a fee basis; they were convinced that no-fault would mean fewer legal papers to serve and, therefore, lower incomes for themselves.

The committee may also be interested in another method that has been used for more than 3 years to fight no-fault. Since late in 1967, the association has been arranging for large fees to be paid by one or another trial lawyer group to a supposedly neutral academic, Prof. David Sargent of Suffolk University Law School in Boston, in return for his speaking, appearing, and testifying before private and legislative groups all around the country.

I see no objection to the appearances or to his being paid—Dave Sargent is a very able law professor; he has a viewpoint, and the subject matter demands the most careful and complete discussion—but I do find it less than honorable that Professor Sargent appears wearing his Suffolk University hat rather than his trial lawyers mantle, and that his audiences are not told who is paying him or how much.

As a matter of fact, at one of the recent Key Men meetings, somebody was complaining that Professor Sargent's rates were going up. The delegates said that he is now asking $500 an appearance plus expenses—for 1 day.

As the committee may know, this morning in Boston the supreme judicial court of Massachusetts heard oral argument in a suit challenging the constitutionality of the Massachusetts no-fault statute. The action has been brought by the immediate past president of the Massachusetts chapter of the American Trial Lawyers, Attorney Robert Cohen.

There was a short news item in the Boston Sunday Globe for April 25, 1971, page A-5, on one of the methods used to finance this constitutional-challenge litigation. According to the Globe's account:

> Attorneys are wondering about a couple of ethical questions raised by the activities of the lawyers bringing the test case of no-fault auto insurance law. The lawyers, Robert Cohen and Alexander Cella, have sent other attorneys a mimeographed form offering for sale at $50 per set the two-volume brief ($45) they have prepared on the case and the appendices ($5) . . . Fellow lawyers say (1) they've never heard of a lawyer openly selling a brief . . . and (2) the appendix consists of court records, which may not be theirs to sell.

To summarize and reiterate, it is my considered judgment that the trial lawyers will probably prevent any meaningful no-fault legislation from being enacted in any of the State legislatures, with a few possible exceptions. It is naive to argue that there is a choice between Federal legislation and legislation in the other 49 State capitals. The only choice is between Federal no-fault legislation or maintenance of the present negligence system, the system which the Department of Transportation's $2 million study so carefully and painstakingly criticized.

There is, I might add, a second reason why I believe Congress must act. If the trial lawyers have a stronghold on the State legislatures, how does one find words to describe the power position of the insurance industry and its armies of lobbyists in all statehouses? There is at this time in my opinion absolutely no justification in experience or policy for the present exemption of the insurance industry from meaningful Federal regulation.

According to Attorney Heffernan of Cleveland, again, the trial lawyers have one lobbyist in the Ohio Legislature and the insurance

companies between them have 30. If the ATL people can make the assertions they make with their one lobbyist and ADOPT/LIFT, think what assertions the insurance companies can make in their private conclaves.

The objective of the insurance industry, according to the best information and intelligence the trial lawyers have been able to acquire, is maximum profit. Rest assured, there are enormous profit possibilities in no-fault automobile insurance unless it is tightly audited and regulated.

The reason for this is that a no-fault policy basically is a combined medical, accident-and-health and income-replacement policy which pays benefits in case of motor vehicle caused injury.

But the rates in Massachusetts, after the no-fault statute was passed, were not set on the basis of experience with accident and health and income replacement coverage, but rather on the basis of reductions from current automobile personal injury liability insurance rates. It is going to take a considerable number of reductions before one gets down to the accident and health premium level, and in the interim, rather enormous profit potential is available to the industry.

S. 945, the Uniform Motor Vehicle Insurance Act, represents new coverage by a new system. Since there are not now any Federal personal injury liability insurance rates, rates won't be set—they couldn't be set—by reductions from existing Federal rates. They will have to be set afresh from the new perspective, and that is what is appropriate when the subject is a new and different kind of coverage.

In my opinion, only the Federal Government has the strength and the capability to tightly audit and regulate no-fault automobile insurance coverage. If profits in excess of a reasonable return are to be prevented, no-fault must be legislated by the Federal Congress. Any other course would just mean the substitution of one form of consumer abuse with another.

I urge the passage of the Hart-Magnuson legislation.

Now, while this concludes my prepared statement, I would like to add a summary of what has happened since I mailed this statement to the Congress.

I was informed on Monday, April 26, after I mailed my statement to Washington, of the decisions reached at another trial lawyers' meeting in Chicago on April 24. At that meeting, the executive committee of the American Trial Lawyers Association unanimously approved a resolution creating a completely new department—the department of Federal-State relations—with a proposed budget of $322,200 for the fiscal year which begins August 1.

The executive committee voted to finance the budget for this new department by (1) reducing the budget of the department of public affairs and education (which edits and publishes *Trial*) by $112,000, and by (2) dues increases expected to net an additional $200,000.

As part of the cutback in the public affairs and education department, its director was ordered to dismiss me, the only lawyer, at the end of the fiscal year, as well as several additional staff members.

In view of the statement I had mailed to Washington, I told the department head, the editor of *Trial*, that I would leave after the 2-week notice period which means I cease to be an employee tomorrow, May 7.

The director of the new department of Federal and State relations—a department momentarily which goes from nonexistence to being the largest department, consuming 40 percent of the association's total budget—the director will be Mr. Alan Locke. Mr. Locke is not a lawyer, but his brother, Harry Locke, is an aide to Secretary Volpe.

As part of this one-shot-in-a-lifetime-only budget, the association has contracted with a professional public relations firm to fight "no-fault—the firm of Edelman & Co. of Chicago.

THANK YOU.

The CHAIRMAN. THANK YOU for your very potent statement.

I am going to have to leave in a minute, but I just want to point out that I, like yourself, in the beginning was hesitant about proceeding on the Federal level, thinking we could encourage States to get at this matter. I mentioned that some time ago—3 or 4 years ago. But I have found from practical experience that it just doesn't seem to be moving.

Now inaction may result from some of the things you are talking about—I suppose they are factors—but even in my own State, and I am quite close to the legislature there, having served in it at one time, I find a lot of opposition to the concept of no-fault by legislators who I guess have never sought out to lawyers or insurance companies or anybody else. But when no-fault is proposed to them, then they will ask someone like an insurance man that they know of or a trial lawyer who just about convince them that no-fault isn't a good system. And there is no rebuttal. There is no chance for the premium payer or the consumer of automobile insurance to get their word in.

The result is there is just no action. I can conceive that, if we did something here that would allow the States to try and do something in a reasonable time, it would just not happen. We have run into that in all kinds of safety legislation. We tried to compel the States to have auto safety laws and it didn't happen until we passed a Federal bill. Sometimes, when we begin hearings on Federal legislation, it wakes some people up and they start to get busy. But when you are talking about 50 States, that isn't true; it is going to be a long, long time.

So, I am appreciative of your testimony, and being a lawyer myself I understand how they operate sometimes, although I am a little rusty at the practice of law now.

This is a very potent testimony because I think there are two things that plague every home in the United States. There are a lot of other things, but these are two things we know plague every home, financially, emotionally, and every other way. One is health insurance and the other is auto insurance. They affect every home, not only because of the money involved but because of the kinds of things that happen. When insurance companies are canceling contracts, when rates go up for insurance, people are afraid to go to the hospital or make an auto claim. They don't know if they can afford to take such action. And this is true in every home. I have said many times in the past 3 or 4 years that auto insurance and health insurance are two things that Congress ought to set itself to.

I am so glad that there is so much interest in this no-fault bill of Senator Hart's and myself, and we are hopeful to move along. And your testimony here is quite potent, and I appreciate it.

Now you will have to excuse me. I have to go down and discuss some maritime matters.

Senator HART (presiding). Mr. Joost, I think "potent" is an excellent word to describe your testimony, and I would think that it would move this legislation along.

Mr. JOOST. I hope so.

Senator HART. It should. We will see if it will.

Now, I made so many notes as you went along that I don't know where to begin, but there are several points that I would like either to have you clarify or by a question, underscore.

Mr. JOOST. Certainly.

Senator HART. Before I get to that, let me comment. On the very first page you describe your professional qualifications. I have met a magna cum laude man from Harvard law, and I have known Harvard Law Review editors. I am not sure if I ever met a magna cum laude graduate from Yale. I have met Phi Beta Kappas. But this is the first time I have met all of them at once. Do you understand my reluctance to ask you questions?

Frankly, I was tempted on other days in these hearings we have had witnesses speak against the bill to suggest the high level of self-interest which inevitably would operate on their judgment. I didn't. You are pretty blunt about it. I guess the reason I didn't is my belief—my hope—that in the legislative considerations of these proposals, intelligent men will be able to evaluate the background from which on any of these witnesses speak. It was not that I was unconscious.

Mr. JOOST. I hope your claim has merit.

Senator HART. Here is one I will have to ask you to clarify. We opened these hearings with Secretary Volpe as the witness, and I haven't reread the testimony—maybe my memory is faulty—I though he was one of the great fighters for the Massachusetts no-fault plan. I get the impression that he knows the fight: you can wait for the States and give them a try. Your vision of his role is sharply different from my impression.

Is my impression wrong?

Mr. JOOST. Your impression is wrong, sir.

As you know, Massachusetts has had a compulsory-automobile-liability-insurance law since 1927. There have been problems under this law, including the fact that it helped to put Massachusetts in the untenable position of being the State with the highest auto-insurance premiums in the country. In 1966 or 1967, shortly after John Volpe's election to the first 4-year term as Governor of Massachusetts, shortly after that election, the Governor filed legislation to end the compulsory-liability-insurance system and enact a financial-responsibility law and also to establish a fraudulent-claims bureau.

Now, financial-responsibility laws exist in 47 of the 50 States. Only three States, Massachusetts, New York and North Carolina, have compulsory automobile-insurance laws. Financial-responsibility laws are a little like the dog-bite laws; you may get the "first bite" free, but after that you have to have liability insurance.

Governor Volpe pushed for "financial responsibility," even though it has never really worked, because "financial responsibility" means there will always be some totally uncompensated victims. If you get hit by an automobile, and if the person who hits you doesn't have liability insurance or private wealth or substantial property subject

to attachment. "financial responsibility" means you are totally with-
out protection in case of injury.

I have heard of cases in States with financial-responsibility law
where hospitals wouldn't even admit an automobile accident victin
until they received proof that either he had a Blue Cross certificat
or that the person who hit him was insured or highly solvent.

Despite all this, Governor Volpe introduced a financial-responsibil
ity bill. Mike Dukakis, who was a classmate of mine at Harvard Lav
School and a very active Democratic Member of the House of Rep
resentatives, decided that the Democrats had to come up with an in
surance program also. He decided that it should be a real refor
program, and thus he filed the "no-fault" legislation that had bee
drawn by Professor Keeton at Harvard.

Governor Volpe did not support him. Mike got it through th
House of Representatives on a hot summer day when there weren
too many people there: he moved substitution on the floor, and th
Keeton-O'Connell plan passed. Lo and behold, the trial lawyers par
icked. There was an emergency return of employees on vacation. A
kinds of things happened. People scurried all over the place.

Finally, there was a day of great jubilation when somebody pe
suaded the head of the Teamsters Union in Massachusetts, I think h
name was Nick Morrisey, to agree to run full-page ads by the Tean
sters opposing no-fault, provided the trial lawyers would pay fo
them all. With this kind of support, "no fault" was killed in the Stat
senate.

Governor Volpe never made a statement in support of "no fault
He never had to act, of course, since the bill was prevented from con
ing to his desk as Governor. The same thing happened again in 196
Governor Volpe never endorsed the concept while he was Governo

Senator HART. My question might appear to be critical of the Se
retary. I was asking for clarification. I react this way. Sort of th
Biblical welcome-home thing. If in fact once he was opposed or n
helpful, he now has moved to the point of urging the adoption
no-fault across the country, but says—and I sense rather reluctantly-
that we ought to wait, you know, pass a resolution and encourage th
States to do it. In any event he does, you will be glad to know, su
port no-fault.

Mr. JOOST. I think one reason for his support now is the fact th
his Lieutenant Governor, now Governor, Francis Sargent, has fou
that the "no-fault" thing works. You know, there is nothing like tr
ing something—try it and see if it works. The Massachusetts law
really not a very good law technically. I have drafted a lot of statut
for the criminal law commission, and believe me, the Massachusetts n
fault law is technically very poor.

The first sentence is 567 words long. The second sentence is 1
words. The guts of the statute are contained in a definitions sectio
the definition of PIP, personal injury protection. With all, it is
weak and limited bill, but the important thing is that it is workin
The premium rates are coming down, although they have got
come down much more.

Senator HART. Governor Sargent filed a statement with us yeste
day complaining about the failure of the Massachussetts plan to
flect the savings that were accruing to the insurance carriers.

I won't ask you to describe in fuller detail how your vacation was interrupted, but I am intrigued by the passing comment that you made about it.

Do you know whether the Internal Revenue Service has reviewed any of these programs or war chests, or whatever you want to call them, specifically the one in Texas?

Mr. JOOST. I just don't know. The letter from tax counsel which I attach to this statement states the facts—in other words, you have told us thus and so. The LIFT program is not in that statement of facts. So I can't blame tax counsel. I have no way of knowing what Internal Revenue has or has not done.

Senator HART. Some place in here you describe a county bar association assessing a sum.

Mr. JOOST. $100.

Senator HART. That was on each member to generate moneys to fight the Ogilvie plan in Illinois County? Could they fog that up in such a fashion as to make it a deductible business expense?

Mr. JOOST. Again, I am not a tax lawyer, and I think I had better stay out of that can of worms.

Senator HART. The group which files and obtains a tax exempt status nonetheless may not use moneys in legislative lobbying unless it wants to forfeit its exemption. I am not a tax lawyer either, but isn't that a correct statement?

Mr. JOOST. That is correct. I think the reasons for it are terribly important public-policy reasons. We cannot permit special-interest groups, particularly special-interest economic groups, to be both tax exempt and free to lobby. When you come right down to it the bar associations, at least the American Trial Lawyers Association, is nothing more, nothing less than a trade association. If groups like this are subsidized by the Federal Government to pursue lobbying and legislative activities aimed, not at the best interest of the Federal Government or the best interest of the people, but at their own personal best interest, their own personal pocketbook interest, then the public is deceived.

The trial lawyers speak in terms of "offensive" legislative activity, which means persuading States to enact new provisions such as comparative negligence as a replacement to the rule of contributory negligence, and "defensive" legislative activity, which means preventing the passage of "things we can't live with"—preeminently no-fault auto insurance.

I think the reasons why Congress continually has said, in all its revision of the Federal Tax Code, that you can't be both tax exempt and lobby, are good. There are particular situations, I know, where the prohibition hurts, but I think the reasons in favor are overwhelming and clear. Personally, I think that the tax law on exemptions for trade associations and such groups should be tightened.

Senator HART. The fact that you have advised us with respect to the activities which you, as a result of sitting with the "Key Men" meetings, know are included in the agenda of these groups would, I think, put the Internal Revenue Service on notice. I am not suggesting that it is or isn't an abuse, I don't know. But certainly you have raised the question. As you say, it is a basic public policy concern that that kind of activity not be subsidized.

[illegible] the political muscle of the trial lawyers [illegible] in the States. [illegible] Lansing, which [illegible] opposition to no-fault [illegible] more political muscle when they enlist [illegible] testimony. As for this [illegible] speaking, and drawing [illegible] will be with us [illegible] I suppose. I don't know how you [illegible] the point has should be most conscious [illegible] someone else [illegible] and they are [illegible] the fact that the group to [illegible] more about the sub[illegible]

Mr. JOOST. That is not always true. The thing that disturbs me personally about the tenure situation is that the scholar, the teacher [illegible] students, if not to else, as a certain sort of person. We have been having a certain amount of trouble in our uni[illegible] students to be all faculty members are i[illegible] I would like to believe, myself, that those who choose to work in academia, who choose to become professors, will in fact pursue the truth in the Socratic manner.

All the law schools say they use the Socratic method of teaching. The goal of Socrates' method at least as I recall it from my limited memory of philosophy courses, was the pursuit of truth. I don't think you can pursue truth and at the same time accept stipends, which you do not disclose, from groups who frankly do not care about the argument so long as they get the desired results.

Senator HART. Perhaps disclosure for academics is what we should recommend just as we recommend disclosure for the political lecturer.

Mr. JOOST. I think you find academics recommend disclosure for politicians much more than they recommend it for themselves.

Senator HART. Drawing on your background, in the course of our hearings, questions have been raised about the basic constitutionality of the Hart-Magnuson proposal and more acutely about State no-fault legislation.

Now, first, on the question of the Massachusetts no-fault law, what is your opinion with respect to its constitutionality?

Mr. JOOST. Well, obviously, I cannot outguess the Supreme Judicial Court of Massachusetts, but my feeling is it may in fact—a key part of it may in fact—be held unconstitutional on the grounds that it is an arbitrary, capricious classification.

Now, the Massachusetts law works on what may be called the threshold concept. If you have $500 of medical and hospital bills, and they are reasonable, then you can get a tort lawyer, go to court, get a jury trial, and you are entitled to and can recover a verdict that include general damages for intangible losses—pain, suffering, inconvenience, emotional hurt, and all the rest.

But, if your medical bills are less than $500—there is a whole list of things, prosthetic devices, ambulance charges, and so forth that are includible—if they are less than $500 you cannot get general damages; you cannot recover for pain and suffering; you cannot get a jury trial.

The Supreme Court of the United States in a line of cases—I don't have the citations here—has spoken of the necessity for reasonable classifications, reasonable categories which bear some logical relationship to the subject matter. Now, I think it is possible that the SJC of Massachusetts will conclude that this $500 business is an unreasonable classification. It has no relation to what kind of an automobile accident it is or what the injuries are, it has no relation to any of the findings of the DOT studies; nobody says that $500 is the magic cutoff between serious and trivial accidents. I don't know where the threshold cutoff came from in the legislative hurly-burly on this law but it came and the number picked was $500.

I think it is quite possible that this could be called arbitrary. If it is arbitrary and capricious, the provision could be wiped out as unconstitutional. I would like to contrast this $500 clause with the related provision in your own bill, Senator Hart. In section 4, your bill says that you can recover general damages in a tort suit if there is a "catastrophic harm," as defined. Now catastrophic harm strikes me as being a very reasonable category. We can distinguish rationally between catastrophic harm, which is defined, and all the rest, which is noncatastrophic harm. That is reasonable classification. I think it fits what was meant by the great justices who have declared that due process means a "scheme of ordered liberty," "the American scheme of justice." Due process requires reasonable classifications, not cutoffs plucked out of thin air. Otherwise, there is a denial of equal protection. Catastrophic harm is a very good dividing point, and certainly it is within the legislative province to define it.

As to the Hart-Magnuson bill itself, I see no constitutional problems. If anything is clear from the original documents on the founding of this Republic, the one power that everyone agreed should go to the Federal Government was the power to regulate interstate commerce. I think that automobiles today—automobile driving today—is the single biggest kind of interstate commerce we have.

Now, the members of the Constitutional Convention of 1789 didn't say everything that was interstate had to be regulated by Congress. But I think it was their understanding that the important things should be centrally regulated if this was to be a viable Federal Union. I believe that automobile driving is so interstate today that all its aspects—the manufacture in terms of safety and environmental controls, the compensation of the people injured, the insurance against losses caused—all belong under Federal regulation. It is preeminently, not marginally, interstate commerce.

The Federal Government regulates many things. There are also a lot of Federal criminal statutes that use the interstate commerce power as a threshold, a kickoff to establish Federal jurisdiction. Automobile operation involves much more interstate commerce than many of these things now governed by Federal law.

There is a real practical necessity for uniform automobile compensation law. If there were 50 different State laws on auto insurance, there would be tremendous confusion. I think the insurance companies would find that even their computers would get tired figuring exactly how the system works in each State and what the applicable law is.

So it is clearly interstate commerce. The subject is clearly within the competence of the Congress. It is clear under the necessary and

proper clause that when the Congress enters an area which is withir its constitutional authority, it may legislate as its wisdom and discre tion dictate.

The argument has been raised that the HART-MAGNUSON bill violate the seventh amendment with respect to jury trial. I do not believe tha argument has merit. The Supreme Court, over the years, has rathe carefully, and I think rather deliberately, refrained from includin the seventh amendment right to civil jury in any of the dicta discuss ing or defining what is meant by the process.

Senator HART. I have not heard it developed really to the end o a paragraph, but I sense some concern, perhaps among some Member of the Congress, that goes this way: Can we legislate, wipe out wha they would describe as everybody's right to proceed in a tort cas to establish and recover for any hurt? It isn't voiced quite that wa but I think that it is out of that question that comes their wonde about the reach of a bill such as this. In other words, I guess the would say what you are doing is by a Federal act washing out an ind vidual's States rights to use a State court system to recover for wha ever he can establish was wrongfully caused.

Mr. JOOST. There are precedents for this. I have taught at the Ne England School of Law; I taught labor law. I think labor law is prime example of an area in which the States and the State cour had major authority. The States defined and enforced the rights c management and of labor, of owners and of strikes. But then came Fe eral acts—the Norris-LaGuardia Act and the Wagner Act in th 1930's, as amended by the Taft-Hartley Act, as amended by th Landrum-Griffin Act—and no longer was a factory owner able to u his State court system to enforce "yellow dog" contracts or convi strikers or enjoin union activity.

Prior to the 1930's, the Federal Government had no great involv ment in labor matters. But the U.S. Supreme Court upheld the N tional Labor Relations Act in the 1930's, when its constitutionali was challenged on the ground that Congress could not take the powers from the States. The Court sustained the Wagner Act becau it clearly involved the regulating of interstate commerce.

The rationale for a Federal Union demands that there be a custon union, a "common market" to stimulate the commercial intercour which is necessary so that every component can benefit to the greate possible extent. There has to be central regulation of the things th are really central. I would argue that transportation matters such automobiles and the driving of automobiles must, like labor matte be regulated by the central authority. I think this is what the foun ers had in mind when they gave Congress the power "to regula commerce * * * among the several States."

Senator HART. You said in your prepared testimony that the were many rewarding jobs open to the trial lawyers of this country- exciting jobs. What has happened to the trial bar in Massachuset now that they are operating under this no-fault program there? Ha they gone to the environmental protection field or are they still bus with insurance law?

Mr. JOOST. Well, just yesterday I heard on the news that the Mass chusetts State Senate had given final approval to a bill to permit pr vate citizens to sue those who are alleged to cause damage to t environment.

I believe that it is a better bill than the one that Michigan passed last year on the same subject. It has also passed the House and it has gone to a conference committee. According to the radio broadcast, the Associated Industries of Massachusetts are preparing a last ditch effort to defeat this bill which would permit individual citizens to sue to enforce the pollution—control statutes and regulations which are already law, but we believe that it will survive the conference committee and Governor Francis Sargent has indicated he personally believes private-remedy suits represent a very important approach to environmental protection.

Congress last year year passed a provision authorizing "Citizens Suits" as one of the amendments to the Clean Air Act. The Federal law provides for reasonable attorney's fees to be paid by violators. This is proper—I think the lawyer should receive a fair compensation for what he does—but that is very different from the frequently exorbitant fees earned in the automobile—negligence business.

Senator HART. The Ogilvie bill in Illinois, is it a Massachusetts no-fault bill?

Mr. JOOST. No, it is not. It is a different kind.

I would say, first, it is a misnomer to call the Ogilvie bill a nofault bill. In fact, a headline in the *Wall Street Journal* declared that the "Ogilvie System Would Bypass No-Fault Concept."

"Others have agrued" that the Ogilvie bill is a no-fault system and one which, if enacted, will make it— unnecessary for the Congress to act.

When you break it down and look at the Ogilvie bill, you see that it is really not a system, it is not a plan. As a result of my work with statutory recodification and revision efforts, I very much believe that the legislative bodies should not try to copy the courts and decide things on a case-by-case basis, a little thing here and a little thing there. Rather, they should try to create systems that make sense and leave it to the courts to fill in the bits and pieces. The Ogilvie plan is not such a system. It is a hodgepodge collection of 13 different bills on different points. The 13 bills don't add up to a system, no-fault or otherwise.

In substance, the Ogilvie bills involve a scaling down, a reduction of the amount of money that would be paid by insurers to motor vehicle accident victims who bring tort suits. That reduction in payout makes two things possible: A reduction in auto insurance premiums which looks good, and a package of first-party-benefits. The first-party-benefits package would pay a maximum of $2,000 per victim in medical, hospital, and funeral benefits plus a maximum of 52 weeks of wage loss up to $150 a week in income continuation benefits.

What this amounts to is adding some no-fault frosting onto the same old negligence cake. The cake itself won't be changed except to scale it down in size.

The most important section of the bill is the section called "General Damages." It states that damages for pain, suffering, mental anguish, and inconvenience shall not exceed the total of a sum equal to 50 percent of the reasonable medical treatment expenses * * * if * * * the total of such * * * expenses is $500 or less, and a sum equal to the amount of such reasonable expenses, if any, in excess of $500."

What this bill does is to say, sure, you can have a jury trial and you can get general damages for pain and suffering, but the jury cannot

find as a fact that your general damages are worth any more than your medical expenses if your medical expenses are over $500, and the jury can't find—they will be in reversible error if they do—that your pain and suffering is worth more than 50 percent of your medical bills if they are less than $500.

Now, I think this restriction represents unwise tampering with the jury. I think that if you give the right to trial by jury in a negligence case, you must really give the plaintiff that right.

The Ogilvie plan keeps the automobile jury, but puts it into a straightjacket so far as damages is concerned. Let's assume the plaintiff is a violinist and something happens to his hand; in the auto accident he breaks a finger, it is put in a cast, the total medical bill is $200. However, for an entire season he cannot play with the Chicago Symphony Orchestra. What Governor Ogilvie is saying is that this particular violinist's pain and suffering and inconvenience for not being able to play with the Chicago Symphony for an entire season shall not exceed $150. This bill is doing something that makes me very uncomfortable: you give or retain a right, you "press-release" it as a right, but you take away its substance.

There is another provision in the Ogilvie package that I would like to take the time to comment on. The section is called "Fraudulent Claims," and it is a substantive criminal law, not an insurance law. Just looking at it technically—and for 3 years I have been drafting and analyzing criminal statutes—this is a bad bill.

The criminal law can take on just so much. It is a little bit like the Great Lakes; it looks enormous, but in fact you can dump only a certain amount of indigestible material into it; dump too much and it ceases to live.

Now, what the provision says is that:

> Any person who . . . indirectly . . . acts in concert with a person seekin to falsely and fraudulently represent . . . or exaggerate the nature and exten of motor-vehicle-caused injury or damage to property shall, if the sum so ob tained or attempted to be obtained is less than $100, be sentenced to not mor than one-year imprisonment, or if the sum exceeds $100, shall be imprisone not more than 10 years.

Now, this is silly. First of all, there is no sure method of obeying i All that is necessary for a criminal conviction is to prove the defend ant acted in concert with someone who was trying to exaggerate claim. You don't have to do it intentionally, you don't have to do knowingly or recklessly or negligently; it is enough that it happen

You can imagine the lawyer, whose client never tells him honestl what happened, who puts on evidence which in fact exaggerates b $101 the extent of the client's injury.

That attorney could go to jail for 10 years.

Now, I think this is foolish. All that the section is going to do to make lawyers reluctant to talk to their clients lest they be accus of acting "in concert" with one who exaggerates; it will thus have "chilling effect" on the attorney-client relationship; as a practic matter it will not work. People are not going to be prosecuted f this, not in the present state of the criminal courts. The fraudule claims bit—in so many cases it is not fraud—it is rather somethi which is built right into the negligence/liability insurance syste Assume you are paying $300 a year in auto-insurance premiums, a

you don't have an accident for 10 years, and then something happens. You know how you paid in $3,000 and you know it is so much that I think that you really do feel a pain in your head.

Mr. SUTCLIFFE. In discussions with Mr. Markus and the trial lawyers yesterday the subject of the Federal-State fund was raised. It was explained to us that that fund would be used to create liaison with Congress in order to facilitate our efforts in considering legislation. You have now told us that you, an expert, as demonstrated in these hearings, have been relieved of your position with the trial lawyers. Can you tell us who will be talking to Congress to help us in our reform of the automobile compensation system?

Mr. JOOST. I think I mentioned that the head of this department will be a nonlawyer, Mr. Alan Locke, whose brother I believe is press secretary to the Department of Transportation, and he will have at his command a Washington representative, Mr. Wayne Smith, who is also not a lawyer, and the services of Edelman & Co., a public relations firm in Chicago, with a New York branch, which will handle the account from a Hartford office.

So I think the help that the Congress will be getting—well, you can weigh yourself what contribution such a group of experts will make to the solution of the problem.

Mr. SUTCLIFFE. One more comment that is taken from yesterday's hearing transcript. This is a response of Mr. Markus to questions about LIFT and ADOPT. He said:

> I might say the items you are describing, frankly I wish they were stronger and more effective. These items represent a very minuscule percentage of the amount the insurance industry is now spending in this area. We have reason to believe it is many millions of dollars.

From your vantage point, does that seem to be an accurate statement?

Mr. JOOST. I will have to answer "Yes," "No," and "I don't know." I do not know what the total figures are, either for LIFT or "for the insurance industry, but I do know that the LIFT ideas is on a curve of rising expectations. The State chapters and affiliates will be stimulated by this well-financed Department of Federal-State Relations which will send people around to show the local groups "how to do it," how to act effectively politically. LIFT and ADOPT programs—every State will have its own acronym—will probably be started in a majority of the States within a very short period of time.

Perhaps I overstressed the financial aspect of LIFT, the fact that it was called "a legislative kitty which is paying off." I do not think that money is the sole source of political and lobbying strength. The real strength comes from the fact that the trial lawyer has many skills, skills which can also make him an attractive political candidate or an effective campaign manager. He is accustomed to speaking. He is accustomed to responding to questions. He is not afraid to appear in public. He is accustomed to hostile questioning. He knows how to get information. He has a lot of friends and a lot of contacts. If he has been an able lawyer for 10 years or so, he knows an awful lot of people who think he is pretty good. If he goes in with this expertise and this ability and really takes to the stump to support and help a candidate with speeches and letters and phone calls, telling people what a great guy "Honest" Joe Doakes is, then Joe Doakes has a lot going for him beyond the, say, $10,000 campaign contribution from LIFT.

You have to bear in mind that campaigns for State legislatures are much less expensive than campaigns for Congress. It does not take that much money. Millions of dollars could easily be wasted by insurance companies while tens of thousands precisely placed by trial lawyers on a particular race could mean veto-power control over a particular State legislature. The important thing is not just how much money a political fund raises and spends; it is also the way in which the money is placed, the way in which it is spent, that counts. For this reason, any comparison of lobbying expenditures between lawyers and insurance companies is of limited value.

Again, this is a very subtle way, and I think, therefore, a very effective way to influence legislation. You do not go after legislation; you go at the person who has a right to vote on legislation, namely, the person who sits in the State legislature. If a legislator votes "wrong," you find a strong opponent, the most attractive person in the district who will run, you fund him, you back him up, you have people prepare programs for him, literature for him, professionally advise him. Thus supported, he is going to have a good chance to defeat the "bad" legislator.

So I am not surprised at these 1970 results in Texas, that out of eight candidates backed in the Democratic primary for the State senate, six won. LIFT's first year, 1970, was their dry run. They can probably get a higher percentage than six out of eight in the future, but even 0.750 is a pretty good batting average.

Again, you see why it is difficult to answer your question.

Mr. SUTCLIFFE. I recognize that and appreciate your response.

The committee would like to draw for a moment, if you will permit us, upon your technical knowledge of the Massachusetts plan. You have mentioned the Illinois plan with the first-party overlay over the existing tort system. In Massachusetts they ostensibly have a first party coverage for tangible losses as between the policyholder and his insurance company, but in that plan they created a subrogation-like arrangement so that the insurance companies of the policyholders have to get together to determine which of their policyholders was at fault. Then through arbitration the company whose policyholder is found to be at fault reimburses the other company for the amount of his first-party payments to his own policyholder as well as its claims cost.

Mr. JOOST. It is something like that. I think they have a 400-word sentence.

Mr. SUTCLIFFE. I hope I got by with a 200-word explanation. What impact will this procedure have on the efficiency of the no-fault system in Massachusetts, and if you will, address yourself to what kind of inconvenience it will create for the consumer who has to have his insurance company talk to him pretty thoroughly about the accident and maybe even have his insurance company ask to come before an arbiter to explain what happened?

Mr. JOOST. If this is in fact what is finally held to be the meaning of the Massachusetts statute, it will be yet another way in which consumers lose out. I have the laws here—Acts of 1970, chapter 67 and chapter 744. I pasted the two statutes together to determine what the law really says, but that doesn't help with internal questions. It is really very hard to know exactly what the Massachusetts no-fault

law means on many points. It has, conservatively, about 30 ambiguities, one thing in one sentence, another thing in another section.

To give you an example, there is a merit-rating provision. If you are claims-free for a year, you are entitled to a 2-percent discount on your insurance premium. But no one knows whether the discount is 2 percent per year cumulatively, intermittently, or totally. If you go 3 years without an accident, file a claim in the fourth year, and then you are accident-free in the fifth, and sixth years, do you then get a 10-percent reduction, a 4-percent reduction or a 2-percent reduction?

There are so many ambiguities and technicalities, that frankly I am not prepared to comment on the retention of subrogation, except to say that I believe your summary is accurate.

Mr. SUTCLIFFE. Do you know why it was done? What is the rationale for this kind of an arrangement?

Let me read one thing and see if you might concur in it. This is in the Massachusetts Association of Independent Insurance Agents and Brokers' booklet entitled "Special Report on Massachusetts Auto Insurance."

On page 13 they talk about what they entitle the "Inter-Insurer Subrogation." They conclude: "In practical effect this means that the liability exposure of companies remains essentially as good or as bad as it was before."

Is this provision included in there only to allow those companies who have all the good risks right now to keep them and to benefit from them?

Mr. JOOST. I think it is clear that subrogation between insurance companies is completely contrary to the theory of no-fault. Basically, the theory of no-fault insurance is that we let the loss stay where it falls but reimburse the victim for that loss from the insurance pool to which he and all other motorists have contributed. To subrogate on a case-by-case basis, to shift money back and forth between insurance companies on the basis of which company's policyholder was at fault, whether it is done by arbitrators or whether it is done by a court, involves a waste of time, a waste of people, a waste of money for hearings, for preparation, for salaries. The cost of waste is eventually paid for by the consumer in the form of higher-than-necessary premiums.

In most cases, the claims of A company vs. B balance out against the claims of B company vs. A in a rather constant ratio. If the law permits this back-to-forth subrogation, then the administrative costs of the system will be excessive. If the law permits this back-and-forth subrogation, then the administrative costs of the system will be excessive. If that agent's association brochure states that this is the Massachusetts law, it probably is, because the genesis of our no-fault it law was a bill, I think it was S. 500, that was filed on behalf of the Massachusetts Agents and Brokers Association.

That original bill was changed enormously. Already two parts of the law have been held unconstitutional by the Supreme Judicial Court of Massachusetts. The trial lawyers' strategy was to make the bill into a Christmas tree when they saw that the votes were there in 1970 to pass no-fault—to put on so many goodies that the whole thing would fall because the Governor would be compelled to veto it because otherwise the insurance companies would yell too much.

They put in a provision that there should be a 15-percent rate reduction, not only for personal-injury policies but also for property liability and collision-insurance policies. There were other things that were put in also. Notwithstanding, the Governor in fact signed the final product. The legislature then amended some of the extras, and in November our Supreme Judicial Court voided the unrelated rate reductions. The insurance companies did in fact yell that they would no longer do business in Massachusetts, but they are all still there and doing handsomely.

There will have to be a great many appellate decisions in Massachusetts to finally determine all the parts of this law. In that context, I would like to command all the people who had anything to do with the drafting of S. 945. I think it is a very well-written bill. It is even better than the one that Senator Hart filed last year. Technically, there are fewer ambiguities. As a matter of fact, I talked with a personal friend just a couple of days before I came down here, a professor at Yale who has written a book on the subject, "The Costs of Accidents," and he says it is the best-written no-fault bill that he has seen filed anywhere this year.

Perhaps I overstress the importance of the draftsmanship, but when so many people are going to have to use a law, live with a law, operate under it, the language should be comprehensible to the layman. The law is not just for the lawyers, it is not our private property. It should not be expressed in archaic or arcane terminology, difficult for the layman to follow. If it applies to all, be it the criminal law or the automobile law, it should be comprehensible by all.

I think your proposed statute, while it could be improved some more, I think it is really very good.

Mr. SUTCLIFFE. That is all the questions I have. Thank you.

Senator HART. Thank you for the last comment which I can take with good grace because, as you suspect, the Members of the Senate rarely do the drafting, and I certainly had nothing to do with what you said was a good product, but I am delighted that you said what you did, because it will permit me to go to those who did draft it and indicate your judgment on the quality of it.

One last question because I have it thrown at me by some of my colleagues; and it is not the result of a trial lawyer lobbying my colleagues. It is just their preliminary reaction to this proposal. In short they say I know we have got to do something about automobile insurance; I am for you; except you have gone too far. I do not want to have to pay to fix up some bum that drives with inexcusable carelessness. Can't you take care of that problem for me? That is the end of the question. How do you respond to that?

Mr. JOOST. Speaking personally, regardless of philosophy, I am afraid you are going to have to pay to take care of that inexcusable bum. The only question is how. We might, for example, have to pay for him or his dependents through welfare. We must face the fact that we pay because that man—that really bad driver, drunken driver—more than a bum on the highway. That is only one part of him. He may also be a skilled craftsman in a machine-tool company. When he is all banged up and does not get rehabilitation and does not get good medical service and cannot come back to work for a long time, the Nation—not just the company—is deprived of his economic input in

the total goods and services of this Nation. We are paying, we do pay, every time someone is really hurt in an accident. The only question is how—out of general revenues or an automobile insurance pool into which the "bum" pays premiums which cover the risk?

I think the most commendable feature of your legislation—whether you did this consciously or not—is that you accept the fact that we are paying and say how do we best get auto victims back in business. I think that by giving the victim basically unlimited medical benefits plus unlimited rehabilitation benefits plus compensation for loss of earnings for a period up to 2½ years, you do everything that reasonable men can do to get that automobile victim back in business, be he a student or a housewife or a production worker or an architect or what have you. In my judgment, this emphasis-on-the-future is much more important; much more just; much more compelling than anything trial lawyers may say about the importance of pain and suffering and the dignity of a jury trial.

I think the Supreme Court will consider the seventh amendment argument in light of that essential justice and compassion. The bill's purpose is so terribly important that the Congress should act without delay.

Senator HART. Thank you.

Let me make one last comment. Normally when this comment is made it reflects a feeling that because of some act of individual courage and sensitive conscience somebody has put himself into the army of the unemployed by coming in here and testifying. With your extraordinary talents there would never be the danger that your services would not be sought. So I know that when you decided, as you put it here, "finally I concluded I had to accept the call to testify," that you did not face economic deprivation from the decision, but that really is not the most difficult part of stepping up and speaking hard truths. Lots of people who are the beneficiaries of enormous trust income never speak.

The fact that you would come as you have to as one who has been a trial lawyers' lawyer and told us that no-fault is the answer is an act, I think, of considerable courage, and I am sure that Senator Magnuson, had he been able to stay, would have joined me in that expression.

Mr. JOOST. Thank you, sir.

(The articles referred to earlier follow:)

[Vol. 1, No. 2 (Spring 1966)]

PORTIA LAW JOURNAL

Basic Protection for the Traffic Victim—*A Blueprint for Reforming Automobile Insurance*. By Robert E. Keeton[1] and Jeffrey O'Connell.[2] Boston, Toronto: Little, Brown and Company. 1965. Pp. xv, 624. $13.50.

A brief review can scarcely do justice to the complexity, intricacy, and thousands of hours of research, thought, analysis, discussion, and consultation that lie behind this ingenious and creative work. It is a pathfinder in a difficult area. Whether the proposed new basic automobile insurance system, based essentially upon strict rather than negligence liability, *should* be adopted is a question that lies within the responsibility and expertise of the legislatures. Clearly, however, each state legislature and even the Congress (what is more inter-state

[1] Professor of Law, Harvard Law School.
[2] Professor of Law, University of Illinois Law School.

commerce these days than automobile driving?) should study carefully this proposed reform and the justifications advanced for it.

The authors state that five major shortcomings affect the present system of compensation for automobile accidents in each of the states: (1) many injured persons receive no compensation and others receive less than their economic losses because the other driver hasn't enough insurance or assets, or because the victim must show the other person was at fault and he was legally blameless. Proof, at times is hard to get, *e.g.* if the accident was hit-and-run; (2) the present system is extraordinarily slow and cumbersome, what with delay in the courts, and the impecunious victim, with his back against the wall financially, may settle for less than his just deserts; (3) there is too much unfairness, as a practical mater, with some people getting more than they deserve and others less; (4) the fault system is extraordinarily expensive to administer and this heavy administrative cost is added to the premium bill each car owner pays; (5) the present system is a constant temptation to dishonesty—"inducements to exaggeration and invention strike at the integrity of driver and injured alike all too often corrupting both and leaving the latter twice a victim—injured and debased." Substantial documentation is advanced to support each of these assertions.

The basic corrective advanced is absolute basic compulsory automobile insurance. Under such a system, *anytime* a driver is in an accident *his own insurance company* shall compensate him or his guest, for their "loss," which shall not include pain, suffering and inconvenience. Benefits would be paid monthly as the loss accrues. Tort liability would remain, but only in major cases (where damage for pain and suffering exceeds $5,000 and other tort damages exceed $10,000).

The proposed statute is a careful attempt at reform. If substantially enacted it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

One question that arises, however, that the authors do not consider, is whether one can ever truly compensate an automobile accident victim in *dollars; e.g.* a man who loses his legs or a child who no longer has a father? No one has said that *all* auto injuries and deaths can be eliminated, but many have suggested that if automobiles were designed with safety rather than sex-appeal as the first order of business, the staggering highway toll would be reduced. The most "Basic Protection for the Traffic Victim" would seem to be that the government do everything possible to protect a man from ever becoming a traffic victim in the first place, through enforcing higher standards for driver skill and demanding a tank-like' approach to auto design.

ROBERT H. JOOST.[3]

[From the Boston Globe, Tuesday, Dec. 6, 1966]

LETTERS TO THE EDITOR

KEEP THE COMPULSORY

. . . With all due respect to the governor of the commonwealth, the leader in Massachusetts of the party which I personally support, the financial responsibility law idea is an irresponsible "solution" to the problem of automobile insurance. Compulsory insurance must be retained. But the rates must also be cut significantly. The Dukakis bill is based upon the results of long and painstaking research by a group under two highly regarded professors of law and tort law authorities. The Dukakis/Keeton-O'Connell plan will not eliminate the right to trial by jury, as some responsible lawyers unfamiliar with the details seem to be afraid. Insurance companies will not lose money, nor will the plaintiff's personal injury lawyer, whose livelihood rests on a contingent fee, suffer unduly.

The political parties and their representatives in the Legislature and executive and the members of the bar who are all "officers of the court" have a responsibility to the people and to the commonwealth that shou'd rule out self-interest, personal pocketbook considerations, and partisanship on an issue so basic and vital: the right to be sure of compensation for automobile injuries (hence the need for compulsory insurance) and the right to drive a car, which often equals the right to employment in today's world (hence the need for significant reduc

---

[3] Member of the Massachusetts Bar; former assistant to the Editor, Journal of the American Trial Lawyers.

tions, not increases, in automobile liability rates). The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried. The problem is critical—nay-sayers are not enough.

ROBERT H. JOOST.

[From the Boston Globe, Friday, Apr. 30, 1971]

LETTERS TO THE EDITOR

NATIONAL NO-FAULT

I was puzzled by your editorial on no-fault auto insurance entitled "Volpe's Wise Proposal" (April 19).

The editorial is puzzling primarily because it is no secret in Washington that Volpe was prepared to recommend national no-fault auto insurance legislation and that his recommendation was sabotaged by White House action.

The Globe may be right in arguing that a rigid national system of no-fault auto insurance would not be a sensible course at this time. On the other hand, if no-fault makes sense in Massachusetts, I see no reason why it does not make sense for the nation as a whole.

Legislating on a national basis on the subject of motor vehicles is hardly a novel proposition. I doubt that anyone would seriously suggest today that we should not have national standards for motor vehicle safety. Congress has also acted to impose auto emission controls on a national basis. In fact, it has gone so far as to deny states jurisdiction of any kind over auto emission controls.

Accordingly, the case for national no-fault auto insurance in some form is a strong one. Simplicity and uniformity of treatment are essential in a nation where so many of us cross state lines in motor vehicles every day. It would be tragic, in my opinion, to encourage a situation in which a crazy quilt of state no-fault laws emerges which results in changes in basic rules or gaps in coverage simply because a motorist leaves his home state.

There may be a sensible compromise between the no-action position of the Nixon Administration and the advocates of comprehensive national no-fault insurance. Congress could pass legislation this year requiring the states to enact no-fault laws within the next two years. The Secretary of Transportation would be given the authority to approve each plan but every state would have some latitude in developing its details so long as the state plan met certain basic criteria.

Such a course may be the one which Congress ultimately takes this year. It is, in my view, the minimum required if we are not to subject the motorists of the nation to a hodge-podge of conflicting laws and insurance policies in the years to come.

MICHAEL S. DUKAKIS.

[From the Journal of Commerce, Apr. 26, 1971]

BAY STATE'S INSURANCE INDUSTRY HIT

GOVERNOR CHARGES PROFITS ARE NOT PASSED TO CONSUMER

BOSTON, April 25.—The auto insurance industry was bitterly criticized here today by the Commonwealth's governor for failing to pass onto consumers the substantial savings the companies have incurred from the Bay State's three-month old no-fault auto insurance system.

Gov. Francis W. Sargent said that during the first three months of this year, the underwriters have seen their claim costs drop by over 35 percent but have not come forward with plans to lower premiums.

The governor also alleged that many insurers have tried to obscure the options in the no-fault program which would lower their auto insurance rates.

"The average paid claim cost in the first quarter of last year was $205," Gov. Sargent said. "The average paid claim cost in the first quarter of this year is $121. The total amount of paid losses in the first quarter of last year were $[illegible],500—this year they are $229,479.

[illegible]

"That is a [illegible] per cent reduction in claim costs this year over last," th governor said in an address before the Massachusetts Association of Independen Insurance Agents and Brokers.

The governor said if the average paid claim costs for 1971 hold at the prese rate through June they will be [illegible] per cent lower than the first six months o 1970.

"Translated into possible future premium reductions that comes out to further premium cost cut of [illegible] per cent for bodily injury insurance, though n property damage and collision for in those years price inflation and the hig cost of auto repair have these costs soundly up," Gov. Sargent said. "But bodily injury the only area affected by no-fault, we can at least hope for furth cost cuts if present experience continues."

Gov. Sargent said he would release a statistical summary next week on t first three months of the first in the nation no-fault system.

"The great irony of no-fault so far is that the industry that fought it so ha is now providing the most from it," said the governor. Further, the industr while it profits, holds the consumer from the benefit of the new system, he sai

Gov. Sargent told the insurance men they were keeping the public ignora about how to take advantage of savings in auto insurance premiums.

"Last year we provided options in auto insurance to let the buyer build h own insurance program through bodily injury deductibles for those with sufficie health insurance," he said, "and $100 and $200 deductibles in property dama insurance.

"We encouraged companies to provide further deductibles to cut cost of c lision and comprehensive insurance," he said.

"I am told the industry in some cases has not only failed to inform custome of these options but has actually refused to allow their purchase." Gov. Sarge said. "Worst of all, I am told that many companies have forced customers buy more insurance than they want in order to buy any at all."

Gov. Sargent said he would order a "step up in investigation of the abus so far charged—and the industry had better be ready to reply.

[From the Boston Sunday Globe, Apr. 25, 1971]

WIRE TAPS

Attorneys are wondering about a couple of ethical questions raised by t activities of the lawyers bringing the test case of no-fault auto insurance la The lawyers, Robert Cohen and Alexander Cella, have sent other attorneys mimeographed form offering for sale at $50 per set the two-volume brief ($4 they have prepared on the case and the appendix ($5). The case is to be hea next month before the Supreme Judicial Court. Fellow lawyers say (1) they' never heard of a lawyer openly selling a brief—"It's a little bit arrogant before y even win"—and (2) the appendix consists of court records, which may not theirs to sell.

A TRIAL LAWYER'S LEGISLATIVE WORKBOOK

HOW TO DO IT

Q.: "What do you feel is the best method to establish and keep rapport wi sympathetic legislators and how do you suggest bill introductions, legislati advocacy and hearings be conducted?—Do you have an active 'Legislative co mittee' in your state trial lawyers organization and how does it work?—Do a trial lawyer groups make campaign contributions to candidates to legislati office, or is this done on an individual basis? Outside of finance, do they aid h in vote-getting? How do you go about encouraging bright young plaintiff-orient lawyers to seek legislative office? In general, how does your state organizati handle 'legislative advocacy', appearance before committees, and follow-up bills? Do you think it is necessary to have a full or part-time man on the job the state capitol to keep members informed?"

(*Texas:* William R. Edwards.)

We have found that the best method of establishing and keeping rapport with legislators whether sympathetic or not (hopefully securing the help of those who are not necessarily sympathetic by so doing) is what I like to call the "buddy system". By this we mean the real responsibility for each of the legislators is placed on the trial lawyers located within their respective districts. We expect our members to befriend the legislators, to get to know them not only as political friends, but as personal friends. We endeavor to secure representative trial lawyers' membership in the district of each legislator. By virtue of such personal contact, we are able to secure the help and understanding of many legislators who are not lawyers and who have not had any real experience with our problems. Additionally, in the past year, we have made some progress toward securing help from non-lawyers convincing them that our programs are right and that by contributing their money and influence through us, such persons may be able to be of much greater influence in securing passage of such legislation that they could otherwise. One such non-lawyer from Dallas was of extreme help to us in our recent passage of the Texas Tort Claims Act, his interest in the matter having accrued by virtue of the death of a daughter caused by governmentally-immune conduct. Generally speaking, if a bill to be introduced is on its face one which is of a public nature, that is for the good of the people, as opposed to the good of the lawyers, we do not hesitate to have one of our strong supporters in the legislature, even one of our members, introduce the legislation, and in fact encourage it. However, as to strictly lawyer legislation, we prefer to get a non-lawyer member, one whose interests are not apparently aligned with ours to introduce the bill if possible. Because of our continued twelve-month-a-year program of legislative contact, we have never had any difficulty in securing introduction of any bills by the "proper" people. With respect to legislative hearings, our experience has indicated conclusively that if we will work closely with those committee members who agree with our position as to any particular legislation, and actively participate in the preparation of the case for our side of the bill, much as we would prepare a court case, that by virtue of careful preparation, including expert witnesses, statistics, etc. that we are ordinarily in a position to place before the committee hearing the bill a far better picture and far more effective case than the other side has usually taken the time or the effort to prepare. *Careful preparation* of the case for or against the bill cannot be over-emphasized.

We have a legislative committee and it is very active. It is the function of our legislative committee to see to the election of representatives who will support our positions, to formulate our legislative programs, to secure introduction of the bills we propose to pass and to shepherd those through to final passage and signature by the Governor. During the legislative session, in our office in Austin [state capital], we maintain a continuous program of public relations including an open bar and a buffet luncheon. During the last session of the legislature, we averaged in the neighborhood to twenty or twenty-five representatives and senators for lunch each day the legislature was in session. We have *one cardinal rule* with respect to the office we maintain in Austin across the street from the Capitol grounds: No lobbying may be done in the office. No pending bills may be discussed unless a particular legislator brings up the subject and asks that it be discussed. We have tried to make our office a place where the members of the legislature can come to escape the continual bombardment of lobbyists—where they get a drink or a good meal and relax. We are convinced that the legislators appreciate this rule.

Approximately two years ago we instituted a bank-draft plan whereby our members and anyone else we can persuade to do so contributes $10.00 a month to a fund maintained in Austin. The fund has been recently renamed and designated LIFT (Lawyers Involved For Texas). This fund is available for use in election contests for either State Senator or State Representative—it is not available for use in the campaign of any candidate seeking state-wide office. The fund is administered by the legislative committee and the President of the Texas Trial Lawyers Association. It is distributed carefully to secure the greatest effect by the use of the money. We expect contributions wherever possible to be made on an individual basis. This program is in line with the "Buddy System" outlined above. However, there are obviously areas in which our membership is not in a position to adequately finance a candidate. Funds are made available on such a basis. Occasionally, there will be an extremely important race between a good friend and a bad enemy of the Association. In such instances we

may apply rather substantial amounts of money to the particular contest. Our members are encouraged to participate actively in the campaigns of legislators and candidates. We do all that is within our power—financially and otherwise—to support actively the election of candidates who are philosophically attuned to our goals. This is the only way it can be done.

The best encouragement that can be given to any candidate for elective office is the chance of winning. We find that our program in Texas has enabled us to secure candidates—both trial lawyers and non-lawyers—to run for office. The non-lawyers are only too ready to assist us when they fully understand our goals and programs. After all, what we are attempting to secure in the way of legislation is in the final analysis good for the people. So long as we continue in that posture, we do not feel it is important to lawyer as opposed to non-lawyers represent us in Austin. So long as our representatives are properly attuned to our program, the non-lawyers are often more effective in securing the passage of our legislation, than are lawyer members.

With respect to each bill that is introduced, a subcommittee of the legislative committee of the Texas Trial Lawyers Association is appointed. This subcommittee has the primary responsibility for the particular bill. The subcommittee is charged with: (1) drafting the bill, (2) securing the sponsors in both the House and Senate, and (3) shepherding the bill through the legislature. The subcommittee is responsible for the preparation and presentation of evidence at committee hearings. The subcommitte is also responsible for keeping the association informed of the bill's progress so that the association may—if necessary—put on a "show of force" at hearings or votes, etc., by calling the membership to Austin at appropriate times. We maintain a constant review of bills introduced to assure that no legislation simply slips by us without our knowledge. This is another task of the legislative committee. Regular reports on what is happening in Austin is disseminated by letter to all the members of the Texas Trial Lawyers Ass'n.

[Because of space limitations, only the Texas responses have reproduced. They appear to contain in more comprehensive form most of the ideas mentioned by other states' Key Men.]

Additional Texas ideas mentioned at regional Key Man Meeting, Denver June 19, 1970:

"We have aproximately 1,200 members in the TTLA. The only requirements for membership are that (1) one pay $100 a year in dues and (2) be a lawyer who does not habitually represent insurance companies.

"We have had an executive director since 1962. The present Executive Director is a *professional lobbyist*, not a lawyer. He teaches us

"To have a successful trial lawyers' legislative program:

#1. You have to have an appealable piece [pieces] of legislation.

#2. You have to have a significant number of people who are able to discuss completely and intelligently the merits of that legislation.

#3. Your program should be neither a Democratic nor a Republican program, neither a Populist nor an American-ist program. It must be a program for the public.

#4. The scope of the legislative program should be very narrow: to get more justifiable money into the hands of claimants.

"Legislative advocacy is a complicated art; there are no simple routes to effectiveness. The most unsuccessful lobbying group at the last session of the Texas legislature was a group that left a fifth of best-quality whiskey in every legislator's car. Reaction: "Huh, those ——— think they can buy my vote with a bottle of booze. ——— them." Subtlety and hard, intelligent work are *essential*.

Up, Up and Away!!

LIFT is the latest effort of Texas Trial Lawyers Association. It stands for Lawyers Involved for Texas, and it's a runaway success . . . The *El Paso Times* reported in its Capital Column June 14th, that *LIFT was responsible* for the Democratic nomination in this year's primaries of six of the eight candidates it backed for the *State Senate*.

LIFT is a legislative kitty which is paying off. Most of your officers are contributing $10 per month on a bank draft authority to LIFT.

If you want to be a part of the movement for *comparative negligence* in Texas for statutory authority to let jurors know what they are doing in *special issue verdicts*, and for a successful rejection of *Keeton-O'Connell* schemes, in other words, if you want your practice to *survive*, better get with it.

Send a check, any amount, to *LIFT, 201 Westgate Bldg, Austin!*

Observation by Nebraska State Senator [Nebraska has only one house of legislature—49 Senators] at Denver Key Man meeting, June 1970:

"We *never* hear from the lawyers of Nebraska except when we are about to vote on a bill that is of interest to them. Thus, it is not surprising that when we voted on repeal of the automobile guest statute, there were only 8 votes out of 49 in favor of repeal. Contrast the trial lawyers whom we never see with the bankers who are the most highly organized group in the state. The Nebraska Bankers Association is always around to lobby and to help and to answer questions—including questions totally unrelated to legislation affecting banks. We build up confidence, rapport, friendship with the bankers. The lawyers are unknowns whom we ignore in turn."

GRAVES, DOUGHERTY, GEE, HEARON, MOODY & GARWOOD,
THE AUSTIN NATIONAL BANK BUILDING,
POST OFFICE BOX 98,
Austin, Tex., February 16, 1967.

Byrd, Davis, Eisenberg & Clark.
Texas Trial Lawyers Association,
214 Austin National Bank Building,
Austin, Tex.
(Attention: Mr. Jack C. Eisenberg.)

DEAR JACK: You have inquired of us whether the expenditure of dues of the Association for purposes of retaining a legislative counselor might have a bad tax effect on the Association.

In our opinion, which must necessarily be rather hastily given because of the time pressure involved, this would have no effect upon the tax situation.

If you will refer to our letter of May 28, 1965 regarding the deductibility of dues or contributions you will note that Denny Ingram concluded that dues were not deductible as contributions but only as ordinary and necessary trade or business expenses. In reaching this conclusion, Denny opined that the Association could not qualify as a charitable organization under IRC Section 501(c)(3). I agree with his conclusion although I have not re-checked it in detail and am relying on it. It is true that 501(c)(3) organizations are forbidden to attempt to influence legislation as a substantial part of their total activities. However in my view the Association falls more nearly under Section 501(c)(6) as a Business League, Chamber of Commerce, or organization of the same general class, being an association of persons having some common business or professional interest, the purpose of which is to promote such a common interest and not to engage in a regular business of the kind ordinarily carried on for profit. If I am correct in this conclusion, and I think I am, the most recent authorities which I have been able to find indicate that legislative activity does not defeat the exemption if it is otherwise allowable, and this even though the legislative activity is the organization's sole or principal activity. See *Washington State Apples, Inc.*, 46 B.T.A. 64; Rev. Rul. 61-177, 1961-2 C.B. 117, modifying Rev. Rul. 54-442, 1954-2 C.B. 131. Nor does the statute itself contain any requirement that organizations falling under 501(c)(6) refrain from legislative activity as does Section 501(c)(3), applicable to charitable organizations generally.

For the above reasons, I do not think that the retaining of legislative counsel by the Association would effect either its tax status or the tax status of dues paid in by its members. I hope that the foregoing answers your question adequately and if you have any further questions or wish further light on the subject, please let me know and I will atempt to oblige.

Yours sincerely,

THOMAS G. GEE.

Texas Association of Plaintiffs Attorneys,
214 Austin National Bank Building,
Austin, Tex.
(Attention: Mr. Tom Davis.)

GENTLEMEN: This letter is designed as our preliminary opinion to you concerning the status of the present method of dues payment in your association, your present organizational structure, and recommendations for future operation and changes in structure.

Your present method of dues payment involves variance in the amount o the dues. You are concerned that some large dues payments or contribution might be denied income tax deductibility as a fixed dues schedule and withou any definite or substantial added membership benefit.

The variance of dues is a procedure quite customary when there are varyin classes of members in a professional organization. Customarily, enhanced ben fits accompany a more expensive form, or higher class, of membership. Suc benefits might include the receipt of additional literature, more prominent pe sonal publicity, and perhaps even a forgiveness of future dues for a defini or indefinite period of time. Generally, extremely wide variations in dues pa ments of classes of members is seldom found.

Accordingly, some of your dues payments are not too ordinary in the nature, and there does indeed exist a serious question as to their deductibili when made in large amounts virtually in the nature of a gift or contributi rather than within an established reasonable framework of dues.

There are only two possible theories under which the dues can be deductibl

First, that they are donations to a charity pursuant to Internal Reven Code (I.R.C.) § 170. Since contributions to a local bar association have be denied such favorable treatment and since there is ample authority of simil import for other professional and trade organizations, it must be conclud that the dues are not deductible charitable gifts. GCM 4805, 1928 C.B. 58, a *P-H Federal Taxes*, ¶ 4522. The basic reasoning is service to a private rath than a public cause. Authority granting deductible treatment for gifts to org nizations such as The State Bar of Texas must be distinguished because th type of an organization is deemed an arm of the government. R.R. 59-152, 195 1 C.B. 54. Also note that the fact that an organization is a charity exempt fr income taxation under I.R.C. § 501 or exempt from income taxation simply b cause it does not make a profit, does not control the question. The tests of c erage under § 170 and § 501 are different.

Second, the dues may be ordinary and necessary trade or business expens I.R.C. § 162. Regulations § 1.162-6 expressly allows the deductibility of p fessional expenses including ". . . dues to professional societies and subscriptio to professional journals. . . ." However, each such deduction must withsta the test of being "ordinary and necessary." A review of the cases and treati reflects much litigation or administrative activity concerning this language. S 1 Rabkin & Johnson, *Federal Income, Gift, and Estate Taxation*, § 3.02; P *Federal Taxes*, ¶ 11,031; 4 Mertens, *Law of Federal Income Taxation*, § 25. 25.122; and Carson and Weiner, *Ordinary and Necessary Expenses* (1959). I quite possible that a large contribution not providing any added benefit ove smaller contribution might be neither ordinary nor necessary.

How can this doubt be resolved? Unfortunately, the lack of authority in area provides little possibility of a reliable answer. But, some guidelines, cluding observance of the patterns of other organizations, can be evolved in or to lessen the probability of serious questioning of the dues system. First, clas of memberships can be based upon some reasonable bases such as time in p tice, honors and publicity accorded certain classes of members, special privil to certain classes of members, etc. Second, advance payment of dues migh permitted for reasonable periods. Third, a companion organization migh founded which serves the general public more so that it will qualify as a cha under I.R.C. § 170 to which a deductible contribution can be made. Comp for example, the American Bar Association Endowment and the American Foundation, two charitable foundations which are allied to the American Association. If such an allied organization is formed, you should seek a ruling of its status for contributions and for exemption of its income.

As for your organizational structure, we would recommend that your ass tion be reorganized as a Texas non-profit corporation in order to provid limited liability, definiteness of structure, and other attendant benefits the offered. This structure is easier to explain to taxing authorities, offers a answer of lines of authority for contractual relationship as well as any po intraorganizational disputes, and avoids the general partnership liability member now has.

We will be glad to confer with you to provide further detail on any foregoing matters.

Sincerely,

DENNY O. INGRAM

Senator HART. Because of a phone call we must recess briefly.
(Recess.)
Senator HART. The committee will be in order.
Let me welcome Mr. John J. O'Brien of Newtown Square, Pa.
Mr. O'Brien, we appreciate your testimony.

STATEMENT OF JOHN J. O'BRIEN, NEWTOWN SQUARE, PA.

Mr. O'BRIEN. Senator Hart and committee members, I reside in Newtown Square, Delaware County, Pa. I am employed as an insurance manager by the Franklin Mint, Inc., of Franklin Center, Pa. I am here as a concerned citizen to speak on behalf of automobile liability insurance reform. Before giving my testimony, it might be helpful if I commented on my educational and employment history. After receiving a bachelor of law degree in 1950, I was employed for approximately 11 years by insurance companies in various claims positions, including those of adjuster, examiner and manager. I was national director of claims services of Avis Rent-A-Car Systems for 3½ years and insurance manager of the Mack Truck Corp. for 5½ years.

Over the years, I have become totally convinced that our present system of tort liability does not satisfy the principal purpose of liability insurance, which is to see that innocent victims are paid their losses. Of course, as an insurance claim representative, I was taught that was not the principal purpose of liability insurance, rather I was educated to believe that my principal responsibility, and I might say properly so, was to conserve company assets by settling claims for the lowest possible dollar. A good settlement most frequently was not one that was fair.

It is a well-documented fact that the current system works unfairly. It favors the affluent and mitigates against the poor. The individual injured in an auto accident who is living from payday-to-payday is a soft touch for an experienced adjuster. There is also gross inequity in the amounts paid in the settlement of claims. The small bodily injured claimants are often overpaid, while the seriously injured often collect but a fraction of their losses, after payment of attorney fees that average 25 percent of benefits.

We hear more and more complaints about the soaring cost of automobile insurance, as well as the inability to purchase coverage at any cost outside of an assigned risk pool.

The backlog of tort cases is insuring that those who have to pursue their claims in court can in some cases wait as long as 5 years for a verdict. If they are unable to work and require income, to whom do they turn? Quite often they are carried by their attorneys. I believe that in agreeing to this, they are joining the attorney in basically unethical conduct. In many cases their personal resources are totally inadequate.

The fault system is obviously failing to meet the needs of motorists, and reform appears to be imminent.

I have read with interest the Hart-Magnuson proposed "Uniform Motor Vehicle Insurance Act (S. 945)" which incorporates the no-fault liability insurance concept. I believe such a law by the Federal Government is desirable, since it is apparent that the States will not

[illegible] a model bill to [illegible] would be resolved.

[illegible] would serve as a [illegible] The bill's defi- [illegible] is too re- [illegible] exclude, for example, a surgeon or [illegible] who lost the tip of a finger, or one who suffered [illegible]!

The definition of [illegible] (page 4, lines 7 through 15) should be amended to say a percentage of the individual's income without [illegible]. A limit of $100 a month would in many instances be [illegible] to meet the needs of injured claimants.

Page 11 from line 12 through line 21 of page 12 should be deleted. This portion of the [illegible] with giving an additional part of the burden on the [illegible] companies.

In my opinion, the provisions contained in this section are unreasonable. Those underwriters who specialize in insuring heavy-duty trucks would of necessity require more premium, the cost of which would in all probability be passed back to the public. It would be more equitable to assess the net against all motor vehicle owners.

I was delighted upon reading the provisions of the proposed "Motor Vehicle Group Act (S. 946)." As a corporate insurance buyer one of my most frustrating experiences is to have someone in management come to me with a problem involving his personal automobile insurance. Despite the clout of hundreds of thousands of dollars in premiums for which I am responsible, I can rarely get my principal underwriters to extend coverage to an individual who has received a declination.

As an example, one of our executive's 17-year-old son worked and saved to buy an automobile. After the acquisition, the car sat in the driveway for months because he couldn't obtain insurance. The young man finally saved the $374 required to buy insurance in the Pennsylvania assigned risk plan. He has inadequate coverage—$10,000–$20,000 bodily injury and $5,000 property damage—and is a menace in the sense that if he has a serious accident, for which he is at fault, severe economic loss could be incurred by one or more innocent people.

If I could offer the employees of my firm group automobile insurance, underwritten subject to the terms of S. 946, many of these problems would be eliminated. The reason I cannot make such an offer is that the interests of the few is being given precedence by the States over the interests of the many. The insurance agency system will be hurt if corporations and associations are permitted to have access to group auto coverages. That would be unfortunate but again the special interest of a particular class should not be given priority. The reduced cost, easy payment by payroll deduction and availability of coverage to the individual, who in many instances cannot buy insurance at equitable rates, far exceeds our concern for the agency system.

In addition to the foregoing testimony, I will be happy to answer any questions of Senator Hart.

Senator HART. Mr. O'Brien, just as I commented to Mr. Joost, it is not an easy decision for you to come down here and speak this way, which makes it even more obvious my obligation to thank you on behalf of the committee for telling us this.

You speak from a background that is very broad, and I would think it is the kind of testimony that would be most persuasive.

Mr. O'BRIEN. Thank you.

Senator HART. You mention that in the insurance business a good settlement isn't necessarily a fair settlement.

Mr. O'BRIEN. That is so true.

Senator HART. Could you tell us a little more fully what you mean by that?

Mr. O'BRIEN. I have in my own experience defended settlements that I have made, third-party liability settlements, to my immediate superiors, and when they didn't compliment me, I have said to them, "but it was a fair settlement." And most often as not, they would turn to me and say "Fair, but not a good settlement."

And we knew what was meant by a good settlement. The first call settlement made by an adjuster for the out-of-pocket expenses, plus a few dollars over and above for inconvenience, pain and suffering is considered a good settlement. Insurance companies favor first call settlements for the primary purpose of closing out claims before the injured parties fully realize the extent of their damages or injuries.

Senator HART. How would they become fair settlements under the mandatory first-party system?

Mr. O'BRIEN. Because they would no longer be adversary settlements. It would be a matter of settling a claim with your own insured. You treat your insured a bit differently than you treat a total stranger whom you believe is interested in taking as many dollars from you as he can.

That is not to say that the insured will not be interested in getting as many dollars as he can, but the relationship will be totally different and it does tend to a more equitable settlement.

Senator HART. That is probably the way I should have put the question. It would produce a more equitable settlement?

Mr. O'BRIEN. That's right.

Senator HART. Certainly, those expenses legitimately incurred, including the potentially substantial area of rehabilitation would be a fixed obligation.

Mr. O'BRIEN. That is correct. Additionally, Senator Hart, the injured party, if treated improperly by the claims adjuster has his agent to turn to who in turn can go back to the underwriting department, the sales department, if you will, and it usually has sufficient leverage to bring the claims department in line.

Senator HART. You said one of the pressures that operates under the existing system is the delay where a man is in need of funds. You mentioned a backlog of court cases.

Now, in our hearings the suggestion has been made to us that we ought to establish an arbitration system, at least for the smaller claims. That would both reduce the court backlog and it would lower expenses, administrative expenses.

Philadelphia does arbitrate, as I understand it, claims under $3,000. As you have observed, has there been any savings in administrative costs?

Mr. O'BRIEN. I have not been in the Philadelphia area for more than a year and a half. I am not prepared to say I know firsthand, but comments that have been made to me would lead me to believe that there isn't any real savings.

I can't see that arbitration and the speeding up of the settlement of cases, reducing the court backlog, would help to reduce the cost of insurance to individual policyholders.

If anything, I think if you speeded justice up, more people would be inclined to obtain the services of attorneys to represent them in their cases.

Senator HART. That certainly was the point that was made or the conclusion that was reached in a very detailed study that the Department of Transportation made.

You put your finger on a section of the bill that all of us realize we are going to have to work on, and that is section 4. You spoke of the surgeon who might lose the tip of a finger. You have already contributed substantially to the work of this committee, but maybe we can enlist you for another job.

If possible, could you suggest, in writing later to us, some language that might help us achieve what we are really after to safeguard, get rid of the spurious pain and suffering claims and yet recognize in the case of the surgeon who loses a finger that there is very substantial economic loss that would be called pain and suffering.

Mr. O'BRIEN. It could be a matter for the medical profession. It has been suggested to me that perhaps in pretrial a court-appointed doctor or panel of doctors, could evaluate the injury sustained by the would be plaintiff, and if, in the opinion of the appointee, taking into consideration the person's occupation and other pertinent circumstances the doctor or panel of physicians reported back to the judge, yes, this individual has suffered catastrophic loss, this would be his or her entry into court to sue in tort.

Just having a term to be defined by—let me ask you a question. Who would determine this, as you have drafted the bill?

Senator HART. A court, as it is drafted here.

Mr. O'BRIEN. May I also comment on using, as in the case of Massachusetts, $500 medical expense as the trigger for a tort action?

Senator HART. Yes.

Mr. O'BRIEN. I am amazed that anyone today would think that this was any sort of barrier. In any major city, I can put myself in a private room for 3 or 4 days for not necessarily treatment but just examination, and I will have a bill in excess of $500. Once again I think the medical profession should be brought in, and this should not be tied to medical expense, because any able attorney in conjunction with doctors, who, in many cases, are more than willing to cooperate, can build the client's medical bills to the necessary level.

Senator HART. Capable but not ethical.

Mr. O'BRIEN. There is a difference.

Senator HART. You heard the testimony earlier today from Mr. Joost. You are recommending the adoption of S. 945 so that it applies nationally. Does this suggest that you believe that the States would not move in a uniform way to change the present compensation system?

Mr. O'BRIEN. More than suggest. I am totally convinced that the States will never do it. I attended a meeting of the State of Pennsylvania Chamber of Commerce Insurance Consumer Committee, of which I am a member, just a few weeks ago, and the motion was made that we advise the chamber that action should be taken in the area

of a State no-fault plan, but should it be the Massachusetts plan, should it be another plan, no one seemed to know.

As sure as I am sitting here, if 10 years from now the Federal Government has not moved in this direction, you are going to have a hodge-podge of laws that will be intolerable. I don't want to see the Federal Government set up a bureaucracy to administer a Federal program. I think it is to the best interest of us all that the States have a model bill and administer the bill under some form of supervision by the Federal Government.

Senator HART. Again, Mr. O'Brien, I am grateful you could come and speak as you have. I am sure that you will not be applauded by all of your old friends in the business but, as you say here, the special interest of the particular class should not be given priority.

Everybody buys that as a principle and yet human nature being what it is, we never recognize that we are making an exception to that principle often. We just don't realize it.

Mr. O'BRIEN. That was not true in the case of the corner grocer. If he had had the wherewithall to have legislation enacted against supermarkets, we would be waiting in block-long lines to buy our groceries from the man on the corner.

So, what I am saying is we have reached a point in time where we must have change. The change is painful, but after it takes place, I think it will work better for everyone. I am now being offered that which the industry refers to as the mass marketing of personal lines—homeowners and automobile insurance on a payroll deductible basis.

Of course, under mass marketing, we still have the problem of the individual who is subject to underwriting. It will not answer—it will not solve the problems that would be resolved by group coverage, but the industry itself recognizes that it has to move in that direction if it is to avoid group personal lines.

I am referring to my comments under 946.

Senator HART. Yes, you were very explicit in your support of that, very explicit, and the example you cite is a sobering one.

Again, we are very grateful that you have come down.

Mr. O'BRIEN. It was my honor.

Senator HART. We will recess until 2:30 p.m.

(Whereupon, at 1:40 p.m., the hearing was recessed, to reconvene at 2:30 p.m., this same day.)

AFTERNOON SESSION

Senator HART. The committee will be in order.

We resume our hearing this afternoon having as our first witness the president of Aetna, Mr. Frederick D. Watkins.

Mr. Watkins, welcome.

STATEMENT OF FREDERICK D. WATKINS, PRESIDENT, AETNA INSURANCE CO., HARTFORD, CONN.

Mr. WATKINS. Thank you, Senator.

To begin my testimony this afternoon I would like to present for your information a film that was produced by the Aetna Insurance Co. to respond to what we believe is a very urgent need in connection with no-fault insurance—an informed public.

We feel that there is a great void in public understanding of wha the present automobile insurance system really is, and what we ar trying to accomplish in advocating the no-fault principle.

This is a documentary film. It includes proponents and opponent of the no-fault concept. We feel that it does a good job and we inten to use it wherever we possibly can across the country to better inforr the public. We are not trying to sell insurance with it. We are tryin to inform people.

With your permission, sir; we will let it roll.

Senator HART. I would like very much to see it.

(Film presentation.)

Senator HART. As we go back on the record, Mr. Watkins, I a sorry that the record itself cannot carry the film which you have ju shown. Whatever point of view one held with respect to no-fault. think there would be agreement that the film presentation is a publ service contribution of real significance, and I am delighted to have chance to thank you and Aetna for doing it.

Mr. WATKINS. Thank you once again for your participation in i I think you made a noble contribution to our film and the work we a attempting to accomplish.

Sir, would you like me to proceed with my statement?

Senator HART. Please.

Mr. WATKINS. Mr. Chairman, I am happy to have an opportunit to be here.

For clarification, I am Frederick D. Watkins, president, Aetna I surance Co.

As your committee is all to well aware, automobile insurance tod is sorely in need of reform. Investigations and hearings over the past years, including those of congressional committees and the Depar ment of Transportation, have documented the facts substantiating t failures of the present negligence system beyond any dispute.

Because the need for reform is no longer the critical issue at the hearings, I would like to restrict my comments today to what I co sider central questions before this committee: What type of refor should be enacted and whether it should be a matter for State Federal initiative. What shape should reform take and how shou it be implemented?

My own company's position is clear. Aetna endorses any plan th would introduce the no-fault concept of automobile insurance either a pure or a modified form. We believe that the primary respo sibility for this reform lies with the governments of the individu States. Thus, we support the recommendations of the Department Transportation for State action guided by national goals.

Our approach is a pragmatic one in that we believe it is warrant both by the present situation and by the potential advantages of t no-fault reform initiated at the State level.

Let me elaborate.

Over 5 years ago my company advocated a first-party compensato system of automobile insurance patterned after workmen's compe sation to replace the existing tort liability system.

It was our belief then, as it is now, that the majority of ills as ciated with the present system revolve around the necessity of det mining fault, case-by-case, in millions of traffic accidents each ye

This time-consuming and expensive process restricts our ability to serve the public and to assist and protect the injured accident victim.

For this reason we advocate reform that would enable us to promptly pay an individual insurance benefits on the basis of his economic losses rather than on the basis of his fault or nonfault in an accident.

Most of the proposals being considered in the States and at the Federal level are based on this no-fault principle. This includes the most prominent plans developed by Professors Keeton and O'Connell, the American Insurance Association, the New York State Department of Insurance—your own, sir—and most recently the recommendation of the Department of Transportation.

As far as the basic insurance concepts are concerned, these proposals and their numerous derivations differ more in degree and in detail than in substance. All would provide for first-party benefits to accident victims, regardless of fault, covering medical and rehabilitation costs, wage loss, and miscellaneous expenses. The compensation would be paid promptly on a period basis.

To the extent that losses could be recovered on a no-fault basis—under some of the plans there are limits established—individuals in an accident would not be permitted to sue each other.

The concept has obvious merits. Most importantly, it would compensate all accident victims promptly according to their actual economic losses. Secondly, by eliminating much of the legal and investigative costs of the present system, it would reduce rates for the consumer and return a greater percentage of the premium dollar to the accident victim.

No-fault would also encourage a more balanced approach to traffic safety by restoring the proper role of the law enforcement bodies in dealing with criminal drivers rather than attempting to impose this responsibility upon the insurance system.

There is no universal agreement on the merits of no-fault, however. Some critics have referred to no-fault as a "victim tax," which in effect would take benefits away from the innocent in order to pay the guilty.

In truth, no-fault would guarantee fair compensation to all parties in an accident. Not even the innocent victim can be sure of as much under the present liability system.

I might add that no-fault, whatever the specific plan, should not be a straitjacket on the insured individual, any more than minimum liability coverages are today.

Individuals should certainly have the option to purchase coverages to suit their particular needs and wants. But the important thing is that no-fault would provide a basic level of compensation for everyone involved in automobile accidents instead of ignoring a significant number of victims.

Many opponents are particularly dismayed by no-fault's renunciation of the common law concept of tort action in accident cases. I would like to read you part of what I consider to be a persuasive answer to these critics:

> In the days of manual labor . . . and the stagecoach, there was no such problem, or if there was, it was almost negligible. Accidents there were in those days, and distressing ones; but they were relatively few and the employee who exercised any reasonable degree of care was comparatively secure from injury.

There was no army of the injured and dying, with constantly swelling ranks, marching with halting step and dimming eyes to the great hereafter. This is what we have with us now, thanks to the wonderful material progress of our age, and this is what we shall have with us for many a day to come.

Legislate as we may in the line of stringent requirements for safety devices or the abolition of employers' common-law defenses, the army of the injured will still increase, and the price of our greatness will still have to be paid in human blood and tears.

To speak of the common-law personal injury action as a remedy for this problem is to jest with serious subjects, to give a stone to one who asks for bread. The terrible economic waste, the overwhelming temptation to the commission of perjury, and the relatively small proportion of the sums recovered which come to the injured parties in such actions, condemn them as wholly inadequate to meet the difficulty.

This passage was part of a decision written by Judge J. C. Winslow in *Borgnis* v. *Falk Company*, a case heard by the Wisconsin Supreme Court in 1911, 60 years ago.

Senator HART. One could only hope that anything we said would be as prophetic—what is it 60 years later—as what Judge Winslow said in that case that you excerpted. I have not seen this before.

Mr. WATKINS. It is considered a landmark case in workmen's compensation. As you point out, sir, its application today is obvious.

The insurance industry does not present a unified front either for or against no-fault, as you know. Some segments of the industry, including some insurance companies, are very outspoken against a first-party system. Other companies, including my own, have fully endorsed the concept.

What motivates our company to support no-fault?

Some people, notably the critics of no-fault, claim that insurance companies are pushing for this program in order to avoid paying large jury awards, to clean up on profits, and in general to exploit the consumer and the public. This is nonsense.

By any test, our business will stand or fall on the quality of service we render our customers—the insuring public. No-fault will help us meet this objective, not contradict it.

I personally believe that a no-fault system would have a favorable impact on the current crisis of insurance availability. Auto insurance is hard to get for a number of reasons, including restrictive rate regulation in many jurisdictions. But the problem goes deeper than this.

The fact is that the liability system itself makes it necessary for insurers to try to identify and insure only the best drivers—those likely to escape accident involvement—in order to avoid the unpredictable costs of accidents involving unknown third parties and their automobiles.

This effort is inevitably frustrating, I might add. But the result is that drivers in certain categories in certain locations find it virtually impossible to obtain auto insurance coverage on the open market. Then they are forced into assigned risk plans.

I feel certain that a no-fault system would lead to expansion of the automobile insurance market. Underwriting standards would be significantly changed.

An individual's driving record would still be important, but so would his income, the size of his family, the kind of car he drives. These are predictable factors, with assignable values.

In short, insurers would be able to figure more accurately the cost of the risk they assume and, in a free and competitive marketplace, would be able to offer coverage to virtually all drivers.

I believe, and my company and its affiliates believe, no-fault reform would ultimately improve the situation not only for the public but for the insurance industry by making possible more reasonable and realistic pricing of our product.

Today, sharp fluctuations in losses make the insurer's position too precarious to tolerate premium levels predicted on narrow or nonexistent profit margins and require the application of long-range trend factors in the pricing computation.

Under a first-party system, based on largely determinable rather than wholly unknown exposures, we would be able to predict losses with a greater degree of accuracy. Thus we would be in a better position to develop adequate rates based on moderate but realistic profit margins, avoiding the violent swings that have characterized our business for the past 10 years or so.

In summary, both from the point of view of the public and the insurance industry, no-fault would be meaningful reform. I strongly believe this.

I also believe that no-fault would be best implemented at the State level by the State governments, and I hold this view for what I regard as a most cogent reason.

In developing the no-fault plan that will be most effective in practice, we can learn much from the natural process of experimentation that occurs among the various states.

While the no-fault concept itself may be a rallying point for most reformers, there is no consensus on the best type of plan.

Some plans would set tort action thresholds at one figure; some at another. Some plans would pay total actual wage loss; others would set monthly limits of $750 or $1,000 or a specified percentage of salary. Some plans would include property damages in addition to bodily injury: others would not.

Before the public, the insurers, and the legislators can reasonably determine the relative merits of each plan, we need to experiment, and this is most appropriately carried out at the State level.

There are additional reasons, I think, why reform should be at the State level. State governments are closer and potentially more responsive to the particular needs of their constituencies, and in the matter of automobile insurance these needs may vary considerably.

Cost of living, for example, particularly medical care costs, often differ greatly from State to State. Contrast New York State to Mississippi.

Finally, the experience developed by the States in their traditional role as regulators of insurance—including the immediate availability of professional staffs knowledgeable in insurance—could be put to good use in dealing with reform at the State level.

Despite my strong preference for State rather than Federal action, I want to make it clear that I am neither dismayed nor frightened in any way by the interest being given to auto insurance reform by the Federal Government. On the contrary, I am encouraged by it. I am encouraged because it brings the urgency of reform into sharper focus.

The activities of this committee, its counterpart in the House, and the Department of Transportation—these activities provide not only direction for the States but incentive for them to act positively and without delay.

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92-18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
WILLIAM B. SPONG, Jr., Virginia

NORRIS COTTON, New Hampshire
WINSTON PROUTY, Vermont
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan
HOWARD H. BAKER, Jr., Tennessee
MARLOW W. COOK, Kentucky
MARK O. HATFIELD, Oregon
TED STEVENS, Alaska

FREDERICK J. LORDAN, *Staff Director*
MICHAEL PERTSCHUK, *Chief Counsel*
S. LYNN SUTCLIFFE, *Staff Counsel*
ARTHUR PANKOPF, Jr., *Minority Staff Director*
PETER POWELL, *Minority Professional Staff*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

THURSDAY, MAY 6, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 11 a.m., pursuant to recess, in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman of the Committee) presiding.

Present: Senators Magnuson and Hart.

The CHAIRMAN. The committee will resume its hearings on the insurance bills. Robert Joost is the next witness.

We will be glad to hear from you. I understand that you are employed by the American Trial Lawyers Association, is that correct?

STATEMENT OF ROBERT H. JOOST

Mr. JOOST. I am from the American Trial Lawyers.

My name is Robert H. Joost. I am a lawyer, and I am employed by the American Trial Lawyers Association at its headquarters in Cambridge, Mass.

I am submitting this statement for the record in favor of pending legislation in the Congress to establish on a nationwide basis a system of compensation of victims of automobile accident regardless of fault.

Since the American Trial Lawyers Association opposes no-fault automobile insurance legislation, I am submitting this statement for myself only and not for the association.

The CHAIRMAN. Can I interrupt just a minute. Do we have a formal statement in opposition from the Trial Lawyers Association?

Senator HART. They testified yesterday in very strong opposition.

Mr. JOOST. First to establish my own professional credentials, I am a graduate, magna cum laude, of the Harvard Law School, where I was an editor of volumes 72 and 73 of the Harvard Law Review, and I am a graduate, magna cum laude, of Yale College, where I was a member of Phi Beta Kappa. I have also studied at Columbia University as a graduate student in economics.

In addition to my professional work from 1962 to the present for the American Trial Lawyers Association—until 1964 it was called the NACCA Bar Association—I have been heavily involved in two major statutory reform efforts in Massachusetts. I participated in the molding and remodeling of the new Massachusetts mental health code, which goes into effect July 1, as a member of the legal studies staff of the Massachusetts Special Commission on Mental Health and as a member of the Attorney General's Committee on Commitment Law Revision, and since 1968 I have been a reporter for the Criminal Law Revision

Staff member assigned to these hearings: S. Lynn Sutcliffe.

Commission of Massachusetts [illegible] of the sub[illegible]

[illegible] in the New England [illegible] and com[illegible] a pied[illegible] published in 6 New England Law Review.

I am a member of the [illegible] and a member of the Amer[illegible] Trial Lawyers Association [illegible] the American Tri[illegible] Lawyers Association [illegible] Society.

My present post with the [illegible] Trial Lawyers Association i[illegible] I have hel[illegible] the title wa[illegible]

I am also [illegible] the monthly na[illegible] as a matter of fact, [illegible] am the only lawyer in the [illegible] of this magazine. Copies o[illegible] attached to m[illegible] formal statement.

I was first employed by the Trial Lawyers in 1961 as assistant to th[illegible] editor of the NACDL Law Journal, which is now called the Journa[illegible] of the American Trial Lawyers. In that capacity, between 1962 an[illegible] 1964, I wrote a substantial percentage of the articles published in vol[illegible] I worked for th[illegible] as the author of a regular colum[illegible] in Trial magazine entitled "A Brief Survey" in which I synopsize[illegible] current law-review articles of interest. I accepted a full-time positio[illegible] as an editor of Trial in September of 1967.

In addition to almost a decade with the trial lawyers associatio[illegible] itself, I also practiced law for 3 years with a law firm in Boston tha[illegible] concentrates on automobile negligence work—Sheff & McGarry; on[illegible] of the partners was then a member of the board of governors of th[illegible] American trial lawyers. The firm is typical of many such law firm[illegible] across the Nation.

As an ATL staff member, I have attended numerous national mee[illegible] ings of the trial lawyers—two in Denver, one here in Washingto[illegible] D.C., one in Las Vegas, one in San Francisco, and one in the Bahama[illegible] In 1970, I arranged and attended regional meetings of Key Men—that is, members interested in influencing legislative action—in Can[illegible] bridge, Las Vegas, Atlanta, Chicago, and Denver.

In 1971 to date, I have been to two such Key Men meetings; th[illegible] 1971 meetings were devoted exclusively to how to defeat no-fault—completely—at both State and Federal levels.

This statement is thus based on long personal involvement with an[illegible] observation of the principal opponents of legislation aimed at con[illegible] pensating automobile accident victims regardless of fault—the tri[illegible] lawyers.

I am submitting this statement in support of the Hart-Magnus[illegible] bill as an act of conscience, as an attorney, and as a citizen. It is al[illegible] submitted with sadness for I had hoped that the association itse[illegible] would see and would accept the fact that we lawyers must put asi[illegible] our personal pocketbook interest where the public interest conflicts.

Unfortunately, the group in control of ATL has refused to conce[illegible] that there is such a conflict and has refused to accept that a profe[illegible]

sional association of attorneys has a higher obligation than maintenance of personal income.

As a matter of fact, the group in control has never even polled the membership on no-fault versus negligence because no-fault is viewed as putting them out of business.

I myself have been in favor of no-fault automobile insurance, at least in part, for some time, I reviewed the trialblazing book by Profs. Robert E. Keeton and Jeffrey O'Connell, "Basic Protection for the Traffic Victim," in the spring 1966 issue of the Portia Law Journal, at pages 266 to 267. In that review, I called the book a "pathfinder in a difficult area," and as to the no-fault plan advocated by the authors, I concluded:

> The proposed statute is a careful attempt at reform. If substantially enacted, it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

A copy of that review is attached to my statement.

I attach also a copy of a letter to the editor of the Boston Globe published December 6, 1966, in which I criticized then Gov. John A. Volpe for his opposition at the time to the no-fault concept. In this letter, I declared in conclusion:

> The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried.

I am pleased personally that in 1970 Massachusetts, under the leadership of Michael Dukakis, a Democrat, and Francis Sargent, a Republican, did seriously consider and enact into law a no-fault automobile insurance law. As both Governor Sargent and Mr. Dukakis have testified to a subcommittee of the House of Representatives, the results in Massachusetts, so far, exceed the most sanguine expectations of the proponents.

I attach a letter by Mr. Dukakis published in the Boston Globe of April 30, 1971, in which he calls for extending these benefits to all the people through a national no-fault system.

When I was hired by the American trial lawyers on a full-time basis in 1967, I had to agree to make no public statements in opposition to the position of the association. My personal views, however, did not change.

The CHAIRMAN. Mr. Joost, do the American trial lawyers have their national headquarters here in town?

Mr. JOOST. No, in Cambridge, Mass. We have a Washington representative, but the headquarters are in Cambridge across the Cambridge common from the Harvard Law School.

To reiterate, my personal views did not change. As a matter of fact, my enthusiasm for the no-fault approach to automobile reparations increased. While my original decision to favor the Keeton-O'Connell plan might have stemmed, at least in part, from the fact that I studied torts from its principal author, Professor Keeton, and because Mr. Keeton was instrumental in getting me my first job with NACCA in 1962, my editorial position with *Trial* starting in September 1967 gave me the time and the access to books and reports which were necessary to a true appreciation of all the issues involved.

Let me state formally for the record: In my judgment, based on my years of study, thought, and observation, I believe that a system of automobile reparations based on compensation of all the tangible losses

of all victims of automobile accidents in the United States without regard to fault would be a much better system than the present one based on compensation of all the tangible and intangible losses of victims but only if the victim proves that a financially solvent defendant by his negligence proximately caused his injuries and only if he proves fault and damages by a preponderance of the evidence in a trial before a court or jury.

Under no-fault, the public, the beneficiaries, and consumers of automobile insurance would get better protection for the premium dollars spent and at lower annual cost.

In addition, the hard-pressed judicial systems of the Federal and State governments would get some relief. The problems of the courts of America today are largely on the criminal docket rather than the civil docket side, but it is my judgment that no-fault, by lifting out of the courts a substantial volume of cases, would free up enough judge time, enough judicial man-hours to make it possible to try every criminal defendant in this country within 60 days from date of arrest, or at least within 6 months. It is by no means the complete answer to the crisis of our courts, but it is a part of the solution, and a part, incidentally, that does not require the expenditure of additional taxpayer money.

Finally, no-fault is a much more efficient system than the present one. The present one was not developed for a nation with 100 million registered motor vehicles and a multibillion dollar insurance industry; it was developed for a horse and carriage society, in another country, in another century, in the pre-liability-insurance era.

Since 1932 and the Columbia University study, it has been apparent to anyone who has studied the literature closely that something better than the automobile negligence liability-insurance system was available. The success of the Saskatchewan plan in one of the provinces of Canada confirmed this point.

However, for almost 40 years, the people of the United States were denied this "something better" because the individuals who feed off and earn their livelihood from the automobile negligence system happen also to possess a great deal of political clout.

They had, in fact, enough political muscle to snuff out the idea before it could even be tried in any State of the Union until the Commonwealth of Massachusetts in 1970 enacted a no-fault law. The Massachusetts statutes, however, came about as a result of rather unique circumstances which are unlikely to be duplicated in many other States: A very strong proponent in each political party; the highest premium rates in the Nation; a weak statewide organization of trial lawyers; and a State legislative tradition of being innovative.

Since there has never been any question as to my personal preference for no-fault, I confess that I did speak, my true feelings with some discreet friends. About a month ago, I received a telephone call from a congressional aide. He asked if I would testify before Congress on no-fault legislation. Apparently, one of my "discreet" friends hadn't been so discreet, and the congressional aide had learned that there was a lawyer who worked for the American Trial Lawyers Association, a trial lawyers' lawyer, who didn't agree with the party line.

I told him no because I wasn't myself convinced that automobile insurance was a proper subject for Federal rather than State legislation. I told him that I leaned toward the view that the States should be given every opportunity to act before the Federal Government comes in, in whole or in part.

Since that surprise telephone call, I have agonized and pondered.

Finally, after a recent meeting of key men in Chicago, I concluded that I had to testify. If Congress is to execute its duty, which is to all the people of the United States and not just to the trial lawyers, it should get the views of one who has studied and thought hard about this no-fault business for many years, and who has been a trial lawyers' lawyer.

In my judgment, the only way in which this Nation is going to get real justice, opportunity and environmental health is if the Congress and the State legislatures authorize the private and independent trial lawyers of America to become "private attorneys general" on behalf of private citizens and to authorize the trial lawyers to bring private-remedy actions for injunctions, court orders to perform, and damages against those who pollute, against those who discriminate, against those who rent substandard housing and against those who take advantage of consumers—in return for a reasonable attorney's fee and true costs, fixed by the court and paid by the defendant found by the courts to be in violation.

The fact is, therefore, that the enactment of the Hart-Magnuson legislation will not wipe out the trial bar for there are so many wrongs that need to be litigated and righted in our courts of justice. But the courts today are so chock-a-block full of existing business that they can't really take on big new workloads, even if class actions, treble-damage suits and all the rest were authorized in all the areas in which adequate enforcement of existing law is important.

The fact is, Mr. Chairman, that the trial lawyers of America, who should be out there litigating for America, a better America, are vegetating in the pork barrel of automobile negligence work.

The fact is that the only thing that will get the private and independent litigation experts en masse into environmental litigation, consumer protection litigation, inadequate housing litigation, antisnooping litigation and all the other things that lawyers can do in court which this country needs to have done is for the Congress of the United States to push them out of their present overstuffed and overpaid womb.

As I mentioned, until recently I leaned toward the position that, I now believe firmly that a decision to leave it to the States is, in fact, a State level before the Federal Government acts. I no longer do. I now believe firmly that a decision to leave it to the States is, in fact, a decision to retain the automobile negligence system with all its waste, all its excessive administrative costs, all its duplication, all its slow pace of operation.

If the Congress declines to act now, there will be some automobile insurance legislation passed by a few States in addition to my own. The legislation will even be called no-fault. But the terminology will be designed for one reason, to keep the Congress out. In reality, these State laws will continue the waste and the inefficiency of the present negligence liability-insurance system while ameliorating some of its bad effects.

Moreover, they will add the new problem which Gov. Francis Sargent of Massachusetts pointed to in a recent speech—the problem of excessive profits by the insurance industry. I have attached to this statement an article summarizing a recent speech on this subject by the Governor.

In Chicago on April 24th, I heard the ATL key men from Ohio and Illinois make such smug associations of control of their State legislaturs, in whole or in part, that I was absolutely and totally disabused of my States-first leaning. I heard also that the trial lawyers have been increasing their power and their strength in State legislatures.

For example, the Texas Trial Lawyers Association has been running a program they call LIFT, under which subscribers contribute a minimum of $10 a month to what amounts to a campaign fund for candidates for the legislature. More than 600 Texas trial lawyers now subscribe, according to what I learned at the Chicago meeting.

Every election year, the funds accumulated by LIFT are divided among protrial lawyer candidates for the Texas Legislature. Let me read the text of an item that was published in the June 23, 1970, issue of the El Paso, Texas Trial Lawyers Association newsletter, "Ready for the Plaintiff." (Vol. VI, No. 3) (The editor of the newsletter is attorney Richard T. Marshall, who was then national secretary of the American Trial Lawyers Association.)

UP, UP AND AWAY!!

LIFT is the latest effort of Texas Trial Lawyers Association. It stands for Lawyers Involved for Texas, and it's a runaway success . . . The *El Paso Times* reported in its Capital Column June 14th, that *LIFT was responsible* for the Democratic nomination in this year's primaries of six of the eight candidates it backed for the *State Senate.*

LIFT is a legislative kitty which is paying off. Most of your officers are contributing $10 per month on a bank draft authority to LIFT.

If you want to be a part of the movement for *comparative negligence* in Texas, for statutory authority to let jurors know what they are doing in *special issue* verdicts, and for a successful rejection of *Keeton-O'Connell* schemes, in other words, if you want your practice to survive, better get with it.

Send a check, any amount, to *LIFT, 201 Westgate Building, Austin!*

A more complete description of LIFT, published in an ATL 1970 publication called "A Trial Lawyer's Legislative Workbook" and taken from a letter dated January 7, 1970, by Attorney William R. Edwards of Corpus Christi, Tex., to the vice chairman of ATL's legislative section with a copy to me as assistant to the chairman of the legislative section is attached to this statement.

It may be of interest to this committee to know that the Texas Trial Lawyers Association, which promotes LIFT as its "latest effort . . . a legislative kitty which is paying off" is itself a tax-exempt organization. I attach also from the Trial Lawyer's Workbook a copy of letters the Texas affiliate received from tax attorneys supporting their exempt status and advising them how to keep it.

What this means, of course, is that in at least one State the Federal Government, by tax preference, is subsidizing political opposition to the Keeton-O'Connell plan and other no-fault proposals, at the same time that Federal Government officials argue that the States can and will pass good no-fault laws.

Mr. Chairman, how many State senators or State representatives in Texas are going to vote for meaningful automobile insurance reform,

when they know that if they do attract candidates, good speakers, with money from LIFT and campaign help from the trial lawyers are going to run against them in the next primary or the next general election?

What real chance do the people of Texas have to receive the benefits of the no-fault system of automobile reparations—unless this Congress passes Federal no-fault legislation?

At the Key Men meeting on April 24, I heard that the LIFT program has been adopted by at least one additional State. According to Attorney Thomas A. Heffernan of Cleveland, Ohio—I believe his law partner, Mr. Craig Spangenberg, addressed this committee the other day—the Ohio Academy of Trial Lawyers is now enrolling subscribers to its version which bears the acronym ADOPT. This attorney predicted flatly, unequivocally, and totally that the Ohio Legislature will never enact any no-fault automobile insurance legislation in any form.

At that meeting, the chairman of ATL's legislative section, Attorney Jerry Finn of Newark, N.J., summed up the discussion by saying: "Let's all ADOPT LIFT." No one objected.

More direct fundraising methods are also used by trial-lawyer groups. According to Attorney Jon Carlson of Belleville, Ill., who spoke at the meeting, every member of the St. Clair, County, Ill., Bar Association has been assessed $100 for a fund to fight Governor Ogilvie's insurance reform legislation.

Incidentally, Mr. Carlson and Attorney Leonard Ring of Chicago both asserted at this meeting that Ogilvie's bill doesn't have "a chance" to become law in Illinois. In Mr. Ring's words: "We control the Senate, Ogilvie controls the House; it's a standoff."

Mr. Chiarman, again, what chance do the consumers of automobile insurance in Illinois have to secure the benefits of no-fault unless the Congress acts?

At another "key men" meeting, this one held for representatives from the northeast region, on April 17, in the offices of the American Trial Lawyers Association in Cambridge, Mass., several of the representatives suggested that defense lawyers, that is, personal injury lawyers who are retained by insurance companies to defend against automobile negligence claims, are a good source for funds to finance the fight against no-fault.

The key men were urged to form general anti-no-fault lawyers' groups and citizens' groups and resign themselves to the fact that defense lawyers were afraid to let their names be used since many of them are retained by insurance companies which are in favor of no-fault auto insurance. I believe it was Attorney Daniel H. Mahoney of Albany, N.Y., who mentioned that such a citizen's committee was functioning in New York State and had purchased newspaper advertising in several papers against the Gordon bill in the New York State Legislature (the Gordon bill is patterned after the Massachusetts law).

It was stated that the advertisements should become punchier. I notice the recent ones just say no-fault is a hoax.

Another Key Man, and a former Connecticut State legislator, Attorney Leon Riscassi of Hartford, mentioned that the Connecticut trial lawyers had also had good luck in raising funds from the sheriffs and constables of the State of Connecticut. Apparently, the deputies

are paid on a fee basis: they were convinced that no-fault would mean fewer legal papers to serve and, therefore, lower incomes for themselves.

The committee may also be interested in another method that has been used for more than 3 years to fight no-fault. Since late in 1967, the association has been arranging for large fees to be paid by one or another trial lawyer group to a supposedly neutral academic, Prof. David Sargent of Suffolk University Law School in Boston, in return for his speaking, appearing, and testifying before private and legislative groups all around the country.

I see no objection to the appearances or to his being paid—Dave Sargent is a very able law professor: he has a viewpoint, and the subject matter demands the most careful and complete discussion—but I do find it less than honorable that Professor Sargent appears wearing his Suffolk University hat rather than his trial lawyers mantle, and that his audiences are not told who is paying him or how much.

As a matter of fact, at one of the recent Key Men meetings, somebody was complaining that Professor Sargent's rates were going up. The delegates said that he is now asking $500 an appearance plus expenses—for 1 day.

As the committee may know, this morning in Boston the supreme judicial court of Massachusetts heard oral argument in a suit challenging the constitutionality of the Massachusetts no-fault statute. The action has been brought by the immediate past president of the Massachusetts chapter of the American Trial Lawyers, Attorney Robert Cohen.

There was a short news item in the Boston Sunday Globe for April 25, 1971, page A-5, on one of the methods used to finance this constitutional-challenge litigation. According to the Globe's account:

> Attorneys are wondering about a couple of ethical questions raised by the activities of the lawyers bringing the test case of no-fault auto insurance law. The lawyers, Robert Cohen and Alexander Cella, have sent other attorneys a mimeographed form offering for sale at $50 per set the two-volume brief ($45) they have prepared on the case and the appendices ($5) . . . Fellow lawyers say (1) they've never heard of a lawyer openly selling a brief . . . and (2) the appendix consists of court records, which may not be theirs to sell.

To summarize and reiterate, it is my considered judgment that the trial lawyers will probably prevent any meaningful no-fault legislation from being enacted in any of the State legislatures, with a few possible exceptions. It is naive to argue that there is a choice between Federal legislation and legislation in the other 49 State capitals. The only choice is between Federal no-fault legislation or maintenance of the present negligence system, the system which the Department of Transportation's $2 million study so carefully and painstakingly criticized.

There is, I might add, a second reason why I believe Congress must act. If the trial lawyers have a stronghold on the State legislatures, how does one find words to describe the power position of the insurance industry and its armies of lobbyists in all statehouses? There is at this time in my opinion absolutely no justification in experience or policy for the present exemption of the insurance industry from meaningful Federal regulation.

According to Attorney Heffernan of Cleveland, again, the trial lawyers have one lobbyist in the Ohio Legislature and the insurance

companies between them have 30. If the ATL people can make the assertions they make with their one lobbyist and ADOPT/LIFT, think what assertions the insurance companies can make in their private conclaves.

The objective of the insurance industry, according to the best information and intelligence the trial lawyers have been able to acquire, is maximum profit. Rest assured, there are enormous profit possibilities in no-fault automobile insurance unless it is tightly audited and regulated.

The reason for this is that a no-fault policy basically is a combined medical, accident-and-health and income-replacement policy which pays benefits in case of motor vehicle caused injury.

But the rates in Massachusetts, after the no-fault statute was passed, were not set on the basis of experience with accident and health and income replacement coverage, but rather on the basis of reductions from current automobile personal injury liability insurance rates. It is going to take a considerable number of reductions before one gets down to the accident and health premium level, and in the interim, rather enormous profit potential is available to the industry.

S. 945, the Uniform Motor Vehicle Insurance Act, represents new coverage by a new system. Since there are not now any Federal personal injury liability insurance rates, rates won't be set—they couldn't be set—by reductions from existing Federal rates. They will have to be set afresh from the new perspective, and that is what is appropriate when the subject is a new and different kind of coverage.

In my opinion, only the Federal Government has the strength and the capability to tightly audit and regulate no-fault automobile insurance coverage. If profits in excess of a reasonable return are to be prevented, no-fault must be legislated by the Federal Congress. Any other course would just mean the substitution of one form of consumer abuse with another.

I urge the passage of the Hart-Magnuson legislation.

Now, while this concludes my prepared statement, I would like to add a summary of what has happened since I mailed this statement to the Congress.

I was informed on Monday, April 26, after I mailed my statement to Washington, of the decisions reached at another trial lawyers' meeting in Chicago on April 24. At that meeting, the executive committee of the American Trial Lawyers Association unanimously approved a resolution creating a completely new department—the department of Federal-State relations—with a proposed budget of $322,200 for the fiscal year which begins August 1.

The executive committee voted to finance the budget for this new department by (1) reducing the budget of the department of public affairs and education (which edits and publishes *Trial*) by $112,000, and by (2) dues increases expected to net an additional $200,000.

As part of the cutback in the public affairs and education department, its director was ordered to dismiss me, the only lawyer, at the end of the fiscal year, as well as several additional staff members.

In view of the statement I had mailed to Washington, I told the department head, the editor of *Trial*, that I would leave after the 2-week notice period which means I cease to be an employee tomorrow, May 7.

The director of the new department of Federal and State relations—a department incidentally which goes from nonexistence to being the largest department, consuming 35 percent of the association's total budget—the director will be Mr. Alan Locke. Mr. Locke is not a lawyer, but his brother, Barry Locke, is an aide to Secretary Volpe.

As part of that one-third-of-a-million-dollar budget, the association has contracted with a professional public relations firm to fight no-fault—the firm of Edelman & Co. of Chicago.

Thank you.

The CHAIRMAN. Thank you for your very potent statement.

I am going to have to leave in a minute, but I just want to point out that I, like yourself, in the beginning was hesitant about proceeding on the Federal level, thinking we could encourage States to get at this matter. I mentioned that sometime ago—3 or 4 years ago. But I have found from practical experience that it just doesn't seem to be moving.

Now inaction may result from some of the things you are talking about—I suppose they are factors—but even in my own State, and I am quite close to the legislature there, having served in it at one time, I find a lot of opposition to the concept of no-fault by legislators who I guess have never sought out to lawyers or insurance companies or anybody else. But when no-fault is proposed to them, then they will ask someone like an insurance man that they know of or a trial lawyer who just about convince them that no-fault isn't a good system. And there is no rebuttal. There is no chance for the premium payer or the consumer of automobile insurance to get their word in.

The result is there is just no action. I can conceive that, if we did something here that would allow the States to try and do something in a reasonable time, it would just not happen. We have run into that in all kinds of safety legislation. We tried to compel the States to have auto safety laws and it didn't happen until we passed a Federal bill. Sometimes, when we begin hearings on Federal legislation, it wakes some people up and they start to get busy. But when you are talking about 50 States, that isn't true; it is going to be a long, long time.

So, I am appreciative of your testimony, and being a lawyer myself I understand how they operate sometimes, although I am a little rusty at the practice of law now.

This is a very potent testimony because I think there are two things that plague every home in the United States. There are a lot of other things, but these are two things we know plague every home, financially, emotionally, and every other way. One is health insurance and the other is auto insurance. They affect every home, not only because of the money involved but because of the kinds of things that happen. When insurance companies are canceling contracts, when rates go up for insurance, people are afraid to go to the hospital or make an auto claim. They don't know if they can afford to take such action. And this is true in every home. I have said many times in the past 3 or 4 years that auto insurance and health insurance are two things that Congress ought to set itself to.

I am so glad that there is so much interest in this no-fault bill of Senator Hart's and myself, and we are hopeful to move along. And your testimony here is quite potent, and I appreciate it.

Now you will have to excuse me. I have to go down and discuss some maritime matters.

Senator HART (presiding). Mr. Joost, I think "potent" is an excellent word to describe your testimony, and I would think that it would move this legislation along.

Mr. JOOST. I hope so.

Senator HART. It should. We will see if it will.

Now, I made so many notes as you went along that I don't know where to begin, but there are several points that I would like either to have you clarify or by a question, underscore.

Mr. JOOST. Certainly.

Senator HART. Before I get to that, let me comment. On the very first page you describe your professional qualifications. I have met a magna cum laude man from Harvard law, and I have known Harvard Law Review editors. I am not sure if I ever met a magna cum laude graduate from Yale. I have met Phi Beta Kappas. But this is the first time I have met all of them at once. Do you understand my reluctance to ask you questions?

Frankly, I was tempted on other days in these hearings we have had witnesses speak against the bill to suggest the high level of self-interest which inevitably would operate on their judgment. I didn't. You are pretty blunt about it. I guess the reason I didn't is my belief—my hope—that in the legislative considerations of these proposals, intelligent men will be able to evaluate the background from which on any of these witnesses speak. It was not that I was unconscious.

Mr. JOOST. I hope your claim has merit.

Senator HART. Here is one I will have to ask you to clarify. We opened these hearings with Secretary Volpe as the witness, and I haven't reread the testimony—maybe my memory is faulty—I though he was one of the great fighters for the Massachusetts no-fault plan. I get the impression that he knows the fight: you can wait for the States and give them a try. Your vision of his role is sharply different from my impression.

Is my impression wrong?

Mr. JOOST. Your impression is wrong, sir.

As you know, Massachusetts has had a compulsory-automobile-liability-insurance law since 1927. There have been problems under this law, including the fact that it helped to put Massachusetts in the untenable position of being the State with the highest auto-insurance premiums in the country. In 1966 or 1967, shortly after John Volpe's election to the first 4-year term as Governor of Massachusetts, shortly after that election, the Governor filed legislation to end the compulsory-liability-insurance system and enact a financial-responsibility law and also to establish a fraudulent-claims bureau.

Now, financial-responsibility laws exist in 47 of the 50 States. Only three States, Massachusetts, New York and North Carolina, have compulsory automobile-insurance laws. Financial-responsibility laws are a little like the dog-bite laws; you may get the "first bite" free, but after that you have to have liability insurance.

Governor Volpe pushed for "financial responsibility," even though it has never really worked, because "financial responsibility" means there will always be some totally uncompensated victims. If you get hit by an automobile, and if the person who hits you doesn't have liability insurance or private wealth or substantial property subject

to attachment, "financial responsibility" means you are totally without protection in case of injury.

I have heard of cases in States with financial-responsibility laws where hospitals wouldn't even admit an automobile accident victim until they received proof that either he had a Blue Cross certificate or that the person who hit him was insured or highly solvent.

Despite all this, Governor Volpe introduced a financial-responsibility bill. Mike Dukakis, who was a classmate of mine at Harvard Law School and a very active Democratic Member of the House of Representatives, decided that the Democrats had to come up with an insurance program also. He decided that it should be a real reform program, and thus he filed the "no-fault" legislation that had been drawn by Professor Keeton at Harvard.

Governor Volpe did not support him. Mike got it through the House of Representatives on a hot summer day when there weren't too many people there: he moved substitution on the floor, and the Keeton-O'Connell plan passed. Lo and behold, the trial lawyers panicked. There was an emergency return of employees on vacation. All kinds of things happened. People scurried all over the place.

Finally, there was a day of great jubilation when somebody persuaded the head of the Teamsters Union in Massachusetts, I think his name was Nick Morrisey, to agree to run full-page ads by the Teamsters opposing no-fault, provided the trial lawyers would pay for them all. With this kind of support, "no fault" was killed in the State senate.

Governor Volpe never made a statement in support of "no fault." He never had to act, of course, since the bill was prevented from coming to his desk as Governor. The same thing happened again in 1968. Governor Volpe never endorsed the concept while he was Governor.

Senator HART. My question might appear to be critical of the Secretary. I was asking for clarification. I react this way. Sort of the Biblical welcome-home thing. If in fact once he was opposed or not helpful, he now has moved to the point of urging the adoption of no-fault across the country, but says—and I sense rather reluctantly—that we ought to wait, you know, pass a resolution and encourage the States to do it. In any event he does, you will be glad to know, support no-fault.

Mr. JOOST. I think one reason for his support now is the fact that his Lieutenant Governor, now Governor, Francis Sargent, has found that the "no-fault" thing works. You know, there is nothing like trying something—try it and see if it works. The Massachusetts law is really not a very good law technically. I have drafted a lot of statutes for the criminal law commission, and believe me, the Massachusetts no-fault law is technically very poor.

The first sentence is 567 words long. The second sentence is 14 words. The guts of the statute are contained in a definitions section, the definition of PIP, personal injury protection. With all, it is a weak and limited bill, but the important thing is that it is working. The premium rates are coming down, although they have got to come down much more.

Senator HART. Governor Sargent filed a statement with us yesterday complaining about the failure of the Massachussetts plan to reflect the savings that were accruing to the insurance carriers.

I won't ask you to describe in fuller detail how your vacation was interrupted, but I am intrigued by the passing comment that you made about it.

Do you know whether the Internal Revenue Service has reviewed any of these programs or war chests, or whatever you want to call them, specifically the one in Texas?

Mr. JOOST. I just don't know. The letter from tax counsel which I attach to this statement states the facts—in other words, you have told us thus and so. The LIFT program is not in that statement of facts. So I can't blame tax counsel. I have no way of knowing what Internal Revenue has or has not done.

Senator HART. Some place in here you describe a county bar association assessing a sum.

Mr. JOOST. $100.

Senator HART. That was on each member to generate moneys to fight the Ogilvie plan in Illinois County? Could they fog that up in such a fashion as to make it a deductible business expense?

Mr. JOOST. Again, I am not a tax lawyer, and I think I had better stay out of that can of worms.

Senator HART. The group which files and obtains a tax exempt status nonetheless may not use moneys in legislative lobbying unless it wants to forfeit its exemption. I am not a tax lawyer either, but isn't that a correct statement?

Mr. JOOST. That is correct. I think the reasons for it are terribly important public-policy reasons. We cannot permit special-interest groups, particularly special-interest economic groups, to be both tax exempt and free to lobby. When you come right down to it the bar associations, at least the American Trial Lawyers Association, is nothing more, nothing less than a trade association. If groups like this are subsidized by the Federal Government to pursue lobbying and legislative activities aimed, not at the best interest of the Federal Government or the best interest of the people, but at their own personal best interest, their own personal pocketbook interest, then the public is deceived.

The trial lawyers speak in terms of "offensive" legislative activity, which means persuading States to enact new provisions such as comparative negligence as a replacement to the rule of contributory negligence, and "defensive" legislative activity, which means preventing the passage of "things we can't live with"—preeminently no-fault auto insurance.

I think the reasons why Congress continually has said, in all its revision of the Federal Tax Code, that you can't be both tax exempt and lobby, are good. There are particular situations, I know, where the prohibition hurts, but I think the reasons in favor are overwhelming and clear. Personally, I think that the tax law on exemptions for trade associations and such groups should be tightened.

Senator HART. The fact that you have advised us with respect to the activities which you, as a result of sitting with the "Key Men" meetings, know are included in the agenda of these groups would, I think, put the Internal Revenue Service on notice. I am not suggesting that it is or isn't an abuse, I don't know. But certainly you have raised the question. As you say, it is a basic public policy concern that that kind of activity not be subsidized.

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

TOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

ADDITIONAL ARTICLES, LETTERS AND STATEMENTS

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

THURSDAY, MAY 6, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 11 a.m., pursuant to recess, in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman of the Committee) presiding.

Present: Senators Magnuson and Hart.

The CHAIRMAN. The committee will resume its hearings on the insurance bills. Robert Joost is the next witness.

We will be glad to hear from you. I understand that you are employed by the American Trial Lawyers Association, is that correct?

STATEMENT OF ROBERT H. JOOST

Mr. JOOST. I am from the American Trial Lawyers.

My name is Robert H. Joost. I am a lawyer, and I am employed by the American Trial Lawyers Association at its headquarters in Cambridge, Mass.

I am submitting this statement for the record in favor of pending legislation in the Congress to establish on a nationwide basis a system of compensation of victims of automobile accident regardless of fault.

Since the American Trial Lawyers Association opposes no-fault automobile insurance legislation, I am submitting this statement for myself only and not for the association.

The CHAIRMAN. Can I interrupt just a minute. Do we have a formal statement in opposition from the Trial Lawyers Association?

Senator HART. They testified yesterday in very strong opposition.

Mr. JOOST. First to establish my own professional credentials, I am a graduate, magna cum laude, of the Harvard Law School, where I was an editor of volumes 72 and 73 of the Harvard Law Review, and I am a graduate, magna cum laude, of Yale College, where I was a member of Phi Beta Kappa. I have also studied at Columbia University as a graduate student in economics.

In addition to my professional work from 1962 to the present for the American Trial Lawyers Association—until 1964 it was called the NACCA Bar Association—I have been heavily involved in two major statutory reform efforts in Massachusetts. I participated in the molding and remodeling of the new Massachusetts mental health code, which goes into effect July 1, as a member of the legal studies staff of the Massachusetts Special Commission on Mental Health and as a member of the Attorney General's Committee on Commitment Law Revision, and since 1968 I have been a reporter for the Criminal Law Revision

Staff member assigned to these hearings: S. Lynn Sutcliffe.

Commission of Massachusetts which is engaged in revision of the substantive criminal law of the State.

Also, from 1967 to 1971 I was a part-time law professor at the New England School of Law in Boston. I have published articles and comments on a variety of legal subjects, the most recent being a piece called "Housing and the Law: An Overview," published in 6 New England Law Review 1 (1970).

I am a member of the Massachusetts bar, and a member of the American, Massachusetts, and Boston Bar Associations, the American Trial Lawyers Association, and the American Judicature Society.

My present post with the American Trial Lawyers Association is assistant to the chairman of the legislative section, which I have held since 1968. For a period I was called special counsel but the title was changed to assistant to the chairman in 1969.

I am also consulting editor of Trial magazine, the bimonthly national legal news magazine published by ATL. As a matter of fact, I am the only lawyer on the editorial staff of this magazine. Copies of letterhead stationery which indicate my position are attached to my formal statement.

I was first employed by the trial lawyers in 1962, as assistant to the editor of the NACCA Law Journal, which is now called the Journal of the American Trial Lawyers. In that capacity, between 1962 and 1964, I wrote a substantial percentage of the articles published in volumes 29, 30, and 31 of the journal. From 1964 to 1967, I worked for the association on a part-time basis as the paid author of a regular column in Trial magazine entitled "A Brief Sweep" in which I synopsized current law-review articles of interest. I accepted a full-time position as an editor of Trial in September of 1967.

In addition to almost a decade with the trial lawyers association itself, I also practiced law for 2 years with a law firm in Boston that concentrates on automobile negligence work—Sheff & McGarry; one of the partners was then a member of the board of governors of the American trial lawyers. The firm is typical of many such law firms across the Nation.

As an ATL staff member, I have attended numerous national meetings of the trial lawyers—two in Denver, one here in Washington D.C., one in Las Vegas, one in San Francisco, and one in the Bahamas. In 1970, I arranged and attended regional meetings of Key Men—that is, members interested in influencing legislative action—in Cambridge, Las Vegas, Atlanta, Chicago, and Denver.

In 1971 to date, I have been to two such Key Men meetings; the 1971 meetings were devoted exclusively to how to defeat no-fault—completely—at both State and Federal levels.

This statement is thus based on long personal involvement with and observation of the principal opponents of legislation aimed at compensating automobile accident victims regardless of fault—the trial lawyers.

I am submitting this statement in support of the Hart-Magnuson bill as an act of conscience, as an attorney, and as a citizen. It is also submitted with sadness for I had hoped that the association itself would see and would accept the fact that we lawyers must put aside our personal pocketbook interest where the public interest conflicts.

Unfortunately, the group in control of ATL has refused to concede that there is such a conflict and has refused to accept that a profes

sional association of attorneys has a higher obligation than maintenance of personal income.

As a matter of fact, the group in control has never even polled the membership on no-fault versus negligence because no-fault is viewed as putting them out of business.

I myself have been in favor of no-fault automobile insurance, at least in part, for some time, I reviewed the trialblazing book by Profs. Robert E. Keeton and Jeffrey O'Connell, "Basic Protection for the Traffic Victim," in the spring 1966 issue of the Portia Law Journal, at pages 266 to 267. In that review, I called the book a "pathfinder in a difficult area," and as to the no-fault plan advocated by the authors, I concluded:

> The proposed statute is a careful attempt at reform. If substantially enacted, it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

A copy of that review is attached to my statement.

I attach also a copy of a letter to the editor of the Boston Globe published December 6, 1966, in which I criticized then Gov. John A. Volpe for his opposition at the time to the no-fault concept. In this letter, I declared in conclusion:

> The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried.

I am pleased personally that in 1970 Massachusetts, under the leadership of Michael Dukakis, a Democrat, and Francis Sargent, a Republican, did seriously consider and enact into law a no-fault automobile insurance law. As both Governor Sargent and Mr. Dukakis have testified to a subcommittee of the House of Representatives, the results in Massachusetts, so far, exceed the most sanguine expectations of the proponents.

I attach a letter by Mr. Dukakis published in the Boston Globe of April 30, 1971, in which he calls for extending these benefits to all the people through a national no-fault system.

When I was hired by the American trial lawyers on a full-time basis in 1967, I had to agree to make no public statements in opposition to the position of the association. My personal views, however, did not change.

The CHAIRMAN. Mr. Joost, do the American trial lawyers have their national headquarters here in town?

Mr. JOOST. No, in Cambridge, Mass. We have a Washington representative, but the headquarters are in Cambridge across the Cambridge common from the Harvard Law School.

To reiterate, my personal views did not change. As a matter of fact, my enthusiasm for the no-fault approach to automobile reparations increased. While my original decision to favor the Keeton-O'Connell plan might have stemmed, at least in part, from the fact that I studied torts from its principal author, Professor Keeton, and because Mr. Keeton was instrumental in getting me my first job with NACCA in 1962, my editorial position with *Trial* starting in September 1967 gave me the time and the access to books and reports which were necessary to a true appreciation of all the issues involved.

Let me state formally for the record: In my judgment, based on my years of study, thought, and observation, I believe that a system of automobile reparations based on compensation of all the tangible losses

of all victims of automobile accidents in the United States without regard to fault would be a much better system than the present one based on compensation of all the tangible and intangible losses of victims but only if the victim proves that a financially solvent defendant by his negligence proximately caused his injuries and only if he proves fault and damages by a preponderance of the evidence in a trial before a court or jury.

Under no-fault, the public, the beneficiaries, and consumers of automobile insurance would get better protection for the premium dollars spent and at lower annual cost.

In addition, the hard-pressed judicial systems of the Federal and State governments would get some relief. The problems of the courts of America today are largely on the criminal docket rather than the civil docket side, but it is my judgment that no-fault, by lifting out of the courts a substantial volume of cases, would free up enough judge time, enough judicial man-hours to make it possible to try every criminal defendant in this country within 60 days from date of arrest, or at least within 6 months. It is by no means the complete answer to the crisis of our courts, but it is a part of the solution, and a part, incidentally, that does not require the expenditure of additional taxpayer money.

Finally, no-fault is a much more efficient system than the present one. The present one was not developed for a nation with 100 million registered motor vehicles and a multibillion dollar insurance industry; it was developed for a horse and carriage society, in another country, in another century, in the pre-liability-insurance era.

Since 1932 and the Columbia University study, it has been apparent to anyone who has studied the literature closely that something better than the automobile negligence liability-insurance system was available. The success of the Saskatchewan plan in one of the provinces of Canada confirmed this point.

However, for almost 40 years, the people of the United States were denied this "something better" because the individuals who feed off and earn their livelihood from the automobile negligence system happen also to possess a great deal of political clout.

They had, in fact, enough political muscle to snuff out the idea before it could even be tried in any State of the Union until the Commonwealth of Massachusetts in 1970 enacted a no-fault law. The Massachusetts statutes, however, came about as a result of rather unique circumstances which are unlikely to be duplicated in many other States: A very strong proponent in each political party; the highest premium rates in the Nation; a weak statewide organization of trial lawyers; and a State legislative tradition of being innovative.

Since there has never been any question as to my personal preference for no-fault, I confess that I did speak, my true feelings with some discreet friends. About a month ago, I received a telephone call from a congressional aide. He asked if I would testify before Congress on no-fault legislation. Apparently, one of my "discreet" friends hadn't been so discreet, and the congressional aide had learned that there was a lawyer who worked for the American Trial Lawyers Association, a trial lawyers' lawyer, who didn't agree with the party line.

I told him no because I wasn't myself convinced that automobile insurance was a proper subject for Federal rather than State legislation. I told him that I leaned toward the view that the States should be given every opportunity to act before the Federal Government comes in, in whole or in part.

Since that surprise telephone call, I have agonized and pondered.

Finally, after a recent meeting of key men in Chicago, I concluded that I had to testify. If Congress is to execute its duty, which is to all the people of the United States and not just to the trial lawyers, it should get the views of one who has studied and thought hard about this no-fault business for many years, and who has been a trial lawyers' lawyer.

In my judgment, the only way in which this Nation is going to get real justice, opportunity and environmental health is if the Congress and the State legislatures authorize the private and independent trial lawyers of America to become "private attorneys general" on behalf of private citizens and to authorize the trial lawyers to bring private-remedy actions for injunctions, court orders to perform, and damages against those who pollute, against those who discriminate, against those who rent substandard housing and against those who take advantage of consumers—in return for a reasonable attorney's fee and true costs, fixed by the court and paid by the defendant found by the courts to be in violation.

The fact is, therefore, that the enactment of the Hart-Magnuson legislation will not wipe out the trial bar for there are so many wrongs that need to be litigated and righted in our courts of justice. But the courts today are so chock-a-block full of existing business that they can't really take on big new workloads, even if class actions, treble-damage suits and all the rest were authorized in all the areas in which adequate enforcement of existing law is important.

The fact is, Mr. Chairman, that the trial lawyers of America, who should be out there litigating for America, a better America, are vegetating in the pork barrel of automobile negligence work.

The fact is that the only thing that will get the private and independent litigation experts en masse into environmental litigation, consumer protection litigation, inadequate housing litigation, antisnooping litigation and all the other things that lawyers can do in court which this country needs to have done is for the Congress of the United States to push them out of their present overstuffed and overpaid womb.

As I mentioned, until recently I leaned toward the position that, I now believe firmly that a decision to leave it to the States is, in fact, a State level before the Federal Government acts. I no longer do. I now believe firmly that a decision to leave it to the States is, in fact, a decision to retain the automobile negligence system with all its waste, all its excessive administrative costs, all its duplication, all its slow pace of operation.

If the Congress declines to act now, there will be some automobile insurance legislation passed by a few States in addition to my own. The legislation will even be called no-fault. But the terminology will be designed for one reason, to keep the Congress out. In reality, these State laws will continue the waste and the inefficiency of the present negligence liability-insurance system while ameliorating some of its bad effects.

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

UTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

COMMITTEE ON [illegible]

WARREN G. MAGNUSON, Washington, Chairman

[illegible], Rhode Island
[illegible], Indiana
[illegible], Michigan
[illegible], Iowa
[illegible], Louisiana
[illegible], Utah
[illegible], North Carolina
[illegible], Hawaii
[illegible], Virginia

[illegible], New Hampshire
[illegible], Vermont
[illegible], Kansas
[illegible], Michigan
[illegible], Jr., Tennessee
[illegible], Kentucky
[illegible], Oregon
[illegible], Alaska

[illegible], Staff Director
[illegible], Chief Counsel
[illegible], Staff Director
[illegible], Jr., Minority Staff Director
[illegible], Minority Professional Staff

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

THURSDAY, MAY 6, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 11 a.m., pursuant to recess, in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman of the Committee) presiding.

Present: Senators Magnuson and Hart.

The CHAIRMAN. The committee will resume its hearings on the insurance bills. Robert Joost is the next witness.

We will be glad to hear from you. I understand that you are employed by the American Trial Lawyers Association, is that correct?

STATEMENT OF ROBERT H. JOOST

Mr. JOOST. I am from the American Trial Lawyers.

My name is Robert H. Joost. I am a lawyer, and I am employed by the American Trial Lawyers Association at its headquarters in Cambridge, Mass.

I am submitting this statement for the record in favor of pending legislation in the Congress to establish on a nationwide basis a system of compensation of victims of automobile accident regardless of fault.

Since the American Trial Lawyers Association opposes no-fault automobile insurance legislation, I am submitting this statement for myself only and not for the association.

The CHAIRMAN. Can I interrupt just a minute. Do we have a formal statement in opposition from the Trial Lawyers Association?

Senator HART. They testified yesterday in very strong opposition.

Mr. JOOST. First to establish my own professional credentials, I am a graduate, magna cum laude, of the Harvard Law School, where I was an editor of volumes 72 and 73 of the Harvard Law Review, and I am a graduate, magna cum laude, of Yale College, where I was a member of Phi Beta Kappa. I have also studied at Columbia University as a graduate student in economics.

In addition to my professional work from 1962 to the present for the American Trial Lawyers Association—until 1964 it was called the NACCA Bar Association—I have been heavily involved in two major statutory reform efforts in Massachusetts. I participated in the molding and remodeling of the new Massachusetts mental health code, which goes into effect July 1, as a member of the legal studies staff of the Massachusetts Special Commission on Mental Health and as a member of the Attorney General's Committee on Commitment Law Revision, and since 1968 I have been a reporter for the Criminal Law Revision

Staff member assigned to these hearings: S. Lynn Sutcliffe.

Commission of Massachusetts which is engaged in revision of the substantive criminal law of the State.

Also, from 1967 to 1971 I was a part-time law professor at the New England School of Law in Boston. I have published articles and comments on a variety of legal subjects, the most recent being a piece called "Housing and the Law: An Overview," published in 6 New England Law Review 1 (1970).

I am a member of the Massachusetts bar, and a member of the American, Massachusetts, and Boston Bar Associations, the American Trial Lawyers Association, and the American Judicature Society.

My present post with the American Trial Lawyers Association is assistant to the chairman of the legislative section, which I have held since 1968. For a period I was called special counsel but the title was changed to assistant to the chairman in 1969.

I am also consulting editor of Trial magazine, the bimonthly national legal news magazine published by ATL. As a matter of fact, I am the only lawyer on the editorial staff of this magazine. Copies of letterhead stationery which indicate my position are attached to my formal statement.

I was first employed by the trial lawyers in 1962, as assistant to the editor of the NACCA Law Journal, which is now called the Journal of the American Trial Lawyers. In that capacity, between 1962 and 1964, I wrote a substantial percentage of the articles published in volumes 29, 30, and 31 of the journal. From 1964 to 1967, I worked for the association on a part-time basis as the paid author of a regular column in Trial magazine entitled "A Brief Sweep" in which I synopsized current law-review articles of interest. I accepted a full-time position as an editor of Trial in September of 1967.

In addition to almost a decade with the trial lawyers association itself, I also practiced law for 2 years with a law firm in Boston that concentrates on automobile negligence work—Sheff & McGarry; one of the partners was then a member of the board of governors of the American trial lawyers. The firm is typical of many such law firms across the Nation.

As an ATL staff member, I have attended numerous national meetings of the trial lawyers—two in Denver, one here in Washington D.C., one in Las Vegas, one in San Francisco, and one in the Bahamas. In 1970, I arranged and attended regional meetings of Key Men—that is, members interested in influencing legislative action—in Cambridge, Las Vegas, Atlanta, Chicago, and Denver.

In 1971 to date, I have been to two such Key Men meetings; the 1971 meetings were devoted exclusively to how to defeat no-fault—completely—at both State and Federal levels.

This statement is thus based on long personal involvement with and observation of the principal opponents of legislation aimed at compensating automobile accident victims regardless of fault—the trial lawyers.

I am submitting this statement in support of the Hart-Magnuson bill as an act of conscience, as an attorney, and as a citizen. It is also submitted with sadness for I had hoped that the association itself would see and would accept the fact that we lawyers must put aside our personal pocketbook interest where the public interest conflicts.

Unfortunately, the group in control of ATL has refused to concede that there is such a conflict and has refused to accept that a profes

sional association of attorneys has a higher obligation than maintenance of personal income.

As a matter of fact, the group in control has never even polled the membership on no-fault versus negligence because no-fault is viewed as putting them out of business.

I myself have been in favor of no-fault automobile insurance, at least in part, for some time, I reviewed the trialblazing book by Profs. Robert E. Keeton and Jeffrey O'Connell, "Basic Protection for the Traffic Victim," in the spring 1966 issue of the Portia Law Journal, at pages 266 to 267. In that review, I called the book a "pathfinder in a difficult area," and as to the no-fault plan advocated by the authors, I concluded:

> The proposed statute is a careful attempt at reform. If substantially enacted, it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

A copy of that review is attached to my statement.

I attach also a copy of a letter to the editor of the Boston Globe published December 6, 1966, in which I criticized then Gov. John A. Volpe for his opposition at the time to the no-fault concept. In this letter, I declared in conclusion:

> The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried.

I am pleased personally that in 1970 Massachusetts, under the leadership of Michael Dukakis, a Democrat, and Francis Sargent, a Republican, did seriously consider and enact into law a no-fault automobile insurance law. As both Governor Sargent and Mr. Dukakis have testified to a subcommittee of the House of Representatives, the results in Massachusetts, so far, exceed the most sanguine expectations of the proponents.

I attach a letter by Mr. Dukakis published in the Boston Globe of April 30, 1971, in which he calls for extending these benefits to all the people through a national no-fault system.

When I was hired by the American trial lawyers on a full-time basis in 1967, I had to agree to make no public statements in opposition to the position of the association. My personal views, however, did not change.

The CHAIRMAN. Mr. Joost, do the American trial lawyers have their national headquarters here in town?

Mr. JOOST. No, in Cambridge, Mass. We have a Washington representative, but the headquarters are in Cambridge across the Cambridge common from the Harvard Law School.

To reiterate, my personal views did not change. As a matter of fact, my enthusiasm for the no-fault approach to automobile reparations increased. While my original decision to favor the Keeton-O'Connell plan might have stemmed, at least in part, from the fact that I studied torts from its principal author, Professor Keeton, and because Mr. Keeton was instrumental in getting me my first job with NACCA in 1962, my editorial position with *Trial* starting in September 1967 gave me the time and the access to books and reports which were necessary to a true appreciation of all the issues involved.

Let me state formally for the record: In my judgment, based on my years of study, thought, and observation, I believe that a system of automobile reparations based on compensation of all the tangible losses

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92–18

Printed for the use of the Committee on Commerce

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971

PART 3

Serial No. 92-18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
WILLIAM B. SPONG, JR., Virginia

NORRIS COTTON, New Hampshire
WINSTON PROUTY, Vermont
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan
HOWARD H. BAKER, JR., Tennessee
MARLOW W. COOK, Kentucky
MARK O. HATFIELD, Oregon
TED STEVENS, Alaska

FREDERICK J. LORDAN, *Staff Director*
MICHAEL PERTSCHUK, *Chief Counsel*
S. LYNN SUTCLIFFE, *Staff Counsel*
ARTHUR PANKOPF, JR., *Minority Staff Director*
PETER POWELL, *Minority Professional Staff*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

THURSDAY, MAY 6, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 11 a.m., pursuant to recess, in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman of the Committee) presiding.

Present: Senators Magnuson and Hart.

The CHAIRMAN. The committee will resume its hearings on the insurance bills. Robert Joost is the next witness.

We will be glad to hear from you. I understand that you are employed by the American Trial Lawyers Association, is that correct?

STATEMENT OF ROBERT H. JOOST

Mr. JOOST. I am from the American Trial Lawyers.

My name is Robert H. Joost. I am a lawyer, and I am employed by the American Trial Lawyers Association at its headquarters in Cambridge, Mass.

I am submitting this statement for the record in favor of pending legislation in the Congress to establish on a nationwide basis a system of compensation of victims of automobile accident regardless of fault.

Since the American Trial Lawyers Association opposes no-fault automobile insurance legislation, I am submitting this statement for myself only and not for the association.

The CHAIRMAN. Can I interrupt just a minute. Do we have a formal statement in opposition from the Trial Lawyers Association?

Senator HART. They testified yesterday in very strong opposition.

Mr. JOOST. First to establish my own professional credentials, I am a graduate, magna cum laude, of the Harvard Law School, where I was an editor of volumes 72 and 73 of the Harvard Law Review, and I am a graduate, magna cum laude, of Yale College, where I was a member of Phi Beta Kappa. I have also studied at Columbia University as a graduate student in economics.

In addition to my professional work from 1962 to the present for the American Trial Lawyers Association—until 1964 it was called the NACCA Bar Association—I have been heavily involved in two major statutory reform efforts in Massachusetts. I participated in the molding and remodeling of the new Massachusetts mental health code, which goes into effect July 1, as a member of the legal studies staff of the Massachusetts Special Commission on Mental Health and as a member of the Attorney General's Committee on Commitment Law Revision, and since 1968 I have been a reporter for the Criminal Law Revision

Staff member assigned to these hearings: S. Lynn Sutcliffe.

Commission of Massachusetts which is engaged in revision of the substantive criminal law of the State.

Also, from 1967 to 1971 I was a part-time law professor at the New England School of Law in Boston. I have published articles and comments on a variety of legal subjects, the most recent being a piece called "Housing and the Law: An Overview," published in 6 New England Law Review 1 (1970).

I am a member of the Massachusetts bar, and a member of the American, Massachusetts, and Boston Bar Associations, the American Trial Lawyers Association, and the American Judicature Society.

My present post with the American Trial Lawyers Association is assistant to the chairman of the legislative section, which I have held since 1968. For a period I was called special counsel but the title was changed to assistant to the chairman in 1969.

I am also consulting editor of Trial magazine, the bimonthly national legal news magazine published by ATL. As a matter of fact, I am the only lawyer on the editorial staff of this magazine. Copies of letterhead stationery which indicate my position are attached to my formal statement.

I was first employed by the trial lawyers in 1962, as assistant to the editor of the NACCA Law Journal, which is now called the Journal of the American Trial Lawyers. In that capacity, between 1962 and 1964, I wrote a substantial percentage of the articles published in volumes 29, 30, and 31 of the journal. From 1964 to 1967, I worked for the association on a part-time basis as the paid author of a regular column in Trial magazine entitled "A Brief Sweep" in which I synopsized current law-review articles of interest. I accepted a full-time position as an editor of Trial in September of 1967.

In addition to almost a decade with the trial lawyers association itself, I also practiced law for 2 years with a law firm in Boston that concentrates on automobile negligence work—Sheff & McGarry; one of the partners was then a member of the board of governors of the American trial lawyers. The firm is typical of many such law firms across the Nation.

As an ATL staff member, I have attended numerous national meetings of the trial lawyers—two in Denver, one here in Washington D.C., one in Las Vegas, one in San Francisco, and one in the Bahamas. In 1970, I arranged and attended regional meetings of Key Men—that is, members interested in influencing legislative action—in Cambridge, Las Vegas, Atlanta, Chicago, and Denver.

In 1971 to date, I have been to two such Key Men meetings; the 1971 meetings were devoted exclusively to how to defeat no-fault—completely—at both State and Federal levels.

This statement is thus based on long personal involvement with and observation of the principal opponents of legislation aimed at compensating automobile accident victims regardless of fault—the trial lawyers.

I am submitting this statement in support of the Hart-Magnuson bill as an act of conscience, as an attorney, and as a citizen. It is also submitted with sadness for I had hoped that the association itself would see and would accept the fact that we lawyers must put aside our personal pocketbook interest where the public interest conflicts.

Unfortunately, the group in control of ATL has refused to concede that there is such a conflict and has refused to accept that a profes

sional association of attorneys has a higher obligation than maintenance of personal income.

As a matter of fact, the group in control has never even polled the membership on no-fault versus negligence because no-fault is viewed as putting them out of business.

I myself have been in favor of no-fault automobile insurance, at least in part, for some time, I reviewed the trialblazing book by Profs. Robert E. Keeton and Jeffrey O'Connell, "Basic Protection for the Traffic Victim," in the spring 1966 issue of the Portia Law Journal, at pages 266 to 267. In that review, I called the book a "pathfinder in a difficult area," and as to the no-fault plan advocated by the authors, I concluded:

> The proposed statute is a careful attempt at reform. If substantially enacted, it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

A copy of that review is attached to my statement.

I attach also a copy of a letter to the editor of the Boston Globe published December 6, 1966, in which I criticized then Gov. John A. Volpe for his opposition at the time to the no-fault concept. In this letter, I declared in conclusion:

> The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried.

I am pleased personally that in 1970 Massachusetts, under the leadership of Michael Dukakis, a Democrat, and Francis Sargent, a Republican, did seriously consider and enact into law a no-fault automobile insurance law. As both Governor Sargent and Mr. Dukakis have testified to a subcommittee of the House of Representatives, the results in Massachusetts, so far, exceed the most sanguine expectations of the proponents.

I attach a letter by Mr. Dukakis published in the Boston Globe of April 30, 1971, in which he calls for extending these benefits to all the people through a national no-fault system.

When I was hired by the American trial lawyers on a full-time basis in 1967, I had to agree to make no public statements in opposition to the position of the association. My personal views, however, did not change.

The CHAIRMAN. Mr. Joost, do the American trial lawyers have their national headquarters here in town?

Mr. JOOST. No, in Cambridge, Mass. We have a Washington representative, but the headquarters are in Cambridge across the Cambridge common from the Harvard Law School.

To reiterate, my personal views did not change. As a matter of fact, my enthusiasm for the no-fault approach to automobile reparations increased. While my original decision to favor the Keeton-O'Connell plan might have stemmed, at least in part, from the fact that I studied torts from its principal author, Professor Keeton, and because Mr. Keeton was instrumental in getting me my first job with NACCA in 1962, my editorial position with *Trial* starting in September 1967 gave me the time and the access to books and reports which were necessary to a true appreciation of all the issues involved.

Let me state formally for the record: In my judgment, based on my years of study, thought, and observation, I believe that a system of automobile reparations based on compensation of all the tangible losses

of all victims of automobile accidents in the United States without regard to fault would be a much better system than the present one based on compensation of all the tangible and intangible losses of victims but only if the victim proves that a financially solvent defendant by his negligence proximately caused his injuries and only if he proves fault and damages by a preponderance of the evidence in a trial before a court or jury.

Under no-fault, the public, the beneficiaries, and consumers of automobile insurance would get better protection for the premium dollars spent and at lower annual cost.

In addition, the hard-pressed judicial systems of the Federal and State governments would get some relief. The problems of the courts of America today are largely on the criminal docket rather than the civil docket side, but it is my judgment that no-fault, by lifting out of the courts a substantial volume of cases, would free up enough judge time, enough judicial man-hours to make it possible to try every criminal defendant in this country within 60 days from date of arrest, or at least within 6 months. It is by no means the complete answer to the crisis of our courts, but it is a part of the solution, and a part, incidentally, that does not require the expenditure of additional taxpayer money.

Finally, no-fault is a much more efficient system than the present one. The present one was not developed for a nation with 100 million registered motor vehicles and a multibillion dollar insurance industry; it was developed for a horse and carriage society, in another country, in another century, in the pre-liability-insurance era.

Since 1932 and the Columbia University study, it has been apparent to anyone who has studied the literature closely that something better than the automobile negligence liability-insurance system was available. The success of the Saskatchewan plan in one of the provinces of Canada confirmed this point.

However, for almost 40 years, the people of the United States were denied this "something better" because the individuals who feed off and earn their livelihood from the automobile negligence system happen also to possess a great deal of political clout.

They had, in fact, enough political muscle to snuff out the idea before it could even be tried in any State of the Union until the Commonwealth of Massachusetts in 1970 enacted a no-fault law. The Massachusetts statutes, however, came about as a result of rather unique circumstances which are unlikely to be duplicated in many other States: A very strong proponent in each political party; the highest premium rates in the Nation; a weak statewide organization of trial lawyers; and a State legislative tradition of being innovative.

Since there has never been any question as to my personal preference for no-fault, I confess that I did speak, my true feelings with some discreet friends. About a month ago, I received a telephone call from a congressional aide. He asked if I would testify before Congress on no-fault legislation. Apparently, one of my "discreet" friends hadn't been so discreet, and the congressional aide had learned that there was a lawyer who worked for the American Trial Lawyers Association, a trial lawyers' lawyer, who didn't agree with the party line.

I told him no because I wasn't myself convinced that automobile insurance was a proper subject for Federal rather than State legislation. I told him that I leaned toward the view that the States should be given every opportunity to act before the Federal Government comes in, in whole or in part.

Since that surprise telephone call, I have agonized and pondered.

Finally, after a recent meeting of key men in Chicago, I concluded that I had to testify. If Congress is to execute its duty, which is to all the people of the United States and not just to the trial lawyers, it should get the views of one who has studied and thought hard about this no-fault business for many years, and who has been a trial lawyers' lawyer.

In my judgment, the only way in which this Nation is going to get real justice, opportunity and environmental health is if the Congress and the State legislatures authorize the private and independent trial lawyers of America to become "private attorneys general" on behalf of private citizens and to authorize the trial lawyers to bring private-remedy actions for injunctions, court orders to perform, and damages against those who pollute, against those who discriminate, against those who rent substandard housing and against those who take advantage of consumers—in return for a reasonable attorney's fee and true costs, fixed by the court and paid by the defendant found by the courts to be in violation.

The fact is, therefore, that the enactment of the Hart-Magnuson legislation will not wipe out the trial bar for there are so many wrongs that need to be litigated and righted in our courts of justice. But the courts today are so chock-a-block full of existing business that they can't really take on big new workloads, even if class actions, treble-damage suits and all the rest were authorized in all the areas in which adequate enforcement of existing law is important.

The fact is, Mr. Chairman, that the trial lawyers of America, who should be out there litigating for America, a better America, are vegetating in the pork barrel of automobile negligence work.

The fact is that the only thing that will get the private and independent litigation experts en masse into environmental litigation, consumer protection litigation, inadequate housing litigation, antisnooping litigation and all the other things that lawyers can do in court which this country needs to have done is for the Congress of the United States to push them out of their present overstuffed and overpaid womb.

As I mentioned, until recently I leaned toward the position that, I now believe firmly that a decision to leave it to the States is, in fact, a State level before the Federal Government acts. I no longer do. I now believe firmly that a decision to leave it to the States is, in fact, a decision to retain the automobile negligence system with all its waste, all its excessive administrative costs, all its duplication, all its slow pace of operation.

If the Congress declines to act now, there will be some automobile insurance legislation passed by a few States in addition to my own. The legislation will even be called no-fault. But the terminology will be designed for one reason, to keep the Congress out. In reality, these State laws will continue the waste and the inefficiency of the present negligence liability-insurance system while ameliorating some of its bad effects.

Moreover, they will add the new problem which Gov. Francis Sargent of Massachusetts pointed to in a recent speech—the problem of excessive profits by the insurance industry. I have attached to this statement an article summarizing a recent speech on this subject by the Governor.

In Chicago on April 24th, I heard the ATL key men from Ohio and Illinois make such smug associations of control of their State legislaturs, in whole or in part, that I was absolutely and totally disabused of my States-first leaning. I heard also that the trial lawyers have been increasing their power and their strength in State legislatures.

For example, the Texas Trial Lawyers Association has been running a program they call LIFT, under which subscribers contribute a minimum of $10 a month to what amounts to a campaign fund for candidates for the legislature. More than 600 Texas trial lawyers now subscribe, according to what I learned at the Chicago meeting.

Every election year, the funds accumulated by LIFT are divided among protrial lawyer candidates for the Texas Legislature. Let me read the text of an item that was published in the June 23, 1970, issue of the El Paso, Texas Trial Lawyers Association newsletter, "Ready for the Plaintiff." (Vol. VI, No. 3) (The editor of the newsletter is attorney Richard T. Marshall, who was then national secretary of the American Trial Lawyers Association.)

UP, UP AND AWAY!!

LIFT is the latest effort of Texas Trial Lawyers Association. It stands for Lawyers Involved for Texas, and it's a runaway success . . . The *El Paso Times* reported in its Capital Column June 14th, that *LIFT was responsible* for the Democratic nomination in this year's primaries of six of the eight candidates it backed for the *State Senate*.

LIFT is a legislative kitty which is paying off. Most of your officers are contributing $10 per month on a bank draft authority to LIFT.

If you want to be a part of the movement for *comparative negligence* in Texas, for statutory authority to let jurors know what they are doing in *special issue* verdicts, and for a successful rejection of *Keeton-O'Connell* schemes, in other words, if you want your practice to survive, better get with it.

Send a check, any amount, to *LIFT, 201 Westgate Building, Austin!*

A more complete description of LIFT, published in an ATL 1970 publication called "A Trial Lawyer's Legislative Workbook" and taken from a letter dated January 7, 1970, by Attorney William R. Edwards of Corpus Christi, Tex., to the vice chairman of ATL's legislative section with a copy to me as assistant to the chairman of the legislative section is attached to this statement.

It may be of interest to this committee to know that the Texas Trial Lawyers Association, which promotes LIFT as its "latest effort . . . a legislative kitty which is paying off" is itself a tax-exempt organization. I attach also from the Trial Lawyer's Workbook a copy of letters the Texas affiliate received from tax attorneys supporting their exempt status and advising them how to keep it.

What this means, of course, is that in at least one State the Federal Government, by tax preference, is subsidizing political opposition to the Keeton-O'Connell plan and other no-fault proposals, at the same time that Federal Government officials argue that the States can and will pass good no-fault laws.

Mr. Chairman, how many State senators or State representatives in Texas are going to vote for meaningful automobile insurance reform,

when they know that if they do attract candidates, good speakers, with money from LIFT and campaign help from the trial lawyers are going to run against them in the next primary or the next general election?

What real chance do the people of Texas have to receive the benefits of the no-fault system of automobile reparations—unless this Congress passes Federal no-fault legislation?

At the Key Men meeting on April 24, I heard that the LIFT program has been adopted by at least one additional State. According to Attorney Thomas A. Heffernan of Cleveland, Ohio—I believe his law partner, Mr. Craig Spangenberg, addressed this committee the other day—the Ohio Academy of Trial Lawyers is now enrolling subscribers to its version which bears the acronym ADOPT. This attorney predicted flatly, unequivocally, and totally that the Ohio Legislature will never enact any no-fault automobile insurance legislation in any form.

At that meeting, the chairman of ATL's legislative section, Attorney Jerry Finn of Newark, N.J., summed up the discussion by saying: "Let's all ADOPT LIFT." No one objected.

More direct fundraising methods are also used by trial-lawyer groups. According to Attorney Jon Carlson of Belleville, Ill., who spoke at the meeting, every member of the St. Clair, County, Ill., Bar Association has been assessed $100 for a fund to fight Governor Ogilvie's insurance reform legislation.

Incidentally, Mr. Carlson and Attorney Leonard Ring of Chicago both asserted at this meeting that Ogilvie's bill doesn't have "a chance" to become law in Illinois. In Mr. Ring's words: "We control the Senate, Ogilvie controls the House; it's a standoff."

Mr. Chiarman, again, what chance do the consumers of automobile insurance in Illinois have to secure the benefits of no-fault unless the Congress acts?

At another "key men" meeting, this one held for representatives from the northeast region, on April 17, in the offices of the American Trial Lawyers Association in Cambridge, Mass., several of the representatives suggested that defense lawyers, that is, personal injury lawyers who are retained by insurance companies to defend against automobile negligence claims, are a good source for funds to finance the fight against no-fault.

The key men were urged to form general anti-no-fault lawyers' groups and citizens' groups and resign themselves to the fact that defense lawyers were afraid to let their names be used since many of them are retained by insurance companies which are in favor of no-fault auto insurance. I believe it was Attorney Daniel H. Mahoney of Albany, N.Y., who mentioned that such a citizen's committee was functioning in New York State and had purchased newspaper advertising in several papers against the Gordon bill in the New York State Legislature (the Gordon bill is patterned after the Massachusetts law).

It was stated that the advertisements should become punchier. I notice the recent ones just say no-fault is a hoax.

Another Key Man, and a former Connecticut State legislator, Attorney Leon Riscassi of Hartford, mentioned that the Connecticut trial lawyers had also had good luck in raising funds from the sheriffs and constables of the State of Connecticut. Apparently, the deputies

are paid on a fee basis; they were convinced that no-fault would mean fewer legal papers to serve and, therefore, lower incomes for themselves.

The committee may also be interested in another method that has been used for more than 3 years to fight no-fault. Since late in 1967, the association has been arranging for large fees to be paid by one or another trial lawyer group to a supposedly neutral academic, Prof. David Sargent of Suffolk University Law School in Boston, in return for his speaking, appearing, and testifying before private and legislative groups all around the country.

I see no objection to the appearances or to his being paid—Dave Sargent is a very able law professor; he has a viewpoint, and the subject matter demands the most careful and complete discussion—but I do find it less than honorable that Professor Sargent appears wearing his Suffolk University hat rather than his trial lawyers mantle, and that his audiences are not told who is paying him or how much.

As a matter of fact, at one of the recent Key Men meetings, somebody was complaining that Professor Sargent's rates were going up. The delegates said that he is now asking $500 an appearance plus expenses—for 1 day.

As the committee may know, this morning in Boston the supreme judicial court of Massachusetts heard oral argument in a suit challenging the constitutionality of the Massachusetts no-fault statute. The action has been brought by the immediate past president of the Massachusetts chapter of the American Trial Lawyers, Attorney Robert Cohen.

There was a short news item in the Boston Sunday Globe for April 25, 1971, page A-5, on one of the methods used to finance this constitutional-challenge litigation. According to the Globe's account:

> Attorneys are wondering about a couple of ethical questions raised by the activities of the lawyers bringing the test case of no-fault auto insurance law. The lawyers, Robert Cohen and Alexander Cella, have sent other attorneys a mimeographed form offering for sale at $50 per set the two-volume brief ($45) they have prepared on the case and the appendices ($5) . . . Fellow lawyers say (1) they've never heard of a lawyer openly selling a brief . . . and (2) the appendix consists of court records, which may not be theirs to sell.

To summarize and reiterate, it is my considered judgment that the trial lawyers will probably prevent any meaningful no-fault legislation from being enacted in any of the State legislatures, with a few possible exceptions. It is naive to argue that there is a choice between Federal legislation and legislation in the other 49 State capitals. The only choice is between Federal no-fault legislation or maintenance of the present negligence system, the system which the Department of Transportation's $2 million study so carefully and painstakingly criticized.

There is, I might add, a second reason why I believe Congress must act. If the trial lawyers have a stronghold on the State legislatures, how does one find words to describe the power position of the insurance industry and its armies of lobbyists in all statehouses? There is at this time in my opinion absolutely no justification in experience or policy for the present exemption of the insurance industry from meaningful Federal regulation.

According to Attorney Heffernan of Cleveland, again, the trial lawyers have one lobbyist in the Ohio Legislature and the insurance

companies between them have 30. If the ATL people can make the assertions they make with their one lobbyist and ADOPT/LIFT, think what assertions the insurance companies can make in their private conclaves.

The objective of the insurance industry, according to the best information and intelligence the trial lawyers have been able to acquire, is maximum profit. Rest assured, there are enormous profit possibilities in no-fault automobile insurance unless it is tightly audited and regulated.

The reason for this is that a no-fault policy basically is a combined medical, accident-and-health and income-replacement policy which pays benefits in case of motor vehicle caused injury.

But the rates in Massachusetts, after the no-fault statute was passed, were not set on the basis of experience with accident and health and income replacement coverage, but rather on the basis of reductions from current automobile personal injury liability insurance rates. It is going to take a considerable number of reductions before one gets down to the accident and health premium level, and in the interim, rather enormous profit potential is available to the industry.

S. 945, the Uniform Motor Vehicle Insurance Act, represents new coverage by a new system. Since there are not now any Federal personal injury liability insurance rates, rates won't be set—they couldn't be set—by reductions from existing Federal rates. They will have to be set afresh from the new perspective, and that is what is appropriate when the subject is a new and different kind of coverage.

In my opinion, only the Federal Government has the strength and the capability to tightly audit and regulate no-fault automobile insurance coverage. If profits in excess of a reasonable return are to be prevented, no-fault must be legislated by the Federal Congress. Any other course would just mean the substitution of one form of consumer abuse with another.

I urge the passage of the Hart-Magnuson legislation.

Now, while this concludes my prepared statement, I would like to add a summary of what has happened since I mailed this statement to the Congress.

I was informed on Monday, April 26, after I mailed my statement to Washington, of the decisions reached at another trial lawyers' meeting in Chicago on April 24. At that meeting, the executive committee of the American Trial Lawyers Association unanimously approved a resolution creating a completely new department—the department of Federal-State relations—with a proposed budget of $322,200 for the fiscal year which begins August 1.

The executive committee voted to finance the budget for this new department by (1) reducing the budget of the department of public affairs and education (which edits and publishes *Trial*) by $112,000, and by (2) dues increases expected to net an additional $200,000.

As part of the cutback in the public affairs and education department, its director was ordered to dismiss me, the only lawyer, at the end of the fiscal year, as well as several additional staff members.

In view of the statement I had mailed to Washington, I told the department head, the editor of *Trial*, that I would leave after the 2-week notice period which means I cease to be an employee tomorrow, May 7.

The director of the new department of Federal and State relations—a department incidentally which goes from nonexistence to being the larges department, consuming 25 percent of the association's total budget—the director will be Mr. Alan Locke. Mr. Locke is not a lawyer, but his brother, Barry Locke, is an aide to Secretary Volpe.

As part of that one-third-of-a-million-dollar budget, the association has contracted with a professional public relations firm to fight "no-fault—the firm of Edelman & Co. of Chicago.

Thank you.

The CHAIRMAN. Thank you for your very potent statement.

I am going to have to leave in a minute, but I just want to point out that I, like yourself, in the beginning was hesitant about proceeding on the Federal level, thinking we could encourage States to get at this matter. I mentioned that sometime ago—3 or 4 years ago. But I have found from practical experience that it just doesn't seem to be moving.

Now inaction may result from some of the things you are talking about—I suppose they are factors—but even in my own State, and I am quite close to the legislature there, having served in it at one time, I find a lot of opposition to the concept of no-fault by legislators who I guess have never sought out to lawyers or insurance companies or anybody else. But when no-fault is proposed to them, then they will ask someone like an insurance man that they know of or a trial lawyer who just about convince them that no-fault isn't a good system. And there is no rebuttal. There is no chance for the premium payer or the consumer of automobile insurance to get their word in.

The result is there is just no action. I can conceive that, if we did something here that would allow the States to try and do something in a reasonable time, it would just not happen. We have run into that in all kinds of safety legislation. We tried to compel the States to have auto safety laws and it didn't happen until we passed a Federal bill. Sometimes, when we begin hearings on Federal legislation, it wakes some people up and they start to get busy. But when you are talking about 50 States, that isn't true; it is going to be a long, long time.

So, I am appreciative of your testimony, and being a lawyer myself I understand how they operate sometimes, although I am a little rusty at the practice of law now.

This is a very potent testimony because I think there are two things that plague every home in the United States. There are a lot of other things, but these are two things we know plague every home, financially, emotionally, and every other way. One is health insurance and the other is auto insurance. They affect every home, not only because of the money involved but because of the kinds of things that happen. When insurance companies are canceling contracts, when rates go up for insurance, people are afraid to go to the hospital or make an auto claim. They don't know if they can afford to take such action. And this is true in every home. I have said many times in the past 3 or 4 years that auto insurance and health insurance are two things that Congress ought to set itself to.

I am so glad that there is so much interest in this no-fault bill of Senator Hart's and myself, and we are hopeful to move along. And your testimony here is quite potent, and I appreciate it.

Now you will have to excuse me. I have to go down and discuss some maritime matters.

Senator HART (presiding). Mr. Joost, I think "potent" is an excellent word to describe your testimony, and I would think that it would move this legislation along.

Mr. JOOST. I hope so.

Senator HART. It should. We will see if it will.

Now, I made so many notes as you went along that I don't know where to begin, but there are several points that I would like either to have you clarify or by a question, underscore.

Mr. JOOST. Certainly.

Senator HART. Before I get to that, let me comment. On the very first page you describe your professional qualifications. I have met a magna cum laude man from Harvard law, and I have known Harvard Law Review editors. I am not sure if I ever met a magna cum laude graduate from Yale. I have met Phi Beta Kappas. But this is the first time I have met all of them at once. Do you understand my reluctance to ask you questions?

Frankly, I was tempted on other days in these hearings we have had witnesses speak against the bill to suggest the high level of self-interest which inevitably would operate on their judgment. I didn't. You are pretty blunt about it. I guess the reason I didn't is my belief—my hope—that in the legislative considerations of these proposals, intelligent men will be able to evaluate the background from which on any of these witnesses speak. It was not that I was unconscious.

Mr. JOOST. I hope your claim has merit.

Senator HART. Here is one I will have to ask you to clarify. We opened these hearings with Secretary Volpe as the witness, and I haven't reread the testimony—maybe my memory is faulty—I though he was one of the great fighters for the Massachusetts no-fault plan. I get the impression that he knows the fight: you can wait for the States and give them a try. Your vision of his role is sharply different from my impression.

Is my impression wrong?

Mr. JOOST. Your impression is wrong, sir.

As you know, Massachusetts has had a compulsory-automobile-liability-insurance law since 1927. There have been problems under this law, including the fact that it helped to put Massachusetts in the untenable position of being the State with the highest auto-insurance premiums in the country. In 1966 or 1967, shortly after John Volpe's election to the first 4-year term as Governor of Massachusetts, shortly after that election, the Governor filed legislation to end the compulsory-liability-insurance system and enact a financial-responsibility law and also to establish a fraudulent-claims bureau.

Now, financial-responsibility laws exist in 47 of the 50 States. Only three States, Massachusetts, New York and North Carolina, have compulsory automobile-insurance laws. Financial-responsibility laws are a little like the dog-bite laws; you may get the "first bite" free, but after that you have to have liability insurance.

Governor Volpe pushed for "financial responsibility," even though it has never really worked, because "financial responsibility" means there will always be some totally uncompensated victims. If you get hit by an automobile, and if the person who hits you doesn't have liability insurance or private wealth or substantial property subject

[illegible] statement. "Financial responsibility" means you are totally with-
[illegible]

I have heard of [illegible] states with financial-responsibility laws where [illegible] an innocent accident victim [illegible] certificate [illegible] the person who hit him was insured or fully solvent.

[illegible] Governor Volpe introduced a financial-responsibil-
[illegible] Mike Dukakis, who was a classmate of mine at Harvard Law School and a very active Democratic Speaker of the House of Representatives, [illegible] the Democrats had to come up with an insurance program [illegible] he felt that it should be a real reform program and not just the "no-fault" legislation that had been drawn up for them in Harvard.

Governor Volpe did not support it. Mike got it through the House of Representatives on a hot summer day when there weren't too many people there to [illegible] the floor, and the Kennedy [illegible] that passed it [illegible] the trial lawyers panicked. There was an emergency return of employees on vacation. All kinds of things happened. People scurried all over the place.

Finally, there was a day of great jubilation when somebody persuaded the head of the Teamsters Union in Massachusetts, I think his name was Nick Morrissey, to agree to the full-page ads by the Teamsters opposing no-fault, provided the trial lawyers would pay for them all. With this kind of support, the "fault" was killed in the State senate.

Governor Volpe never made a statement in support of "no fault." He never had to act, of course, since the bill was prevented from coming to his desk as Governor. The same thing happened again in 1968. Governor Volpe never endorsed the concept while he was Governor.

Senator HART. My question might appear to be critical of the Secretary. I was asking for clarification. I react this way. Sort of the Biblical welcome-home thing. If in fact once he was opposed or not helpful, he now has moved to the point of urging the adoption of no-fault across the country, but says—and I sense rather reluctantly—that we ought to wait, you know, pass a resolution and encourage the States to do it. In any event he does, you will be glad to know, support no-fault.

Mr. JOOST. I think one reason for his support now is the fact that his Lieutenant Governor, now Governor, Francis Sargent, has found that the "no-fault" thing works. You know, there is nothing like trying something—try it and see if it works. The Massachusetts law is really not a very good law technically. I have drafted a lot of statutes for the criminal law commission, and believe me, the Massachusetts no-fault law is technically very poor.

The first sentence is 567 words long. The second sentence is 14 words. The guts of the statute are contained in a definitions section, the definition of PIP, personal injury protection. With all, it is a weak and limited bill, but the important thing is that it is working. The premium rates are coming down, although they have got to come down much more.

Senator HART. Governor Sargent filed a statement with us yesterday complaining about the failure of the Massachussetts plan to reflect the savings that were accruing to the insurance carriers.

I won't ask you to describe in fuller detail how your vacation was interrupted, but I am intrigued by the passing comment that you made about it.

Do you know whether the Internal Revenue Service has reviewed any of these programs or war chests, or whatever you want to call them, specifically the one in Texas?

Mr. JOOST. I just don't know. The letter from tax counsel which I attach to this statement states the facts—in other words, you have told us thus and so. The LIFT program is not in that statement of facts. So I can't blame tax counsel. I have no way of knowing what Internal Revenue has or has not done.

Senator HART. Some place in here you describe a county bar association assessing a sum.

Mr. JOOST. $100.

Senator HART. That was on each member to generate moneys to fight the Ogilvie plan in Illinois County? Could they fog that up in such a fashion as to make it a deductible business expense?

Mr. JOOST. Again, I am not a tax lawyer, and I think I had better stay out of that can of worms.

Senator HART. The group which files and obtains a tax exempt status nonetheless may not use moneys in legislative lobbying unless it wants to forfeit its exemption. I am not a tax lawyer either, but isn't that a correct statement?

Mr. JOOST. That is correct. I think the reasons for it are terribly important public-policy reasons. We cannot permit special-interest groups, particularly special-interest economic groups, to be both tax exempt and free to lobby. When you come right down to it the bar associations, at least the American Trial Lawyers Association, is nothing more, nothing less than a trade association. If groups like this are subsidized by the Federal Government to pursue lobbying and legislative activities aimed, not at the best interest of the Federal Government or the best interest of the people, but at their own personal best interest, their own personal pocketbook interest, then the public is deceived.

The trial lawyers speak in terms of "offensive" legislative activity, which means persuading States to enact new provisions such as comparative negligence as a replacement to the rule of contributory negligence, and "defensive" legislative activity, which means preventing the passage of "things we can't live with"—preeminently no-fault auto insurance.

I think the reasons why Congress continually has said, in all its wisdom of the Federal Tax Code, that you can't be both tax exempt and lobby, are good. There are particular situations, I know, where the prohibition hurts, but I think the reasons in favor are overwhelming and clear. Personally, I think that the tax law on exemptions for trade associations and such groups should be tightened.

Senator HART. The fact that you have advised us with respect to the activities which you, as a result of sitting with the "Key Men" meetings, know are included in the agenda of these groups would, I think, put the Internal Revenue Service on notice. I am not suggesting that it is or isn't an abuse, I don't know. But certainly you have raised the question. As you say, it is a basic public policy concern that that kind of activity not be subsidized.

Incidentally, you describe the political muscle of the trial lawyers' groups in the States. With the little experience I had at Lansing, which is the State Capitol of Michigan, I would think that opposition to no-fault in consequence is getting more political muscle when they enlist the sheriffs and constables as alluded to in your testimony. As for this business of the professor at Suffolk testifying, speaking, and drawing fees from the association; this practice probably will be with us as long as we have this kind of society, I suppose. I don't know how you can get a hand-hold on that. The politicians should be most conscious of the glasshouses in which they dwell before criticizing someone else. We do it in reverse, or some do. Some lecture to groups and they are then compensated. I am always struck by the fact that the group to which the politician is lecturing knows infinitely more about the subject matter than the politician, but the group pays him.

Mr. JOOST. That is not always true. The thing that disturbs me personally about the university situation is that the scholar, the teacher, does hold himself out to his students, if to no one else, as a certain sort of person. We have been having a certain amount of trouble in our universities because not all students believe all faculty members are in that position. But I would like to believe, myself, that those who choose to work in academia, who choose to become professors, will in fact pursue the truth in the old Socratic manner.

All the law schools say they have the Socratic method of teaching. The goal of Socrates' method at least as I recall it from my limited memory of philosophy courses, was the pursuit of truth. I don't think you can pursue truth and at the same time accept stipends, which you do not disclose, from groups who frankly do not care about the argument so long as they get the desired results.

Senator HART. Perhaps disclosure for academics is what we should recommend just as we recommend disclosure for the political lecturer.

Mr. JOOST. I think you find academics recommend disclosure for politicians much more than they recommend it for themselves.

Senator HART. Drawing on your background, in the course of our hearings, questions have been raised about the basic constitutionality of the Hart-Magnuson proposal and more acutely about State no-fault legislation.

Now, first, on the question of the Massachusetts no-fault law, what is your opinion with respect to its constitutionality?

Mr. JOOST. Well, obviously, I cannot outguess the Supreme Judicial Court of Massachusetts, but my feeling is it may in fact—a key part of it may in fact—be held unconstitutional on the grounds that it is an arbitrary, capricious classification.

Now, the Massachusetts law works on what may be called the threshold concept. If you have $500 of medical and hospital bills, and they are reasonable, then you can get a tort lawyer, go to court, get a jury trial, and you are entitled to and can recover a verdict that includes general damages for intangible losses—pain, suffering, inconvenience emotional hurt, and all the rest.

But, if your medical bills are less than $500—there is a whole lis of things, prosthetic devices, ambulance charges, and so forth tha are includible—if they are less than $500 you cannot get genera damages; you cannot recover for pain and suffering; you cannot ge a jury trial.

The Supreme Court of the United States in a line of cases—I don't have the citations here—has spoken of the necessity for reasonable classifications, reasonable categories which bear some logical relationship to the subject matter. Now, I think it is possible that the SJC of Massachusetts will conclude that this $500 business is an unreasonable classification. It has no relation to what kind of an automobile accident it is or what the injuries are, it has no relation to any of the findings of the DOT studies; nobody says that $500 is the magic cutoff between serious and trivial accidents. I don't know where the threshold cutoff came from in the legislative hurly-burly on this law but it came and the number picked was $500.

I think it is quite possible that this could be called arbitrary. If it is arbitrary and capricious, the provision could be wiped out as unconstitutional. I would like to contrast this $500 clause with the related provision in your own bill, Senator Hart. In section 4, your bill says that you can recover general damages in a tort suit if there is a "catastrophic harm," as defined. Now catastrophic harm strikes me as being a very reasonable category. We can distinguish rationally between catastrophic harm, which is defined, and all the rest, which is noncatastrophic harm. That is reasonable classification. I think it fits what was meant by the great justices who have declared that due process means a "scheme of ordered liberty," "the American scheme of justice." Due process requires reasonable classifications, not cutoffs plucked out of thin air. Otherwise, there is a denial of equal protection. Catastrophic harm is a very good dividing point, and certainly it is within the legislative province to define it.

As to the Hart-Magnuson bill itself, I see no constitutional problems. If anything is clear from the original documents on the founding of this Republic, the one power that everyone agreed should go to the Federal Government was the power to regulate interstate commerce. I think that automobiles today—automobile driving today—is the single biggest kind of interstate commerce we have.

Now, the members of the Constitutional Convention of 1789 didn't say everything that was interstate had to be regulated by Congress. But I think it was their understanding that the important things should be centrally regulated if this was to be a viable Federal Union. I believe that automobile driving is so interstate today that all its aspects—the manufacture in terms of safety and environmental controls, the compensation of the people injured, the insurance against losses caused—all belong under Federal regulation. It is preeminently, not marginally, interstate commerce.

The Federal Government regulates many things. There are also a lot of Federal criminal statutes that use the interstate commerce power as a threshold, a kickoff to establish Federal jurisdiction. Automobile operation involves much more interstate commerce than many of these things now governed by Federal law.

There is a real practical necessity for uniform automobile compensation law. If there were 50 different State laws on auto insurance, there would be tremendous confusion. I think the insurance companies would find that even their computers would get tired figuring exactly how the system works in each State and what the applicable law is.

So it is clearly interstate commerce. The subject is clearly within the competence of the Congress. It is clear under the necessary and

proper clause that when the Congress enters an area which is within its constitutional authority, it may legislate as its wisdom and discretion dictate.

The argument has been raised that the Hart-Magnuson bill violates the seventh amendment with respect to jury trial. I do not believe that argument has merit. The Supreme Court, over the years, has rather carefully, and I think rather deliberately, refrained from including the seventh amendment right to civil jury in any of the dicta discussing or defining what is meant by due process.

Senator HART. I have not heard it developed really to the end of a paragraph, but I sense some concern, perhaps among some Members of the Congress, that goes this way: Can we legislate, wipe out what they would describe as everybody's right to proceed in a tort case to establish and recover for any hurt? It isn't voiced quite that way, but I think that it is out of that question that comes their wonder about the reach of a bill such as this. In other words, I guess they would say what you are doing is by a Federal act washing out an individual's States rights to use a State court system to recover for whatever he can establish was wrongfully caused.

Mr. JOOST. There are precedents for this. I have taught at the New England School of Law; I taught labor law. I think labor law is a prime example of an area in which the States and the State courts had major authority. The States defined and enforced the rights of management and of labor, of owners and of strikes. But then came Federal acts—the Norris-LaGuardia Act and the Wagner Act in the 1930's, as amended by the Taft-Hartley Act, as amended by the Landrum-Griffin Act—and no longer was a factory owner able to use his State court system to enforce "yellow dog" contracts or convict strikers or enjoin union activity.

Prior to the 1930's, the Federal Government had no great involvement in labor matters. But the U.S. Supreme Court upheld the National Labor Relations Act in the 1930's, when its constitutionality was challenged on the ground that Congress could not take these powers from the States. The Court sustained the Wagner Act because it clearly involved the regulating of interstate commerce.

The rationale for a Federal Union demands that there be a customs union, a "common market" to stimulate the commercial intercourse which is necessary so that every component can benefit to the greatest possible extent. There has to be central regulation of the things that are really central. I would argue that transportation matters such as automobiles and the driving of automobiles must, like labor matters, be regulated by the central authority. I think this is what the founders had in mind when they gave Congress the power "to regulate commerce * * * among the several States."

Senator HART. You said in your prepared testimony that there were many rewarding jobs open to the trial lawyers of this country—exciting jobs. What has happened to the trial bar in Massachusetts now that they are operating under this no-fault program there? Have they gone to the environmental protection field or are they still busy with insurance law?

Mr. JOOST. Well, just yesterday I heard on the news that the Massachusetts State Senate had given final approval to a bill to permit private citizens to sue those who are alleged to cause damage to the environment.

I believe that it is a better bill than the one that Michigan passed last year on the same subject. It has also passed the House and it has gone to a conference committee. According to the radio broadcast, the Associated Industries of Massachusetts are preparing a last ditch effort to defeat this bill which would permit individual citizens to sue to enforce the pollution—control statutes and regulations which are already law, but we believe that it will survive the conference committee and Governor Francis Sargent has indicated he personally believes private-remedy suits represent a very important approach to environmental protection.

Congress last year year passed a provision authorizing "Citizens Suits" as one of the amendments to the Clean Air Act. The Federal law provides for reasonable attorney's fees to be paid by violators. This is proper—I think the lawyer should receive a fair compensation for what he does—but that is very different from the frequently exorbitant fees earned in the automobile—negligence business.

Senator HART. The Ogilvie bill in Illinois, is it a Massachusetts no-fault bill?

Mr. JOOST. No, it is not. It is a different kind.

I would say, first, it is a misnomer to call the Ogilvie bill a nofault bill. In fact, a headline in the *Wall Street Journal* declared that the "Ogilvie System Would Bypass No-Fault Concept."

"Others have agrued" that the Ogilvie bill is a no-fault system and one which, if enacted, will make it— unnecessary for the Congress to act.

When you break it down and look at the Ogilvie bill, you see that it is really not a system, it is not a plan. As a result of my work with statutory recodification and revision efforts, I very much believe that the legislative bodies should not try to copy the courts and decide things on a case-by-case basis, a little thing here and a little thing there. Rather, they should try to create systems that make sense and leave it to the courts to fill in the bits and pieces. The Ogilvie plan is not such a system. It is a hodgepodge collection of 13 different bills on different points. The 13 bills don't add up to a system, no-fault or otherwise.

In substance, the Ogilvie bills involve a scaling down, a reduction of the amount of money that would be paid by insurers to motor vehicle accident victims who bring tort suits. That reduction in payout makes two things possible: A reduction in auto insurance premiums which looks good, and a package of first-party-benefits. The first-party-benefits package would pay a maximum of $2,000 per victim in medical, hospital, and funeral benefits plus a maximum of 52 weeks of wage loss up to $150 a week in income continuation benefits.

What this amounts to is adding some no-fault frosting onto the same old negligence cake. The cake itself won't be changed except to scale it down in size.

The most important section of the bill is the section called "General Damages." It states that damages for pain, suffering, mental anguish, and inconvenience shall not exceed the total of a sum equal to 50 percent of the reasonable medical treatment expenses * * * if * * * the total of such * * * expenses is $500 or less, and a sum equal to the amount of such reasonable expenses, if any, in excess of $500."

What this bill does is to say, sure, you can have a jury trial and you can get general damages for pain and suffering, but the jury cannot

are paid on a fee basis; they were convinced that no-fault would mean fewer legal papers to serve and, therefore, lower incomes for themselves.

The committee may also be interested in another method that has been used for more than 3 years to fight no-fault. Since late in 1967, the association has been arranging for large fees to be paid by one or another trial lawyer group to a supposedly neutral academic, Prof. David Sargent of Suffolk University Law School in Boston, in return for his speaking, appearing, and testifying before private and legislative groups all around the country.

I see no objection to the appearances or to his being paid—Dave Sargent is a very able law professor; he has a viewpoint, and the subject matter demands the most careful and complete discussion—but I do find it less than honorable that Professor Sargent appears wearing his Suffolk University hat rather than his trial lawyers mantle, and that his audiences are not told who is paying him or how much.

As a matter of fact, at one of the recent Key Men meetings, somebody was complaining that Professor Sargent's rates were going up. The delegates said that he is now asking $500 an appearance plus expenses—for 1 day.

As the committee may know, this morning in Boston the supreme judicial court of Massachusetts heard oral argument in a suit challenging the constitutionality of the Massachusetts no-fault statute. The action has been brought by the immediate past president of the Massachusetts chapter of the American Trial Lawyers, Attorney Robert Cohen.

There was a short news item in the Boston Sunday Globe for April 25, 1971, page A–5, on one of the methods used to finance this constitutional-challenge litigation. According to the Globe's account:

> Attorneys are wondering about a couple of ethical questions raised by the activities of the lawyers bringing the test case of no-fault auto insurance law. The lawyers, Robert Cohen and Alexander Cella, have sent other attorneys a mimeographed form offering for sale at $50 per set the two-volume brief ($45) they have prepared on the case and the appendices ($5) . . . Fellow lawyers say (1) they've never heard of a lawyer openly selling a brief . . . and (2) the appendix consists of court records, which may not be theirs to sell.

To summarize and reiterate, it is my considered judgment that the trial lawyers will probably prevent any meaningful no-fault legislation from being enacted in any of the State legislatures, with a few possible exceptions. It is naive to argue that there is a choice between Federal legislation and legislation in the other 49 State capitals. The only choice is between Federal no-fault legislation or maintenance of the present negligence system, the system which the Department of Transportation's $2 million study so carefully and painstakingly criticized.

There is, I might add, a second reason why I believe Congress must act. If the trial lawyers have a stronghold on the State legislatures, how does one find words to describe the power position of the insurance industry and its armies of lobbyists in all statehouses? There is at this time in my opinion absolutely no justification in experience or policy for the present exemption of the insurance industry from meaningful Federal regulation.

According to Attorney Heffernan of Cleveland, again, the trial lawyers have one lobbyist in the Ohio Legislature and the insurance

companies between them have 30. If the ATL people can make the assertions they make with their one lobbyist and ADOPT/LIFT, think what assertions the insurance companies can make in their private conclaves.

The objective of the insurance industry, according to the best information and intelligence the trial lawyers have been able to acquire, is maximum profit. Rest assured, there are enormous profit possibilities in no-fault automobile insurance unless it is tightly audited and regulated.

The reason for this is that a no-fault policy basically is a combined medical, accident-and-health and income-replacement policy which pays benefits in case of motor vehicle caused injury.

But the rates in Massachusetts, after the no-fault statute was passed, were not set on the basis of experience with accident and health and income replacement coverage, but rather on the basis of reductions from current automobile personal injury liability insurance rates. It is going to take a considerable number of reductions before one gets down to the accident and health premium level, and in the interim, rather enormous profit potential is available to the industry.

S. 945, the Uniform Motor Vehicle Insurance Act, represents new coverage by a new system. Since there are not now any Federal personal injury liability insurance rates, rates won't be set—they couldn't be set—by reductions from existing Federal rates. They will have to be set afresh from the new perspective, and that is what is appropriate when the subject is a new and different kind of coverage.

In my opinion, only the Federal Government has the strength and the capability to tightly audit and regulate no-fault automobile insurance coverage. If profits in excess of a reasonable return are to be prevented, no-fault must be legislated by the Federal Congress. Any other course would just mean the substitution of one form of consumer abuse with another.

I urge the passage of the Hart-Magnuson legislation.

Now, while this concludes my prepared statement, I would like to add a summary of what has happened since I mailed this statement to the Congress.

I was informed on Monday, April 26, after I mailed my statement to Washington, of the decisions reached at another trial lawyers' meeting in Chicago on April 24. At that meeting, the executive committee of the American Trial Lawyers Association unanimously approved a resolution creating a completely new department—the department of Federal-State relations—with a proposed budget of $322,200 for the fiscal year which begins August 1.

The executive committee voted to finance the budget for this new department by (1) reducing the budget of the department of public affairs and education (which edits and publishes *Trial*) by $112,000, and by (2) dues increases expected to net an additional $200,000.

As part of the cutback in the public affairs and education department, its director was ordered to dismiss me, the only lawyer, at the end of the fiscal year, as well as several additional staff members.

In view of the statement I had mailed to Washington, I told the department head, the editor of *Trial*, that I would leave after the 2-week notice period which means I cease to be an employee tomorrow, May 7.

The director of the new department of Federal and State relations—a department incidentally which goes from nonexistence to being the larges department, consuming 25 percent of the association's total budget—the director will be Mr. Alan Locke. Mr. Locke is not a lawyer, but his brother, Barry Locke, is an aide to Secretary Volpe.

As part of that one-third-of-a-million-dollar budget, the association has contracted with a professional public relations firm to fight "no-fault—the firm of Edelman & Co. of Chicago.

Thank you.

The CHAIRMAN. Thank you for your very potent statement.

I am going to have to leave in a minute, but I just want to point out that I, like yourself, in the beginning was hesitant about proceeding on the Federal level, thinking we could encourage States to get at this matter. I mentioned that sometime ago—3 or 4 years ago. But I have found from practical experience that it just doesn't seem to be moving.

Now inaction may result from some of the things you are talking about—I suppose they are factors—but even in my own State, and I am quite close to the legislature there, having served in it at one time, I find a lot of opposition to the concept of no-fault by legislators who I guess have never sought out to lawyers or insurance companies or anybody else. But when no-fault is proposed to them, then they will ask someone like an insurance man that they know of or a trial lawyer who just about convince them that no-fault isn't a good system. And there is no rebuttal. There is no chance for the premium payer or the consumer of automobile insurance to get their word in.

The result is there is just no action. I can conceive that, if we did something here that would allow the States to try and do something in a reasonable time, it would just not happen. We have run into that in all kinds of safety legislation. We tried to compel the States to have auto safety laws and it didn't happen until we passed a Federal bill. Sometimes, when we begin hearings on Federal legislation, it wakes some people up and they start to get busy. But when you are talking about 50 States, that isn't true; it is going to be a long, long time.

So, I am appreciative of your testimony, and being a lawyer myself I understand how they operate sometimes, although I am a little rusty at the practice of law now.

This is a very potent testimony because I think there are two things that plague every home in the United States. There are a lot of other things, but these are two things we know plague every home, financially, emotionally, and every other way. One is health insurance and the other is auto insurance. They affect every home, not only because of the money involved but because of the kinds of things that happen. When insurance companies are canceling contracts, when rates go up for insurance, people are afraid to go to the hospital or make an auto claim. They don't know if they can afford to take such action. And this is true in every home. I have said many times in the past 3 or 4 years that auto insurance and health insurance are two things that Congress ought to set itself to.

I am so glad that there is so much interest in this no-fault bill of Senator Hart's and myself, and we are hopeful to move along. And your testimony here is quite potent, and I appreciate it.

Now you will have to excuse me. I have to go down and discuss some maritime matters.

Senator HART (presiding). Mr. Joost, I think "potent" is an excellent word to describe your testimony, and I would think that it would move this legislation along.

Mr. JOOST. I hope so.

Senator HART. It should. We will see if it will.

Now, I made so many notes as you went along that I don't know where to begin, but there are several points that I would like either to have you clarify or by a question, underscore.

Mr. JOOST. Certainly.

Senator HART. Before I get to that, let me comment. On the very first page you describe your professional qualifications. I have met a magna cum laude man from Harvard law, and I have known Harvard Law Review editors. I am not sure if I ever met a magna cum laude graduate from Yale. I have met Phi Beta Kappas. But this is the first time I have met all of them at once. Do you understand my reluctance to ask you questions?

Frankly, I was tempted on other days in these hearings we have had witnesses speak against the bill to suggest the high level of self-interest which inevitably would operate on their judgment. I didn't. You are pretty blunt about it. I guess the reason I didn't is my belief—my hope—that in the legislative considerations of these proposals, intelligent men will be able to evaluate the background from which on any of these witnesses speak. It was not that I was unconscious.

Mr. JOOST. I hope your claim has merit.

Senator HART. Here is one I will have to ask you to clarify. We opened these hearings with Secretary Volpe as the witness, and I haven't reread the testimony—maybe my memory is faulty—I though he was one of the great fighters for the Massachusetts no-fault plan. I get the impression that he knows the fight: you can wait for the States and give them a try. Your vision of his role is sharply different from my impression.

Is my impression wrong?

Mr. JOOST. Your impression is wrong, sir.

As you know, Massachusetts has had a compulsory-automobile-liability-insurance law since 1927. There have been problems under this law, including the fact that it helped to put Massachusetts in the untenable position of being the State with the highest auto-insurance premiums in the country. In 1966 or 1967, shortly after John Volpe's election to the first 4-year term as Governor of Massachusetts, shortly after that election, the Governor filed legislation to end the compulsory-liability-insurance system and enact a financial-responsibility law and also to establish a fraudulent-claims bureau.

Now, financial-responsibility laws exist in 47 of the 50 States. Only three States, Massachusetts, New York and North Carolina, have compulsory automobile-insurance laws. Financial-responsibility laws are a little like the dog-bite laws; you may get the "first bite" free, but after that you have to have liability insurance.

Governor Volpe pushed for "financial responsibility," even though it has never really worked, because "financial responsibility" means there will always be some totally uncompensated victims. If you get hit by an automobile, and if the person who hits you doesn't have liability insurance or private wealth or substantial property subject

to attachment, "financial responsibility" means you are totally without protection in case of injury.

I have heard of cases in States with financial-responsibility laws where hospitals wouldn't even admit an automobile accident victim until they received proof that either he had a Blue Cross certificate or that the person who hit him was insured or highly solvent.

Despite all this, Governor Volpe introduced a financial-responsibility bill. Mike Dukakis, who was a classmate of mine at Harvard Law School and a very active Democratic Member of the House of Representatives, decided that the Democrats had to come up with an insurance program also. He decided that it should be a real reform program, and thus he filed the "no-fault" legislation that had been drawn by Professor Keeton at Harvard.

Governor Volpe did not support him. Mike got it through the House of Representatives on a hot summer day when there weren't too many people there; he moved substitution on the floor, and the Keeton-O'Connell plan passed. Lo and behold, the trial lawyers panicked. There was an emergency return of employees on vacation. All kinds of things happened. People scurried all over the place.

Finally, there was a day of great jubilation when somebody persuaded the head of the Teamsters Union in Massachusetts, I think his name was Nick Morrisey, to agree to run full-page ads by the Teamsters opposing no-fault, provided the trial lawyers would pay for them all. With this kind of support, "no fault" was killed in the State senate.

Governor Volpe never made a statement in support of "no fault." He never had to act, of course, since the bill was prevented from coming to his desk as Governor. The same thing happened again in 1968. Governor Volpe never endorsed the concept while he was Governor.

Senator HART. My question might appear to be critical of the Secretary. I was asking for clarification. I react this way. Sort of the Biblical welcome-home thing. If in fact once he was opposed or not helpful, he now has moved to the point of urging the adoption of no-fault across the country, but says—and I sense rather reluctantly—that we ought to wait, you know, pass a resolution and encourage the States to do it. In any event he does, you will be glad to know, support no-fault.

Mr. JOOST. I think one reason for his support now is the fact that his Lieutenant Governor, now Governor, Francis Sargent, has found that the "no-fault" thing works. You know, there is nothing like trying something—try it and see if it works. The Massachusetts law is really not a very good law technically. I have drafted a lot of statutes for the criminal law commission, and believe me, the Massachusetts no-fault law is technically very poor.

The first sentence is 567 words long. The second sentence is 140 words. The guts of the statute are contained in a definitions section; the definition of PIP, personal injury protection. With all, it is a weak and limited bill, but the important thing is that it is working. The premium rates are coming down, although they have got to come down much more.

Senator HART. Governor Sargent filed a statement with us yesterday complaining about the failure of the Massachussetts plan to reflect the savings that were accruing to the insurance carriers.

I won't ask you to describe in fuller detail how your vacation was interrupted, but I am intrigued by the passing comment that you made about it.

Do you know whether the Internal Revenue Service has reviewed any of these programs or war chests, or whatever you want to call them, specifically the one in Texas?

Mr. JOOST. I just don't know. The letter from tax counsel which I attach to this statement states the facts—in other words, you have told us thus and so. The LIFT program is not in that statement of facts. So I can't blame tax counsel. I have no way of knowing what Internal Revenue has or has not done.

Senator HART. Some place in here you describe a county bar association assessing a sum.

Mr. JOOST. $100.

Senator HART. That was on each member to generate moneys to fight the Ogilvie plan in Illinois County? Could they fog that up in such a fashion as to make it a deductible business expense?

Mr. JOOST. Again, I am not a tax lawyer, and I think I had better stay out of that can of worms.

Senator HART. The group which files and obtains a tax exempt status nonetheless may not use moneys in legislative lobbying unless it wants to forfeit its exemption. I am not a tax lawyer either, but isn't that a correct statement?

Mr. JOOST. That is correct. I think the reasons for it are terribly important public-policy reasons. We cannot permit special-interest groups, particularly special-interest economic groups, to be both tax exempt and free to lobby. When you come right down to it the bar associations, at least the American Trial Lawyers Association, is nothing more, nothing less than a trade association. If groups like this are subsidized by the Federal Government to pursue lobbying and legislative activities aimed, not at the best interest of the Federal Government or the best interest of the people, but at their own personal best interest, their own personal pocketbook interest, then the public is deceived.

The trial lawyers speak in terms of "offensive" legislative activity, which means persuading States to enact new provisions such as comparative negligence as a replacement to the rule of contributory negligence, and "defensive" legislative activity, which means preventing the passage of "things we can't live with"—preeminently no-fault auto insurance.

I think the reasons why Congress continually has said, in all its revision of the Federal Tax Code, that you can't be both tax exempt and lobby, are good. There are particular situations, I know, where the prohibition hurts, but I think the reasons in favor are overwhelming and clear. Personally, I think that the tax law on exemptions for trade associations and such groups should be tightened.

Senator HART. The fact that you have advised us with respect to the activities which you, as a result of sitting with the "Key Men" meetings, know are included in the agenda of these groups would, I think, put the Internal Revenue Service on notice. I am not suggesting that it is or isn't an abuse, I don't know. But certainly you have raised the question. As you say, it is a basic public policy concern that that kind of activity not be subsidized.

Incidentally, you describe the political muscle of the trial lawyer groups in the States. With the little experience I had at Lansing, whic is the State Capitol of Michigan, I would think that opposition to no fault in consequence is getting more political muscle when they enlis the sheriffs and constables as alluded to in your testimony. As for thi business of the professor at Suffolk testifying, speaking, and draw ing fees from the association: this practice probably will be with u as long as we have this kind of society, I suppose. I don't know how yo can get a hand-hold on that. The politicians should be most conscio of the glasshouses in which they dwell before criticizing someone els We do it in reverse, or some do. Some lecture to groups and they ar then compensated. I am always struck by the fact that the group t which the politician is lecturing knows infinitely more about the sub ject matter than the politician, but the group pays him.

Mr. JOOST. That is not always true. The thing that disturbs me pe sonally about the university situation is that the scholar, the teache does hold himself out to his students, if to no one else, as a certain so of person. We have been having a certain amount of trouble in our un versities because not all students believe all faculty members are i that position. But I would like to believe, myself, that those who choos to work in academia, who choose to become professors, will in fa pursue the truth in the old Socratic manner.

All the law schools say they have the Socratic method of teachin The goal of Socrates' method at least as I recall it from my limite memory of philosophy courses, was the pursuit of truth. I don't thin you can pursue truth and at the same time accept stipends, which yo do not disclose, from groups who frankly do not care about the arg ment so long as they get the desired results.

Senator HART. Perhaps disclosure for academics is what we shoul recommend just as we recommend disclosure for the political lecture

Mr. JOOST. I think you find academics recommend disclosure for pol ticians much more than they recommend it for themselves.

Senator HART. Drawing on your background, in the course of o hearings, questions have been raised about the basic constitutionali of the Hart-Magnuson proposal and more acutely about State no-fau legislation.

Now, first, on the question of the Massachusetts no-fault law, wh is your opinion with respect to its constitutionality?

Mr. JOOST. Well, obviously, I cannot outguess the Supreme Jud cial Court of Massachusetts, but my feeling is it may in fact—a ke part of it may in fact—be held unconstitutional on the grounds th it is an arbitrary, capricious classification.

Now, the Massachusetts law works on what may be called the thre hold concept. If you have $500 of medical and hospital bills, and the are reasonable, then you can get a tort lawyer, go to court, get a ju trial, and you are entitled to and can recover a verdict that includ general damages for intangible losses—pain, suffering, inconvenienc emotional hurt, and all the rest.

But, if your medical bills are less than $500—there is a whole li of things, prosthetic devices, ambulance charges, and so forth th are includible—if they are less than $500 you cannot get gener damages; you cannot recover for pain and suffering; you cannot g a jury trial.

The Supreme Court of the United States in a line of cases—I don't have the citations here—has spoken of the necessity for reasonable classifications, reasonable categories which bear some logical relationship to the subject matter. Now, I think it is possible that the SJC of Massachusetts will conclude that this $500 business is an unreasonable classification. It has no relation to what kind of an automobile accident it is or what the injuries are, it has no relation to any of the findings of the DOT studies; nobody says that $500 is the magic cutoff between serious and trivial accidents. I don't know where the threshold cutoff came from in the legislative hurly-burly on this law but it came and the number picked was $500.

I think it is quite possible that this could be called arbitrary. If it is arbitrary and capricious, the provision could be wiped out as unconstitutional. I would like to contrast this $500 clause with the related provision in your own bill, Senator Hart. In section 4, your bill says that you can recover general damages in a tort suit if there is a "catastrophic harm," as defined. Now catastrophic harm strikes me as being a very reasonable category. We can distinguish rationally between catastrophic harm, which is defined, and all the rest, which is noncatastrophic harm. That is reasonable classification. I think it fits what was meant by the great justices who have declared that due process means a "scheme of ordered liberty," "the American scheme of justice." Due process requires reasonable classifications, not cutoffs plucked out of thin air. Otherwise, there is a denial of equal protection. Catastrophic harm is a very good dividing point, and certainly it is within the legislative province to define it.

As to the Hart-Magnuson bill itself, I see no constitutional problems. If anything is clear from the original documents on the founding of this Republic, the one power that everyone agreed should go to the Federal Government was the power to regulate interstate commerce. I think that automobiles today—automobile driving today—is the single biggest kind of interstate commerce we have.

Now, the members of the Constitutional Convention of 1789 didn't say everything that was interstate had to be regulated by Congress. But I think it was their understanding that the important things should be centrally regulated if this was to be a viable Federal Union. I believe that automobile driving is so interstate today that all its aspects—the manufacture in terms of safety and environmental controls, the compensation of the people injured, the insurance against losses caused—all belong under Federal regulation. It is preeminently, not marginally, interstate commerce.

The Federal Government regulates many things. There are also a lot of Federal criminal statutes that use the interstate commerce power as a threshold, a kickoff to establish Federal jurisdiction. Automobile operation involves much more interstate commerce than many of these things now governed by Federal law.

There is a real practical necessity for uniform automobile compensation law. If there were 50 different State laws on auto insurance, there would be tremendous confusion. I think the insurance companies would find that even their computers would get tired figuring exactly how the system works in each State and what the applicable law is.

So it is clearly interstate commerce. The subject is clearly within the competence of the Congress. It is clear under the necessary and

proper clause that when the Congress enters an area which is withir its constitutional authority, it may legislate as its wisdom and discre tion dictate.

The argument has been raised that the Hart-Magnuson bill violate the seventh amendment with respect to jury trial. I do not believe tha argument has merit. The Supreme Court, over the years, has rathe carefully, and I think rather deliberately, refrained from includin the seventh amendment right to civil jury in any of the dicta discuss ing or defining what is meant by due process.

Senator HART. I have not heard it developed really to the end o a paragraph, but I sense some concern, perhaps among some Membe of the Congress, that goes this way: Can we legislate, wipe out wha they would describe as everybody's right to proceed in a tort ca to establish and recover for any hurt? It isn't voiced quite that wa but I think that it is out of that question that comes their wond about the reach of a bill such as this. In other words, I guess the would say what you are doing is by a Federal act washing out an ind vidual's States rights to use a State court system to recover for wha ever he can establish was wrongfully caused.

Mr. JOOST. There are precedents for this. I have taught at the Ne England School of Law: I taught labor law. I think labor law is prime example of an area in which the States and the State cou had major authority. The States defined and enforced the rights management and of labor, of owners and of strikes. But then came Fe eral acts—the Norris-LaGuardia Act and the Wagner Act in t 1935's, as amended by the Taft-Hartley Act, as amended by t Landrum-Griffin Act—and no longer was a factory owner able to u his State court system to enforce "yellow dog" contracts or conv strikers or enjoin union activity.

Prior to the 1935's the Federal Government had no great invol ment in labor matters. But the U.S. Supreme Court upheld the N tional Labor Relations Act in the 1930's, when its constitutional was challenged on the ground that Congress could not take th powers from the States. The Court sustained the Wagner Act beca it clearly involved the regulating of interstate commerce.

The rationale for a Federal Union demands that there be a custo union, a "common market" to stimulate the commercial intercou which is necessary so that every component can benefit to the great possible extent. There has to be central regulation of the things t are really central. I would argue that transportation matters such automobiles and the driving of automobiles must, like labor matt be regulated by the central authority. I think this is what the fou ers had in mind when they gave Congress the power "to regul commerce * * * among the several States."

Senator HART. You said in your prepared testimony that th were many rewarding jobs open to the trial lawyers of this countr exciting jobs. What has happened to the trial bar in Massachus now that they are operating under this no-fault program there? H they gone to the environmental protection field or are they still b with insurance law?

Mr. JOOST. Well, just yesterday I heard on the news that the Mas chusetts State Senate had given final approval to a bill to permit p vate citizens to sue those who are alleged to cause damage to environment.

I believe that it is a better bill than the one that Michigan passed last year on the same subject. It has also passed the House and it has gone to a conference committee. According to the radio broadcast, the Associated Industries of Massachusetts are preparing a last ditch effort to defeat this bill which would permit individual citizens to sue to enforce the pollution—control statutes and regulations which are already law, but we believe that it will survive the conference committee and Governor Francis Sargent has indicated he personally believes private-remedy suits represent a very important approach to environmental protection.

Congress last year year passed a provision authorizing "Citizens Suits" as one of the amendments to the Clean Air Act. The Federal law provides for reasonable attorney's fees to be paid by violators. This is proper—I think the lawyer should receive a fair compensation for what he does—but that is very different from the frequently exorbitant fees earned in the automobile—negligence business.

Senator HART. The Ogilvie bill in Illinois, is it a Massachusetts no-fault bill?

Mr. JOOST. No, it is not. It is a different kind.

I would say, first, it is a misnomer to call the Ogilvie bill a nofault bill. In fact, a headline in the *Wall Street Journal* declared that the "Ogilvie System Would Bypass No-Fault Concept."

"Others have agrued" that the Ogilvie bill is a no-fault system and one which, if enacted, will make it— unnecessary for the Congress to act.

When you break it down and look at the Ogilvie bill, you see that it is really not a system, it is not a plan. As a result of my work with statutory recodification and revision efforts, I very much believe that the legislative bodies should not try to copy the courts and decide things on a case-by-case basis, a little thing here and a little thing there. Rather, they should try to create systems that make sense and leave it to the courts to fill in the bits and pieces. The Ogilvie plan is not such a system. It is a hodgepodge collection of 13 different bills on different points. The 13 bills don't add up to a system, no-fault or otherwise.

In substance, the Ogilvie bills involve a scaling down, a reduction of the amount of money that would be paid by insurers to motor vehicle accident victims who bring tort suits. That reduction in payout makes two things possible: A reduction in auto insurance premiums which looks good, and a package of first-party-benefits. The first-party-benefits package would pay a maximum of $2,000 per victim in medical, hospital, and funeral benefits plus a maximum of 52 weeks of wage loss up to $150 a week in income continuation benefits.

What this amounts to is adding some no-fault frosting onto the same old negligence cake. The cake itself won't be changed except to make it down in size.

The most important section of the bill is the section called "General damages." It states that damages for pain, suffering, mental anguish, and inconvenience shall not exceed the total of a sum equal to 50 percent of the reasonable medical treatment expenses * * * if * * * the total such * * * expenses is $500 or less, and a sum equal to the amount such reasonable expenses, if any, in excess of $500."

What this bill does is to say, sure, you can have a jury trial and you can get general damages for pain and suffering, but the jury cannot

find as a fact that your general damages are worth any more than your medical expenses if your medical expenses are over $500, and the jury can't find—they will be in reversible error if they do—that your pain and suffering is worth more than 50 percent of your medical bills if they are less than $500.

Now, I think this restriction represents unwise tampering with the jury. I think that if you give the right to trial by jury in a negligence case, you must really give the plaintiff that right.

The Ogilvie plan keeps the automobile jury, but puts it into a straightjacket so far as damages is concerned. Let's assume the plaintiff is a violinist and something happens to his hand; in the auto accident he breaks a finger, it is put in a cast, the total medical bill is $200. However, for an entire season he cannot play with the Chicago Symphony Orchestra. What Governor Ogilvie is saying is that this particular violinist's pain and suffering and inconvenience for not being able to play with the Chicago Symphony for an entire season shall not exceed $150. This bill is doing something that makes me very uncomfortable: you give or retain a right, you "press-release" it as a right, but you take away its substance.

There is another provision in the Ogilvie package that I would like to take the time to comment on. The section is called "Fraudulent Claims," and it is a substantive criminal law, not an insurance law. Just looking at it technically—and for 3 years I have been drafting and analyzing criminal statutes—this is a bad bill.

The criminal law can take on just so much. It is a little bit like the Great Lakes; it looks enormous, but in fact you can dump only a certain amount of indigestible material into it; dump too much and it ceases to live.

Now, what the provision says is that:

> Any person who . . . indirectly . . . acts in concert with a person seeking to falsely and fraudulently represent . . . or exaggerate the nature and extent of motor-vehicle-caused injury or damage to property shall, if the sum so obtained or attempted to be obtained is less than $100, be sentenced to not more than one-year imprisonment, or if the sum exceeds $100, shall be imprisoned not more than 10 years.

Now, this is silly. First of all, there is no sure method of obeying it. All that is necessary for a criminal conviction is to prove the defendant acted in concert with someone who was trying to exaggerate a claim. You don't have to do it intentionally, you don't have to do it knowingly or recklessly or negligently; it is enough that it happens.

You can imagine the lawyer, whose client never tells him honestly what happened, who puts on evidence which in fact exaggerates by $101 the extent of the client's injury.

That attorney could go to jail for 10 years.

Now, I think this is foolish. All that the section is going to do is to make lawyers reluctant to talk to their clients lest they be accused of acting "in concert" with one who exaggerates; it will thus have a "chilling effect" on the attorney-client relationship; as a practical matter it will not work. People are not going to be prosecuted for this, not in the present state of the criminal courts. The fraudulent claims bit—in so many cases it is not fraud—it is rather something which is built right into the negligence/liability insurance system. Assume you are paying $300 a year in auto-insurance premiums, and

you don't have an accident for 10 years, and then something happens. You know how you paid in $3,000 and you know it is so much that I think that you really do feel a pain in your head.

Mr. SUTCLIFFE. In discussions with Mr. Markus and the trial lawyers yesterday the subject of the Federal-State fund was raised. It was explained to us that that fund would be used to create liaison with Congress in order to facilitate our efforts in considering legislation. You have now told us that you, an expert, as demonstrated in these hearings, have been relieved of your position with the trial lawyers. Can you tell us who will be talking to Congress to help us in our reform of the automobile compensation system?

Mr. JOOST. I think I mentioned that the head of this department will be a nonlawyer, Mr. Alan Locke, whose brother I believe is press secretary to the Department of Transportation, and he will have at his command a Washington representative, Mr. Wayne Smith, who is also not a lawyer, and the services of Edelman & Co., a public relations firm in Chicago, with a New York branch, which will handle the account from a Hartford office.

So I think the help that the Congress will be getting—well, you can weigh yourself what contribution such a group of experts will make to the solution of the problem.

Mr. SUTCLIFFE. One more comment that is taken from yesterday's hearing transcript. This is a response of Mr. Markus to questions about LIFT and ADOPT. He said:

> I might say the items you are describing, frankly I wish they were stronger and more effective. These items represent a very minuscule percentage of the amount the insurance industry is now spending in this area. We have reason to believe it is many millions of dollars.

From your vantage point, does that seem to be an accurate statement?

Mr. JOOST. I will have to answer "Yes," "No," and "I don't know." I do not know what the total figures are, either for LIFT or "for the insurance industry, but I do know that the LIFT ideas is on a curve of rising expectations. The State chapters and affiliates will be stimulated by this well-financed Department of Federal-State Relations which will send people around to show the local groups "how to do it," how to act effectively politically. LIFT and ADOPT programs—every State will have its own acronym—will probably be started in a majority of the States within a very short period of time.

Perhaps I overstressed the financial aspect of LIFT, the fact that it was called "a legislative kitty which is paying off." I do not think that money is the sole source of political and lobbying strength. The real strength comes from the fact that the trial lawyer has many skills, skills which can also make him an attractive political candidate or an effective campaign manager. He is accustomed to speaking. He is accustomed to responding to questions. He is not afraid to appear in public. He is accustomed to hostile questioning. He knows how to get information. He has a lot of friends and a lot of contacts. If he has been an able lawyer for 10 years or so, he knows an awful lot of people who think he is pretty good. If he goes in with this expertise and this ability and really takes to the stump to support and help a candidate with speeches and letters and phone calls, telling people what a great guy "Honest" Joe Doakes is, then Joe Doakes has a lot going for him beyond the, say, $10,000 campaign contribution from LIFT.

You have to bear in mind that campaigns for State legislatures are much less expensive than campaigns for Congress. It does not take that much money. Millions of dollars could easily be wasted by insurance companies while tens of thousands precisely placed by trial lawyers on a particular race could mean veto-power control over a particular State legislature. The important thing is not just how much money a political fund raises and spends; it is also the way in which the money is placed, the way in which it is spent, that counts. For this reason, any comparison of lobbying expenditures between lawyers and insurance companies is of limited value.

Again, this is a very subtle way, and I think, therefore, a very effective way to influence legislation. You do not go after legislation; you go at the person who has a right to vote on legislation, namely, the person who sits in the State legislature. If a legislator votes "wrong," you find a strong opponent, the most attractive person in the district who will run, you fund him, you back him up, you have people prepare programs for him, literature for him, professionally advise him. Thus supported, he is going to have a good chance to defeat the "bad" legislator.

So I am not surprised at these 1970 results in Texas, that out of eight candidates backed in the Democratic primary for the State senate, six won. LIFT's first year, 1970, was their dry run. They can probably get a higher percentage than six out of eight in the future, but even 0.750 is a pretty good batting average.

Again, you see why it is difficult to answer your question.

Mr. SUTCLIFFE. I recognize that and appreciate your response.

The committee would like to draw for a moment, if you will permit us, upon your technical knowledge of the Massachusetts plan. You have mentioned the Illinois plan with the first-party overlay over the existing tort system. In Massachusetts they ostensibly have a first party coverage for tangible losses as between the policyholder and his insurance company, but in that plan they created a subrogation-like arrangement so that the insurance companies of the policyholders have to get together to determine which of their policyholders was at fault. Then through arbitration the company whose policyholder is found to be at fault reimburses the other company for the amount of his first-party payments to his own policyholder as well as its claims cost.

Mr. JOOST. It is something like that. I think they have a 400-word sentence.

Mr. SUTCLIFFE. I hope I got by with a 200-word explanation. What impact will this procedure have on the efficiency of the no-fault system in Massachusetts, and if you will, address yourself to what kind of inconvenience it will create for the consumer who has to have his insurance company talk to him pretty thoroughly about the accident and maybe even have his insurance company ask to come before an arbiter to explain what happened?

Mr. JOOST. If this is in fact what is finally held to be the meaning of the Massachusetts statute, it will be yet another way in which consumers lose out. I have the laws here—Acts of 1970, chapter 67 and chapter 744. I pasted the two statutes together to determine what the law really says, but that doesn't help with internal questions. It is really very hard to know exactly what the Massachusetts no-fault

law means on many points. It has, conservatively, about 30 ambiguities, one thing in one sentence, another thing in another section.

To give you an example, there is a merit-rating provision. If you are claims-free for a year, you are entitled to a 2-percent discount on your insurance premium. But no one knows whether the discount is 2 percent per year cumulatively, intermittently, or totally. If you go 3 years without an accident, file a claim in the fourth year, and then you are accident-free in the fifth, and sixth years, do you then get a 10-percent reduction, a 4-percent reduction or a 2-percent reduction?

There are so many ambiguities and technicalities, that frankly I am not prepared to comment on the retention of subrogation, except to say that I believe your summary is accurate.

Mr. SUTCLIFFE. Do you know why it was done? What is the rationale for this kind of an arrangement?

Let me read one thing and see if you might concur in it. This is in the Massachusetts Association of Independent Insurance Agents and Brokers' booklet entitled "Special Report on Massachusetts Auto Insurance."

On page 13 they talk about what they entitle the "Inter-Insurer Subrogation." They conclude: "In practical effect this means that the liability exposure of companies remains essentially as good or as bad as it was before."

Is this provision included in there only to allow those companies who have all the good risks right now to keep them and to benefit from them?

Mr. JOOST. I think it is clear that subrogation between insurance companies is completely contrary to the theory of no-fault. Basically, the theory of no-fault insurance is that we let the loss stay where it falls but reimburse the victim for that loss from the insurance pool to which he and all other motorists have contributed. To subrogate on a case-by-case basis, to shift money back and forth between insurance companies on the basis of which company's policyholder was at fault, whether it is done by arbitrators or whether it is done by a court, involves a waste of time, a waste of people, a waste of money for hearings, for preparation, for salaries. The cost of waste is eventually paid for by the consumer in the form of higher-than-necessary premiums.

In most cases, the claims of A company vs. B balance out against the claims of B company vs. A in a rather constant ratio. If the law permits this back-to-forth subrogation, then the administrative costs of the system will be excessive. If the law permits this back-and-forth subrogation, then the administrative costs of the system will be excessive. If that agent's association brochure states that this is the Massachusetts law, it probably is, because the genesis of our no-fault it law was a bill, I think it was S. 500, that was filed on behalf of the Massachusetts Agents and Brokers Association.

That original bill was changed enormously. Already two parts of the law have been held unconstitutional by the Supreme Judicial Court of Massachusetts. The trial lawyers' strategy was to make the bill into a Christmas tree when they saw that the votes were there in 1970 to pass no-fault—to put on so many goodies that the whole thing would fall because the Governor would be compelled to veto it because otherwise the insurance companies would yell too much.

They put in a provision that there should be a 15-percent rate reduction, not only for personal-injury policies but also for property liability and collision-insurance policies. There were other things that were put in also. Notwithstanding, the Governor in fact signed the final product. The legislature then amended some of the extras, and in November our Supreme Judicial Court voided the unrelated rate reductions. The insurance companies did in fact yell that they would no longer do business in Massachusetts, but they are all still there and doing handsomely.

There will have to be a great many appellate decisions in Massachusetts to finally determine all the parts of this law. In that context, I would like to command all the people who had anything to do with the drafting of S. 945. I think it is a very well-written bill. It is ever better than the one that Senator Hart filed last year. Technically, there are fewer ambiguities. As a matter of fact, I talked with a personal friend just a couple of days before I came down here, a professor at Yale who has written a book on the subject, "The Costs of Accidents," and he says it is the best-written no-fault bill that he has seen filed anywhere this year.

Perhaps I overstress the importance of the draftsmanship, but when so many people are going to have to use a law, live with a law, operate under it, the language should be comprehensible to the layman. The law is not just for the lawyers, it is not our private property. It should not be expressed in archaic or arcane terminology, difficult for the layman to follow. If it applies to all, be it the criminal law or the automobile law, it should be comprehensible by all.

I think your proposed statute, while it could be improved some more, I think it is really very good.

Mr. SUTCLIFFE. That is all the questions I have. Thank you.

Senator HART. Thank you for the last comment which I can take with good grace because, as you suspect, the Members of the Senate rarely do the drafting, and I certainly had nothing to do with what you said was a good product, but I am delighted that you said what you did, because it will permit me to go to those who did draft it and indicate your judgment on the quality of it.

One last question because I have it thrown at me by some of my colleagues; and it is not the result of a trial lawyer lobbying my colleagues. It is just their preliminary reaction to this proposal. In short they say I know we have got to do something about automobile insurance; I am for you; except you have gone too far. I do not want to have to pay to fix up some bum that drives with inexcusable carelessness. Can't you take care of that problem for me? That is the end of the question. How do you respond to that?

Mr. JOOST. Speaking personally, regardless of philosophy, I am afraid you are going to have to pay to take care of that inexcusable bum. The only question is how. We might, for example, have to pay for him or his dependents through welfare. We must face the fact that we pay because that man—that really bad driver, drunken driver—is more than a bum on the highway. That is only one part of him. He may also be a skilled craftsman in a machine-tool company. When he is all banged up and does not get rehabilitation and does not get good medical service and cannot come back to work for a long time, the Nation—not just the company—is deprived of his economic input into

the total goods and services of this Nation. We are paying, we do pay, every time someone is really hurt in an accident. The only question is how—out of general revenues or an automobile insurance pool into which the "bum" pays premiums which cover the risk?

I think the most commendable feature of your legislation—whether you did this consciously or not—is that you accept the fact that we are paying and say how do we best get auto victims back in business. I think that by giving the victim basically unlimited medical benefits plus unlimited rehabilitation benefits plus compensation for loss of earnings for a period up to 2½ years, you do everything that reasonable men can do to get that automobile victim back in business, be he a student or a housewife or a production worker or an architect or what have you. In my judgment, this emphasis-on-the-future is much more important; much more just; much more compelling than anything trial lawyers may say about the importance of pain and suffering and the dignity of a jury trial.

I think the Supreme Court will consider the seventh amendment argument in light of that essential justice and compassion. The bill's purpose is so terribly important that the Congress should act without delay.

Senator HART. Thank you.

Let me make one last comment. Normally when this comment is made it reflects a feeling that because of some act of individual courage and sensitive conscience somebody has put himself into the army of the unemployed by coming in here and testifying. With your extraordinary talents there would never be the danger that your services would not be sought. So I know that when you decided, as you put it here, "finally I concluded I had to accept the call to testify," that you did not face economic deprivation from the decision, but that really is not the most difficult part of stepping up and speaking hard truths. Lots of people who are the beneficiaries of enormous trust income never speak.

The fact that you would come as you have to as one who has been a trial lawyers' lawyer and told us that no-fault is the answer is an act, I think, of considerable courage, and I am sure that Senator Magnuson, had he been able to stay, would have joined me in that expression.

Mr. JOOST. Thank you, sir.

(The articles referred to earlier follow:)

[Vol. 1, No. 2 (Spring 1966)]

PORTIA LAW JOURNAL

Basic Protection for the Traffic Victim—*A Blueprint for Reforming Automobile Insurance*. By Robert E. Keeton[1] and Jeffrey O'Connell.[2] Boston, Toronto: Little, Brown and Company. 1965. Pp. xv, 624. $13.50.

A brief review can scarcely do justice to the complexity, intricacy, and thousands of hours of research, thought, analysis, discussion, and consultation that lie behind this ingenious and creative work. It is a pathfinder in a difficult area. Whether the proposed new basic automobile insurance system, based essentially upon strict rather than negligence liability, *should* be adopted is a question that lies within the responsibility and expertise of the legislatures. Clearly, however, each state legislature and even the Congress (what is more inter-state

[1] Professor of Law, Harvard Law School.
[2] Professor of Law, University of Illinois Law School.

[illegible] these days than automobile driving? should study carefully this [illegible] reform and the justifications advanced for it.

[illegible] the present system of [illegible] for automobile accidents in each of the states: (1) many injured [illegible] receive no compensation and others receive less than their economic [illegible] because the other driver hasn't enough insurance or assets, or because the victim must show the other person was at fault and he was legally blameless. Proof at times is hard to get, e.g. if the accident was hit-and-run; (2) the present system is extraordinarily slow and cumbersome, what with delay in the courts and the injured victim, with his back against the wall financially, may settle for less than his just deserts; (3) there is too much unfairness, as a practical matter, with some people getting more than they deserve and others less; (4) the fault system is extraordinarily expensive to administer and this heavy administrative cost is added to the premium bill each car owner pays; (5) the present system is a constant temptation to dishonesty—inducements to exaggeration and invention strike at the integrity of driver and injured alike, all too often corrupting both and leaving the latter twice a victim—injured and defrauded. Substantial documentation is advanced to support each of these assertions.

The basic corrective advanced is absolute basic compulsory automobile insurance. Under such a system, anytime a driver is in an accident his own insurance company shall compensate him or his guest, for their "loss," which shall not include pain, suffering and inconvenience. Benefits would be paid monthly as the loss accrues. Tort liability would remain, but only in major cases (where damage for pain and suffering exceeds $5,000 and other tort damages exceed $10,000).

The proposed statute is a careful attempt at reform. If substantially enacted, it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

One question that arises, however, that the authors do not consider, is whether one can ever truly compensate an automobile accident victim in *dollars; e.g.* a man who loses his legs or a child who no longer has a father? No one has said that *all* auto injuries and deaths can be eliminated, but many have suggested that if automobiles were designed with safety rather than sex-appeal as the first order of business, the staggering highway toll would be reduced. The most "Basic Protection for the Traffic Victim" would seem to be that the government do everything possible to protect a man from ever becoming a traffic victim in the first place, through enforcing higher standards for driver skill and demanding a tank-like approach to auto design.

ROBERT H. JOOST.[3]

[From the Boston Globe, Tuesday, Dec. 6, 1966]

LETTERS TO THE EDITOR

KEEP THE COMPULSORY

. . . With all due respect to the governor of the commonwealth, the leader in Massachusetts of the party which I personally support, the financial responsibility law idea is an irresponsible "solution" to the problem of automobile insurance. Compulsory insurance must be retained. But the rates must also be cut significantly. The Dukakis bill is based upon the results of long and painstaking research by a group under two highly regarded professors of law and tort law authorities. The Dukakis/Keeton-O'Connell plan will not eliminate the right to trial by jury, as some responsible lawyers unfamiliar with the details seem to be afraid. Insurance companies will not lose money, nor will the plaintiff's personal injury lawyer, whose livelihood rests on a contingent fee, suffer unduly.

The political parties and their representatives in the Legislature and executive and the members of the bar who are all "officers of the court" have a responsibility to the people and to the commonwealth that should rule out self-interest, personal pocketbook considerations, and partisanship on an issue so basic and vital: the right to be sure of compensation for automobile injuries (hence the need for compulsory insurance) and the right to drive a car, which often equals the right to employment in today's world (hence the need for significant reduc

---

[3] Member of the Massachusetts Bar; former assistant to the Editor, Journal of the American Trial Lawyers.

tions, not increases, in automobile liability rates). The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried. The problem is critical—nay-sayers are not enough.

ROBERT H. JOOST.

[From the Boston Globe, Friday, Apr. 30, 1971]

LETTERS TO THE EDITOR

NATIONAL NO-FAULT

I was puzzled by your editorial on no-fault auto insurance entitled "Volpe's Wise Proposal" (April 19).

The editorial is puzzling primarily because it is no secret in Washington that Volpe was prepared to recommend national no-fault auto insurance legislation and that his recommendation was sabotaged by White House action.

The Globe may be right in arguing that a rigid national system of no-fault auto insurance would not be a sensible course at this time. On the other hand, if no-fault makes sense in Massachusetts, I see no reason why it does not make sense for the nation as a whole.

Legislating on a national basis on the subject of motor vehicles is hardly a novel proposition. I doubt that anyone would seriously suggest today that we should not have national standards for motor vehicle safety. Congress has also acted to impose auto emission controls on a national basis. In fact, it has gone so far as to deny states jurisdiction of any kind over auto emission controls.

Accordingly, the case for national no-fault auto insurance in some form is a strong one. Simplicity and uniformity of treatment are essential in a nation where so many of us cross state lines in motor vehicles every day. It would be tragic, in my opinion, to encourage a situation in which a crazy quilt of state no-fault laws emerges which results in changes in basic rules or gaps in coverage simply because a motorist leaves his home state.

There may be a sensible compromise between the no-action position of the Nixon Administration and the advocates of comprehensive national no-fault insurance. Congress could pass legislation this year requiring the states to enact no-fault laws within the next two years. The Secretary of Transportation would be given the authority to approve each plan but every state would have some latitude in developing its details so long as the state plan met certain basic criteria.

Such a course may be the one which Congress ultimately takes this year. It is, in my view, the minimum required if we are not to subject the motorists of the nation to a hodge-podge of conflicting laws and insurance policies in the years to come.

MICHAEL S. DUKAKIS.

[From the Journal of Commerce, Apr. 26, 1971]

BAY STATE'S INSURANCE INDUSTRY HIT

GOVERNOR CHARGES PROFITS ARE NOT PASSED TO CONSUMER

BOSTON, April 25.—The auto insurance industry was bitterly criticized here today by the Commonwealth's governor for failing to pass onto consumers the substantial savings the companies have incurred from the Bay State's three-month old no-fault auto insurance system.

Gov. Francis W. Sargent said that during the first three months of this year, the underwriters have seen their claim costs drop by over 35 percent but have not come forward with plans to lower premiums.

The governor also alleged that many insurers have tried to obscure the options in the no-fault program which would lower their auto insurance rates.

"The average paid claim cost in the first quarter of last year was $205," Gov. Sargent said. "The average paid claim cost in the first quarter of this year is $131. The total amount of paid losses in the first quarter of last year were $359,590—this year they are $229,479.

"That is a 34 per cent reduction in claim costs this year over last," the governor said in an address before the Massachusetts Association of Independent Insurance Agents and Brokers.

The governor said if the average paid claim costs for 1971 hold at the present rate through June they will be 60 per cent lower than the first six months of 1970.

"Translated into possible future premium reductions that comes out to a further premium cost cut of 25 per cent for bodily injury insurance, though no property damage and collision for in those years price inflation and the high cost of auto repair drive these costs steadily up," Gov. Sargent said. "But in bodily injury, the only area affected by no-fault, we can at least hope for further cost cuts if present experience continues."

Gov. Sargent said he would release a statistical summary next week on the first three months of the first in the nation no-fault system.

"The great irony of no-fault so far is that the industry that fought it so hard is now profiting the most from it," said the governor. Further, the industry while it profits, blocks the consumer from the benefit of the new system, he said.

Gov. Sargent told the insurance men they were keeping the public ignorant about how to take advantage of savings on auto insurance premiums.

"Last year we provided options in auto insurance to let the buyer build his own insurance program through bodily injury deductibles for those with sufficient health insurance," he said, "and $100 and $200 deductibles in property damage insurance.

"We encouraged companies to provide further deductibles to cut cost of collision and comprehensive insurance," he said.

"I am told the industry in some cases has not only failed to inform customers of these options but has actually refused to allow their purchase," Gov. Sargent said. "Worst of all, I am told that many companies have forced customers to buy more insurance than they want in order to buy any at all."

Gov. Sargent said he would order a "step up in investigation of the abuses so far charged—and the industry had better be ready to reply.

[From the Boston Sunday Globe, Apr. 25, 1971]

WIRE TAPS

Attorneys are wondering about a couple of ethical questions raised by activities of the lawyers bringing the test case of no-fault auto insurance b The lawyers, Robert Cohen and Alexander Cella, have sent other attorneys mimeographed form offering for sale at $50 per set the two-volume brief ($ they have prepared on the case and the appendix ($5). The case is to be he next month before the Supreme Judicial Court. Fellow lawyers say (1) the never heard of a lawyer openly selling a brief—"It's a little bit arrogant before even win"—and (2) the appendix consists of court records, which may not theirs to sell.

A TRIAL LAWYER'S LEGISLATIVE WORKBOOK

HOW TO DO IT

Q.: "What do you feel is the best method to establish and keep rapport w sympathetic legislators and how do you suggest bill introductions, legislat advocacy and hearings be conducted?—Do you have an active 'Legislative C mittee' in your state trial lawyers organization and how does it work?—Do trial lawyer groups make campaign contributions to candidates to legisla office, or is this done on an individual basis? Outside of finance, do they aid in vote-getting? How do you go about encouraging bright young plaintiff-orie lawyers to seek legislative office? In general, how does your state organiz handle 'legislative advocacy', appearance before committees, and follow-u bills? Do you think it is necessary to have a full or part-time man on the the state capitol to keep members informed?"

(*Texas:* William R. Edwards.)

We have found that the best method of establishing and keeping rapport with legislators whether sympathetic or not (hopefully securing the help of those who are not necessarily sympathetic by so doing) is what I like to call the "buddy system". By this we mean the real responsibility for each of the legislators is placed on the trial lawyers located within their respective districts. We expect our members to befriend the legislators, to get to know them not only as political friends, but as personal friends. We endeavor to secure representative trial lawyers' membership in the district of each legislator. By virtue of such personal contact, we are able to secure the help and understanding of many legislators who are not lawyers and who have not had any real experience with our problems. Additionally, in the past year, we have made some progress toward securing help from non-lawyers convincing them that our programs are right and that by contributing their money and influence through us, such persons may be able to be of much greater influence in securing passage of such legislation that they could otherwise. One such non-lawyer from Dallas was of extreme help to us in our recent passage of the Texas Tort Claims Act, his interest in the matter having accrued by virtue of the death of a daughter caused by governmentally-immune conduct. Generally speaking, if a bill to be introduced is on its face one which is of a public nature, that is for the good of the people, as opposed to the good of the lawyers, we do not hesitate to have one of our strong supporters in the legislature, even one of our members, introduce the legislation, and in fact encourage it. However, as to strictly lawyer legislation, we prefer to get a non-lawyer member, one whose interests are not apparently aligned with ours to introduce the bill if possible. Because of our continued twelve-month-a-year program of legislative contact, we have never had any difficulty in securing introduction of any bills by the "proper" people. With respect to legislative hearings, our experience has indicated conclusively that if we will work closely with those committee members who agree with our position as to any particular legislation, and actively participate in the preparation of the case for our side of the bill, much as we would prepare a court case, that by virtue of careful preparation, including expert witnesses, statistics, etc. that we are ordinarily in a position to place before the committee hearing the bill a far better picture and far more effective case than the other side has usually taken the time or the effort to prepare. *Careful preparation* of the case for or against the bill cannot be over-emphasized.

We have a legislative committee and it is very active. It is the function of our legislative committee to see to the election of representatives who will support our positions, to formulate our legislative programs, to secure introduction of the bills we propose to pass and to shepherd those through to final passage and signature by the Governor. During the legislative session, in our office in Austin [state capital], we maintain a continuous program of public relations including an open bar and a buffet luncheon. During the last session of the legislature, we averaged in the neighborhood to twenty or twenty-five representatives and senators for lunch each day the legislature was in session. We have *one cardinal rule* with respect to the office we maintain in Austin across the street from the Capitol grounds: No lobbying may be done in the office. No pending bills may be discussed unless a particular legislator brings up the subject and asks that it be discussed. We have tried to make our office a place where the members of the legislature can come to escape the continual bombardment of lobbyists—where they get a drink or a good meal and relax. We are convinced that the legislators appreciate this rule.

Approximately two years ago we instituted a bank-draft plan whereby our members and anyone else we can persuade to do so contributes $10.00 a month to a fund maintained in Austin. The fund has been recently renamed and designated LIFT (Lawyers Involved For Texas). This fund is available for use in election contests for either State Senator or State Representative—it is not available for use in the campaign of any candidate seeking state-wide office. The fund is administered by the legislative committee and the President of the Texas Trial Lawyers Association. It is distributed carefully to secure the greatest effect by the use of the money. We expect contributions wherever possible to be made on an individual basis. This program is in line with the "Buddy System" mentioned above. However, there are obviously areas in which our membership is not in a position to adequately finance a candidate. Funds are made available on such a basis. Occasionally, there will be an extremely important race between a good friend and a bad enemy of the Association. In such instances we

36 PC REDUCTION

"That is a 36 per cent reduction (in claim costs) this year over last," the governor said in an address before the Massachusetts Association of Independent Insurance Agents and Brokers.

The governor said if the average paid claim costs for 1971 hold at the present rate through June they will be 69 per cent lower than the first six months of 1970.

"Translated into possible future premium reductions that comes out to a further premium cost cut of 25 per cent for bodily injury insurance, though not property damage and collision for in those years price inflation and the high cost of auto repair drive these costs steadily up," Gov. Sargent said. "But in bodily injury, the only area affected by no-fault, we can at least hope for further cost cuts if present experience continues."

Gov. Sargent said he would release a statistical summary next week on the first three months of the first in the nation no-fault system.

"The great irony of no-fault so far is that the industry that fought it so hard is now profiting the most from it," said the governor. Further, the industry while it profits, blocks the consumer from the benefit of the new system, he said.

Gov. Sargent told the insurance men they were keeping the public ignorant about how to take advantage of savings on auto insurance premiums.

"Last year we provided options in auto insurance to let the buyer build his own insurance program through bodily injury deductibles for those with sufficient health insurance," he said, "and $100 and $200 deductibles in property damage insurance.

"We encouraged companies to provide further deductibles to cut cost of collision and comprehensive insurance," he said.

"I am told the industry in some cases has not only failed to inform customers of these options but has actually refused to allow their purchase," Gov. Sargent said. "Worst of all, I am told that many companies have forced customers to buy more insurance than they want in order to buy any at all."

Gov. Sargent said he would order a "step up in investigation of the abuses so far charged—and the industry had better be ready to reply.

[From the Boston Sunday Globe, Apr. 25, 1971]

WIRE TAPS

Attorneys are wondering about a couple of ethical questions raised by the activities of the lawyers bringing the test case of no-fault auto insurance law. The lawyers, Robert Cohen and Alexander Cella, have sent other attorneys a mimeographed form offering for sale at $50 per set the two-volume brief ($45) they have prepared on the case and the appendix ($5). The case is to be heard next month before the Supreme Judicial Court. Fellow lawyers say (1) they've never heard of a lawyer openly selling a brief—"It's a little bit arrogant before you even win"—and (2) the appendix consists of court records, which may not be theirs to sell.

A TRIAL LAWYER'S LEGISLATIVE WORKBOOK

HOW TO DO IT

Q.: "What do you feel is the best method to establish and keep rapport with sympathetic legislators and how do you suggest bill introductions, legislative advocacy and hearings be conducted?—Do you have an active 'Legislative committee' in your state trial lawyers organization and how does it work?—Do any trial lawyer groups make campaign contributions to candidates to legislative office, or is this done on an individual basis? Outside of finance, do they aid him in vote-getting? How do you go about encouraging bright young plaintiff-oriented lawyers to seek legislative office? In general, how does your state organization handle 'legislative advocacy', appearance before committees, and follow-up on bills? Do you think it is necessary to have a full or part-time man on the job at the state capitol to keep members informed?"

(*Texas:* William R. Edwards.)

We have found that the best method of establishing and keeping rapport with legislators whether sympathetic or not (hopefully securing the help of those who are not necessarily sympathetic by so doing) is what I like to call the "buddy system". By this we mean the real responsibility for each of the legislators is placed on the trial lawyers located within their respective districts. We expect our members to befriend the legislators, to get to know them not only as political friends, but as personal friends. We endeavor to secure representative trial lawyers' membership in the district of each legislator. By virtue of such personal contact, we are able to secure the help and understanding of many legislators who are not lawyers and who have not had any real experience with our problems. Additionally, in the past year, we have made some progress toward securing help from non-lawyers convincing them that our programs are right and that by contributing their money and influence through us, such persons may be able to be of much greater influence in securing passage of such legislation that they could otherwise. One such non-lawyer from Dallas was of extreme help to us in our recent passage of the Texas Tort Claims Act, his interest in the matter having accrued by virtue of the death of a daughter caused by governmentally-immune conduct. Generally speaking, if a bill to be introduced is on its face one which is of a public nature, that is for the good of the people, as opposed to the good of the lawyers, we do not hesitate to have one of our strong supporters in the legislature, even one of our members, introduce the legislation, and in fact encourage it. However, as to strictly lawyer legislation, we prefer to get a non-lawyer member, one whose interests are not apparently aligned with ours to introduce the bill if possible. Because of our continued twelve-month-a-year program of legislative contact, we have never had any difficulty in securing introduction of any bills by the "proper" people. With respect to legislative hearings, our experience has indicated conclusively that if we will work closely with those committee members who agree with our position as to any particular legislation, and actively participate in the preparation of the case for our side of the bill, much as we would prepare a court case, that by virtue of careful preparation, including expert witnesses, statistics, etc. that we are ordinarily in a position to place before the committee hearing the bill a far better picture and far more effective case than the other side has usually taken the time or the effort to prepare. *Careful preparation* of the case for or against the bill cannot be over-emphasized.

We have a legislative committee and it is very active. It is the function of our legislative committee to see to the election of representatives who will support our positions, to formulate our legislative programs, to secure introduction of the bills we propose to pass and to shepherd those through to final passage and signature by the Governor. During the legislative session, in our office in Austin [state capital], we maintain a continuous program of public relations including an open bar and a buffet luncheon. During the last session of the legislature, we averaged in the neighborhood to twenty or twenty-five representatives and senators for lunch each day the legislature was in session. We have *one cardinal rule* with respect to the office we maintain in Austin across the street from the Capitol grounds: No lobbying may be done in the office. No pending bills may be discussed unless a particular legislator brings up the subject and asks that it be discussed. We have tried to make our office a place where the members of the legislature can come to escape the continual bombardment of lobbyists—where they get a drink or a good meal and relax. We are convinced that the legislators appreciate this rule.

Approximately two years ago we instituted a bank-draft plan whereby our members and anyone else we can persuade to do so contributes $10.00 a month to a fund maintained in Austin. The fund has been recently renamed and designated LIFT (Lawyers Involved For Texas). This fund is available for use in election contests for either State Senator or State Representative—it is not available for use in the campaign of any candidate seeking state-wide office. The fund is administered by the legislative committee and the President of the Texas Trial Lawyers Association. It is distributed carefully to secure the greatest effect by the use of the money. We expect contributions wherever possible to be made on an individual basis. This program is in line with the "Buddy System" outlined above. However, there are obviously areas in which our membership is not in a position to adequately finance a candidate. Funds are made available on such a basis. Occasionally, there will be an extremely important race between a good friend and a bad enemy of the Association. In such instances we

may apply rather substantial amounts of money to the particular contest. Our members are encouraged to participate actively in the campaigns of legislators and candidates. We do all that is within our power—financially and otherwise—to support actively the election of candidates who are philosophically attuned to our goals. This is the only way it can be done.

The best encouragement that can be given to any candidate for elective office is the chance of winning. We find that our program in Texas has enabled us to secure candidates—both trial lawyers and non-lawyers—to run for office. The non-lawyers are only too ready to assist us when they fully understand our goals and programs. After all, what we are attempting to secure in the way of legislation is in the final analysis good for the people. So long as we continue in that posture, we do not feel it is important to lawyer as opposed to non-lawyers represent us in Austin. So long as our representatives are properly attuned to our program, the non-lawyers are often more effective in securing the passage of our legislation, than are lawyer members.

With respect to each bill that is introduced, a subcommittee of the legislative committee of the Texas Trial Lawyers Association is appointed. This subcommittee has the primary responsibility for the particular bill. The subcommittee is charged with: (1) drafting the bill, (2) securing the sponsors in both the House and Senate, and (3) shepherding the bill through the legislature. The subcommitte is responsible for the preparation and presentation of evidence at committee hearings. The subcommitte is also responsible for keeping the association informed of the bill's progress so that the association may—if necessary—put on a "show of force" at hearings or votes, etc., by calling the membership to Austin at appropriate times. We maintain a constant review of bills introduced to assure that no legislation simply slips by us without our knowledge. This is another task of the legislative committee. Regular reports on what is happening in Austin is disseminated by letter to all the members of the Texas Trial Lawyers Ass'n.

[Because of space limitations, only the Texas responses have reproduced. They appear to contain in more comprehensive form most of the ideas mentioned by other states' Key Men.]

Additional Texas ideas mentioned at regional Key Man Meeting, Denver June 19, 1970:

"We have aproximately 1,200 members in the TTLA. The only requirements for membership are that (1) one pay $100 a year in dues and (2) be a lawyer who does not habitually represent insurance companies.

"We have had an executive director since 1962. The present Executive Director is a *professional lobbyist*, not a lawyer. He teaches us

"To have a successful trial lawyers' legislative program:

#1. You have to have an appealable piece [pieces] of legislation.

#2. You have to have a significant number of people who are able to discuss completely and intelligently the merits of that legislation.

#3. Your program should be neither a Democratic nor a Republican program, neither a Populist nor an American-ist program. It must be a program for the public.

#4. The scope of the legislative program should be very narrow: to get more justifiable money into the hands of claimants.

"Legislative advocacy is a complicated art; there are no simple routes to effectiveness. The most unsuccessful lobbying group at the last session of the Texas legislature was a group that left a fifth of best-quality whiskey in every legislator's car. Reaction: "Huh, those ——— think they can buy my vote with a bottle of booze. ——— them." Subtlety and hard, intelligent work are *essential*.

Up, Up and Away!!

LIFT is the latest effort of Texas Trial Lawyers Association. It stands for Lawyers Involved for Texas, and it's a runaway success . . . The *El Paso Times* reported in its Capital Column June 14th, that *LIFT was responsible* for the Democratic nomination in this year's primaries of six of the eight candidates it backed for the *State Senate*.

LIFT is a legislative kitty which is paying off. Most of your officers are contributing $10 per month on a bank draft authority to LIFT.

If you want to be a part of the movement for *comparative negligence* in Texas, for statutory authority to let jurors know what they are doing in *special issue verdicts*, and for a successful rejection of *Keeton-O'Connell* schemes, in other words, if you want your practice to *survive*, better get with it.

Send a check, any amount, to *LIFT, 201 Westgate Bldg, Austin!*

Observation by Nebraska State Senator [Nebraska has only one house of legislature—49 Senators] at Denver Key Man meeting, June 1970:

"We *never* hear from the lawyers of Nebraska except when we are about to vote on a bill that is of interest to them. Thus, it is not surprising that when we voted on repeal of the automobile guest statute, there were only 8 votes out of 49 in favor of repeal. Contrast the trial lawyers whom we never see with the bankers who are the most highly organized group in the state. The Nebraska Bankers Association is always around to lobby and to help and to answer questions—including questions totally unrelated to legislation affecting banks. We build up confidence, rapport, friendship with the bankers. The lawyers are unknowns whom we ignore in turn."

GRAVES, DOUGHERTY, GEE, HEARON, MOODY & GARWOOD,
THE AUSTIN NATIONAL BANK BUILDING,
POST OFFICE BOX 98,
Austin, Tex., February 16, 1967.

Byrd, Davis, Eisenberg & Clark,
Texas Trial Lawyers Association,
214 Austin National Bank Building,
Austin, Tex.
(Attention: Mr. Jack C. Eisenberg.)

DEAR JACK: You have inquired of us whether the expenditure of dues of the Association for purposes of retaining a legislative counselor might have a bad tax effect on the Association.

In our opinion, which must necessarily be rather hastily given because of the time pressure involved, this would have no effect upon the tax situation.

If you will refer to our letter of May 28, 1965 regarding the deductibility of dues or contributions you will note that Denny Ingram concluded that dues were not deductible as contributions but only as ordinary and necessary trade or business expenses. In reaching this conclusion, Denny opined that the Association could not qualify as a charitable organization under IRC Section 501(c)(3). I agree with his conclusion although I have not re-checked it in detail and am relying on it. It is true that 501(c)(3) organizations are forbidden to attempt to influence legislation as a substantial part of their total activities. However in my view the Association falls more nearly under Section 501(c)(6) as a Business League, Chamber of Commerce, or organization of the same general class, being an association of persons having some common business or professional interest, the purpose of which is to promote such a common interest and not to engage in a regular business of the kind ordinarily carried on for profit. If I am correct in this conclusion, and I think I am, the most recent authorities which I have been able to find indicate that legislative activity does not defeat the exemption if it is otherwise allowable, and this even though the legislative activity is the organization's sole or principal activity. See *Washington State Apples, Inc.*, 46 B.T.A. 64; Rev. Rul. 61-177, 1961-2 C.B. 117, modifying Rev. Rul. 54-442, 1954-2 C.B. 131. Nor does the statute itself contain any requirement that organizations falling under 501(c)(6) refrain from legislative activity as does Section 501(c)(3), applicable to charitable organizations generally.

For the above reasons, I do not think that the retaining of legislative counsel by the Association would effect either its tax status or the tax status of dues paid in by its members. I hope that the foregoing answers your question adequately and if you have any further questions or wish further light on the subject, please let me know and I will atempt to oblige.

Yours sincerely,

THOMAS G. GEE.

Texas Association of Plaintiffs Attorneys,
214 Austin National Bank Building,
Austin, Tex.
(Attention: Mr. Tom Davis.)

GENTLEMEN: This letter is designed as our preliminary opinion to you concerning the status of the present method of dues payment in your association, your present organizational structure, and recommendations for future operation and changes in structure.

Your present method of dues payment involves variance in the amount of the dues. You are concerned that some large dues payments or contributions might be denied income tax deductibility to a fixed dues schedule and without any definite or substantial added membership benefit.

The variance of dues is a procedure quite customary when there are varying classes of members in a professional organization. Customarily, enhanced benefits accompany a more expensive form, or higher class, of membership. Such benefits might include the receipt of additional literature, more prominent personal publicity, and perhaps even a forgiveness of future dues for a definite or indefinite period of time. Generally, extremely wide variations in dues payments of classes of members is seldom found.

Accordingly, some of your dues payments are not too ordinary in their nature, and there does indeed exist a serious question as to their deductibility when made in large amounts virtually in the nature of a gift or contribution rather than within an established reasonable framework of dues.

There are only two possible theories under which the dues can be deductible. First, that they are donations to a charity pursuant to Internal Revenue Code (I.R.C.) § 170. Since contributions to a local bar association have been denied such favorable treatment and since there is ample authority of similar import for other professional and trade organizations, it must be concluded that the dues are not deductible charitable gifts. GCM 4805, 1928 C.B. 58, and *P-H Federal Taxes*, ¶ 4522. The basic reasoning is service to a private rather than a public cause. Authority granting deductible treatment for gifts to organizations such as The State Bar of Texas must be distinguished because the type of an organization is deemed an arm of the government. R.R. 59-152, 1959-1 C.B. 54. Also note that the fact that an organization is a charity exempt from income taxation under I.R.C. § 501 or exempt from income taxation simply because it does not make a profit, does not control the question. The tests of coverage under § 170 and § 501 are different.

Second, the dues may be ordinary and necessary trade or business expense. I.R.C. § 162. Regulations § 1.162-6 expressly allows the deductibility of professional expenses including ". . . dues to professional societies and subscriptions to professional journals. . . ." However, each such deduction must withstand the test of being "ordinary and necessary." A review of the cases and treatises reflects much litigation or administrative activity concerning this language. See 1 Rabkin & Johnson, *Federal Income, Gift, and Estate Taxation*, § 3.02; *P-H Federal Taxes*, ¶ 11,031; 4 Mertens, *Law of Federal Income Taxation*, § 25.0[illegible]-25.122; and Carson and Weiner, *Ordinary and Necessary Expenses* (1959). It is quite possible that a large contribution not providing any added benefit over a smaller contribution might be neither ordinary nor necessary.

How can this doubt be resolved? Unfortunately, the lack of authority in this area provides little possibility of a reliable answer. But, some guidelines, including observance of the patterns of other organizations, can be evolved in order to lessen the probability of serious questioning of the dues system. First, classes of memberships can be based upon some reasonable bases such as time in practice, honors and publicity accorded certain classes of members, special privileges to certain classes of members, etc. Second, advance payment of dues might be permitted for reasonable periods. Third, a companion organization might be founded which serves the general public more so that it will qualify as a charity under I.R.C. § 170 to which a deductible contribution can be made. Compare, for example, the American Bar Association Endowment and the American Bar Foundation, two charitable foundations which are allied to the American Bar Association. If such an allied organization is formed, you should seek a ruling of its status for contributions and for exemption of its income.

As for your organizational structure, we would recommend that your association be reorganized as a Texas non-profit corporation in order to provide limited liability, definiteness of structure, and other attendant benefits thereof offered. This structure is easier to explain to taxing authorities, offers a clear answer of lines of authority for contractual relationship as well as any possible intraorganizational disputes, and avoids the general partnership liability each member now has.

We will be glad to confer with you to provide further detail on any of the foregoing matters.

Sincerely,

DENNY O. INGRAM, JR.

Senator HART. Because of a phone call we must recess briefly.
(Recess.)
Senator HART. The committee will be in order.
Let me welcome Mr. John J. O'Brien of Newtown Square, Pa.
Mr. O'Brien, we appreciate your testimony.

STATEMENT OF JOHN J. O'BRIEN, NEWTOWN SQUARE, PA.

Mr. O'BRIEN. Senator Hart and committee members, I reside in Newtown Square, Delaware County, Pa. I am employed as an insurance manager by the Franklin Mint, Inc., of Franklin Center, Pa. I am here as a concerned citizen to speak on behalf of automobile liability insurance reform. Before giving my testimony, it might be helpful if I commented on my educational and employment history. After receiving a bachelor of law degree in 1950, I was employed for approximately 11 years by insurance companies in various claims positions, including those of adjuster, examiner and manager. I was national director of claims services of Avis Rent-A-Car Systems for 3½ years and insurance manager of the Mack Truck Corp. for 5½ years.

Over the years, I have become totally convinced that our present system of tort liability does not satisfy the principal purpose of liability insurance, which is to see that innocent victims are paid their losses. Of course, as an insurance claim representative, I was taught that was not the principal purpose of liability insurance, rather I was educated to believe that my principal responsibility, and I might say properly so, was to conserve company assets by settling claims for the lowest possible dollar. A good settlement most frequently was not one that was fair.

It is a well-documented fact that the current system works unfairly. It favors the affluent and mitigates against the poor. The individual injured in an auto accident who is living from payday-to-payday is a soft touch for an experienced adjuster. There is also gross inequity in the amounts paid in the settlement of claims. The small bodily injured claimants are often overpaid, while the seriously injured often collect but a fraction of their losses, after payment of attorney fees that average 25 percent of benefits.

We hear more and more complaints about the soaring cost of automobile insurance, as well as the inability to purchase coverage at any cost outside of an assigned risk pool.

The backlog of tort cases is insuring that those who have to pursue their claims in court can in some cases wait as long as 5 years for a verdict. If they are unable to work and require income, to whom do they turn? Quite often they are carried by their attorneys. I believe that in agreeing to this, they are joining the attorney in basically unethical conduct. In many cases their personal resources are totally inadequate.

The fault system is obviously failing to meet the needs of motorists, and reform appears to be imminent.

I have read with interest the Hart-Magnuson proposed "Uniform Motor Vehicle Insurance Act (S. 945)" which incorporates the no-fault liability insurance concept. I believe such a law by the Federal Government is desirable, since it is apparent that the States will not

voluntarily adopt uniform legislation. By mandating a model bill to the States the problem of liability insurance reform would be resolved.

In my opinion, the legislation under consideration could serve as a model bill, subject to some amendment and deletion. The bill's definition of catastrophic loss (page 3, lines 17 through 21) is too restricted. Would not the term "catastrophic harm" as defined, exclude, for example, a surgeon or concert pianist who lost the tip of a finger, or one who suffered residual stiffness in his fingers?

The definition of economic loss (page 4, lines 7 through 15) should be amended to pay a percentum of the individual's income without limitation. A limit of $1,000 a month would in many instances be totally inadequate to meet the needs of injured claimants.

Page 11 from line 19 through line 21 of page 12 should be deleted. This portion of the act has to do with putting an additional part of the burden on the trucking companies.

In my opinion, the provisions contained in this section are unreasonable. Those underwriters who specialize in insuring heavy-duty trucks would of necessity require more premium, the cost of which would in all probability be passed back to the public. It would be more equitable to assess the cost against all motor vehicle owners.

I was delighted upon reading the provisions of the proposed "Motor Vehicle Group Act (S. 946)." As a corporate insurance buyer one of my most frustrating experiences is to have someone in management come to me with a problem involving his personal automobile insurance. Despite the clout of hundreds of thousands of dollars in premiums for which I am responsible, I can rarely get my principal underwriters to extend coverage to an individual who has received a declination.

As an example, one of our executive's 17-year-old son worked and saved to buy an automobile. After the acquisition, the car sat in the driveway for months because he couldn't obtain insurance. The young man finally saved the $374 required to buy insurance in the Pennsylvania assigned risk plan. He has inadequate coverage—$10,000–$20,000 bodily injury and $5,000 property damage—and is a menace in the sense that if he has a serious accident, for which he is at fault, severe economic loss could be incurred by one or more innocent people.

If I could offer the employees of my firm group automobile insurance, underwritten subject to the terms of S. 946, many of these problems would be eliminated. The reason I cannot make such an offer is that the interests of the few is being given precedence by the States over the interests of the many. The insurance agency system will be hurt if corporations and associations are permitted to have access to group auto coverages. That would be unfortunate but again the special interest of a particular class should not be given priority. The reduced cost, easy payment by payroll deduction and availability of coverage to the individual, who in many instances cannot buy insurance at equitable rates, far exceeds our concern for the agency system.

In addition to the foregoing testimony, I will be happy to answer any questions of Senator Hart.

Senator HART. Mr. O'Brien, just as I commented to Mr. Joost, it is not an easy decision for you to come down here and speak this way which makes it even more obvious my obligation to thank you on behalf of the committee for telling us this.

You speak from a background that is very broad, and I would think it is the kind of testimony that would be most persuasive.

Mr. O'BRIEN. Thank you.

Senator HART. You mention that in the insurance business a good settlement isn't necessarily a fair settlement.

Mr. O'BRIEN. That is so true.

Senator HART. Could you tell us a little more fully what you mean by that?

Mr. O'BRIEN. I have in my own experience defended settlements that I have made, third-party liability settlements, to my immediate superiors, and when they didn't compliment me, I have said to them, "but it was a fair settlement." And most often as not, they would turn to me and say "Fair, but not a good settlement."

And we knew what was meant by a good settlement. The first call settlement made by an adjuster for the out-of-pocket expenses, plus a few dollars over and above for inconvenience, pain and suffering is considered a good settlement. Insurance companies favor first call settlements for the primary purpose of closing out claims before the injured parties fully realize the extent of their damages or injuries.

Senator HART. How would they become fair settlements under the mandatory first-party system?

Mr. O'BRIEN. Because they would no longer be adversary settlements. It would be a matter of settling a claim with your own insured. You treat your insured a bit differently than you treat a total stranger whom you believe is interested in taking as many dollars from you as he can.

That is not to say that the insured will not be interested in getting as many dollars as he can, but the relationship will be totally different and it does tend to a more equitable settlement.

Senator HART. That is probably the way I should have put the question. It would produce a more equitable settlement?

Mr. O'BRIEN. That's right.

Senator HART. Certainly, those expenses legitimately incurred, including the potentially substantial area of rehabilitation would be a fixed obligation.

Mr. O'BRIEN. That is correct. Additionally, Senator Hart, the injured party, if treated improperly by the claims adjuster has his agent to turn to who in turn can go back to the underwriting department, the sales department, if you will, and it usually has sufficient leverage to bring the claims department in line.

Senator HART. You said one of the pressures that operates under the existing system is the delay where a man is in need of funds. You mentioned a backlog of court cases.

Now, in our hearings the suggestion has been made to us that we ought to establish an arbitration system, at least for the smaller claims. That would both reduce the court backlog and it would lower expenses, administrative expenses.

Philadelphia does arbitrate, as I understand it, claims under $3,000. As you have observed, has there been any savings in administrative costs?

Mr. O'BRIEN. I have not been in the Philadelphia area for more than a year and a half. I am not prepared to say I know firsthand, but comments that have been made to me would lead me to believe that there isn't any real savings.

voluntarily adopt uniform legislation. By mandating a model bill to the States the problem of liability insurance reform would be resolved.

In my opinion, the legislation under consideration could serve as a model bill, subject to some amendment and deletion. The bill's definition of catastrophic loss (page 3, lines 17 through 21) is too restricted. Would not the term "catastrophic harm" as defined, exclude, for example, a surgeon or concert pianist who lost the tip of a finger, or one who suffered residual stiffness in his fingers?

The definition of economic loss (page 4, lines 7 through 15) should be amended to pay a percentum of the individual's income without limitation. A limit of $1,000 a month would in many instances be totally inadequate to meet the needs of injured claimants.

Page 11 from line 19 through line 21 of page 12 should be deleted. This portion of the act has to do with putting an additional part of the burden on the trucking companies.

In my opinion, the provisions contained in this section are unreasonable. Those underwriters who specialize in insuring heavy-duty trucks would of necessity require more premium, the cost of which would in all probability be passed back to the public. It would be more equitable to assess the cost against all motor vehicle owners.

I was delighted upon reading the provisions of the proposed "Motor Vehicle Group Act (S. 946)." As a corporate insurance buyer one of my most frustrating experiences is to have someone in management come to me with a problem involving his personal automobile insurance. Despite the clout of hundreds of thousands of dollars in premiums for which I am responsible, I can rarely get my principal underwriters to extend coverage to an individual who has received a declination.

As an example, one of our executive's 17-year-old son worked and saved to buy an automobile. After the acquisition, the car sat in the driveway for months because he couldn't obtain insurance. The young man finally saved the $374 required to buy insurance in the Pennsylvania assigned risk plan. He has inadequate coverage—$10,000–$20,000 bodily injury and $5,000 property damage—and is a menace in the sense that if he has a serious accident, for which he is at fault, severe economic loss could be incurred by one or more innocent people.

If I could offer the employees of my firm group automobile insurance, underwritten subject to the terms of S. 946, many of these problems would be eliminated. The reason I cannot make such an offer is that the interests of the few is being given precedence by the States over the interests of the many. The insurance agency system will be hurt if corporations and associations are permitted to have access to group auto coverages. That would be unfortunate but again the special interest of a particular class should not be given priority. The reduced cost, easy payment by payroll deduction and availability of coverage to the individual, who in many instances cannot buy insurance at equitable rates, far exceeds our concern for the agency system.

In addition to the foregoing testimony, I will be happy to answer any questions of Senator Hart.

Senator HART. Mr. O'Brien, just as I commented to Mr. Joost, it's not an easy decision for you to come down here and speak this way which makes it even more obvious my obligation to thank you on behalf of the committee for telling us this.

You speak from a background that is very broad, and I would think it is the kind of testimony that would be most persuasive.

Mr. O'BRIEN. Thank you.

Senator HART. You mention that in the insurance business a good settlement isn't necessarily a fair settlement.

Mr. O'BRIEN. That is so true.

Senator HART. Could you tell us a little more fully what you mean by that?

Mr. O'BRIEN. I have in my own experience defended settlements that I have made, third-party liability settlements, to my immediate superiors, and when they didn't compliment me, I have said to them, "but it was a fair settlement." And most often as not, they would turn to me and say "Fair, but not a good settlement."

And we knew what was meant by a good settlement. The first call settlement made by an adjuster for the out-of-pocket expenses, plus a few dollars over and above for inconvenience, pain and suffering is considered a good settlement. Insurance companies favor first call settlements for the primary purpose of closing out claims before the injured parties fully realize the extent of their damages or injuries.

Senator HART. How would they become fair settlements under the mandatory first-party system?

Mr. O'BRIEN. Because they would no longer be adversary settlements. It would be a matter of settling a claim with your own insured. You treat your insured a bit differently than you treat a total stranger whom you believe is interested in taking as many dollars from you as he can.

That is not to say that the insured will not be interested in getting as many dollars as he can, but the relationship will be totally different and it does tend to a more equitable settlement.

Senator HART. That is probably the way I should have put the question. It would produce a more equitable settlement?

Mr. O'BRIEN. That's right.

Senator HART. Certainly, those expenses legitimately incurred, including the potentially substantial area of rehabilitation would be a fixed obligation.

Mr. O'BRIEN. That is correct. Additionally, Senator Hart, the injured party, if treated improperly by the claims adjuster has his agent to turn to who in turn can go back to the underwriting department, the sales department, if you will, and it usually has sufficient leverage to bring the claims department in line.

Senator HART. You said one of the pressures that operates under the existing system is the delay where a man is in need of funds. You mentioned a backlog of court cases.

Now, in our hearings the suggestion has been made to us that we ought to establish an arbitration system, at least for the smaller claims. That would both reduce the court backlog and it would lower expenses, administrative expenses.

Philadelphia does arbitrate, as I understand it, claims under $3,000. As you have observed, has there been any savings in administrative costs?

Mr. O'BRIEN. I have not been in the Philadelphia area for more than a year and a half. I am not prepared to say I know firsthand, but comments that have been made to me would lead me to believe that there isn't any real savings.

I can't see that arbitration and the speeding up of the settlement of cases, reducing the court backlog, would help to reduce the cost of insurance to individual policyholders.

If anything, I think if you speeded justice up, more people would be inclined to obtain the services of attorneys to represent them in their cases.

Senator HART. That certainly was the point that was made or the conclusion that was reached in a very detailed study that the Department of Transportation made.

You put your finger on a section of the bill that all of us realize we are going to have to work on, and that is section 4. You spoke of the surgeon who might lose the tip of a finger. You have already contributed substantially to the work of this committee, but maybe we can enlist you for another job.

If possible, could you suggest, in writing later to us, some language that might help us achieve what we are really after to safeguard, get rid of the spurious pain and suffering claims and yet recognize in the case of the surgeon who loses a finger that there is very substantial economic loss that would be called pain and suffering.

Mr. O'BRIEN. It could be a matter for the medical profession. It has been suggested to me that perhaps in pretrial a court-appointed doctor, or panel of doctors, could evaluate the injury sustained by the would-be plaintiff, and if, in the opinion of the appointee, taking into consideration the person's occupation and other pertinent circumstances, the doctor or panel of physicians reported back to the judge, yes, this individual has suffered catastrophic loss, this would be his or her entry into court to sue in tort.

Just having a term to be defined by—let me ask you a question. Who would determine this, as you have drafted the bill?

Senator HART. A court, as it is drafted here.

Mr. O'BRIEN. May I also comment on using, as in the case of Massachusetts, $500 medical expense as the trigger for a tort action?

Senator HART. Yes.

Mr. O'BRIEN. I am amazed that anyone today would think that this was any sort of barrier. In any major city, I can put myself into a private room for 3 or 4 days for not necessarily treatment but just examination, and I will have a bill in excess of $500. Once again I think the medical profession should be brought in, and this should not be tied to medical expense, because any able attorney in conjunction with doctors, who, in many cases, are more than willing to cooperate, can build the client's medical bills to the necessary level.

Senator HART. Capable but not ethical.

Mr. O'BRIEN. There is a difference.

Senator HART. You heard the testimony earlier today from Mr. Joost. You are recommending the adoption of S. 945 so that it applies nationally. Does this suggest that you believe that the States would not move in a uniform way to change the present compensation system?

Mr. O'BRIEN. More than suggest. I am totally convinced that the States will never do it. I attended a meeting of the State of Pennsylvania Chamber of Commerce Insurance Consumer Committee, of which I am a member, just a few weeks ago, and the motion was made that we advise the chamber that action should be taken in the area

of a State no-fault plan, but should it be the Massachusetts plan, should it be another plan, no one seemed to know.

As sure as I am sitting here, if 10 years from now the Federal Government has not moved in this direction, you are going to have a hodge-podge of laws that will be intolerable. I don't want to see the Federal Government set up a bureaucracy to administer a Federal program. I think it is to the best interest of us all that the States have a model bill and administer the bill under some form of supervision by the Federal Government.

Senator HART. Again, Mr. O'Brien, I am grateful you could come and speak as you have. I am sure that you will not be applauded by all of your old friends in the business but, as you say here, the special interest of the particular class should not be given priority.

Everybody buys that as a principle and yet human nature being what it is, we never recognize that we are making an exception to that principle often. We just don't realize it.

Mr. O'BRIEN. That was not true in the case of the corner grocer. If he had had the wherewithall to have legislation enacted against supermarkets, we would be waiting in block-long lines to buy our groceries from the man on the corner.

So, what I am saying is we have reached a point in time where we must have change. The change is painful, but after it takes place, I think it will work better for everyone. I am now being offered that which the industry refers to as the mass marketing of personal lines—homeowners and automobile insurance on a payroll deductible basis.

Of course, under mass marketing, we still have the problem of the individual who is subject to underwriting. It will not answer—it will not solve the problems that would be resolved by group coverage, but the industry itself recognizes that it has to move in that direction if it is to avoid group personal lines.

I am referring to my comments under 946.

Senator HART. Yes, you were very explicit in your support of that, very explicit, and the example you cite is a sobering one.

Again, we are very grateful that you have come down.

Mr. O'BRIEN. It was my honor.

Senator HART. We will recess until 2:30 p.m.

(Whereupon, at 1:40 p.m., the hearing was recessed, to reconvene at 2:30 p.m., this same day.)

AFTERNOON SESSION

Senator HART. The committee will be in order.

We resume our hearing this afternoon having as our first witness the president of Aetna, Mr. Frederick D. Watkins.

Mr. Watkins, welcome.

STATEMENT OF FREDERICK D. WATKINS, PRESIDENT, AETNA INSURANCE CO., HARTFORD, CONN.

Mr. WATKINS. Thank you, Senator.

To begin my testimony this afternoon I would like to present for your information a film that was produced by the Aetna Insurance Co. to respond to what we believe is a very urgent need in connection with no-fault insurance—an informed public.

We feel that there is a great void in public understanding of what the present automobile insurance system really is, and what we are trying to accomplish in advocating the no-fault principle.

This is a documentary film. It includes proponents and opponents of the no-fault concept. We feel that it does a good job and we intend to use it wherever we possibly can across the country to better inform the public. We are not trying to sell insurance with it. We are trying to inform people.

With your permission, sir; we will let it roll.

Senator HART. I would like very much to see it.

(Film presentation.)

Senator HART. As we go back on the record, Mr. Watkins, I am sorry that the record itself cannot carry the film which you have just shown. Whatever point of view one held with respect to no-fault, I think there would be agreement that the film presentation is a public service contribution of real significance, and I am delighted to have a chance to thank you and Aetna for doing it.

Mr. WATKINS. Thank you once again for your participation in it. I think you made a noble contribution to our film and the work we are attempting to accomplish.

Sir, would you like me to proceed with my statement?

Senator HART. Please.

Mr. WATKINS. Mr. Chairman, I am happy to have an opportunity to be here.

For clarification, I am Frederick D. Watkins, president, Aetna Insurance Co.

As your committee is all to well aware, automobile insurance today is sorely in need of reform. Investigations and hearings over the past years, including those of congressional committees and the Department of Transportation, have documented the facts substantiating the failures of the present negligence system beyond any dispute.

Because the need for reform is no longer the critical issue at these hearings, I would like to restrict my comments today to what I consider central questions before this committee: What type of reform should be enacted and whether it should be a matter for State or Federal initiative. What shape should reform take and how should it be implemented?

My own company's position is clear. Aetna endorses any plan that would introduce the no-fault concept of automobile insurance in either a pure or a modified form. We believe that the primary responsibility for this reform lies with the governments of the individual States. Thus, we support the recommendations of the Department of Transportation for State action guided by national goals.

Our approach is a pragmatic one in that we believe it is warranted both by the present situation and by the potential advantages of the no-fault reform initiated at the State level.

Let me elaborate.

Over 5 years ago my company advocated a first-party compensatory system of automobile insurance patterned after workmen's compensation to replace the existing tort liability system.

It was our belief then, as it is now, that the majority of ills associated with the present system revolve around the necessity of determining fault, case-by-case, in millions of traffic accidents each year

This time-consuming and expensive process restricts our ability to serve the public and to assist and protect the injured accident victim.

For this reason we advocate reform that would enable us to promptly pay an individual insurance benefits on the basis of his economic losses rather than on the basis of his fault or nonfault in an accident.

Most of the proposals being considered in the States and at the Federal level are based on this no-fault principle. This includes the most prominent plans developed by Professors Keeton and O'Connell, the American Insurance Association, the New York State Department of Insurance—your own, sir—and most recently the recommendation of the Department of Transportation.

As far as the basic insurance concepts are concerned, these proposals and their numerous derivations differ more in degree and in detail than in substance. All would provide for first-party benefits to accident victims, regardless of fault, covering medical and rehabilitation costs, wage loss, and miscellaneous expenses. The compensation would be paid promptly on a period basis.

To the extent that losses could be recovered on a no-fault basis—under some of the plans there are limits established—individuals in an accident would not be permitted to sue each other.

The concept has obvious merits. Most importantly, it would compensate all accident victims promptly according to their actual economic losses. Secondly, by eliminating much of the legal and investigative costs of the present system, it would reduce rates for the consumer and return a greater percentage of the premium dollar to the accident victim.

No-fault would also encourage a more balanced approach to traffic safety by restoring the proper role of the law enforcement bodies in dealing with criminal drivers rather than attempting to impose this responsibility upon the insurance system.

There is no universal agreement on the merits of no-fault, however. Some critics have referred to no-fault as a "victim tax," which in effect would take benefits away from the innocent in order to pay the guilty.

In truth, no-fault would guarantee fair compensation to all parties in an accident. Not even the innocent victim can be sure of as much under the present liability system.

I might add that no-fault, whatever the specific plan, should not be a straitjacket on the insured individual, any more than minimum liability coverages are today.

Individuals should certainly have the option to purchase coverages to suit their particular needs and wants. But the important thing is that no-fault would provide a basic level of compensation for everyone involved in automobile accidents instead of ignoring a significant number of victims.

Many opponents are particularly dismayed by no-fault's renunciation of the common law concept of tort action in accident cases. I would like to read you part of what I consider to be a persuasive answer to these critics:

> In the days of manual labor . . . and the stagecoach, there was no such problem, or if there was, it was almost negligible. Accidents there were in those days, and distressing ones; but they were relatively few and the employee who exercised any reasonable degree of care was comparatively secure from injury.

There was no army of the injured and dying, with constantly swelling ranks, marching with halting step and dimming eyes to the great hereafter. This is what we have with us now, thanks to the wonderful material progress of our age, and this is what we shall have with us for many a day to come.

Legislate as we may in the line of stringent requirements for safety devices or the abolition of employers' common-law defenses, the army of the injured will still increase, and the price of our greatness will still have to be paid in human blood and tears.

To speak of the common-law personal injury action as a remedy for this problem is to jest with serious subjects, to give a stone to one who asks for bread. The terrible economic waste, the overwhelming temptation to the commission of perjury, and the relatively small proportion of the sums recovered which comes to the injured parties in such actions, condemn them as wholly inadequate to meet the difficulty.

This passage was part of a decision written by Judge J. C. Winslow in *Borgnis v. Falk Company*, a case heard by the Wisconsin Supreme Court in 1911, 60 years ago.

Senator HART. One could only hope that anything we said would be as prophetic—what is it 60 years later—as what Judge Winslow said in that case that you excerpted. I have not seen this before.

Mr. WATKINS. It is considered a landmark case in workmen's compensation. As you point out, sir, its application today is obvious.

The insurance industry does not present a unified front either for or against no-fault, as you know. Some segments of the industry, including some insurance companies, are very outspoken against a first-party system. Other companies, including my own, have fully endorsed the concept.

What motivates our company to support no-fault?

Some people, notably the critics of no-fault, claim that insurance companies are pushing for this program in order to avoid paying large jury awards, to clean up on profits, and in general to exploit the consumer and the public. This is nonsense.

By any test, our business will stand or fall on the quality of service we render our customers—the insuring public. No-fault will help us meet this objective, not contradict it.

I personally believe that a no-fault system would have a favorabl impact on the current crisis of insurance availability. Auto insuranc is hard to get for a number of reasons, including restrictive rate regu lation in many jurisdictions. But the problem goes deeper than this.

The fact is that the liability system itself makes it necessary for in surers to try to identify and insure only the best drivers—those likel to escape accident involvement—in order to avoid the unpredictabl costs of accidents involving unknown third parties and thei automobiles.

This effort is inevitably frustrating, I might add. But the result i that drivers in certain categories in certain locations find it virtuall impossible to obtain auto insurance coverage on the open market. Thu they are forced into assigned risk plans.

I feel certain that a no-fault system would lead to expansion of th automobile insurance market. Underwriting standards would b significantly changed.

An individual's driving record would still be important, but s would his income, the size of his family, the kind of car he drive These are predictable factors, with assignable values.

In short, insurers would be able to figure more accurately the cos of the risk they assume and, in a free and competitive marketplac would be able to offer coverage to virtually all drivers.

I believe, and my company and its affiliates believe, no-fault reform would ultimately improve the situation not only for the public but for the insurance industry by making possible more reasonable and realistic pricing of our product.

Today, sharp fluctuations in losses make the insurer's position too precarious to tolerate premium levels predicted on narrow or nonexistent profit margins and require the application of long-range trend factors in the pricing computation.

Under a first-party system, based on largely determinable rather than wholly unknown exposures, we would be able to predict losses with a greater degree of accuracy. Thus we would be in a better position to develop adequate rates based on moderate but realistic profit margins, avoiding the violent swings that have characterized our business for the past 10 years or so.

In summary, both from the point of view of the public and the insurance industry, no-fault would be meaningful reform. I strongly believe this.

I also believe that no-fault would be best implemented at the State level by the State governments, and I hold this view for what I regard as a most cogent reason.

In developing the no-fault plan that will be most effective in practice, we can learn much from the natural process of experimentation that occurs among the various states.

While the no-fault concept itself may be a rallying point for most reformers, there is no consensus on the best type of plan.

Some plans would set tort action thresholds at one figure; some at another. Some plans would pay total actual wage loss; others would set monthly limits of $750 or $1,000 or a specified percentage of salary. Some plans would include property damages in addition to bodily injury; others would not.

Before the public, the insurers, and the legislators can reasonably determine the relative merits of each plan, we need to experiment, and this is most appropriately carried out at the State level.

There are additional reasons, I think, why reform should be at the State level. State governments are closer and potentially more responsive to the particular needs of their constituencies, and in the matter of automobile insurance these needs may vary considerably.

Cost of living, for example, particularly medical care costs, often differ greatly from State to State. Contrast New York State to Mississippi.

Finally, the experience developed by the States in their traditional role as regulators of insurance—including the immediate availability of professional staffs knowledgeable in insurance—could be put to good use in dealing with reform at the State level.

Despite my strong preference for State rather than Federal action, I want to make it clear that I am neither dismayed nor frightened in any way by the interest being given to auto insurance reform by the Federal Government. On the contrary, I am encouraged by it. I am encouraged because it brings the urgency of reform into sharper focus.

The activities of this committee, its counterpart in the House, and the Department of Transportation—these activities provide not only direction for the States but incentive for them to act positively and without delay.

Most importantly, Federal attention to the problem serves to alert the public. This is crucial. Ultimately public pressure will stir even the most recalcitrant State legislature to reform.

You may be interested in some recent events in my home State of Connecticut, which illustrates this point. This year the Connecticut legislature is considering no-fault for the second time. The first time was 2 years ago when my good friend William R. Cotter, then insurance commissioner and now our Representative from the First Congressional District, sponsored an unsuccessful drive to have a no-fault plan adopted.

This year, however, reformers were more optimistic. The major no-fault bill under consideration by the legislature has the backing of the State labor council and a large portion of the local insurance industry. In addition, the press has been very forthright in its support of the no fault.

In spite of this, the unanimous decision of the legislative committee considering the bill, a decision reached 3 weeks ago, was to appoint a study commission to report back to the legislature next year.

This was a blow to those of us who considered prompt action to be imperative, but with this massive opposition we were realistic enough to view the matter as virtually dead in the current session.

Now it appears that we underestimated the enthusiasm of both the press and the public for no-fault reform. Editorial writers have been very critical of the committee action and, as a result, today there is reason for some optimism. State Senator Lieberman, the sponsor of the bill, and his associates have secured the necessary votes to petition the bill out of committee.

Not too long ago capital experts in Connecticut were saying such an achievement would be a virtual miracle. Today we have that miracle. It is to the credit of Senator Lieberman and his own tenacity in fighting for reform. It is also evidence of the timeliness of the no-fault issue itself.

Although the outcome of the critical votes in both houses of the legislature still remains to be seen, at least for the time being, no-fault is alive once again in Connecticut.

I am convinced that public pressure for reform is the most powerful force behind no-fault auto insurance. This is suggested not only by events in Connecticut but by various studies which show that an informed public is overwhelmingly in favor of no-fault as an alternative to the present automobile liability system.

An informed public will support no-fault. But a public that does not understand the issues is a hindrance to reform. Results of a Gallup poll published recently dramatically illustrate the need for better public information.

In summary, the findings of this poll were as follows: Of the people interviewed on April 3 and 4, 1971 only 19 percent understood the basic features of no-fault. Of this total, however, support for no-fault was 4-to-1.

Clearly, it is extremely important that public concern be activated. I am confident that these hearings and those of the House committee will help to serve this purpose of public education.

As I said earlier, this was the reason that motivated us to produce this film and it is our firm corporate purpose to pursue in every way

we can this concept of no-fault. We think it is in our best interests, in the long run, because what is good for the consumer we feel will benefit us if it is to last.

Beyond this, sir, I would like to see this committee give its endorsement to the recommendations of the Department of Transportation, thus recognizing that the overall public interest would be best served by adoption of no-fault reform and its implementation at the State level.

Again, I thank you for the committee's invitation and this opportunity to present our views for your consideration.

Senator HART. It is that kind of thoughtful, and I think balanced testimony that is most useful to the committee. We appreciate your willingness to discuss it as you have. There is really great appeal in logic to your suggestion for waiting until we experiment at the State level.

Mr. WATKINS. Sir, may I——

Senator HART. If I had more confidence in the State action, I probably would be less hesitant to accept that as the prudent course. I do agree with you that the more people—all of us—come to understand what is involved the better. And understanding must include first an appraisal of what the system is that we have been living with. It is not surprising to me that only 19 percent of the people expressed an understanding of no-fault.

Was that the figure?

Mr. WATKINS. That is correct.

Senator HART. I am not sure many more would be able to say they understood what we have now. That is not critical of Aetna; I mean it is the nature of the animal. The broadest understanding possible is very desirable. And that film again will help.

If you advertise its showing in advance you will probably find included in the audience fellows like me who want to get up and explain why the no-fault feature is better, and you might find a trial lawyer there who might explain that the individual will be brutalized and who knows who else?

Mr. WATKINS. Mr. Sargent was there, but let me assure you, sir, that we paid no fees for participation in this film.

Senator HART. One point you make though about the present system. You say that among the arguments the critics make against no-fault is that it is a victim tax hurting the innocent and paying for the guilty and so on. You say it would, in truth, provide fair compensation to any and all parties in that accident. And then here is the point we ought not forget; not even the innocent victim can be sure of as much under the present liability system.

Mr. WATKINS. That is right.

Senator HART. We are going to have to run around the track a long time before they convince me that that statement is not correct.

Mr. WATKINS. We feel very sincerely that it is correct, sir. Unfortunately, in the present system, the public as a whole doesn't understand what we are insuring. We are insuring liability coverage for other people, legal liability. We owe our insured the obligation to protect him in that position as well as we can. We have no obligation to the third party, that is why it is called third-party liability insurance as you know, sir. But the average man and the public doesn't

understand that. He feels everybody should be compensated as is the case under workmen's compensation. And by public acceptance, if not by law, the automobile is such a social instrument now—in fact, every man has the inalienable right to drive an automobile—we feel that the only way this can be resolved is with a first-party system.

I have not been able to find, sir, a single instance in any of the States where a driver has lost his right to drive permanently, regardless of what he has done with his automobile. And the insurance system cannot be made the policemen of that type of a driver.

Senator HART. On that very point, the difficulty of getting a driver, whose lack of responsibility has been demonstrated many times, off the road, I hope will be commented on by a witness tomorrow.

As happens periodically, both of our Detroit daily papers in the past have run series on this. You know, where there is a driver with an arm's length record who is still out on the road. And I think it was sparked by just a tragedy of a few weeks ago where a driver with that kind of a record jumped a lane on an expressway and wiped out a family.

Mr. Sutcliffe?

Mr. SUTCLIFFE. Thank you, Senator.

Mr. Watkins, in your——

Senator HART. Now, I am not suggesting that the Federal Government should take over the licensing of automobile drivers. We have problems enough. But referring now to the reliability of letting States experiment with no-fault, why do you think we should allow States which have been so wretched even in the simple matter of getting a nutty driver off the road guide the development of insurance reform?

Mr. WATKINS. That is true, sir; and I don't honestly believe that we will, within the course of a few years, have all 50 States adopting this type of legislation. My statement didn't mean to imply that I felt there should be a permanent moratorium on Federal action. I heartily endorse the concept of national guidelines. I think you have laid down some excellent guideposts in your proposed legislation.

But, I think that since it is new, the public would be much better served if we could try various experiments without having mandated one system countrywide at one fell swoop.

Over the long pull, in a few years, if individual States haven't acted, I think we should review the bidding and then Congress should probably enact legislation that would either force the States to adopt minimum programs or the Federal program would become the law in the noncomplying States. In other words, Congress would mandate the individual States because they have had ample opportunity. Then through the experimentation process the individual State would—could if it wanted to—amend or adopt regulations that would rid over the Federal law but they would never be permitted to fall below it. It is simply a matter of time, sir, I think.

Senator HART. To what extent are you troubled by this suggestion that if all or most of the States did adopt no-fault but in a variety of patterns, that the complications resulting from simply the multiplicity of plans given the mobility of the driver of the car, would be a disservice to us all? How do you respond to that?

Mr. WATKINS. We have a similar circumstance right now. Massachusetts had its own—even before it adopted its no-fault plan Janu

ary 1 of this year—compulsory insurance statute. A driver in Connecticut, whenever he got into Massachusetts, had a policy that automatically complied with the Massachusetts law. He was protected. And I think that during this experimentation process, policies would be issued to recognize these circumstances of the varying States.

If a man from Massachusetts, which has a no-fault law, were driving in, say Pennsylvania, where there isn't, and if there is an accident, he would be protected with whatever requirements might be in the Pennsylvania law, which of course would be basic third-party liability.

Senator HART. Thank you. Mr. Sutcliffe?

Mr. SUTCLIFFE. Thank you, Senator.

Mr. Watkins, pursuing the matter of the guideline approach, it was reported in the *Washington Post* following the testimony of Secretary Volpe in the House, that he had modified his position as to what he meant by national goals, and was willing to accept somewhat more of a Federal guideline approach capable of building a floor and a certain degree of uniformity into a State-by-State approach.

I judge by your comments that were the Congress to act now, you would not be adverse to a guideline into which a State plan would have to fit.

Is that my understanding of your statement?

Mr. WATKINS. Well——

Mr. SUTCLIFFE. Or have I stated it too strongly?

Mr. WATKINS. I believe you stated it too strongly, Mr. Sutcliffe. I am not in sympathy with the concept of a Federal mandate.

Mr. SUTCLIFFE. You see there are degrees of mandation. As the Department of Transportation study shows there are one, two, or three possible stages of development of no-fault—mandatory first-party coverage of medical expenses, wage replacement, and property damage. Certain possible gradations of tort exemption coinciding with the policy set forth could also be prescribed. We could set out guidelines, that said within the next 3 years, 2 years, whatever the legislation established, each State should work toward or shall work toward this level, and then within that, of course, there would be alternative ways of reaching those stated objectives.

Would this satisfy the desire for the need to have experimentation on a State-by-State basis which is, I understand, the rationale for your approach on the State-by-State basis?

Mr. WATKINS. I understand your proposal to imply that Federal legislation will be required at the end of this period of—end of this moratorium; is that correct?

Mr. SUTCLIFFE. Well, I am not certain that the legislation would require this. What you could do, as has been done in some other situations, is come back and take another look at it to see what the compliance has been. As to whether or not you have to at the end of the 3-year period to mandate that planning in the States that had not acted depends upon the kind of standards that are adopted and how easy it would be to judge whether the State had met those standards.

Mr. WATKINS. If I may be permitted, Senator Hart, you have given a tremendous amount of personal attention to this development over the past several years, and I would not be uncomfortable if the Almighty could guarantee that such a guiding hand would be continued over the next several years in this development, but I am fearful

of legislation being adopted now which suddenly has a way of becom-ing set in concrete, because I am convinced that this is such a new approach, it is so novel we are going to have to change with the the concept virtually month by month, if not year by year as it develops.

And I just have an inborn fear of legislation becoming concrete and we would have to live with what's in existence and also with the possibility that it may become a political football. Now, if——

Senator HART. Thanks for your compliment, but I am trying to figure out whether it's easier to get the Congress to go back after it's jumped or whether it's easier to go forward step by step. Depending on which way you want it to go, you think it works better the other way?

Mr. SUTCLIFFE. Let me, sir, ask you, as the president of an insurance company that does a great deal of business in interstate commerce what the practical implications for your company and perhaps other noninsurance businesses would be if you set up different laboratories to launch different experiments to test certain tenents of a no-fault concept that you have endorsed today.

The first question is: How many different forms would your company have to fomulate to comply with the various plans that would go into effect in different States?

Mr. WATKINS. Actually, we are in the paper business now. In nearly every State, there is some particular clause that is required to appear in the policy which requires overprinting. As you probably know, every time you run a piece of paper through the printing press even if it's to change two words, it's expensive. So we wouldn't be in any different posture than we are now.

Mr. SUTCLIFFE. But one of the advantages we are trying to seek with a change in the system is reduction in operating costs. Is it a significant reduction?

Mr. WATKINS. No. Our printing cost is infinitesimal. We would still have to keep statistics. We would want to, on a territory by territory basis, to validate this experimentation process that we are speaking of.

In fact, even if we did have a common program countrywide, I am sure the country would be divided into zones, population districts and so forth, and we would have the same statistical problems and requirements that we have now and I think it would be a problem. Yes, it would be a problem.

Mr. SUTCLIFFE. You mentioned validating the different experimentations. How do you evaluate experiments? We had explained this morning two different plans that are being touted as no-fault plans one in the State of Massachusetts which has been passed, and another being proposed in the State of Illinois.

A person knowledgeable as to contents of those plans explained that they were entirely different. One, in his opinion, was not a no-fault plan. Although it expanded first-party coverage it certainly had a rather difficult tort overload. I guess one of the validations that you are trying to find is, will operating costs be reduced? Will consumers therefore save in premium dollars? At the same time, will they be given a great deal more protection by their insurance policy in terms of compensation over what they presently receive? Do you run the risk of having experiments launched that are designed to prove that what you are testing for won't work?

Mr. WATKINS. Validation doesn't necessarily mean that what is being tested is proven to be feasible and useful. In other words, you can validate a failure. Specifically, if the validation says that a particular plan is no good, get rid of it. That in my terminology is a validation.

Mr. SUTCLIFFE. What if it turns out to be very good for insurance companies and very bad in terms of the amount of dollars that the consumer puts into it.

Mr. WATKINS. We are in one of the most highly competitive businesses in the United States. Also one of the most regulated at the State level. But we are in a very violently competitive business.

Mr. SUTCLIFFE. But as to each jurisdiction, you are each playing the same rules. So that you know if it turns out to produce expanded profits to the insurance companies the competition will be, how do we get the most people in that jurisdiction, not as to how you design the plan that is most beneficial to consumers.

Mr. WATKINS. I think you are making the assumption, Mr. Sutcliffe, that all companies will charge the same rates. I don't contemplate that. I think they will be competitive on rates and that in itself will be a lid on these profits, that the automobile insurance companies may make and which we haven't made for, lo, too many years.

Mr. SUTCLIFFE. It is not profits but the amount of expenditure of consumer dollars necessary to reach the kind of protection we all want that I am talking about.

Mr. WATKINS. There are two areas of benefit to the consumer. One, the premium he pays; and the other, what is returned to him in benefits. If the premium dollars is reduced from $100 to $80, and the public gets back in benefits, not in collection costs—if I can use that term, instead of lawyer's fees—65 percent, they are a lot better off because right now they are getting something less than 40 percent; some show as little as 14 percent out of that $100, or $14 out of the $100.

So I feel very sincerely, that competition between insurance companies, the different types of insurance companies because as you know we have agency companies, mutual companies, we have direct writers, mail-order companies, that don't even have local agents. That type of competition, I think, will certainly control the price of the product. Particularly in those States where we have a free-rating climate.

Mr. SUTCLIFFE. I don't want to belabor the point. But let me take your analogy of a plan that returns instead of 45 percent on the dollar, 65 percent. Now, that enables you with the same collection of premium dollars to offer more benefits to the consumer.

Mr. WATKINS. Yes.

Mr. SUTCLIFFE. What if you take that plan and put it in one State and take another plan, which returns only 50 percent in benefits to the consumer. You see, we have developing now in Massachusetts a no-fault plan which has some cost added onto it because of something labeled "interinsurer subrogation."

We have suggestions for a similar type of overlay in Illinois. If our objective is to utilize to the best extent possible premium dollars to maximize the benefits payable, and avoid economic waste, be it expressed in terms of economic waste for the consumer or in terms of eating up profits for industry, how much of the costs should the American public be willing to pay for the privilege of experimenting as you advocate?

Mr. WATKINS. Well, I don't think I can answer that question in the way you asked it. I don't think that there would be plans—a plan returning only 50 cents out of the premium dollar—I think would fall of its own weight.

Mr. SUTCLIFFE. What if it straightened out another problem, as perhaps the Massachusetts plan has done by taking bodily injury claims out of the picture in PD cases, thus correcting an unusual situation there.

Certainly an apparent improvement in the system has been realized. And the systems might be one that the people may be willing to live with even though it increases the efficiency of the system from 45 to only 50 percent?

Mr. WATKINS. Are you assuming that the people in the State of Massachusetts are going to want exactly the same thing that the people in Arizona do?

Mr. SUTCLIFFE. I guess I have to make that assumption. I have lived in too many parts of the country to think that the needs of people in various States are different.

If I am injured in the State of Washington, I will have the identical kinds of needs in terms of payment for hospitalization, rehabilitation, and wage replacements that I will have if I were injured in the District of Columbia.

Mr. WATKINS. Proportionately, yes.

Mr. SUTCLIFFE. I might have to pay a little different cost for the insurance. But my needs, I think, would be pretty much the same.

Mr. WATKINS. Let me explain that I don't feel this experimentation period should go on ad infinitum. I hope—I hope that's clear. So we are not talking about something that is of long duration that is going to be continued in perpetuity.

I think very honestly that the bare facets of the various programs are going to surface rather rapidly. And as they surface, I think they should be identified and as soon as it's proven that they are feasible, workable, that it's what the public wants and it does relieve the pressure on the court system, that it makes more prompt reimbursement of medical expenses, it particularly encourages rehabilitation.

I think this is one of the most critical objections to the present system the fact that rehabilitation is so frequently negated because the poor person doesn't have the funds to take advantage of the remedial medical assistance that would save the use of his arm.

Consequently, after 6 months, why, it's irretrievably lost. The use of it is. The wealthy person has the means to finance that rehabilitation

Mr. SUTCLIFFE. Have you given any consideration to how you appropriately draw the tort exemption line, you or your company? Because if these hearings are not going to produce Federal legislation they may serve as a guide to States that will be considering these important issues.

Mr. WATKINS. I cannot answer that in the affirmative, no. We have not put it down on paper. We have some pretty strong feelings in broad principle.

Mr. SUTCLIFFE. For the record, then, could you, if and when they are committed to paper, provide them to the committee?

Mr. WATKINS. I certainly will. In a nutshell we are purists. We believe in a pure compensatory system without any thresholds. In

other words, we follow Senator Hart's proposal that there will be unlimited medical reimbursement for incurred expenses and rehabilitation expenses.

Mr. SUTCLIFFE. What do you do with the intangible loss or the general damage?

Mr. WATKINS. We don't feel—we feel that that is a burden on society. If a person is made whole through prompt rehabilitation, through reimbursement of his economic losses, that fulfills society's obligation. This is true of workmen's compensation.

I am not holding up all the workmen's compensation laws as the model either. But I think the theory of workmen's compensation, the bold theory of workmen's compensation applies.

Mr. SUTCLIFFE. Would your company consider selling a first party policy to the individual on an optional basis to cover an intangible loss?

Mr. WATKINS. At this point I don't think we would. We might if competition forced us to. Again, let me emphasize, we are in a very competitive business. If we did, I feel sure we would want to have that intangible damage very carefully defined and limited to a fraction or a multiple of some readily identifiable expense.

Mr. SUTCLIFFE. Mr. Watkins, for the record, could you provide this committee with an estimate of the kinds of manpower training costs your company would have to engage in with different plans and different States compared to a uniform national plan of automobile insurance compensation?

Mr. WATKINS. Manpower training for underwriting?

Mr. SUTCLIFFE. For selling. I imagine there would have to be some difference there, for educating underwriters, for educating claims adjusters—those costs that might have to be incurred in the home office and in the jurisdictions in which you are writing if you had to market insurance under different plans. If we need clarification as to what we are after here, these can be just guesstimates. If it is not a valid question, please say so.

Mr. WATKINS. It is valid in some respects and we will certainly be glad to comply with your request. But companies that deal through independent agents, as does my company, have no control over those agents.

Mr. SUTCLIFFE. But you do provide them with information?

Mr. WATKINS. We provide them with information, but they are independent and they pride themselves in following their own educational patterns and their own devices. We can lead them to the trough but we cannot make them think.

Mr. SUTCLIFFE. I am sure they all do that anyway.

Mr. WATKINS. However, the principal concern would be in the area of loss adjustments which, of course, there would be no problem because it is purely first-party reimbursement and in the underwriting process.

But we will comply with your request. Be glad to.

(The following information was subsequently received for the record:)

At the present time we are handling a multiplicity of insurance plans and programs in the fifty state jurisdictions. Our best intelligence is that the staff, supported by our centrally-located Training and Development Department, should be able to handle the development of state-by-state No-Fault automobile programs.

Mr. WATKINS. Well, I don't think I can answer that question in the way you asked it. I don't think that there would be plans—a plan returning only 50 cents out of the premium dollar—I think would fall of its own weight.

Mr. SUTCLIFFE. What if it straightened out another problem, as perhaps the Massachusetts plan has done by taking bodily injury claims out of the picture in PD cases, thus correcting an unusual situation there.

Certainly an apparent improvement in the system has been realized. And the systems might be one that the people may be willing to live with even though it increases the efficiency of the system from 45 to only 50 percent?

Mr. WATKINS. Are you assuming that the people in the State of Massachusetts are going to want exactly the same thing that the people in Arizona do?

Mr. SUTCLIFFE. I guess I have to make that assumption. I have lived in too many parts of the country to think that the needs of people in various States are different.

If I am injured in the State of Washington, I will have the identical kinds of needs in terms of payment for hospitalization, rehabilitation, and wage replacements that I will have if I were injured in the District of Columbia.

Mr. WATKINS. Proportionately, yes.

Mr. SUTCLIFFE. I might have to pay a little different cost for the insurance. But my needs, I think, would be pretty much the same.

Mr. WATKINS. Let me explain that I don't feel this experimentation period should go on ad infinitum. I hope—I hope that's clear. So we are not talking about something that is of long duration that is going to be continued in perpetuity.

I think very honestly that the bare facets of the various programs are going to surface rather rapidly. And as they surface, I think they should be identified and as soon as it's proven that they are feasible, workable, that it's what the public wants and it does relieve the pressure on the court system, that it makes more prompt reimbursement of medical expenses, it particularly encourages rehabilitation.

I think this is one of the most critical objections to the present system the fact that rehabilitation is so frequently negated because the poor person doesn't have the funds to take advantage of the remedial medical assistance that would save the use of his arm.

Consequently, after 6 months, why, it's irretrievably lost. The use of it is. The wealthy person has the means to finance that rehabilitation.

Mr. SUTCLIFFE. Have you given any consideration to how you appropriately draw the tort exemption line, you or your company? Because if these hearings are not going to produce Federal legislation they may serve as a guide to States that will be considering these important issues.

Mr. WATKINS. I cannot answer that in the affirmative, no. We have not put it down on paper. We have some pretty strong feelings in broad principle.

Mr. SUTCLIFFE. For the record, then, could you, if and when they are committed to paper, provide them to the committee?

Mr. WATKINS. I certainly will. In a nutshell we are purists. We believe in a pure compensatory system without any thresholds. In

other words, we follow Senator Hart's proposal that there will be unlimited medical reimbursement for incurred expenses and rehabilitation expenses.

Mr. SUTCLIFFE. What do you do with the intangible loss or the general damage?

Mr. WATKINS. We don't feel—we feel that that is a burden on society. If a person is made whole through prompt rehabilitation, through reimbursement of his economic losses, that fulfills society's obligation. This is true of workmen's compensation.

I am not holding up all the workmen's compensation laws as the model either. But I think the theory of workmen's compensation, the bold theory of workmen's compensation applies.

Mr. SUTCLIFFE. Would your company consider selling a first party policy to the individual on an optional basis to cover an intangible loss?

Mr. WATKINS. At this point I don't think we would. We might if competition forced us to. Again, let me emphasize, we are in a very competitive business. If we did, I feel sure we would want to have that intangible damage very carefully defined and limited to a fraction or a multiple of some readily identifiable expense.

Mr. SUTCLIFFE. Mr. Watkins, for the record, could you provide this committee with an estimate of the kinds of manpower training costs your company would have to engage in with different plans and different States compared to a uniform national plan of automobile insurance compensation?

Mr. WATKINS. Manpower training for underwriting?

Mr. SUTCLIFFE. For selling. I imagine there would have to be some difference there, for educating underwriters, for educating claims adjusters—those costs that might have to be incurred in the home office and in the jurisdictions in which you are writing if you had to market insurance under different plans. If we need clarification as to what we are after here, these can be just guesstimates. If it is not a valid question, please say so.

Mr. WATKINS. It is valid in some respects and we will certainly be glad to comply with your request. But companies that deal through independent agents, as does my company, have no control over those agents.

Mr. SUTCLIFFE. But you do provide them with information?

Mr. WATKINS. We provide them with information, but they are independent and they pride themselves in following their own educational patterns and their own devices. We can lead them to the trough but we cannot make them think.

Mr. SUTCLIFFE. I am sure they all do that anyway.

Mr. WATKINS. However, the principal concern would be in the area of loss adjustments which, of course, there would be no problem because it is purely first-party reimbursement and in the underwriting process.

But we will comply with your request. Be glad to.

(The following information was subsequently received for the record:)

At the present time we are handling a multiplicity of insurance plans and programs in the fifty state jurisdictions. Our best intelligence is that the staff, supported by our centrally-located Training and Development Department, should be able to handle the development of state-by-state No-Fault automobile programs.

While we believe economies would accrue in the preparation of printed material, we are unable at this time to identify any significant reduction in manpower training costs.

Mr. SUTCLIFFE. Just one other question. I did not note in your discussion the impact the construction of vehicles in a manner that would make them less susceptible to damage, might have on the cost of insurance.

We have before this committee legislation to establish property loss reduction standards for motor vehicles. Does your company take a position on that legislation?

Mr. WATKINS. We do not have technical support for such a position, but we do heartily endorse the concept that vehicles should be rated by their damageability. Now, how this is going to be established is another matter.

Mr. SUTCLIFFE. Do you think minimum levels of property damage susceptibility should be established by the Government that would mandate auto manufacturers to build their vehicles to comply with those minimum specifications?

Mr. WATKINS. I think it is in order for the Federal Government to establish safety standards; yes, sir.

Mr. SUTCLIFFE. And property loss reduction standards, bumper legislation?

Mr. WATKINS. This is what I call safety. Here again I think it is like going back to our discussion of no-fault, I think that guidelines could well be adopted and then if, in the course of a few years, those guidelines are not adhered to, then, by gosh, let's put some whip into them.

Mr. SUTCLIFFE. Thank you.

I have no further questions, Senator.

Senator HART. On that last point, I note in your prepared statement you expressed the belief that no-fault would lead to an expansion of the automobile insurance market and that underwriting standards would be changed significantly. Then you say "An individual's driving record would still be important, but so would his income, the size of his family, the kind of car he drives."

I assumed when I read that that you did agree with the question that Mr. Sutcliffe suggested?

Mr. WATKINS. In the main I do, sir.

Senator HART. Thank you again, both for your testimony and for the film. I hope there is very broad distribution of it.

Mr. WATKINS. Thank you, sir. I appreciate the opportunity.

Senator HART. Next the vice president and manager of the American Mutual Insurance Alliance, Mr. Andre Maisonpierre.

I think it was in another committee, but I remember pleasantly hearing your testimony then.

STATEMENT OF ANDRE MAISONPIERRE, VICE PRESIDENT AND MANAGER, AMERICAN MUTUAL INSURANCE ALLIANCE, WASHINGTON, D.C.

Mr. MAISONPIERRE. Thank you very much, Mr. Chairman.

My name is Andre Maisonpierre, and I am a vice president of the American Mutual Insurance Alliance. We are a voluntary association of more than 100 mutual insurance companies which provide auto-

mobile and other property-casualty coverages in all 50 States and the District of Columbia.

We appreciate the opportunity of presenting our views to the committee. Since our oral statement very briefly summarizes our full statement, we respectfully request that the full statement will be made a part of the record.

Senator HART. It will be made a part of the record along with the exhibits.

Mr. MAISONPIERRE. We believe that the excessive human and economic losses resulting from auto accidents can be dramatically reduced. To this end, we have developed a reform proposal called the guaranteed protection plan which deals with all of the major factors contributing to high insurance costs and consumer dissatisfaction. This is a comprehensive approach to the automobile problem—an approach which calls for responsible reform in the automobile reparations system, in vehicle design, in driver performance, and in traffic safety regulations.

AUTOMOBILE DESIGN—KEY TO MAJOR INSURANCE SAVINGS

Automobile damage has become the dominant factor pushing up the cost of automobile insurance. About two-thirds of the total premium paid for a typical package of automobile insurance goes for coverage paid for vehicle repair or replacement.

Moreover, the cost of the vehicle coverages is now rising at an accelerating rate, while the cost of the bodily injury coverage is slowing down.

Rate filings made in a number of States over the past few months called for increases in the vehicle damage coverages of 10 percent to 20 percent or more, while the bodily injury rates remained the same or required minimal increases.

Thus, reducing crash damage to cars is the single most urgent priority in the alliance's guaranteed protection plan for auto insurance reform.

In prior testimony before this committee Dr. William Haddon, Jr., president of the Insurance Institute for Highway Safety, laid a firm foundation for congressional action to stimulate auto manufacturers to recognize the impact which fragile car designs has had in increasing the transportation costs of the American consumer.

Dr. Haddon's testimony covered a number of misunderstood points about low-speed crash problems. Among those, the following need emphasis.

(1) There is no necessary conflict between the goals of protecting automobile occupants from injury and protecting the vehicle itself from costly damage in collisions.

(2) Preventing low-speed crash damage will not automatically mean car price increases.

(3) Rear end damage is nearly as common as front-end damage—hence, protection of the rear of the car is just as important as protection of the front of the car.

(4) Low-speed test crashes and insurance data show that the bulk of property damage is produced by minor crashes.

Results of crash tests on 1971 models clearly indicate that presently available technology to reduce automobile damageability continues to be ignored in the design and manufacturing of automobiles.

On the other hand, improvements in vehicle design already are helping to reduce crash injuries and to minimize the cost of the economically less significant bodily injury coverages. Similar dedication to reducing car fragility would go a long way toward actually reducing the cost of automobile insurance.

PROPOSED REFORMS IN THE AUTO REPARATIONS SYSTEM

The guaranteed protection plan also calls for major reforms in the auto reparations system. These reforms are designed to achieve a reasonable balance among three difficult and often contradictory goals:

1. To provide crash victims with prompt and fair compensation.
2. To encourage driver responsibility.
3. To keep overall costs at a reasonable level.

Our statement describes the plan in detail. Let me merely outline some of its proposals.

The plan would require that every private passenger automobile policy issued or delivered in the applicable State shall include as minimum benefits, payable regardless of fault:

1. Medical and hospital expense coverage up to $2,00 a person.
2. Disability income coverage of 85 percent of gross income lost during a period commencing 30 days after the accident.

Insurance companies would, of course, be permitted to offer broader coverages than the statutory minimums.

The guaranteed protection plan would retain existing liability protection. Persons with losses exceeding their first-party, no-fault benefits would be entitled to compensation from the other driver for such losses. But insurance companies which pay the medical and disability benefits to their own policyholders could seek reimbursement from the party at fault or his company.

Thus, the proposed system would be no-fault in the sense that the accident victim would collect for his basic economic losses, regardless of who caused the accident. But it would be a fault system in the sense that it would preserve the principle of personal accountability.

In order to simplify the payment of both fault and no-fault benefits the plan calls for the compulsory arbitration of all liability claims under $3,000 and an intercompany arbitration system to handle all subrogation matters.

The guranateed protection plan sets an objective standard for determining general damages—those damages which go beyond the accident victim's out-of-pocket economic losses.

Payment for these damages would be limited to a proportion of medical and hospital expenses incurred. Such limits are intended to curb nuisance claims and to offset the cost of extending the basic no-fault benefits to accident victims generally.

These limits do not apply in cases involving death, permanent disfigurement, dismemberment, permanent impairment, and in other exceptional circumstances where the court or jury finds such a limitation to be unjust.

In addition, the plan would require the adoption by the States of comparative negligence laws. To the extent that the operation of the contributory negligence rules sometimes produce a harsh, unjust re

sult in individual cases, the proposed reform would eliminate these inequities.

To reduce excessive attorney fees our plan calls for placing a limitation of 25 percent on such fees where they are contingent on the amount awarded the person represented by the attorney.

To protect car owners against unwarranted cancellations of their auto insurance the guaranteed protection plan calls for passage of legislation limiting permissible reasons for cancellation of private passenger auto insurance policies to nonpayment of premium or suspension of driver's license or vehicle registrations.

In addition, specific requirements with respect to the insurer's intention to cancel or not renew are provided in the plan.

GUARANTEED PROTECTION PLAN: COMPATIBILITY WITH DOT RECOMMENDATIONS

There are many points of similarity between the insurance reform portion of the guaranteed protection plan and the program recommended by the Department of Transportation. There are, also, some basic differences between the two approaches. Let me briefly outline these for you.

We agree with Secretary Volpe that the States should move promptly to experiment with reform plans extending to auto accident victims—on a first-party, contractual basis—basic benefits to be paid to all accident victims without regard to fault.

The benefits paid under the guaranteed protection plan would cover in full the wage and medical losses incurred in more than 95 percent of all auto crashes.

The alliance proposal is consistent with the Secretary's suggestion that the States might want to experiment initially with the reform plan that would offset the cost of first-party coverages by the savings achieved in revising the rules on general damages.

Under our plan, such cost savings would be produced by imposing limits on the amount of general damages that could be collected for injuries not involving death, disfigurement, or permanent impairment.

We specifically endorse the administration's findings that the Federal assumption of the regulation of the automobile insurance business is highly undesirable.

Our differences with Mr. Volpe have to do primarily with matters of timing, and of defining what constitutes radical, irreversible change.

Mr. Volpe argues persuasively in his testimony that there is an urgent need for experimentation at the State level to clear up major uncertainties about the cost, workability, and public acceptance of any new system.

Having established that major uncertainties exist, very little credibility can be given to the DOT's proposal since it goes beyond the point of no return in the first stage of implementation.

We believe that the guaranteed protection plan offers crash victims betters benefits and would allow for a more orderly testing of public sentiment than the Administration's program.

The people affected by changes in the reparations system need to be able to see and make judgments about what they would gain and lose as the balance is shifted towards greater use of no-fault coverages.

GUARANTEED PROTECTION PLAN: COMPATIBILITY WITH MOTOR VEHICLE INFORMATION ACT

For the past few years the alliance has supported State legislation bumpers. We believe, however, that minimum Federal standards in this area would be desirable. Accordingly, we strongly endorse Federal legislation which would give the Department of Transportation authority to issue standards aimed at making cars more crashworthy.

We question, however, the desirability of section 5(c) of S. 976. We find it very difficult to understand delaying action until 1975. Each year's delay in enacting adequate standards penalizes the insurance cost for a whole generation.

Since the average life of a car is about 10 years, it would not be until 1985 that all cars on the road would be equipped with adequate bumpers if this section is allowed to stand as it is.

We believe that there is every expectation that the Congress should require a total vehicle design capable of withstanding rear and front impacts at 5 miles per hour into a solid barrier by 1973. Unless this is done, the Federal law will invalidate stronger State laws already on the books in Florida and Maryland and will give auto manufacturers a 2½-year umbrella during which time they need do nothing about providing adequate bumpers and more damage resistant car designs.

We support the requirement that auto manufacturers test their new models for crash resistance and publish the data so that potential purchasers can use this information in their buying decisions. This would encourage insurers to rate the various makes and models on the basis of their damageability and ease of repair.

We urge the enactment of legislation calling for periodic inspection and reinspection of damaged vehicles. The finds of the recently released California Highway Patrol's investigation of fatal single-car crashes makes such inspections imperative.

The reinspection of automobiles following crashes may bring about some additional insurance cost, since insurers will not be entirely successful in sorting out the maintenance repairs from the crash damage. However, we feel that such costs would be justified by the ensuing increase in safety.

We also support the uniform title registration program covered under title V of the bill. Over the years we have urged the States to adopt the auto title registration program of the National Committee on Uniform Traffic Laws and Ordinances.

Statistics clearly indicate that in States which have adopted this program, fewer automobiles are stolen and more stolen cars are recovered. Obviously, a substantial reduction in thefts or a substantial increase in the recovery rate would be reflected by a reduction in premium rates for theft insurance.

We want to stress our basic endorsement of the purpose of S. 976. Although our specific objections are substantive, we believe that with suitable amendments this bill can be of major assistance in bringing under control the excessively high price now paid by consumers for auto crashes and for the insurance coverages they pay for crash damage.

GUARANTEED PROTECTION PLAN: COMPATIBILITY WITH CONSUMER ATTITUDES

One of the major considerations involved in assessing the practical and political feasibility of any new automobile reparations system is public acceptability.

In designing the guaranteed protection plan, the Alliance has conducted major research on public attitudes and has tailored its various proposals accordingly. All of the available evidence indicates that the American public attaches considerable importance to the concept of driver responsibility for injury done another.

This was demonstrated in a major national study of the attitudes and feelings of people who buy auto insurance, conducted by Market Facts, Inc., largest consumer survey organization in the Nation. The survey is described in detail in our prepared statement. Let me just cite a few of the pertinent findings.

1. Auto accident victims who have been injured by a negligent driver are unwilling to give up the legal right to collect for general damages.

2. Six out of ten consumers are opposed to pure no-fault auto insurance. Among those who have had experience with the existing claim payments system, almost two out of three were opposed.

3. About two-thirds of the consumers interviewed felt that making automobile insurance excess over other benefits would not be too good an idea.

In addition to this public attitude survey, the Alliance conducted an actual field experiment over a 12-month period in the Syracuse-Rochester areas of New York and in several counties on the western edge of Chicago.

The objective was to test injured claimants' receptivity to a program guaranteeing them prompt but reduced benefits.

The 16 participating companies, representing a broad section of the auto insurance business, offered third-party bodily injury liability claimants a choice of collecting all of their medical expenses up to $5,000, plus wage benefits equal to 105 percent of their losses, to be paid promptly as their losses accrued. Or they could reject this alternative and pursue a regular liability claim.

The major finding of this experiment was that, given a choice between a guaranteed offer and the payment available under the existing auto liability system, only 25 percent of the eligible claimants elected to accept the alternative benefits in Illinois, and 15 percent in New York.

Confirming this apparent public attachment to the present liability system is the response found to a question in DOT's own public opinion survey. The question was: "In your opinion, is there a need to change the system? In what ways?"

More than two-thirds—78 percent of all respondents—did not express a preference that the system be changed. See pages 6 of exhibit 3.

UNIFORM MOTOR VEHICLE INSURANCE ACT

One of the important shortcomings of this proposal is its incompleteness. The bill leaves many questions unanswered. The public is not being well served by being left in the dark by these unresolved issues.

There is wide appeal to a plan which seemingly offers something for everybody with no controversy. But it is the responsibility of this committee not only to examine these promises but also to examine the unresolved problems created by the proposal.

For instance, what rates would be charged for the compulsory coverages? What additional coverages would be needed and what would they cost? What cost would have to be paid out of the pockets of accident victims and which claims would not be paid under the proposed new form of insurance?

We know that 55 percent of the persons injured in auto crashes are not wage earners at the time of the accident. Many of these persons expect to enter or reenter the work force at some future date.

Under the Uniform Motor Vehicle Insurance Act these people would have no way to collect for any harmful effects an auto injury might have on future earning capabilities unless they sustain catastrophic harm. This inequity is even more severe in the case of the unemployed.

The bill does not state how disability is to be defined. Nor how the extent and duration of this disability is to be measured. And, what is meant by "disfigurement"?

The bill will fall far short of its sponsors' expectation of providing "almost total compensation" for the seriously injured. Although the bill preserves the right of total recovery for those who are more than 70 percent disabled, this remedy is made largely meaningless by other provisions of the bill which would prohibit the States from requiring drivers to carry any form of liability insurance to pay for such losses.

Additionally, the bill creates serious inequity for the much larger group of seriously injured crash victims who suffer permanent disabilities below the 70 percent level. These victims would receive no compensation at all for going through life with some rather serious impairments.

It is argued that general damages should be excluded from compensation because they are subjective in nature and are not susceptible of precise measurement in dollars. Yet the same thing is true of a great many things in this world.

What is a man's time worth, and how is its value determined? How do we determine the value of a piece of real estate condemned for a highway?

All these things are subjective in nature. Yet we manage to translate them into dollar amounts by the process of bargaining and compromise.

In fact, under the Uniform Motor Vehicle Insurance Act, very large numbers of auto accident victims would receive nothing at all even from the compulsory personal injury coverages. Nobody would collect for damages inflicted on his automobile under the statutory coverages. Many of those who have wage continuation plans, health insurance protection, et cetera, would not collect anything for their wage and medical losses, either.

No doubt it will be argued that these losses are covered by other benefit systems. But the same argument can be made today.

The point is, both the present statutory auto insurance coverages and those proposed under this Federal bill are designed deliberately to leave out certain categories of claimants. And the group left out is

much larger under the Federal proposal than under the present system or under the guaranteed protection plan.

Another unfortunate shortcoming of the Uniform Motor Vehicle Insurance Act is the damage it would do to one of the Nation's major industries by abolishing State regulation of insurance and superimposing a system of Federal regulation under the Secretary of Transportation.

There is nothing in the history of the Federal regulatory system to instill confidence that the Federal regulation of insurance would be, on the whole, more efficient than the present State regulatory system.

The *Congressional Record* is full of official and unofficial criticism of Federal regulatory agencies for dilatory procedures, their inflexibility, their lack of independence and competency.

Insurance remains one of the most diverse businesses in the Nation. In most respects it is still a local business, built on local bases and solving local needs. The alliance believes that the regulation of insurance must recognize and respond to this diversity.

One of the politically popular features of the Uniform Motor Vehicle Protection Act is the provision which would require auto insurers to accept all applicants for coverage, provided they have a valid driver's license and are willing to pay the premiums.

The most likely result of this would be to increase the cost of insurance for a vast majority of drivers who now enjoy preferred rates, since companies which attempt to set their rates at a lower level to attract such drivers would be inundated by high-risk drivers.

The guaraneed protection plan deals with the problem of insurance availability in a more reasonable fashion. It calls for an expansion of the present automobile insurance plans so as to guarantee reasonable limits of protection for both liability and auto insurance coverages to every licensed driver.

CONCLUSION

The problems generated by automobile crashes are far more complex than was generally realized when the reform issue first came to the general public's notice.

We believe that the ensuing research, debate, and soul searching has been productive, and has produced something close to a consensus on the steps that must now be taken to bring about a reformed system and to bring under control the excessive losses.

The alliance has been privileged to play a major role in the search for reform. We pledge to you and to the public our sincere efforts to accomplish these objectives.

This, Mr. Chairman, completes my oral statement.

Senator HART. Thank you very much, particularly for the skill you used in summarizing a very long and useful paper.

I would want to comment about that bumper standard section of S. 976. We will want to take a look at that language, I agree with you. Whether it prevents anybody establishing the standards before the date required, January 1975, it was not intended to do so.

Mr. MAISONPIERRE. That is right, sir.

Senator HART. You cite public opinion surveys to establish the proposition that with respect to the elimination of pain and suffering

informed citizens say no. don't eliminate it. You suggest that we should respond to that wish. Then. you say just because it is politically popular to prohibit cancellation or to compel writing we shouldn't necessarily follow what is popular.

Mr. MAISONPIERRE. I would like to answer this if I may.

We believe that this program which I stated to be politically attractive is politically attractive because many individuals who have supported this proposition do not really understand the far-reaching consequences that such a proposal might have. Once this is explained to them. once the straitjacket to which the industry is really placed under a proposal of this nature is explained to many of the supporters of this proposal. there is. then. a realization that perhaps its attractiveness is superficial and doesn't go to the depth of the problem.

Senator HART. You have helped us before and I am sure when we have an opportunity to inhale the full paper, we will find there is much that is helpful.

Mr. MAISONPIERRE. I apologize for the length. Senator.

Senator HART. No, it will be very helpful. We are today where we were when we last visited, trying to figure out a better delivery system. We now use the figure $14 billion a year in premiums with economic losses substantially greater than the total benefits that are paid out. We are meeting again to discuss how we can better provide for the public with insurance benefits and understand the existing system.

Mr. MAISONPIERRE. This is right. sir. We have been studying this over a period of years, and this program I described to you, the guaranteed protection plan, we believe will bring about a better distribution of the benefit system, will certainly bring about substantially greater reimbursement for economic losses for accident victims; we expect it will bring about a substantial diminution in the benefits paid where we think that there is abuse. This is in the so-called minor cases. and, of course, minor is relative, and we believe the program. by bringing about certainty of recovery for all accident victims, by reducing the payout in the small cases, hence also reducing the attractiveness of pursuing lawsuits in the small case, will bring about a better distribution of the benefits.

Senator HART. Mr. Sutcliffe?

Mr. SUTCLIFFE. Thank you, Senator.

Mr. Maisonpierre, in your testimony on automobile design as a key to major insurance savings, I understand that you endorse S. 976 particularly in its authorizing the Department of Transportation to set property loss reduction standards. Is that correct?

Mr. MAISONPIERRE. This is right.

Mr. SUTCLIFFE. I understand that you ask the committee to look very closely at the preemption provisions that would be included in any such legislation.

Mr. MAISONPIERRE. Yes. I am very concerned, Mr. Sutcliffe, and if I may, I would like to indicate that we support very strongly the Maryland bill.

Mr. SUTCLIFFE. This is the Maryland bumper bill?

Mr. MAISONPIERRE. The Maryland bumper bill.

Mr. SUTCLIFFE. This was a 5 mile per hour front and rear standard

Mr. MAISONPIERRE. To be effective January 1, 1974. The bill went through the legislation and it is now before the Governor. The Gover-

nor is holding hearings tomorrow, I believe, to see whether or not the bill should be vetoed.

There is the argument that the latest bumper standards issued by the DOT have in fact already preempted any State action in this area and hence the Governor should veto the bill.

Mr. SUTCLIFFE. Were those bumper standards of the Department of Transportation based upon the authority to develop motor vehicle safety standards?

Mr. MAISONPIERRE. That is right.

Mr. SUTCLIFFE. As distinguished from property loss reduction standards?

Mr. MAISONPIERRE. That is right. The argument is being made even though the purpose of the two standards really are different, the one is aimed at safety, the other at damageability, these purposes are different. The argument is being made that the standard issued by DOT about 3 weeks ago have already preempted all State action in this area.

We will appear before the Governor strongly supporting the point that there is no preemption. We do not believe there is such a preemption.

Mr. SUTCLIFFE. As to the diagnostic inspection requirements in S. 976, do I understand you to favor those as incorporated in the bill?

Mr. MAISONPIERRE. We believe that these are very, very important, Mr. Sutcliffe. In fact, Senator Hart, we appeared before you about 2 years ago when we talked in terms of postaccident inspection and reinspection. At that time we opposed a Federal provision or any provision requiring the reinspection of automobiles after accidents. We opposed this on the basis that we did not think that the reinspection programs or the inspection programs pursued by the States were sufficiently sophisticated to support the cost of reinspection after crashes.

However, this program which is described in S. 976 gives us the confidence that the reinspection program will be very much more thorough and will bring about the type of improved automobile safety which is needed on the highway. But, we think for this to come about, we need to have the inspection mechanism which you have described, Mr. Sutcliffe.

Mr. SUTCLIFFE. The diagnostic inspection?

Mr. MAISONPIERRE. Yes.

Mr. SUTCLIFFE. As you understand it, would this require construction of vehicles to be susceptible to diagnostic inspection?

Mr. MAISONPIERRE. Yes. It will require both. The vehicles must be properly equipped so that the centers can get the information adequately.

Mr. SUTCLIFFE. What impact would the uniform titling provisions in S. 976 which you also endorse have upon insurance cost?

Mr. MAISONPIERRE. Well, the two major States which have not adopted the uniform title and registration law are New York and Massachusetts. Those are two States which have a huge amount of vehicles, two States where both the rate of theft is high, very high, much higher than nationwide, and the rate of recovery much lower than nationwide. Obviously, the impact will be felt primarily in those two States—New York and Massachusetts.

To the extent that we are going to be able to reduce insurance losses, theft losses, we are going to be reducing the impact on auto insurance cost. I cannot give you any exact figures, but automobile theft in both States have had serious impact on the automobile insurance rates in those States.

Mr. SUTCLIFFE. Have estimates been made of the amount of insurance payout for those States and, if so, could you provide them for the record?

Mr. MAISONPIERRE. I would like to provide this for the record.

(The following information was subsequently received for the record:)

AMOUNT OF INSURANCE PAYOUT IN NEW YORK AND MASSACHUSETTS RELATED TO AUTOMOBILE THEFT

The amounts of insurance benefits paid out in those two states for the calenda year 1969 (latest available figures) are as follows:

	Million
New York	$3
Massachusetts	1

Mr. SUTCLIFFE. Mr. Maisonpierre with regard to point about auto mobile design keyed to major insurance savings—how is this commit tee to be assured that savings that may result from better bumpers an for proper inspection and for uniform titling will be passed on t the consumer and not retained by insurance companies?

Mr. MAISONPIERRE. Perhaps, Mr. Sutcliffe, if I may, I would lik to bring some specific examples of what is presently going on. As m statement indicates, we feel that we are reaching a payoff in the safet standards. We are convinced that the standards have had stron impact on reducing both the number and the severity of accident on the highway.

Let me introduce some rate filings which have been approved in number of States as they relate to the bodily injury liability rat which are of course affected by the safety standards and the propert damage liability rates which, of course, are unaffected by Feder standards.

In the State of Illinois there was no change in the bodily injur liability rates and there was a 13.9 percent increase in the propert damage liability rate.

Idaho had a 13.6 percent decrease in bodily injury liability ra and a 19.9 percent increase in property damage liability rate.

Nebraska had a 2.3 percent increase in bodily injury liability ra and a 32.5 percent increase in property damage liability rate

New Jersey had 0.1 percent in bodily liability, and a 23.6 perce increase in property damage liability.

South Carolina had a 3.5 percent increase in bodily injury and 34.7 percent increase property damage liability.

Maine had a 4.1 percent increase in bodily injury liability rates a a 32.9 percent increase in property damage liability rates.

I think that this indicates that where there are ways to either redu or control the cost of insurance to the public these costs are pass on to the public.

On the other hand, when we are at this stage in no position to co trol the cost because the damageability of cars, the public is just pa ing horrendously for this lack of control.

Mr. SUTCLIFFE. So, your suggestion is the rating system of he several States would factor in any savings resulting from property loss reduction standards when determinating rates for insurance companies?

Mr. MAISONPIERRE. That is right.

Mr. SUTCLIFFE. And this would be perhaps established under the auspices of the National Association of Insurance Commissioners as a standard operating procedure in rate filings?

Mr. MAISONPIERRE. Yes, this is right. In fact, this is what is really happening today.

Mr. SUTCLIFFE. I understand the figures that you have read and I understand the point you make.

Another interpretation of those figures, however, on the basis of the Department of Transportation's study would be that we are continuing to take better care of our cars than we are the bodily injury claimants. In other words, the rate reductions or the failure to achieve justified rate increases was on the basis that the payout in the bodily injury area was constricted.

Although I do appreciate those figures and realize what you are trying to represent by them, I must be somewhat suspect as to whether or not that the reason for the maintenance of the rate or the lowering of the rate was the one you ascribe.

Mr. MAISONPIERRE. If I can address myself to this, in those States which I have mentioned to you there has been no appreciable change in the law except perhaps Illinois and Maine which comes to mind where we have come to a comparative negligence system. So, we have broadened the opportunity for paying accident victims. Yet, we know that the periods covered by these rates are the periods which have witnessed the fastest rise in medical care in the history of our Nation.

So, the ingredients that make up these bodily injury liability rates have gone up at a rate higher than ever before, and yet the rates have remained fairly stable, or as in Idaho, I stated 16.9 percent decrease. There has been no change in the law to decrease the amounts of benefits or economic loss reimbursement to the injured people.

Mr. SUTCLIFFE. I think the only thing I was suggesting was that the payout experience could result from the fact that, you are not having as many losses because of improved safety features on highways, or, the claims are on the increase but payment for those claims is not being made. That is the only point I wish to make.

I recognize that all costs in terms of attorney's fees, doctor's expenses, adjustments—all service costs—are dramatically on the rise and are not susceptible to any kind of technological advance. I just want the record to suggest that there may be more than one cause for the situation which you describe.

Mr. MAISONPIERRE. We do know that any way you measure it, the number of fatalities last year has gone down, and this I think is a measure of the number of serious bodily injury accidents caused; and this number, I think, reflect the number of bodily injury claims which are received.

Mr. SUTCLIFFE. That was even true, was it not, with an increase in the number of vehicles on the road and miles driven?

Mr. MAISONPIERRE. Yes, this was the first year I believe over a long period of time that there was an actual reduction in the number of

64-345 O - 71 - pt. 3 -- 5

fatalities in spite of the fact that we have had an increase in the num ber of cars, and so forth.

Mr. SUTCLIFFE. Mr. Maisonpierre, as to your guaranteed protectio plan and the proposals to reform the reparations system, could yo provide us with the percentage of injured accident victims that yo have calculated would be covered by the basic benefits provided i your plan?

Mr. MAISONPIERRE. Yes. I would be glad to do this.

(The following information was subsequently received for th record:)

PERCENTAGE OF INJURED ACCIDENT VICTIMS WHO WOULD BE COVERED BY TH BASIC BENEFITS PROVIDED IN THE GUARANTEED PROTECTION PLAN

The Guaranteed Protection Plan would require that every private passeng automobile insurance policy contain at least $2,000 in medical coverage and least $6,000 in disability income coverage.

Table IV-2, Department of Transportation's Automobile Personal Injur Claims Study, indicates that 98.5% of all accident victims suffer economic loss of $5,000 or less, and 99.6% of accident victims sustain economic losses of $10,0 or less. Thus, a program paying $8,000 economic loss benefits would cover in fu the economic losses of more than 99% of all accident victims.

COMPARISON OF THE GUARANTEED PROTECTION PLAN WITH THE PRESENT SYSTEM

When attempting to project the cost of any new reparation system, the follo ing points must be emphasized:

1. It is impossible to quantify the effects which changes in reparation syste are likely to have on losses

As we have already indicated, the present reparation system, through t insurance mechanism, plays an important role in reducing the total losses arisi out of the operation of automobiles. Although this loss reduction has never be quantified, it nevertheless exists. One can only assume that the impact of this lo reduction mechanism will diminish as the reparation system moves away fr fault.

However, the major impact of changing the reparation system on society co sists of redistribution of who will bear what losses. S.945 would, for the m part, require that those who have suffered losses will pay a greater share of t total incurred automobile accident losses. The present system and the Guar teed Protection Plan, on the other hand, would continue to bear down hard on those who have caused the losses, on the theory that the system should rec nize as a matter of equity that the good drivers should not subsidize those w abuse the privilege of driving.

Additionally, it should be noted that reduction of automobile insurance premi costs does not necessarily reflect a reduction in the total incurred losses nor a reduction of cost for individual car owners. Automobile insurance premium co can be reduced by increasing the amount of self insurance which car owners injured are required to absorb. Thus, a reparation system which contains ma benefit gaps may, at first blush, appear to the automobile owner to be a cost savi in that his premium will be lower. But, when that same owner is involved in accident and has to dip into his savings to cover his losses because of inadequ insurance coverage, the reparation system, will in fact, have turned out to much more costly to him.

Each of the reparation systems which have been proposed to date would p for the losses arising out of automobile accidents through a mixture of automo insurance, insurance other than automobile, such as health, social security, e and self insurance. The Guaranteed Protection Plan attempts to minimize dependency on self insurance and other insurance systems. It seeks to internal the cost of automobile accidents by incorporating the loss components within a insurance. This is, of course, highly desirable so that by pinpointing the cost accidents, society can make informed decisions on how to best structure the tra portation system. S. 945, on the other hand, externalizes many if the costs ass ated with auto accidents by passing on those costs to other insurance systems

by requiring victims of accidents to self insure substantial portions of their losses. Thus, superficially it might appear as though S. 945 "costs less", when in reality it redistributes automobile accident losses in a very unfair way—by asking those least able to pay for the losses, accident victims, to foot a much higher proportion of the losses.

2. When pricing a new insurance system, people's behavior will vary depending on the insurance systems in force

Because it is impossible to accurately predict behavioral pattern changes under different reparation systems, one invariably assumes that there will be no change when attempting to project costs of new systems. This is a false assumption. We know, for instance, that the cost predictions relating to both the federal Medicare and Medicaid programs were grossly understated because changes in people's behavior were not considered at the time the original cost projections were made. Obviously, the greater the departure from an existing insurance system, the greater the changes in society's behavioral patterns and the less dependable are cost projections.

The Guaranteed Protection Plan borrows a great deal from the past and one can assume that people's behavior under Guaranteed Protection will be fairly similar to their behavior under the present system. However, S. 945, and other such radical proposals, expose the public to entirely new reparation systems. One should expect that auto accident victims will resist being paid substantially reduced benefits and that much greater use of the insurance mechanism will be made than is anticipated by the planners of those new systems. This will, of course, frustrate attempts at reducing the cost of automobile insurance.

In spite of these costing difficulties, we have arrived at Cost-Benefit projections of the Guaranteed Protection Plan and we have compared those to the present system.

We believe that automobile insurance premiums for the year 1970, assuming all the states had enacted the Guaranteed Protection Plan, would have run to $10.4 billion. This is compared to the present system's premium of $12.9 billion, or a reduction of 19%.

As to the auto accident victims' net recoveries, in 1970, again assuming the enactment of the Guaranteed Protection Plan in all 50 states, this would have run to $6.7 billion as compared to $7.7 billion under the present system, or a reduction of 13%.

It should be noted that the Guaranteed Protection Plan would reduce consumers' automobile insurance premiums more than the losses paid to accident victims. This is the result of efficiently structuring Guaranteed Protection so to reduce company administrative expenses. In fact, Guaranteed Protection would decrease company expenses in the area of bodily injury insurance by nearly 10%.

The lower net recoveries under Guaranteed Protection, are due entirely to the fact that improved bumper assemblies capable of withstanding 5 mph front or rear collision without damage other than the expense of refinishing, will reduce both losses—hence, recoveries by 21% or $850 million.

Comparing the Guaranteed Protection Plan with the present system, we believe that the following changes will likely occur if Guaranteed Protection is enacted in all 50 states:

A 21% reduction in insured vehicle damage ultimately when all cars have proper bumpers.

A four-fold increase in first-party benefits under bodily injury insurance.

More than ⅔ reduction in plaintiff-attorney fees.

A ⅓ reduction in total insurance company expenses and overhead for bodily injury insurance.

A 40% reduction in payments for pain and suffering.

Nearly a 20% increase in bodily injury payments for economic losses to those who are not recovering any benefits under the present system.

Mr. SUTCLIFFE. Do you have any rough estimate?

Mr. MAISONPIERRE. About 95 percent.

Mr. SUTCLIFFE. You point to the fact that driver responsibility would be retained. Is this through the tort mechanism?

Mr. MAISONPIERRE. It would be a combination of two ways. Basically, it would be a tort mechanism. Of course, the payment of the

first-party no-fault benefits would ultimately be assessed against the responsible driver through an intercompany arbitration procedure.

Mr. SUTCLIFFE. It would be assessed to the company insuring that driver; is that correct?

Mr. MAISONPIERRE. It would be assessed against him and against his class and against the individual in the long run.

Mr. SUTCLIFFE. The individual in the long run through the payment of premiums but not as to the particular instance?

Mr. MAISONPIERRE. That is right.

Mr. SUTCLIFFE. So in many respects it is parallel to the inter-insurer subrogation provisions of the Massachusetts no-fault law?

Mr. MAISONPIERRE. To a large degree it does, Mr. Sutcliffe.

Mr. SUTCLIFFE. Do you mandate arbitration?

Mr. MAISONPIERRE. We mandate arbitration, and if I can explain. What we are contemplating is an expansion of an arbitration system which the industry is already using very extensively in the property damage area. I can describe this, it will just take a second of the committee's time.

This is a program which is administered by the companies. In the property damage area it is voluntary to the extent that a company does not have to become a signatory to the arbitration procedure, but 500 companies have become signatories to the procedure and once they have become signatories they must then abide by the arbitration proceedings.

Approximately 157,000 cases are handled this way a year, with about 50-some odd million dollars in losses being exchanged every year The cost to arbitrate such cases will vary from about $3.50 to $7.50 depending on the locality.

Mr. SUTCLIFFE. May I interrupt there and ask you whether or not in that arbitration the consumer, the policyholder is involved at all?

Mr. MAISONPIERRE. No, he is not. The arbitration is done for the most part, I would say 99 percent of the time, by a filing of the files The files are filed with the arbitrators. Occasionally, in difficult cases there may be an appearance by a company representative.

Mr. SUTCLIFFE. But not the policyholder?

Mr. MAISONPIERRE. The policyholder is not involved.

Mr. SUTCLIFFE. Do you anticipate that that would be the procedure followed in the bodily injury claim?

Mr. MAISONPIERRE. Yes, we would.

Mr. SUTCLIFFE. You would not ask the consumer to appear?

Mr. MAISONPIERRE. No, we would not.

Mr. SUTCLIFFE. How would you notify the consumer that he was at fault then? Under the property damage situation, do you notify him that he was found to be at fault?

Mr. MAISONPIERRE. I cannot speak for all companies. I can only speak for two companies whose procedure I know. The companies will send a card to the insurer advising the insurer of the disposition of the claim.

Mr. SUTCLIFFE. That will include the fact that he had been found at fault?

Mr. MAISONPIERRE. I cannot say exactly whether it would.

Mr. SUTCLIFFE. For the record you might.

(The following information was subsequently received for the record:)

PROCEDURES USED BY INSURERS NOTIFYING POLICYHOLDERS THAT A PROPERTY DAMAGE LIABILITY LOSS HAS BEEN PAID ON THEIR BEHALF

The procedure varies extensively among companies. Some companies notify their policyholders of the payment of the loss, at the time of the payment of the loss and some do not.

However, the policyholder is always made aware of the payment of the loss at the time of receipt of the policy renewal notice and statement. This notice reflects the "chargeable accidents" which affect the policyholder's premium.

STATUS OF INSOLVENCY CLAIMS IN ARIZONA AND CALIFORNIA

The attached letter dated April 26, 1971, reports on the liquidation progress of the insolvent Key Insurance Exchange, California and the Liberty Universal Insurance Company's insolvency in Arizona.

Mr. SUTCLIFFE. The reason I think this is important for the record is you are calling this a way of retaining driver responsibility, and unless the driver is informed that he is found to be at fault and knows why he is found to be at fault, you can't even pretend that there is a deterrence value.

Mr. MAISONPIERRE. Of course, the driver knows whether or not he is at fault. It depends whether he recovers on his own car. If his car is damaged and he does not recover himself, he knows that he is at least at fault. It may not be an indication that the other party is at fault, but he is at some fault.

Mr. SUTCLIFFE. You mean neither party is oftentimes paid for their collision and then the companies go through a subrogation proceeding?

Mr. MAISONPIERRE. No, because whenever an arbitration proceeding has been handled, it also takes care of the individual's deductible. In other words, the company will collect a deductible for its own insureds and it will pay its insured the deductible back.

So, it is the mechanism through which the insured can collect his deductible.

Mr. SUTCLIFFE. I am simply trying to explore how driver responsibility is built into the interinsurer subrogation concept that you have presented us.

First of all, the DOT study is very skeptical of the ability to deter accidents through insurance, but even assuming that there is a class of people who can be deterred, I think it would be appropriate to ask how through a communication which would have to be made in the bodily injury situation, because you don't have the care there, the person is found to be at fault.

Do you understand that question?

Mr. MAISONPIERRE. Yes, I understand this. I would like to inject this one thing. The DOT report, if I remember correctly, said that it had not been able to measure the trend that the present system brings about greater highway responsibility and there is deterrence in the present system.

Mr. SUTCLIFFE. We will, for the record, include at this point, with the permission of the Senator, the appropriate language of the Department of Transportation report.

(The information follows:)

EXCERPTS FROM THE DEPARTMENT OF TRANSPORTATION REPORT

Unfortunately, the claim of a significant deterrent effect for the present automobile liability insurance system has so far proven unsusceptible to substantiation by empirical evidence. Nor does significant evidence exist to support the

common belief that most accidents are caused by improper and avoidable human error. Two investigations conducted during the course of the Department's study however, indicate that most accidents are caused by environmental or personal factors which are external to the individual's conscious control and that punishment or its threat, therefore, is ineffective as a deterrent to deviant driving behavior.[1]

Analyzing the deterrent effects of various measures, including those of the tort liability system, one of these studies notes that existing deterrent measures fail to distinguish between two groups of drivers: those who are unwilling to conform to "normal" driving behavior and those who are willing but unable to conform.[2] The "won't conform" group consists of motorists who willfully choose to violate traffic laws—who are able to modify their "bad" driving, but do not do so. Included in this group are those individuals who by virtue of their membership in deviant subgroups, are more likely to conform to deviant norms than to conventional driving norms (for example, certain youthful operators). For these relatively few drivers who deliberately choose to ignore safe driving practices, the threat of punishment will not, by itself, motivate careful driving behavior.

Motorists falling in the "can't conform" group attempt to exercise reasonable care when driving but, at times, are unable to do so.

"Some drivers are chronically unable to perform adequately, and all drivers have occasional nondeliberate lapses from adequate performance. The new and inexperienced driver, for example, regardless of his intentions and attitudes, will inevitably make errors. . . . Some of these errors will undoubtedly result in citations and crashes (as the disproportionate crash involvement of young drivers would seem to indicate), but to assume that these can be eliminated by deterrents is to assume also that the new driver is capable of a level of performance which in fact he has not yet achieved."[3]

Mr. MAISONPIERRE. I would like to bring this out. There is a way which I think has been overlooked by many people.

Senator HART. I am sure you have heard of the woes and the complaints of the presidents of the automobile manufacturers in the rather dramatic drop in the sale of the so-called muscle cars. We have been told by the manufacturers, in fact we have been severely criticized by the manufacturers in discussions we have had with them, that the insurance system, the loading of the insurance rates on these muscle cars has deterred the sale of the cars.

Now we do know this. We do know from statistical evidence, from studies which have been made by a number of companies that the muscle cars do cause more accidents and more serious accidents.

So, at least the present insurance system in its rating has kept off the roads. I gather from what the manufacturers say, a substantial number of such muscle cars. And this has brought about a reduction in the number of injuries. I think this is to some degree a deterrence.

The cost of the present automobile insurance for the high-powered cars which are the cars which cause a much higher proportion of accidents on the road have kept those cars off the roads.

Senator HART. While Mr. Sutcliffe is reacting to that, let me say something that, of course, is treasonable in Detroit, but logically what is suggested by the point you just made that muscle cars have been reduced in number because of the economics of the insurance rating system and we have thereby reduced the number of serious accidents. Does that suggest in terms of the national good we would be better off if all cars were of lower horsepower and smaller in body size?

---

[1] David Klein and Julian Waller, *Causation, Culpability and Deterrence in Highway Crashes* (1970), for the U.S. Department of Transportation (hereinafter cited as *Causation, Culpability and Deterrence*), and U.S. Department of Transportation, "The Human Factor in the Highway Environment: Normal and Deviant Behavior," *Driver Behavior*, pp. 111–1[illegible]

[2] *Causation, Culpability and Deterrence*, p. 130.

[3] *Ibid.*

Mr. MAISONPIERRE. Senator Hart, I can only give you my own personal feeling on this, not our association's feeling. I would certainly welcome a trend which I think perhaps we are witnessing in the small and less powerful cars. I would welcome it for a number of reasons.

No 1, cost of operation.

No. 2, safety.

No. 3, I have children driving those cars, and I would just as soon have them drive cars which are not as powerful, they don't have the getup and go which some of them do.

On the other hand, I think that we should recognize that as long as we have a system which is built on speed and on power, I cannot totally do away with the idea that cars need to have some so-called reserve power. I say this because in the fairly recent years, the only serious or close call I have ever had in a car was driving a car which had very little power, it was a foreign car with very, very little power, trying to pass a truck when perhaps I shouldn't have passed the truck, and almost getting involved in a pretty terrible accident. I had misjudged the reserve power of the car.

I think from personal experience, I think there is something to this reserve power, but still the trend toward making speed and power attractive should be reversed, and we should encourage in every possible way to reverse this trend.

Senator HART. Thank you.

Mr. SUTCLIFFE. Mr. Maisonpierre, in response to your example of possible behavior modification that occurred because of higher premium rates being assigned to muscle cars, I can only say in response to that analogy and in questioning its applicability that, as Senator Hart pointed out, with regard to the film which we saw on the record, that every mile of traffic driving requires about 20 major decisions on the part of the individual. Whereas in the decision to buy a car, though many, many factors are involved, there is usually one decision at a particular point in time with an ability to be very careful and selective and one where price would have a much more direct impact. In fact this very principle is recognized in S. 976 when we asked insurance companies to rate vehicles on the basis of property damage susceptibility and ask for the index for injury severity.

Whether or not a rate increase following an accident would modify driving behavior is questionable. There may be deterrent value, but it might affect only one or two of the kinds of conscious driving decisions. But in that 1 mile and those 20 major decisions price might not be able to reach all making other behavioral factors that make up a person's total driving behavior.

Also, rate increases oftentimes will occur across the board as to the classification and maybe one accident will not result in another classification, particularly if a person is in a high-risk category already.

So the relationship of his own personal driving behavior to a cost increase might be much less direct than his own premium cost because he has a muscle car. That would be a possible distinction between the muscle car deterrence analogy which you suggest and its applicability to driver behavior modification.

Would you care to respond?

Mr. MAISONPIERRE. I want to make it very clear that we endorse I wholeheartedly Senator Hart's suggested recommendation which we

find in the bill, that automobiles be rated on the basis of their damageability and safety. In fact, Senator Hart, following the hearings which you held 2 years ago, one of our companies immediately got started along these lines. It has been severely criticized perhaps by some of the manufacturers. It has set up some very definite classification rates and has filed those classification rates in quite a number of States following up on your recommendation, and we do endorse that part of the bill.

We also recognize that driving a car requires a great many acts, both conscious and unconscious, but we believe that the human body is amazingly adaptable and that, in spite of the crowded condition of the highways, there appears somehow to be enough leeway in the operation of a car that even though one should recognize all of these difficult things that must be done to drive a car, still, the majority of people drive without accidents for many, many years.

Mr. SUTCLIFFE. I think we have exhausted that particular subject. Perhaps on some of these other issues we can submit questions for the record.

I have one further question, and it relates to a part of the plan called insolvency protection. You advocate the passage of post-insolvency assessment laws in the various States.

Mr. MAISONPIERRE. This is right.

Mr. SUTCLIFFE. I would like to ask whether or not the State of Illinois has yet passed an insolvency bill.

Mr. MAISONPIERRE. As of this morning the Illinois Legislature had passed a bill through the house, the senate insurance committee has reported out a bill unanimously. The bill was pending on the floor of the Senate. Seasoned observers feel convinced that there is no question whatsoever that the bill will be enacted by the Illinois Legislature in the very near future, if not today. But I checked on this this morning before coming down.

Mr. SUTCLIFFE. I imagine that if one were to test the coverage, the State-by-State approach to insolvency which your organization has fought very strongly for, one would also have to inquire about the progress of insolvency legislation in the State of Texas.

Mr. MAISONPIERRE. There again, Mr. Sutcliffe, the situation is identical to that in Illinois. The bill passed unanimously through the House, it passed unanimously through the appropriate Senate committee—I am not sure which committee it is—and it is pending on the floor, and there is no question whatsoever that the bill will be enacted by the legislature and signed by the Governor, in both Illinois and Texas.

We have worked very hard to enact such laws, not only in Illinois and Texas but in all jurisdictions. I would expect by the end of the legislative year, in the neighborhood of 42 or 43 States at least will have enacted the model NAIC postassembly insolvency law.

Mr. SUTCLIFFE. With the experience of insolvencies in several States which have had postinsolvency assessment laws, what is your association's appraisal of the way in which they have been able to handle consumer claims made to the industry insolvency fund in lieu of their own companies because of the insolvency?

Mr. MAISONPIERRE. I think this has worked out quite well. I know of two particular cases, one in California and one in Arizona, and I may, Senator Hart, I would like to submit for the record the status of the pending claims at this time.

In Arizona——

Senator HART. For the committee's files, yes, we would welcome it.

Mr. MAISONPIERRE. I know in Arizona it was just a matter of a few months after the insolvency had occurred that the majority of the claims had been paid, and by that I mean, as you well know, some of the cases in the present system must go through the same procedure that any other case must go through; that is, the liability must be determined. But there has been absolutely no delay occurring in a payment of claims because of the insolvency.

I would like to introduce for the record the status of the insolvency losses in California and Arizona.

Mr. SUTCLIFFE. Mr. Maisonpierre, the assigned claims provision in S. 945 as to the treatment of insolvencies closely parallel the kind of collective action of insurance companies in the States under postinsolvency assessment plan. Could you furnish for the record your reaction to that kind of an approach to taking care of the insolvency problem and its compatibility with the existing postinsolvency assessment plans which the States have enacted?

Mr. MAISONPIERRE. I would like to submit this for the record, if I may.

(The following information was subsequently received for the record:)

COMPARISON OF ASSIGNED CLAIMS PROVISION OF S. 945 AND STATE POST INSOLVENCY ASSESSMENT PLANS

For the following reasons, we believe that the state post insolvency programs are by far preferable to the assigned claim plan of S. 945.

1. The Assigned Claim Plan is an incomplete solution

The state programs cover all insolvencies related to all lines of property and casualty insurance. In fact, approximately 95% of all property and casualty premiums are today protected through state insolvency programs.

The Assigned Claim Plan limits its coverage to automobile, thus leaving a major coverage gap.

The state programs not only insure the payment of insolvency losses but are so structured as to improve the regulatory climate to prevent insolvencies in the first place. The Assigned Claim Plan, on the other hand, makes no pretense to seek to prevent companies from becoming insolvent.

2. The Assigned Claim Plan assignment could result in the unfair treatment of smaller companies

The state insolvency programs distribute the insolvency *losses* proportionately to the amount of insurance which every company writes. The Assigned Claim Plan, on the other hand, would distribute the *claims* on such a proportionate basis. Thus, under the Assigned Claim Plan program, a small company could be assigned a major loss—way out of proportion to the amount of insurance be assigned a major loss—way out of proportion to the amount of insurance it writes. This is obviously highly undersirable.

3. The state insolvency plans allow for tight cost control

The state plans concentrate all of the insolvency claims and losses through one administration. Thus, close cost accounting and accountability can be maintained.

The Assigned Claim Plan, on the other hand, would diffuse the claims and the losses and it would be most difficult under an assigned claim program to keep accurate accounting of the losses.

Mr. SUTCLIFFE. One other thing for the record, Mr. Maisonpierre. You have no doubt been familiar with the figures that we have been working with on this committee, $14 billion of premiums collected annually—these are estimates for 1970—$11 billion of economic loss an-

nually, an insurance mechanism providing $7 billion of benefits and those benefits not distributed on a 1-to-1 ratio as dollars of economic loss.

For the record, could you provide and actuarially justify to the extent possible, how you would think that the total premium dollar and the benefits paid would shake out if your plan were adopted simultaneously in the 50 States? I think we should assume at this point also a car population with five-and-five bumper capability to give the property damage side of the picture as well as the bodily injury side of the picture if you can. To the extent you can factor this out and where you have holes in your own estimates, if you indicate those to the committee, we would certainly appreciate it.

Mr. MAISONPIERRE. We would like to do this.

I would like to say one word. You are predicating, of course, the losses, the economic losses and the extent of loss recovery I would imagine to a large degree on the DOT's economic consequences of motor vehicle accidents study. We have some grave questions about the accuracy of the data collected in the study.

I know that you are pressed for time and I will not go into it. We do have a critique of this study as part of our appendix in our statement, and I would like to emphasize that we do not happen to agree with the data collected, and the reasons for our disagreement are detailed as one of the appendices of our statement.

Mr. SUTCLIFFE. Perhaps then you could provide your cost estimates on the basis of your own figures for the present system, DOT figures for the present system updated to the $14–$7 billion relationship so that we can have both pictures.

Mr. MAISONPIERRE. Very good, sir.

Mr. SUTCLIFFE. And then we will be in a position to judge which picture we will use for examination or where the differences are and how significant they are.

Mr. MAISONPIERRE. Right.

(The following information was subsequently received for the record:)

ARIZONA INSURANCE GUARANTY ASSOCIATION,
Phoenix, Ariz.

Summary of loss claims activity—Period ending Feb. 26, 1971

Automobile:	
Closed	3
Open	2
Amount expended	$43,307.
Present reserves	$585,607.
All other:	
Closed	
Open	
Amount expended	$24,039.
Present reserves	101,809.
Total expended	67,347.
Total outstanding reserves	$687,416.

KEY INSURANCE EXCHANGE INSOLVENCY ADJUSTERS.
Los Angeles, Calif., April 26, 1971.

Re Key Insurance Exchange
liquidation progress report.

Mr. R. E. EARLY,
Chairman, Board of Governors, California Insurance Guarantee Association, Los Angeles, Calif.

DEAR BOB: Herewith is a listing of drafts we have issued from the inception of our program to April 1, 1971. Our first claims draft was issued on December 1, 1969.

Type of drafts issued	Number	Amount
Bodily injury	202	$393,934.90
Medical payments	50	6,348.61
Uninsured motorists	83	137,435.42
Property damage	66	19,292.10
Collision	75	38,624.08
Comprehensive	31	10,180.26
Allocated legal expense	298	139,801.80
Unallocated adjustment expense	223	10,742.14
Allocated adjustment expense	125	55,403.66
Premium refunds to members	4	543.98
Total	1,157	812,306.95

Our Novato Bank Account was closed during this period, which required the cancellation of a substantial number of small "stale drafts" mostly of the Property Damage, Collision and Comprehensive category. An audit of all drafts issued to date also resulted in the change of some draft allocations. Therefore the number of drafts listed as issued on this April Report in some cases is less than shown on our January Report.

CLAIM RESERVE SUMMARY—EXCLUDING ADJUSTMENT EXPENSE

The following is a list of claims reserves outstanding on April 1, 1971, compared to December 20, 1969, the date of our first audit.

	Dec. 20, 1969 claims count	Dec. 30, 1969 reserves	Apr. 1, 1971 claims count	Apr. 1, 1971 reserves
Bodily injury	354	$782,183.00	120	$341,000.00
Medical payments	74	26,230.00	0	0
Uninsured motorists	115	183,672.00	24	65,000.00
Property damage	467	181,941.00	13	14,835.00
Collision	141	57,655.00	0	0
Comprehensive	72	21,251.10	0	0
Total	1,223	1,252,932.10	157	420,835.00

NOTES TO ABOVE CHART

A. During the past three months, we have reduced the number of open claims by 62 units.

B. In this period, we have paid out a total of $49,884.41 on claims (not including legal or claims expense) and have reduced our outstanding claim reserve by $54,915.00.

C. Compared to our initial *claim reserve* of $1,252,932.00, we have paid out $905,815.37, and have reduced this reserve by $832,097.00.

Adjustment expense

During the past three months, we have incurred $19,842.75 in legal expense, and $6,503.29 in allocated and unallocated adjustment expense. Our remaining reserve of $96,081.94 to cover future legal and adjustment expenses should be adequate.

Financial statement

The attached statement reflects our position as of April 1, 1971.

Based on our experience to date. I believe these estimates are realistic, except the asset of our estimated recovery as a general creditor of Key Insurance Exchange may be over-stated. Any shortage in this estimate of $100,000.00 will be more than offset by our interest income, which has not been included in our claims accounting figures.

R. H. WENZEL.

California Insurance Guarantee Association financial statement—Apr. 1, 1971

	Amount
Assets:	
CIGA premiums	$1,350,104.60
Less expenditures to date	812,306.98
Total	537,797.62
Estimated future subrogation recoveries	1,000.00
Estimated recovery as general creditor of Key Insurance Exchange	100,000.00
Grand total	638,797.62
Liabilities:	
Claims reserves	420,835.00
Less future statutory savings	—20,000.00
Total	400,835.0
Allocated and unallocated adjustment expense reserve	96,081.9
Total	496,916.9
Surplus	141,880.7

Senator HART. If there are additional questions, may we submi them to you and we will hold the record open for a while.

Mr. MAISONPIERRE. Thank you, sir.

Senator HART. Again I have enjoyed the exchange and I knov as I have said before, when we get into an analysis of the details th you have furnished us, it is going to be helpful.

Mr. MAISONPIERRE. Thank you.

(The statement follows:)

Auto Insurance Reform

Statement of the

American Mutual Insurance Alliance

before the

Senate Commerce Committee

May 6, 1971

AMERICAN MUTUAL INSURANCE ALLIANCE

(967)

TABLE OF CONTENTS

(continued)

TABLE OF CONTENTS

I. INTRODUCTION

My name is Andre Maisonpierre, and I am a vice president of the American Mutual Insurance Alliance. We are a voluntary association of more than 100 mutual insurance companies which provide automobile and other property-casualty coverages in all 50 states and the District of Columbia.

We welcome this opportunity to tell you what the Alliance is doing to reform the automobile reparations system, to share our research with you, and to offer you our views on the proposals currently pending in Congress.

Automobile crashes impose an increasingly heavy burden on the American public. One out of four automobiles on the highways is involved in an accident each year. That adds up to more than 20 million crashes, 30 million damaged vehicles, more than 4 million injuries, 55,000 deaths and a staggering economic loss exceeding $16 billion. That's the equivalent of about $75 for every man, woman and child in the United States, or $375 for a family of five.

The human cost - the pain, the injuries, the loss of life - are borne directly by the accident victims and their families. But the economic loss is shared by every motorist and consumer, in their out-of-pocket expenses and in the insurance premiums they pay.

II. THE GUARANTEED PROTECTION PLAN FOR AUTO REFORM

The American Mutual Insurance Alliance believes these excessive human and economic losses can be dramatically reduced. We have developed a reform proposal called the Guaranteed Protection Plan, which deals with all of the major factors contributing to high insurance costs and consumer dissatisfaction. This is a comprehensi

approach to the automobile problem - an approach that calls for responsible reform in the auto reparations system, in vehicle design, in driver performance, and in traffic safety regulations.

The Guaranteed Protection Plan is the result of a decade of statistical studies, legislative research, public attitudes surveys, auto crash tests and field experiments with new claims handling methods.

This proposal is based on the premise that automobile insurance reforms alone cannot lift the intolerable burden created by highway crashes. Changes in insurance affect only what happens to the loss after it occurs - whether it is to be borne by the crash victim, paid by the negligent motorist, or shifted to someone else's shoulders. Any meaningful reform program - to be effective and serve the best interest of the consumer - must also concern itself with measures to keep the loss from occurring in the first place, and to reduce the severity of injuries and economic costs.

Reducing the number of crashes will be extremely difficult, because both the number of cars and the mileage driven are going up much faster than the growth in population. Thus each person's chances of having an auto accident are getting worse every year as congestion worsens and the average person's exposure to traffic lengthens. Herculean efforts to improve roads, vehicles and driver performance will be needed just to keep the number of accidents from getting much worse.

The prospect for reducing the excessive costs of auto crashes is much more hopeful. Changes in automobile design, using technology already developed and available, can bring about dramatic reductions

64-345 O - 71 - pt. 3 -- 6

in the economic burden created by highway crashes.

A. Automobile Design - Key to Major Insurance Savings

Damage to vehicles accounts for a major part of the excessive economic loss produced by highway crashes. One reason is that damaged cars outnumber crash injuries by more than 7 to 1. The other reason is that today's cars are vulnerable to an astonishing amount of damage in low-speed, "fender-bender" crashes. Four popular sedans recently crash-tested into a barrier at walking speed - 5 miles per hour - produced repair bills averaging $332.

The result is that auto damage has become the dominant factor pushing up the cost of automobile insurance. Few people realize the startling impact which high repair bills are having on the insurance premiums paid by individual car owners.

About two-thirds of the total premium paid for a typical full package of automobile insurance goes for coverages that pay for vehicle repair or replacement, including collision insurance, property damage liability and comprehensive physical damage (vandalism, theft, hail damage, etc.). The bodily injury portion of auto insurance typically accounts for only one-third of the total insurance premium (See Exhibit 1).

Moreover, the cost of the vehicle coverages is now rising at an accelerating rate, while the cost of the bodily injury coverages is slowing down. Rate filings made in a number of states over the past few months called for increases in the vehicle damage coverages of 10% to 20% or more, while the bodily injury rates remained the same or required minimal increases.

The accelerating cost of auto repair also can be demonstrated by auto damage appraisals made over an 11-year period, by the actual amounts paid out for vehicle damage claims, and by looking at the one-year increases revealed in the crash tests conducted for the Insurance Institute for Highway Safety, the wholly-owned research arm of the auto insurance industry.

The appraisal method compares the cost of repairing front-end collision damage involving comparable parts on 1960 cars damaged in 1960, and 1971 cars damaged in 1971. Repair estimates are for damage to the front bumper, grille, fender, headlight, radiator, windshield, fan and water pump.

	1960 Repair Cost	1971 Repair Cost	% Increase
Ford Fairlane 500	$388.77	$ 947.64	144%
Chevrolet Biscayne	$435.95	$ 845.79	94%
Pontiac Catalina	$423.39	$1,024.13	141%

These results are corroborated by rating bureau data on the amounts actually paid out in insurance claims for vehicle repairs. The average repair claim jumped from $131 in 1960 to an estimated $276 in January, 1971 - an increase of 111%.

Earlier testimony by Dr. William Haddon, Jr., president of the Insurance Institute for Highway Safety, also confirms the accelerating increase in auto repair costs. The Institute's recent crash tests on twelve 1971 car models show that the 1971 cars cost an average of 50% more to repair than their 1970 counterparts - in spite of all that has been done to stimulate auto manufacturers to recognize the impact which fragile designs has had in increasing the transportation costs of the American consumer.

Specifically, damage to the 1971 models in crashes at only 5 miles per hour averaged $332, as compared with $216 for the 1970 models.

These test results clearly indicate that presently available technology continues to be ignored in the design and manufacturing of automobiles. The technological remedies remain on the shelf where they have gathered dust for many years.

Dr. Haddon was particularly critical of ineffective auto bumper that do little to protect the car from damage even in these low-spee collisions. In addition, he noted that retractible headlights, fancy chrome grilles, and other design features intended primarily for aesthetic appeal have added substantially to the damageability o today's automobiles.

The Institute's testimony covered a number of misunderstood points about low-speed crash problems. Dr. Haddon was emphatic in stating that there is no necessary conflict between the goals of protecting automobile occupants from injury and protecting the vehicle itself from costly damage in collisions. He noted that vehicle designs which would accomplish both objectives are well within the present state of the art.

Another misunderstanding is that car designs to prevent low-speed crash damage would automatically mean car price increases. Dr. Haddon testified that by doing away with unnecessary configurations and ornamentation, and using the freed-up space for proper energy absorbing structures, auto manufacturers could reduce the initial price of the vehicle or, at worse, maintain it at its present level.

The Institute's testimony also noted that collisions resulting in damage to the rear ends of cars are nearly as common as collisions involving damage to front ends of cars.

Most importantly, the results of the Insurance Institute's low-speed test crashes show that the bulk of property damage is produced by minor crashes.

To get a more accurate picture of the economic losses involved in low-speed collisions, one major insurance company has tabulated the property damage claims it closed during a one-month period late in 1969. A total of 10,583 claims were tabulated. These represented collisions occurring on a country-wide basis, involving liability claims made by the other drivers for damage to passenger cars. This study reveals that 92% of all these insurance claims were for $600 or less. Thus, the Insurance Institute's estimates of damage done in low-speed crashes have been verified by actual experience.

The Department of Transportation's report makes mention of the significant opportunities for economic savings in minor accidents. The report notes that 46% of the total estimated compensable economic loss resulting from 1967 automobile accidents was for property damage and that approximately 22 million victims of accidents who suffered only property damage incurred total losses of about $3.8 billion.

We concur wholeheartedly with these conclusions of the Department of Transportation:

"A car capable of resisting damage in low-speed collisions and of protecting its occupants in severe crashes would very substantially reduce overall accident losses, even if all vehicles in severe crashes were totally demolished in an economic sense. Economic loss reduction

efforts, therefore, to be truly effective, must address the accident environment of both the serious and minor crashes."

Improvements in vehicle design already are helping to reduce crash injuries and to minimize the cost of the economically less significantly bodily injury coverages. Over the past four years, the severity of injuries has been substantially reduced by regulations requiring auto manufacturers to install impact-absorbing steering columns, more crash-resistant glass in auto windshields, front and rear seat belts, stronger doors, and other safety features.

The result is that the cost of bodily injury liability insurance has been rising at a much slower rate than the cost of vehicle damage insurance, despite the zooming cost of medical care and the rising cost of replacing income loss as the result of auto crash injuries.

Similar dedication to reducing car fragility would go a long way toward actually reducing the cost of automobile insurance. The American Mutual Insurance Alliance will continue to support measures aimed at this objective as part of its Guaranteed Protection Plan. I will comment further on this in Section IV. Impact-absorbing bumpers and more crashworthy cars are absolutely essential if auto insurance costs are to be reduced or even stabilized. Some companies already are rating cars for damageability. Others have offered a 20% reduction in the cost of collision insurance for any car that can withstand even a 5-mile-per-hour crash, rear and front, without damage.

As for compensation to car owners for damage caused in highway crashes, the Guaranteed Protection Plan would retain existing property damage liability protection for situations where the negligent driver should pay. The Plan also would retain collision and compre-

hensive coverages for those situations where the vehicle owner himself is responsible for the damage to his own car.

B. Proposed Reforms in the Auto Reparations System

The Guaranteed Protection Plan also calls for major reforms in the auto reparations system. This portion of the Plan would produce changes in the insurance coverages purchased by car owners, changes in the procedures used to compensate crash victims, and changes in the legal rules governing settlements of disputed claims.

These proposals for responsible insurance reform are designed to achieve a reasonable balance among three difficult and often contradictory goals:

1. To provide crash victims with prompt and fair compensation.
2. To encourage driver responsibility.
3. To keep overall costs at a reasonable level.

This portion of the Plan also seeks to allocate the cost burden fairly among vehicle owners, to prohibit unwarranted cancellations of insurance and to ease the burden on congested courts.

Highlights of the proposal are as follows:

1. Basic Benefits Would Be Guaranteed

State laws would be amended to require that every private passenger automobile policy issued or delivered in the applicable state shall include the following minimum benefits payable regardless of fault:

(A) Medical and hospital expense coverage up to a $2,000 per person limit in any one accident and subject to an optional deductible (applicable only to the named insured and resident family members) up to $250.

(B) Disability income coverage of 85% of gross income lost during a period commencing 30 days after the accident and continuing for 52 weeks, subject to a maximum of $500 per month or a total of $6,000.

Persons covered include the named insured, members of his family residing in the same household, guests, passengers and pedestrians. Insurance companies would be permitted to offer broader coverages tha the statutory minimums, and it is anticipated that healthy competitic would provide a wide choice of higher limit, first-party coverages fc vehicle owners who desired to purchase them.

2. Driver Responsibility Would Be Retained

Existing liability protection would be retained and made to worl more effectively under the Guaranteed Protection Plan. Persons inju through the negligence of another driver would be entitled to compensation from the other driver for damages that go beyond the basic benefits. In addition, insurance companies which paid the medical and disability benefits to their own policyholders could seek reimbursement from the party at fault (if any) or that party's insurance company. Thus, the proposed system would be no-fault in the sense that the accident victim would collect for his basic economic losses regardless of who caused the accident. But it would be a fault syst in the sense that it would preserve the principle of personal accous ability. The cost of the accident ultimately would be charged agair the record of the negligent driver, and not against the record of tl innocent victim as would be the case under a total no-fault system.

3. Claim Settlements Would Be Streamlined

Two different types of arbitration would be used to speed settl ments, cut the cost of handling claims and ease the burden on the cc

The Plan calls for mandatory arbitration of disputes in the vast number of liability claims involving damages under $3,000, using court supervised procedures which have worked successfully in Pennsylvania since 1952. One of the Department of Transportation's studies found that 73% of litigated cases fall into this under-$3,000 category. In Pennsylvania, such cases are assigned to a three-man arbitration panel, operating under rules and procedures established by the court having jurisdiction over the case. Either party may appeal the arbitrator's decision. However, the rate of appeals has been less than 8% under the compulsory arbitration procedure used in Philadelphia. A similar system was instituted on a three-year trial basis in New York State on September 1, 1970. Initial reports indicate that the plan has been well accepted in the Monroe County test area, which includes the City of Rochester, and that other areas of New York are considering adoption of mandatory arbitration.

A second form of arbitration would be mandatory in resolving disputes arising in subrogation claims between insurance companies. Intercompany arbitration already is widely used for handling auto property damage cases. The procedure is quick, inexpensive and efficient. The important thing is that the claimant is paid first and then any necessary readjustment of the insurance loss is made between the companies, without burdening the courts.

4. Objective Yardsticks Would Be Established For Measuring Damages

The Guaranteed Protection Plan would provide an objective standard for determining general damages - such as the damages for disfigurement, loss of bodily function, pain and suffering, and other damages which

go beyond the accident victim's out-of-pocket economic losses such as medical expenses and lost wages.

Payments for these general damages would be limited to no more than 50% of medical and hospital expenses if such expenses ran $500 or less. When medical and hospital expenses exceeded $500, payment for general damages may not exceed $250 plus up to 100% of the excess over $500. These limits are intended to curb nuisance claims and to offset the cost of extending the basic no-fault benefits to accident victims generally. These limits do not apply in cases involving death, permanent disfigurement, dismemberment, permanent loss of a bodily function, and in other exceptional circumstances where a court or jury finds that such a limitation would be unjust. The court, or either party, may request an impartial medical panel to make a determination of this and other issues.

Objective yardsticks also would be established for measuring loss of earnings. At present, damages for loss of earnings are not subject to income tax. This allows some people to be overcompensated, because their recovery is computed on the basis of gross earnings instead of "take home pay." The Guaranteed Protection Plan provides tha these loss of earnings awards be reduced in recognition of the income tax savings. The bill calls for a statutory 15% offset, subject to reduction if the claimant can show that his actual income tax would have been smaller. Enactment of this provision will assure that claimants seeking damage for loss of income will be neither undercompensated not overcompensated for that loss.

5. Legal Rules Governing Claim Settlements Would Be Streamlined

Two changes in the legal rules governing claim settlements are proposed.

One calls for adoption of comparative negligence laws. Twelve states have adopted one form or another of the comparative negligence rule. Moreover, the doctrine is applied in claims coming under the Federal Employer's Liability Act, the Merchant Marine Act and the admiralty laws of the United States and England.

The Alliance believes the Wisconsin type of comparative negligence statute to be the most equitable of the various types now in effect. It provides that the person injured can collect from a negligent defendant as long as he is himself less than 50% negligent, and the defendant is more than 50% negligent. However, the amount of his recovery is reduced accordingly.

The "contributory negligence" doctrine currently in effect in most states provides that an injured party is completely barred from recovery even though his negligence was slight in comparison with that of the other party to the accident. In practice, the existing rule is not actually so rigidly enforced, and juries as well as insurance adjusters often apply something akin to a comparative negligent rule in arriving at judgments or settlements. However, to the extent that the operation of the contributory negligence rule sometimes produces a harsh, unjust result in individual cases, the proposed reform will eliminate those inequities.

Another change in the legal rules governing claim settlements is intended to further encourage insurance companies to make immediate advance payments to injured victims to cover medical expenses and wage losses as they accrue.

go beyond the accident victim's out-of-pocket economic losses such as medical expenses and lost wages.

Payments for these general damages would be limited to no more than 50% of medical and hospital expenses if such expenses ran $500 or less. When medical and hospital expenses exceeded $500, payment for general damages may not exceed $250 plus up to 100% of the excess over $500. These limits are intended to curb nuisance claims and to offset the cost of extending the basic no-fault benefits to accident victims generally. These limits do not apply in cases involving death, permanent disfigurement, dismemberment, permanent loss of a bodily function, and in other exceptional circumstances where a court or jury finds that such a limitation would be unjust. The court, or either party, may request an impartial medical panel to make a determination of this and other issues.

Objective yardsticks also would be established for measuring loss of earnings. At present, damages for loss of earnings are not subject to income tax. This allows some people to be overcompensated, because their recovery is computed on the basis of gross earnings instead of "take home pay." The Guaranteed Protection Plan provides that these loss of earnings awards be reduced in recognition of the income tax savings. The bill calls for a statutory 15% offset, subject to reduction if the claimant can show that his actual income tax would have been smaller. Enactment of this provision will assure that claimants seeking damage for loss of income will be neither undercompensated not overcompensated for that loss.

5. Legal Rules Governing Claim Settlements Would Be Streamlined

Two changes in the legal rules governing claim settlements are proposed.

One calls for adoption of comparative negligence laws. Twelve states have adopted one form or another of the comparative negligence rule. Moreover, the doctrine is applied in claims coming under the Federal Employer's Liability Act, the Merchant Marine Act and the admiralty laws of the United States and England.

The Alliance believes the Wisconsin type of comparative negligence statute to be the most equitable of the various types now in effect. It provides that the person injured can collect from a negligent defendant as long as he is himself less than 50% negligent, and the defendant is more than 50% negligent. However, the amount of his recovery is reduced accordingly.

The "contributory negligence" doctrine currently in effect in most states provides that an injured party is completely barred from recovery even though his negligence was slight in comparison with that of the other party to the accident. In practice, the existing rule is not actually so rigidly enforced, and juries as well as insurance adjusters often apply something akin to a comparative negligent rule in arriving at judgments or settlements. However, to the extent that the operation of the contributory negligence rule sometimes produces a harsh, unjust result in individual cases, the proposed reform will eliminate those inequities.

Another change in the legal rules governing claim settlements is intended to further encourage insurance companies to make immediate advance payments to injured victims to cover medical expenses and wage losses as they accrue.

It provides that such advance payments will not be considered an admission of liability in any subsequent legal action that may result. A similar rule is proposed for property damage claims, so they may be settled separately from any bodily injury liability claim arising out of the same accident. This would encourage prompt settlement of the property damage portion, where final settlement of the injury claim is delayed pending medical treatment or other causes beyond the insurance company's control.

6. Attorney Fees Would Be Regulated

The Guaranteed Protection Plan would place a limitation of 25% o attorneys' fees where such fees are contingent (dependent) on the amount awarded the person represented by the attorney. It also permits the courts to establish graduated contingent fees scheduled subject to the 25% limitation. Attorneys also would be required to report all contingent fee payments to the clerk of the court.

The contingent fee system is widely used in this country, and i regarded as a means of making available competent legal representati to persons who might not otherwise be able to hire an attorney. At t same time, there is widespread criticism that lawyers' fees in auto accident cases are too high. The proposed regulation would prevent abuses in those cases not removed from the courts by other provision of the Guaranteed Protection Plan, such as the automatic first-party benefits and the use of mandatory arbitration in the vast majority o claims disputes.

Contingent fee regulation already is practiced today in some jurisdictions. The First and Second Departments of the New York

Appellate Court have established fee schedules. Regulation also is enforced in Maine, Oklahoma, Massachusetts (criminal and domestic relations cases), and Pennsylvania.

7. Fraudulent Claims Would Be Discouraged

The Guaranteed Protection Plan provides for imposing stiff penalties for false and fraudulent activities with respect to claims filed against individuals or insurance companies. It also includes provisions regarding the admissibility in evidence of unreasonable refusal by a claimant to submit to medical examination to determine the nature and extent of his injuries and the medical treatment thereof.

8. Arbitrary Policy Cancellations Would Be Prohibited

To protect car owners against unwarranted cancellation of their auto insurance, the Guaranteed Protection Plan calls for passage of legislation limiting permissible reasons for cancellation of private passenger automobile insurance policies to nonpayment of premium or suspension of drivers license or vehicle registration. Thirty-eight states already have enacted cancellation laws with insurance company support. Member companies of the American Mutual Insurance Alliance also have taken action through the appropriate rating bureaus to provide this protection voluntarily in the additional states. Passage of laws in the remaining states would make certain that all companies do so. The Plan further provides specific notice requirements with respect to the insurer's intention to cancel or nonrenew. It also requires that the reasons for cancellation be provided to the insured upon request.

9. Insolvency Protection Would Be Provided

To protect the public against insurance company insolvencies, the Guaranteed Protection Plan calls for prompt state enactment of post-insolvency assessment plans in every state where such plans are not already in effect. Under these plans insurance carriers licensed to do business in each state may be assessed to provide funds for paying the unmet claims of companies that become insolvent. To date, 33 states already have enacted insolvency legislation, including 1971 enactments by the states of Indiana, Maryland, Minnesot Montana, North Dakota, Utah and Wyoming. Several additional states are expected to take action before the current legislative sessions end.

III. GUARANTEED PROTECTION PLAN: COMPATIBILITY WITH DOT RECOMMENDATIONS

The reparations system reforms proposed under the Guaranteed Protection Plan are similar in most respects to the findings and recommendations of the Department of Transportation, as contained in House Concurrent Resolution 241. In his report to the Senate Commerc Committee on March 18, 1971, Secretary of Transportation John A. Volp proposed that the states move promptly to experiment with reform plan which expand the use of first-party, no-fault coverages, but which avoid radical, irreversible changes. Mr. Volpe noted that "there remains much legitimate uncertainty about how far and how fast

the public wants or is willing to go" in changing the present system. He also said there exists "genuine and warranted" concern as to the "unknown and essentially unknowable price and cost implications of any major change in the system."

Because of these unknowns, and for other reasons relating to the undesirability of a federal takeover of the state regulatory function, the Administration concluded that state level experimentation is indicated.

The Guaranteed Protection Plan is consistent with that recommendation, and in fact, already is being actively considered in a number of states, along with other similar plans. The proposed concurrent resolution outlines six principles for the states to use in evolving a "rational, equitable and compatible" new system for compensating auto accident victims.

1. The first principle is that basic benefits should be provided to auto accident victims on a first-party, contractual basis. The Guaranteed Protection Plan would require that auto insurance policies contain such benefits.

2. The second principle is that basic benefits should be payable to all accident victims without regard to fault, excluding those who willfully injure themselves. The basic benefits provided under the Guaranteed Protection Plan are on a no-fault basis. However, we have suggested that legislatures also consider excluding no-fault payments to persons injured while driving a stolen car, those injured while seeking to elude lawful arrest, and those injured while driving under the influence of intoxicating liquor or narcotics.

3. The third principle is that the basic benefits should provid compensation for all economic loss, subject to reasonable deduct ibles and limits, and the system should be designed to avoid litigation for the mass of accidents. The Guaranteed Protection Plan's recommended basic benefit limits of at least $2,000 for medical expenses and at least $6,000 for wage losses would be adequate to cover in full the wage and medical losses incurred i more than 95% of all auto crashes, based on DOT data. Taken as a whole, the Plan also would eliminate the delay and expense of court trials for all but a few serious cases where settlements could not be arrived at by negotiation. And, even in these few cases, the accident victim would receive the basic no-fault benefits.

4. The fourth principle is that the reparations system should provide adequate, but not excessive, compensation to the acciden victim at minimum cost. Therefore, the resolution provides that benefits obtainable by the accident victim from other benefit sources should be coordinated and meshed with those obtainable from the automobile accident reparations system with a view toward internalizing automobile accident loss costs by making automobile insurance the primary benefit source whenever feasib The Guaranteed Protection Plan generally conforms to this principle. Basic benefits under the auto policy are primary, for t most part, and tort recoveries also are primary with the usual exception of workmen's compensation benefits.

5. The fifth principle is that maximum choice should be afford the motorist in selecting his insurance source provided the

coverage complies with the principles for the required minimum mandatory coverage. With more than 800 insurance companies currently writing automobile insurance, most motorists today already have a very wide choice of insurance sources. In addition, the industry has established automobile insurance plans in every state to guarantee a source of insurance protection to the small percentage of motorists whose high risk characteristics make it difficult for them to obtain coverage in the voluntary market. The Alliance advocates that these plans be expanded to provide physical damage coverages as well as the bodily injury coverages, and that convenient premium financing arrangements be made available. Several states already have taken action to accomplish this result, and other states are expected to follow suit in the near future.

6. The sixth principle is that rehabilitation, avocational as well as vocational, should be a primary function and objective of the compensation system. The Guaranteed Protection Plan's basic benefits cover medical rehabilitation. Optional coverages and tort recoveries offer broader rehabilitation care.

The Alliance proposal also is consistent with Mr. Volpe's suggestion that states might want to experiment initially with a reform plan that would offset the cost of the first-party medical coverage by the savings achieved in revising the rules on general damages. Under the Guaranteed Protection Plan, such cost savings would be produced by imposing limits on the amount of general damages that could be collected for injuries not involving death, disfigurement or permanent impairment. In addition, the provisions requiring car manufacturers

to install more crash-resistant bumpers would bring about even more significant savings on the dominant vehicle damage portion of the overall insurance premium.

The Alliance also specifically endorses the finding that "assumption of the present comprehensive state regulatory authority over automobile insurance by the Federal Government would be fraught with great and grave consequences giving rise to issues and problems of great magnitude, and is highly undesirable."

Our differences with Mr. Volpe have to do primarily with matters of timing, and of defining what constitutes a "radical, irreversible change." Mr. Volpe argues persuasively in his testimony that there is an urgent need for experimentation at the state level to clear up major uncertainties about the cost, workability and public acceptability of any new system. He concedes that the DOT does not have definitive answers to these questions, and says that "The experience of the state should have much to tell us about the most desirable final configuration of the motor vehicle reparations system."

Having established that major uncertainties exist, and that experimentation is needed to evolve a final configuration, very little credibility can be given to the DOT's speculations about what an "illustrative" or "ultimate" system might look like. It is inconsistent to call for experimentation, on grounds that the public itself must be allowed to participate in evolving the kind of system that will best serve its needs, and then to suggest a plan which goes beyond the point of no return in the very first stage of implementation.

In his testimony, Mr. Volpe seems to be suggesting that medical and rehabilitation losses be placed on a total no-fault basis immediately, and that the concept of driver accountability be virtually eliminated for such losses by prohibiting subrogation and by restricting payment of general damages to a very small number of serious cases - less than 5% of all auto crash injuries. Income losses and other injury-related economic loss payments would be shifted to a first-party, no-fault basis at a later date. Mr. Volpe indicated that the feasibility of shifting some or all of the losses now being compensated under the third-party property damage liability coverage is more doubtful, in part because there is little opportunity for cost savings in making such a switch, and in part because the DOT is doubtful that a total no-fault system for vehicle damage would be acceptable to the public.

As proposed in the Guaranteed Protection Plan, the Alliance believes it is desirable to take action immediately to guarantee prompt payment of basic benefits for both medical and wage losses - not medical losses only. But all the available evidence indicates that the public will insist on retaining reasonable payments for general damages to innocent crash victims, and will insist that the principle of driver accountability also be preserved. Our Plan provides an efficient means of determining driver accountability through subrogation and arbitration procedures.

We believe the Guaranteed Protection Plan offers crash victims better benefits, and would allow for a more orderly testing of public sentiment. The people affected by changes in the reparations system

need to be able to see and make judgments about what they would gain and lose as the balance is shifted toward greater use of no-fault coverages. Our Plan also will provide a more feasible means of testing to what extent the public is willing to forego compensation for personal injury damage not measured by out-of-pocket economic losses.

The Alliance has strong doubts about the public acceptability of shifting all vehicle damage to a no-fault basis, now or later. The motorist whose car is smashed by a negligent driver today is entitled to full payment for the repairs under the other driver's property damage liability coverage. But under a total no-fault system, the owner of the smashed car would not be able to collect anything from the negligent driver, and would have to pay the loss out of his own pocket or, at a minimum, pay the amount of the deductible under his own collision coverage.

One major reason for taking an evolutionary, experimental approa is the uncertainty that exists with regard to what Mr. Volpe calls the "unknown and essentially unknowable" price and cost implications of any major change in the system. The hazards of enacting major new benefit programs without such experimentation are well illustrate by the experience with Medicare. When Medicare was introduced in July, 1966, the cost of Part B was $3.00 per month, with equal contri butions by the U.S. Government. In April, 1968, the cost was increas to $4.00 per month, and on July 1, 1970 the cost went up to $5.30 per month. A further increase on July 1, 1971 brings the monthly premium to $5.60 per month - an 86.7% increase in five years.

Medicare Part A also has been forced to pass higher costs on to senior citizens by increasing the deductible. It was $40 originally, then was increased to $44 in January 1969; to $52 in January 1970; to $60 in January 1971. That's a 50% increase in the deductible in five years. The Medicaid program suffered even more severe cost overruns, forcing Congress to cut back the scope of the program and take away benefits from certain groups who had previously been eligible for benefits.

We find it difficult to understand the total absence of any recommendation by the Department of Transportation for some form of federal action aimed at reducing the damageability of automobiles. As we have already noted, the DOT report itself clearly spells out the fact that substantial cost savings could be accomplished if the manufacturers were made to comply with certain minimum standards aimed at protecting the automobile itself. We believe that the Department's failure to recognize the need for a systems approach in the automobile insurance area is a major flaw in its proposed solution.

IV. GUARANTEED PROTECTION PLAN: COMPATIBILITY WITH MOTOR VEHICLE INFORMATION ACT

The American Mutual Insurance Alliance has supported state legislation which requires the automobile manufacturers to provide better automobile bumpers. Several legislatures are considering laws similar to the one enacted in Florida, requiring that cars sold after January 1, 1973 be equipped with bumpers capable of sustaining a 5-mile-per-hour impact damage and 10-miles-per-hour by 1975. The state of Maryland has already enacted somewhat similar legislation.

need to be able to see and make judgments about what they would gain and lose as the balance is shifted toward greater use of no-fault coverages. Our Plan also will provide a more feasible means of testing to what extent the public is willing to forego compensation for personal injury damage not measured by out-of-pocket economic losses.

The Alliance has strong doubts about the public acceptability of shifting all vehicle damage to a no-fault basis, now or later. The motorist whose car is smashed by a negligent driver today is entitled to full payment for the repairs under the other driver's property damage liability coverage. But under a total no-fault system, the owner of the smashed car would not be able to collect anything from the negligent driver, and would have to pay the loss out of his own pocket or, at a minimum, pay the amount of the deductible under his own collision coverage.

One major reason for taking an evolutionary, experimental approac is the uncertainty that exists with regard to what Mr. Volpe calls the "unknown and essentially unknowable" price and cost implications of any major change in the system. The hazards of enacting major new benefit programs without such experimentation are well illustrated by the experience with Medicare. When Medicare was introduced in July, 1966, the cost of Part B was $3.00 per month, with equal contributions by the U.S. Government. In April, 1968, the cost was increase to $4.00 per month, and on July 1, 1970 the cost went up to $5.30 per month. A further increase on July 1, 1971 brings the monthly premium to $5.60 per month - an 86.7% increase in five years.

Medicare Part A also has been forced to pass higher costs on to senior citizens by increasing the deductible. It was $40 originally, then was increased to $44 in January 1969; to $52 in January 1970; to $60 in January 1971. That's a 50% increase in the deductible in five years. The Medicaid program suffered even more severe cost overruns, forcing Congress to cut back the scope of the program and take away benefits from certain groups who had previously been eligible for benefits.

We find it difficult to understand the total absence of any recommendation by the Department of Transportation for some form of federal action aimed at reducing the damageability of automobiles. As we have already noted, the DOT report itself clearly spells out the fact that substantial cost savings could be accomplished if the manufacturers were made to comply with certain minimum standards aimed at protecting the automobile itself. We believe that the Department's failure to recognize the need for a systems approach in the automobile insurance area is a major flaw in its proposed solution.

IV. GUARANTEED PROTECTION PLAN: COMPATIBILITY WITH MOTOR VEHICLE INFORMATION ACT

The American Mutual Insurance Alliance has supported state legislation which requires the automobile manufacturers to provide better automobile bumpers. Several legislatures are considering laws similar to the one enacted in Florida, requiring that cars sold after January 1, 1973 be equipped with bumpers capable of sustaining a 5-mile-per-hour impact damage and 10-miles-per-hour by 1975. The state of Maryland has already enacted somewhat similar legislation.

We believe, however, that minimum federal standards in this area would be desirable. Accordingly, we endorse federal legislati which would give the Department of Transportation authority to issu standards aimed at making cars more crashworthy.

We question, however, the desirability of Section 5(c) of S.976. This Section would require the Secretary to issue as soon as practicable after July 1, 1972 a standard requiring that all cars manufactured and sold after January 1, 1975, have energy-absorbing bumpers capable of withstanding front and rear impacts of 5 miles per hour into solid barriers, with minimum prescribed damag

We find it very difficult to understand delaying action until 1975. In his floor statement on the bill, Senator Hart promised these standards by July 1, 1974. Postponing the effective date of the standards six months will mean that 5 million additional cars will find their way on the road with inadequate bumpers.

But even July 1, 1974 is a disappointing timetable. We know that the technology is at hand. Furthermore, the state of Florida in enacting legislation imposing standards by 1973 gave ample time to the manufacturers to meet production timetables.

Because the Federal authority is a pre-empting authority, this Section provides the manufacturers with a 2½-year umbrella during which time they need to do nothing about providing adequate bumpers This, in spite of the fact that GM has publicly announced its abili to meet a 5-mile-per-hour front and 2½-mile-per-hour rear impact system by August 1973.

Each year's delay penalizes the insurance cost for a whole generation. The average life of a car is about 10 years. So at

best, it will not be until 1985 that all cars on the roads will be equipped with adequate bumpers if this Section is allowed to stand as it is.

Perhaps it might be best for Congress to spell out specifically what it wants these standards to accomplish and allow the technicians within the Department of Transportation to set the standards. What is most needed initially is a total vehicle design capable of withstanding rear and front impacts at 5 miles per hour into a solid barrier.

The need for Congress to spell out its will is important in view of the inadequacy of some of the standards that have been issued by the Department of Transportation as related to manufacturing and design. We find, for instance, that the recently issued bumper regulations are considerably weaker than they should have been even within the present authority of the Department of Transportation. These unnecessarily weak regulations circumvent the implied will of Congress to put into application as soon as possible the technology presently available to make cars safer than they have been to date.

We particularly support the requirement that auto manufacturers test their new models for crash resistance and publish the data so that potential purchasers can use this information in their buying decisions. Auto insurers thus would be encouraged to rate the various makes and models on the basis of their damageability and ease of repair as is now done in Sweden.

Last year, we testified before the Senate Antitrust and Monopoly Subcommittee against the reinspection of damaged vehicles before they are allowed to return to the road. We did not believe that there

was sufficient evidence that such reinspection was practical and doubted that the inspection system was sufficiently sophisticated to warrant the extra costs involved.

Today, we urge the enactment of Title V of S.976 which calls for both periodic inspections and reinspection of damaged vehicles. We believe that the new inspection techniques which are called for in the Act make an inspection and reinspection program feasible. Furthermore, we are convinced that the findings of the California Highway Patrol's investigation of fatal single-car crashes make such inspections and reinspections imperative.

This California study examined 409 fatal single traffic accident for mechanical failure. Some of its more dramatic findings show that

- 29% of all vehicles examined had one or more mechanical defects.
- About 6.4% of the vehicles examined had a mechanical defect which caused the accident.
- Considering only vehicles that had a defect, approximately 63% of the defects observed either caused or contributed to the accident in which the vehicle was involved.
- There were 172 defective mechanical systems located in 119 vehicles.
- The most commonly observed mechanical defect was in the braking system. These accounted for 35% of all defects found. Next were steering system defects which accounted for 26% of all defects.
- Older vehicles are more likely to be mechanically defective than the newer models.

- Almost all of the mechanical defects were attributed to wear and lack of maintenance rather than design or assembly flaws.
- Drivers of vehicles with mechanical defects are more likely to be under 20 and less likely to be over 60 than drivers of nondefective vehicles.

This study indicates that a reinspection program as called for in this bill would substantially reduce the safety hazard of mechanical defects in all vehicles.

We support the concept of separating the function of inspection from that of repair. We believe that technology is available which would allow diagnostic centers to detect mechanical flaws within a minimum of time and cost if the manufacturers built into their cars simple devices allowing for electronic monitoring of possible hidden defects.

Independent diagnostic centers are essential to practical reinspection programs.

We do want to sound a word of caution in regard to reinspections, however. We are certain that reinspections of damaged automobiles following crashes will turn up a whole lot of things wrong with the cars not necessarily caused by the accident. We suspect that many car owners will erroneously conclude that all repairs are due to the crash, and that the total cost of repair should be covered by the insurance contract. Insurers will not be entirely successful in sorting out the "maintenance" repairs from the crash damage. This will bring about additional insurance cost which, however, we believe would be justified by the ensuing increase in safety.

We also support the Uniform Title and Registration program covered under Title V of the bill. The National Automobile Theft Bureau reports that 1 out of every 97 cars on the nation's highways was stolen last year. This means that some 930,000 cars were stole in the United States in 1970. Despite some progress in the fight against car theft, Gordon H. Snow, Chairman of the Bureau, reports that "the major part of combating theft rings right now is to find effective ways of preventing these criminals from registering these cars that they steal."

The Alliance has over the years urged the states to adopt the auto title and registration program of the National Committee on Uniform Traffic Laws and Ordinances. We believe that widespread state adoption of these laws has assisted in the recovery of stolen automobiles, thus reducing the cost of insurance to consumers.

Uniform title and registration in all states would greatly reduce the number of fraudulent registrations now being used by car-theft rings. In states which have adopted the Uniform Title and Registration program - 42 - stolen automobile losses are down, and 81% of the cars stolen have been recovered. By contrast, the recovery rates in the nontitle states is only about 50%. Obviously a substantial reduction in thefts or a substantial increase in recoveries would be reflected by an appreciable reduction in premiu rates for theft insurance.

We want to again stress the Alliance's basic endorsement of th purpose of S.976. Although our specific objections are substantive we believe that with suitable amendments this bill can be of major assistance in bringing under control the excessively high price now paid by consumers for auto crashes and for the insurance coverages that pay for crash damage.

V. GUARANTEED PROTECTION PLAN: COMPATIBILITY WITH CONSUMER ATTITUDES

One of the major considerations involved in assessing the practical and political feasibility of any new automobile reparations system is public acceptability. How do American consumers feel about some of the ideas that have been suggested for changing the auto insurance system? Does the public consider fault to be an outmoded concept? How would accident victims feel about giving up compensation for general damages? What do consumers consider to be the real causes of rising auto insurance rates? What steps would they like to see taken to reduce cost? How do they feel about the considerations used in raising or lowering auto insurance prices for particular groups and individuals?

Any new auto reparations system must be based on satisfactory answers to these and other questions if it is to earn public understanding and acceptance. Yet the whole subject of public acceptability has been largely ignored in much of the public discussion of ways to reduce auto insurance costs and to reform the reparations system. As an advisory committee noted in a report for the Department of

Transportation: "The largest single gap in knowledge about the motor vehicle accident compensation system concerns the people in it and the impact of the system upon them. Their perceptions, beliefs, attitudes, and behaviors are the subject of much speculation, support by very little factual data."

This uncertainty about public acceptability is one of the major reasons why an experimental approach is urgently necessary. It is easy enough to criticize the shortcomings of the present system. But there is no assurance that a radical switch to an untried new system would bring instant consumer satisfaction, either.

In designing the Guaranteed Protection Plan, the Alliance has conducted major research into the questions of public attitudes, and has tailored the various proposals accordingly.

All of the available evidence indicates that the American public attaches considerable importance to the concept of driver responsibil for injury done to another. There is a growing demand in our societ for more - not less - personal accountability and responsibility. T was demonstrated in a major national study of the attitudes and feel of people who buy auto insurance, conducted by Market Facts, Inc., largest consumer survey firm in the nation. Market Facts specialize in marketing research and in the measurement of consumer attitudes. Included among its clients are the Columbia Broadcasting System, Lif Magazine, U.S. Steel, the Ford Motor Company, the U.S. Department of Agriculture, the Social Security Administration and the U.S. Department of Transportation.

1. Consumer Attitudes Toward Driver Responsibility for Acciden

To find out how people feel about the causation of auto crashes

the interviewers in this survey asked a carefully drawn national probability sample of 1,494 car owners the following question:

"Let's talk for a minute about auto accidents and why they occur. Please think about your own experience and other accidents you know of - and consider whether these accidents could be avoided and how they could be avoided." Then respondents were given a card showing four alternative answers and were asked which statement came closest to how they feel. The overwhelming majority, more than 9 out of 10, believe that most auto crashes are someone's fault. More than half feel that almost all accidents are someone's fault, if the facts are carefully studied.

Driver Responsibility for Accidents

	Percentage of Respondents
Almost all accidents are quirks of fate and no one is to blame.	2.0%
Most accidents are unavoidable. They are unfortunate, but inevitable.	6.0%
Most accidents are the fault of drivers. Someone is to blame.	40.3%
Almost all accidents are someone's fault if the facts are carefully studied.	50.8%
No opinion.	.9%

It's interesting that Professors Keeton and O'Connell also feel that the fault concept cannot be eliminated from the auto accident reparations system. In their book, titled "After Cars Crash," they have these comments on the need to retain the concept of making the wrongdoer pay:

"The public believes in that principle strongly enough that they would seriously object to any system that tried to do away with it

completely. Many proposals that would have abolished altogether the role of fault in traffic cases just never got anywhere."

The Guaranteed Protection Plan is a reasonable balance between the objective of encouraging driver responsibility, and the objectiv of compensating accident victims promptly and fairly. All auto accident victims, except those which may be excluded as a matter of public policy, would receive prompt payment of their basic economic losses, and those who are injured by a negligent motorist would als retain the right to collect additional compensation from the wrongd In addition, the consequence of the accident would be recorded agai the insurance record of the negligent driver through subrogation procedures. This makes possible a rating system which brings to be the financial consequences of a negligent act on the person who caused the loss.

2. Consumer Attitudes Toward Eliminating "Pain and Suffering" Payments To Reduce Auto Insurance Costs

Public attitude surveys and field experiments confirm that aut accident victims who have been injured by a negligent driver are unwilling to give up the legal right to collect for general damages often inadequately referred to as "pain and suffering."

One of the major objectives in conducting the Market Facts survey was to find out whether consumers really understood what the were being asked to judge when they were asked questions about givi up payment for something called "pain and suffering." Several previous polls, including the one conducted by the University of Michigan for the Department of Transportation study, have used thi term without any definition of what it means.

Respondents were first asked, "Sometimes we read about payments from auto insurance companies to individuals for 'pain and suffering. What does the term 'pain and suffering' mean to you? What do you think these payments would cover? Anything else?"

The answers were quite revealing. The public had a wide variety of definitions, many of them erroneous. Many others were vague and uncertain. These results cast serious doubt on the validity of any survey that uses the term "pain and suffering" without explaining what it means in the context of auto insurance claims.

After respondents had been given an opportunity to volunteer their personal definitions of the term, it was explained that "pain and suffering," in the insurance sense, refers to payments made for disability, disfigurement, permanent impairment of bodily functions, inconvenience, discomfort, and other damages that go beyond such tangible economic losses as doctor bills, hospital bills, and lost wages.

This survey is believed to be the first study in which people were given a detailed explanation of what they would be giving up if no compensation were provided for "pain and suffering." Having been given this explanation, respondents were then asked to consider the following question:

"Suppose that the cost of auto insurance could be reduced somewhat by eliminating 'pain and suffering' coverage from all policies. Payments would be limited to covering 'economic' losses such as doctor bills, hospital expenses, and lost wages or salary. How would you feel about the idea of cutting insurance somewhat by eliminating 'pain and suffering' payments?"

About 65% opposed this idea and 27% favored it. Among respondents who had previously filed an insurance claim, more than 70% were opposed and 23% favored it.

Consumer Attitudes Toward
Eliminating "Pain and Suffering"
Payments to Reduce Auto Insurance Costs

	Total	Have Filed Claims	Never Filed Claims
Opposed	64.7%	70.2%	62.3%
In Favor	27.3%	23.1%	29.1%
Don't Know			
No Answer	7.9%	6.7%	8.6%
Number of Respondents	(1494)	(463)	(1024)

This opinion survey was corroborated by an actual field experiment conducted by the Alliance over a full twelve-month period in the Syracuse and Rochester areas of upstate New York, and in several counties on the western edge of Chicago.

The 16 participating companies, representing a broad cross-section of the auto insurance business, gave third-party bodily injury liability claimants a choice of how they wanted their claims to be handled. They could collect all of their medical expenses up to $5,000, plus wage benefits equal to about 105% of their losses, to be paid promptly as the losses accrued. Or they could reject this alternative and pursue a regular liability claim.

Some 2,890 auto accident victims took a part in the experiment - 587 in Illinois and 2,303 in New York. The major finding is that, given a choice between the guaranteed benefits offer and the payment available under the existing auto liability system, 25% of the eligible claimants elected to accept the alternative benefits in the Illinois experiment and 15% elected the alternative benefits in the New York

experiment. (Exhibit 1)

We certainly do not consider these results the final, authoritative answer on public acceptance of any new system. We do think it indicates that people who have been injured by a negligent driver expect to be paid something above their medical and income losses. The more serious the injury, the less interested they were in settling on an economic loss basis.

Another insight on this issue comes from the experience of Preferred Risk Mutual, an Iowa company, which has added no-fault wage and medical benefits to its auto insurance policies. We are told by an official of the company that many of their policyholders decline to accept the first-party benefits and file a claim against the other driver, feeling that the driver at fault ought to pay for the damage.

3. Consumer Attitudes Toward A Total "No-Fault" Plan

The Guaranteed Protection Plan recognizes the fact that auto insurance policies sold today make extensive use of both "fault" and "no-fault" coverages. Both concepts would be retained. Payment of benefits to auto accident victims would be made considerably less dependent on fault determinations, but the idea of determining responsibility for the accident would be retained for purposes of insurance rate determinations and for payment of damages that go beyond basic economic losses.

The Plan is based on the premise that the public does not have as yet any well formulated opinion about the merits of a total no-fault automobile insurance system. Mr. Jay Schmiedeskamp, who helped conduct the University of Michigan study on public attitudes for the Department of Transportation, was perhaps more candid than he intended

64-345 O - 71 - pt. 3 -- 8

to be when he told a CPCU Clinic in Des Moines that "Existing attitudes toward the no-fault plan can be summarized very quickly - namely that there aren't any because it doesn't exist." He went on to say that attitudes toward a no-fault plan might change if one were actuall put into effect. (Please see Exhibit 2 for a critique of the DOT's Public Attitudes study.)

However, some insight into the current state of public opinion on this issue can be obtained from the Market Facts national survey. After testing the respondents to find out their understanding of the term "pain and suffering," interviewers asked the following questions

"Now I'd like your opinion on a new idea that's being talked about these days. The idea is to change the auto insurance system so that a person in an accident would go to his own insurance company for payment as is done with fire and health insurance.

"The question of who was 'at fault' in the accident would not be considered in the payment of claims. Those responsible for an accident would have the same coverage and protection as those who were without fault.

"Under this new system, those in accidents would be reimbursed for expenses they incurred because of the accident, such as medical bills, repair bills and lost wages. However, under this new plan no payments would be made to anyone for 'pain and suffering' losses suc as those we just talked about. Do you tend to favor or tend to oppo this new system?"

With this understanding of a "no-fault" plan, about 6 out of 10 consumers were opposed. Among those who have had experience with th

existing claims payment system, almost two out of three were opposed.

Consumer Attitudes Toward
Total "No-Fault" Plan

Percentage of Respondents

	Total	Have Filed Claims	Never Filed Claims
Opposed	57.9%	65.5%	57.4%
In Favor	31.3%	26.5%	33.6%
Don't Know	9.0%	8.5%	9.2%
(Number of Respondents)	(1494)	(463)	(1024)

A followup question was then asked of those who were opposed, as follows:

"If the new plan cost less, would you favor it or still oppose it?"

More than 7 out of 10 of those who opposed the plan said they would still oppose it, even if it were to cost less. Thus, it is clear that most auto insurance buyers reject the no-fault principle as described to them in this survey - and even the prospect of lowering insurance costs would not change the minds of the majority of those in opposition.

4. Consumer Attitudes Toward Making Auto Insurance A "Last Resort" Coverage

Since some of the "no-fault" proposals that have been made called for offset of other available benefits, consumers surveyed in the Market Facts project were asked to evaluate that idea with this question:

"A different plan is to have auto insurance pay only for injuries after the injured person has used up any benefits he may have received

from his other insurance such as Blue Cross, union benefits, sick leave or salary continuation plans. Generally speaking, do you thin such an idea would be a good idea or not too good an idea?"

About two-thirds of the consumers interviewed felt that such a plan would not be "too good an idea." Again, the opposition was noticeably stronger among those who have had direct experience with auto insurance claims. More than 70% of them turned thumbs down. It's interesting that about 6% were perceptive enough to point out that they might exhaust their sick leave or health insurance and th be left without coverage if they had a subsequent illness or injury not caused by an auto accident.

5. Consumer Attitudes Toward Merit Rating

Although the Guaranteed Protection Plan does not deal directly with rating matters, the type of auto reparations system ultimately adopted will have major implications for rating. For example, it w be difficult if not impossible to devise an acceptable "merit ratin plan under a system based on a categorical rejection of the fault concept. Actuarially, a drivers' past accident record is a good indicator of his probable future accident frequency. And there is strong public support for the idea of charging higher rates for accident-prone drivers and lower rates for those who are safe drive

However, it is also clear that most people are adamantly oppos to being surcharged because of their involvement in an accident whi was not their fault. Yet how is fault to be determined under a sys which rejects the whole idea of fault. If proponents of total no-f plans remain true to their convictions and ignore fault entirely, will the majority of safe drivers be content to pay surcharges when

they are involved in accidents caused by negligent drivers? And if the fault concept is smuggled back into the pricing of insurance, why is it not also a valid concept to use in the settlement of claims?

It's interesting to note that when the Market Facts interviewers asked car owners for any suggestions they may have as to the responsibilities of the insurance industry for reducing auto insurance costs, the most frequent suggestion volunteered was that insurance companies follow the "merit rating" concept, with high rates for poor drivers and lower rates for good drivers. About 1 out of 4 respondents volunteered this suggestion.

6. Consumer Attitudes On the Causes of Rising Insurance Costs

It is clear from public opinion polls, newspaper articles and other evidence that the public is concerned over rising auto insurance costs. However, this concern is by no means concentrated on the bodily injury portion of the auto insurance premium. In fact, it appears that car owners have a surprisingly clear understanding of the factors that are driving up auto insurance costs - and some strong ideas on what should be done to solve what they perceive as the real problems.

To put the cost issue into perspective, Market Facts interviewers asked respondents to consider a "deck of shuffled cards," listing things which might or might not contribute to high auto insurance rates. They were asked to sort the cards into piles according to how they felt each thing contributed to high insurance rates, if at all. The four piles were labeled (1) a great deal, (2) somewhat, (3) a little, and (4) not at all.

By far the most important contributing factor, in the opinion of consumers, is "too many reckless drivers." Nearly 78% said this

contributes a great deal to higher insurance rates. Next in order of magnitude are three characteristics having directly to do with automobile design: high power, fragile bodies, and expensive-to-fix bodi

Several additional questions were asked about auto design and ab so-called "muscle cars," defined as cars that will accelerate to 60 miles per hour in less than 8 seconds. About 8 out of 10 respondents said cars should be designed to reduce repair costs, even if this mak cars less stylish in appearance. This strong feeling is especially significant in the light of other recent evidence that the high cost of auto repair has become the major factor pushing up the cost of aut insurance.

Factors Which Contribute "A Great Deal" to Higher Auto Insurance Costs

	Percentage of Respondents
Too many reckless drivers - irresponsible, lawless, or drunken drivers	77.9%
Cars with too much power and speed - new high acceleration "racing" models	61.9%
Car bodies which are easily damaged - fragile, not sturdy	57.4%
Car designs which are expensive to fix because of "sculptured" bodies, unitized construction, etc.	53.4%
High prices from repair garages	48.0%
Too many unskilled drivers - poorly trained or inexperienced	50.2%
Cars designed with ornamental bumpers that don't prevent damage	51.1%
Small dents and minor damages cost too much to repair	46.9%
Too much competition on roads - too many cars	46.4%

(continued)

Factors Which Contribute "A Great Deal" to Higher Auto Insurance Costs (continued)

	Percentage of Respondents
Traffic laws not enforced enough - too few arrests; sentences are too light	31.6%
Roads not designed for safety; not properly marked, lighted, repaired, etc.	29.9%
Procedures of automobile insurance companies are inefficient	17.1%

In summary, the Guaranteed Protection Plan has been designed so as to recognize what is now known about public attitudes toward the major issues involved in reforming the auto reparations system. More important, the Plan has been designed so as to permit an orderly public test of consumer reactions under actual operational conditions. It is not an irreversible change, as would be the case in a switch to a total no-fault system. Policymakers would retain many different options for modifying, speeding up, slowing down or altering the direction of change on the basis of actual experience under the new system. This would permit the public itself to help evolve the kind of auto reparations system which it feels will best serve its own needs and purposes.

VI. UNIFORM MOTOR VEHICLE INSURANCE ACT

The merits of the Guaranteed Protection Plan are perhaps best illustrated by comparison of its features with those of the so-called Uniform Motor Vehicle Insurance Act, now under consideration by this committee.

The Guaranteed Protection Plan represents a responsible, evolutionary approach to auto reparations reform - one that allows the affected public and policymakers alike to test out the workability

of the Plan. By contrast, the Uniform Motor Vehicle Insurance Act is a risky leap into the dark, representing a drastic, irreversible change in the system. In the course of our critique we will point to a number of shortcomings in both the philosophy and practicality of the Plan. We believe it would create inequities so severe as to make it unacceptible to the public.

1. Unresolved Problems

One of the most serious shortcomings of the proposal is its incompleteness. The bill draft leaves many questions unanswered and many serious problems unresolved.

The public is not being well served by being left in the dark about these unresolved issues. There is wide appeal in a plan which seemingly promises something for everybody with no controversy. But it is the obligation of this committee not only to examine these promises - which have been prominently publicised in the press - but also to examine the unresolved problems created by this proposal.

Specifically we think people have a right to know what their rates would be for the compulsory coverages, what additional coverag would be needed and what they would cost, what costs they would have to pay out of their own pockets, which claims would be paid and not paid under the proposed new form of insurance. People also have a right to know about the uncertainties, delays, frustrations, inequities, controversies and litigation which this Plan would generate.

For example, our claims people foresee major difficulties and legal controversy in determining how much to pay large numbers of auto accident victims under this Plan. The bill provides for income replacement in an amount equal to 85% of the accident victim's month

earnings at the time of injury, or $1,000, whichever is less, for as long a period (up to 30 months) as the injury causes the inability to engage in gainful activity substantially the same or similar to that engaged in prior to the injury. The bill further provides that if the injured person worked substantially the whole year immediately preceding the injury, the income loss will be based on those previous earnings. If the injured person had just taken a new job, the loss would be computed on the basis of what a person doing similar work would have received during the immediately preceding year.

Several aspects of this issue are troublesome. One is that 55% of the persons injured in auto crashes are not wage earners at the time of the accident. These include minor children, housewives, students and retired persons. Many of these persons expect to enter or re-enter the work force at some future date, or to earn supplementary income in some way. But under the Uniform Motor Vehicle Insurance Act there is no way they can collect for any harmful effects an auto injury may have on their future earning capabilities unless they are totally disabled or can demonstrate that they have suffered permanent partial disability exceeding 70%.

The inequity is even more immediate and glaring in the case of the unemployed. Let's take the case of the thousands of aerospace workers now temporarily out of work, or the workers who were furloughed during the 1970 business slowdown and have not been rehired, or the construction workers who are seasonally unemployed. Under this federal bill, such persons would not be eligible for any wage benefits on a no-fault basis. Nor would they have a right to seek a tort recovery

for future wage losses unless they suffered permanent disability exceeding 70%.

This raises additional unresolved problems. How is "disability" to be defined? Does it mean industrial disability - i.e., impairment of the injured person's ability to perform gainful employment? Or is it limited to actual wage impairment? Or does it mean medical disability - i.e., physical impairment without reference to what this may mean in terms of the person's earning capacity? Does it include mental and emotional disability, or not?

Assuming a definition is devised, how is the extent and duration of disability to be measured? In the absence of any provision in this bill, these issues presumably would have to be resolved in the courts. It is interesting to note that in Texas, where workmen's compensation claims are court-administered, the judiciary is burdened with several times more workmen's compensation disputes than auto liability claims.

Serious problems of malingering would be likely to arise under a system which withholds compensation for serious bodily harm unless the injured person can prove that the damage is permanent and has resulted in more than 70% disability. Such problems are a major cause of concern under the workmen's compensation system, despite the many limits and safeguards built into that system but omitted from the proposed Uniform Motor Vehicle Insurance Act.

Such safeguards include administrative procedures and tribunals for determining the degree and duration of disability, and the active involvement of an employer in investigating the accident and in following through with the medical treatment, rehabilitation and

return to work of the injured employee.

Similar uncertainties and unresolved problems exist with regard to the definition of "disfigurement," and how it is to be measured.

2. The Seriously Injured Victim

Much of the publicity for the Uniform Motor Vehicle Insurance Act focuses on the plight of the seriously injured crash victim. Proponents have severely criticized the present system for its alleged failures to provide adequate compensation for such persons, and have promised that their plan would provide "almost total compensation."

Both the criticisms and the promises are somewhat inaccurate and overstated.

For example, in a news release issued February 24, 1971, Senator Hart said flatly that the "present system...provides auto victims with only 16% of their out-of-pocket losses." Subsequent inquiry reveals that this statistic is based on mismatching data from two different studies, and deals solely with the lifetime economic losses estimated for a tiny group of persons suffering permanent and total disability. It is not, as the news release erroneously implies, an indication of how the present system performs for all auto accident victims, or even for all of those defined as "seriously injured."

The DOT's study of seriously injured crash victims likewise contains a misleading picture of how the auto reparations system performs. The document titled "Economic Consequences of Auto Accident Injuries" is erroneously thought to show that some 500,000 persons categorized as "seriously injured" in 1967 auto crashes recovered only half of their economic losses.

But a radically different picture emerges when the data are examined in detail. In the first place, the survey did not involve 500,000 persons. It involved a sample of 1,376 persons, which the report itself concedes to be unrepresentative of the auto accident population generally. The document also is replete with warnings about the "speculative nature" of the projections of future economic losses (Vol. 1, p. 24), the "substantial" errors in classification (Vol. 1, p. 24), the "arbitrary" criteria used in defining serious injury (Vol. 1, p. 17), and the flat admission that "...the study do not provide reliable estimates of aggregates" (Vol. 1, p. 15). Yet all of the DOT's highly publicized conclusions about the amount of economic loss incurred by auto accident victims, and about the amour of compensation received from various sources, are based on the "aggregates" which the report says are unreliable.

Even if the figures are taken at face value, a detailed study of the tables leads to different conclusions than those which have been widely publicized. It reveals that nearly all of the so-calle "uncompensated compensable economic loss" stems from a small core o catastrophic situations. (See Exhibit 3.)

The startling fact is that 121 persons accounted for 94% of th uncompensated economic losses which the DOT subsequently blew up into billion dollar estimates purporting to measure the "compensation gap." This small group - the "catastrophic few" estimated to incurred losses exceeding $25,000 - represents only 8.8% of the DOT real-life sample of 1,376 crash victims, and fewer than 1% of all a crash victims.

This means the other 91.2% of the seriously injured group were compensated for all but 6% of their economic losses, as a group.

These findings have great significance in assessing both the present reparations system and the various reforms being proposed.

For example, most of the uncompensated economic loss reported for the "catastrophic few" consisted of future wage losses extending far beyond the 30-month cutoff period found in the Uniform Motor Vehicle Insurance Act. This means the proposed federal bill will fall far short of providing "almost total compensation" for the group of crash victims which accounts for 94% of all the DOT's estimated "uncompensated compensable losses."

The Act proposes to deal with this problem by preserving the right of tort recovery for survivors in death cases and for persons who are more than 70% disabled. But this is rendered largely meaningless by other provisions prohibiting the states from requiring drivers to carry any form of liability insurance to pay for such losses. The high-risk drivers most likely to cause such injuries are the ones least likely to voluntarily purchase liability insurance if existing state financial responsibility laws are abolished, as Senator Hart proposes.

Moreover, the person who has suffered a serious crash injury - a spinal cord injury, for example - will be faced with a cruel choice under this federal bill. Its provisions create a serious disincentive for rehabilitation in the cases most desperately needing rehabilitation care. Many months normally elapse in such cases before the degree of disability is stabilized. In the meantime, the injured person will be left in uncertainty as to whether he will be able to pursue a tort recovery. Should he retain an attorney, and begin preparing his case while witnesses are available, or wait to see if his disability

will exceed the 70% level? In some states, the statute of limitation on filing a claim or a lawsuit may run out before he knows the answer. This gives the injured person a strong financial incentive to regard himself as permanently and totally disabled, and to be classified as such as quickly as possible. How many seriously injured persons, facing an uncertain future, can afford to do otherwise - particularly if he has a family dependent on him for support?

The Uniform Motor Vehicle Insurance Act also creates serious inequities for the much larger group of seriously injured crash victims who suffer permanent disabilities below the 70% level. These unfortunate victims would receive no compensation at all for going through life with some rather serious impairments.

Under the disability rating systems commonly in use today a person may suffer loss of limbs, serious loss of bodily function, deformity, recurring pain and other severe personal damage without being considered 70% disabled. For example, the amputation of an arm is considered a 60% disability of the body as a whole under the American Medical Association's "Guides to the Evaluation of Permanent Impairment." Partial paraplegia also carries a 60% rating so long as the person is able to walk without braces and has complete bowel and bladder control, despite the fact that he may be unable to pursue his previous occupation. In the case of workers who earn their living by manual labor or other jobs requiring physical exertion, disabilities well below the 70% level can mean a drastic change in income for the rest of their lives, in addition to the personal anguish imposed on them and their families.

Or consider another type of disability rating under the Labor

Code of the State of California. California's "Schedule for Rating Permanent Disabilities" rates a complete loss of speech as a 50% disability. The loss of sense of taste and smell is considered a 10% disability. The loss of a thumb and all fingers on one hand is a 55% disability.

There is no completely satisfactory answer to this problem. But at least the Guaranteed Protection program offers everyone who has been injured as a result of someone else's irresponsibility an opportunity to recover full economic losses and general damages for the harm done to the quality of life he may expect as a result of a permanent injury. Under the Uniform Motor Vehicle Insurance Act, large numbers of these permanently impaired victims would not even be entitled to full recovery of their economic losses.

3. General Damages

It is argued that general damages should be excluded from compensation because they are subjective in nature and are not susceptible of objective measurement in dollars. Yet the same thing is true of a great many things in this world. How much is a man's time worth, and how is its value determined? Why do we pay higher wages for overtime, night work and holidays, and how is the differential arrived at? How do we determine the value of a piece of real estate condemned for a highway?

All of these things are subjective in nature. Yet we manage to translate them into dollar amounts by a process of bargaining and compromise. Our society not only is capable of translating subjective values into dollars - it insists upon it, and considers it one of the distinguishing features of a democratic society. We do it every time

we negotiate a wage settlement, sign a contract, buy a house or hire the neighbor's kid to mow the lawn.

Auto accident victims insist upon it also. People who have bee injured by a negligent driver expect to get paid something for their trouble, pain and inconvenience. Those who have suffered a permanen impairment such as loss of speech or all of the fingers of one hand are even less likely to be satisfied with being paid nothing more than their net economic losses.

4. Delay

One of the major promises made for the Uniform Motor Vehicle Insurance Act is that it would provide prompt payment. However, th feature which makes other benefit sources pay first would tend to create considerable delay in payments by the auto insurer. This wo result because the auto insurance policy would be intended to pay only those amounts left unreimbursed after all other benefits had been offset. This would require that the auto insurer determine no only the existence of other collateral benefit sources, but also fi out to what extent they had overlaps, deductibles, coinsurance provisions, dollar limits, time limits, exclusions and other features affecting the amounts payable. Accident victims usually would be unable to provide such information until other benefits had been actually received. With the auto insurer being "last in line" to any delays in the payment of benefits by other sources would tend delay the payment of auto insurance.

Moreover, the bill provides no safeguards to prevent conceal ment of collateral sources, tax deductions, second jobs and other information which would have to be taken into account in settling

We rejected this approach in structuring the Guaranteed Protection Plan for several reasons. First of all, it is unfair to the prudent man who has provided other forms of protection for himself and his family. Why should this man be denied payment under his auto insurance policy, while the person who has not obtained other coverages would collect? In the case of employee benefits such as group health insurance and wage continuation plans, spokesmen for organized labor regard these union negotiated benefits as compensation received in place of additional wage income. For this reason, total no-fault plans have run into stiff opposition from labor groups in several states as soon as they took a close look at the plans and found out what it would do to their members.

Quite aside from the attitudes of labor and management, why should other benefit systems - private or public - be saddled with the burden of subsidizing highway accidents? As a matter of public policy, motorists as a group ought to pay their own way for the accidents and injuries they caused. We believe it is in the public interest to keep these auto accident costs visible, instead of hiding them by passing on a large part of the expense to taxpayers and purchasers of other insurance coverages.

5. Who Is Left Out?

In numerous hearings over the past three years, and in the steady barrage of press releases issued in behalf of this proposal, major emphasis has been placed on the fact that some auto accident victims fail to receive any compensation under the auto bodily injury liability coverage, and that seriously injured accident victims are sometimes not compensated in full for all of their economic losses.

Careless use of such terms as "the present system" and "the fault system" seem almost calculated to mislead the casual reader into thinking that auto accident victims have no other source of recovery under the present auto insurance system other than by proving that they were totally innocent and the other driver was totally at fault.

In fact, the bodily injury liability coverage is not designed to cover all injuries occurring on the highways. For example, it is not designed to cover the approximately 25% of all auto crashes involving single vehicles, except to the extent that guest passengers have a cause of action against the negligent driver of the car in which he was riding. A majority of these single vehicle crashes involve only the driver, and of course the liability coverages are not designed to pay for such cases.

However, about 70% of private passenger vehicle owners carry medical payments insurance, which pays on a first-party, no-fault basis, even in single vehicle accidents and in cases where the injured person was at fault. Vehicle owners also can purchase first-party, no-fault collision insurance to cover any damage to their own cars, regardless of fault. Thus it is misleading to imply that "the present system" is incapable of providing compensation for crash losses.

If critics of the present system insist on looking only at the statutory coverages, then it is fair to ask how many accident victims would not get paid under the statutory coverages which they propose. Under the Uniform Motor Vehicle Insurance Act, very large numbers of auto accident victims would receive nothing at all from the compulsory personal injury coverages. Nobody would collect for damage inflicted on his automobile under the statutory coverages. Many of those who

have wage continuation plans, sick leave or nonwage income wouldn't collect anything for their lost work time. Those who have health insurance or other medical benefits wouldn't collect from their auto insurance for these expenses either, unless these collateral sources specifically provided that the benefits are secondary to auto insurance.

No doubt it will be argued that these losses are covered by other benefit systems. But the same argument can be made today. The point is, both the present statutory auto insurance coverages and those proposed under this federal act are designed deliberately to leave out certain categories of claimants - and the group left out is much larger under the federal proposal than under the present system.

The Guaranteed Protection Plan would provide broader protection than either the present system or Senator Hart's proposal. It would cover a far larger number of accident victims, and provide benefits more promptly, than the auto insurance coverages specified in the proposed Uniform Motor Vehicle Insurance Act.

6. Coverage Gaps

Another major flaw in the Uniform Motor Vehicle Insurance Act is the provision which would strike down existing state financial responsibility laws. The Plan not only does not cover property damage - it also prohibits states from requiring or strongly encouraging drivers to carry property damage liability for the damage they may inflict on other vehicles. As a practical matter, this means that people whose cars are smashed by negligent drivers are unlikely to be able to collect.

Owners of other property such as houses, commercial property

Careless use of such terms as "the present system" and "the fault system" seem almost calculated to mislead the casual reader into thinking that auto accident victims have no other source of recovery under the present auto insurance system other than by proving that they were totally innocent and the other driver was totally at fault.

In fact, the bodily injury liability coverage is not designed to cover all injuries occurring on the highways. For example, it is not designed to cover the approximately 25% of all auto crashes involving single vehicles, except to the extent that guest passengers have a cause of action against the negligent driver of the car in which he was riding. A majority of these single vehicle crashes involve only the driver, and of course the liability coverages are not designed to pay for such cases.

However, about 70% of private passenger vehicle owners carry medical payments insurance, which pays on a first-party, no-fault basis, even in single vehicle accidents and in cases where the injured person was at fault. Vehicle owners also can purchase first-party, no-fault collision insurance to cover any damage to their own cars, regardless of fault. Thus it is misleading to imply that "the present system" is incapable of providing compensation for crash losses.

If critics of the present system insist on looking only at the statutory coverages, then it is fair to ask how many accident victims would not get paid under the statutory coverages which they propose. Under the Uniform Motor Vehicle Insurance Act, very large numbers of auto accident victims would receive nothing at all from the compulsory personal injury coverages. Nobody would collect for damage inflicted on his automobile under the statutory coverages. Many of those who

have wage continuation plans, sick leave or nonwage income wouldn't collect anything for their lost work time. Those who have health insurance or other medical benefits wouldn't collect from their auto insurance for these expenses either, unless these collateral sources specifically provided that the benefits are secondary to auto insurance.

No doubt it will be argued that these losses are covered by other benefit systems. But the same argument can be made today. The point is, both the present statutory auto insurance coverages and those proposed under this federal act are designed deliberately to leave out certain categories of claimants - and the group left out is much larger under the federal proposal than under the present system.

The Guaranteed Protection Plan would provide broader protection than either the present system or Senator Hart's proposal. It would cover a far larger number of accident victims, and provide benefits more promptly, than the auto insurance coverages specified in the proposed Uniform Motor Vehicle Insurance Act.

6. Coverage Gaps

Another major flaw in the Uniform Motor Vehicle Insurance Act is the provision which would strike down existing state financial responsibility laws. The Plan not only does not cover property damage - it also prohibits states from requiring or strongly encouraging drivers to carry property damage liability for the damage they may inflict on other vehicles. As a practical matter, this means that people whose cars are smashed by negligent drivers are unlikely to be able to collect.

Owners of other property such as houses, commercial property

also would find it much more difficult to collect from negligent motorists than is the case today under state financial responsibility requirements.

Third, people who suffer catastrophic harm at the hands of negligent motorists are likely to find their right to sue largely meaningless, since there is no requirement or sanction on vehicle owners to insure against this liability. All insurance companies would be required to offer such residual liability coverages to their policyholders, but it is quite likely that a high percentage of the most accident-prone segment of the driving population would not purchase it if existing financial responsibility laws are abolished.

7. Is Negligence Still Relevant?

If the Congress enacts the Uniform Motor Vehicle Insurance Act, it will be saying as a matter of public policy that a negligent driver no longer is responsible for the injury and damage he inflicts on other people. The idea of abandoning responsibility is based in part on the assumption that auto crashes are really nobody's fault - that they are more or less random events, the inevitable consequence of a motorized society. But there is strong evidence to the contrary. A startling high percentage of all serious auto accidents involve flagrant driver negligence.

Improper driving is a factor in about 9 out of 10 fatal and injury-producing accidents, according to reports of state and city traffic authorities.

Drinking is the dominant factor in highway fatalities. Studies published by the DOT indicate that drinking plays a part in at least half of the 55,000 annual highway deaths - and in more than 800,000 injuries a year.

Additional evidence on the role of driver negligence is found in a report prepared by the National Highway Accident and Injury Analysis Center of the United States Department of Transportation. Out of 217 accidents studied, 612 factors were identified as contributing to the occurrence of the accidents. These included vehicle defects, roadway defects, bad weather and a variety of other factors.

But 422 of the 612 "accident causation" factors involve human error. And a high percentage of these accidents involve flagrant driver negligence.

In 104 cases, for example, the driver was intoxicated or had been drinking.

In 81 cases, the driver was speeding or going too fast for conditions.

In 19 cases, the driver went through a red light or stop sign.

In the light of all the evidence that has been gathered, the American Mutual Insurance Alliance believes that driver behavior is still a highly relevant factor to the innocent victims who are maimed and to vehicle owners whose cars are smashed as a result of someone else's carelessness. The Guaranteed Protection Plan is based on the premise that driver negligence is still relevant, and must be taken into account to some degree in any reparations system likely to win public approval.

8. Efficiency of the Auto Insurance System

The Alliance agrees with proponents of various auto insurance reform plans that one objective of reform should be to make the auto insurance system more efficient, and to return a greater percentage of the insurance premium dollar to accident victims.

Such an assumption of federal control would be justified only if the states had utterly failed in their job, and there was a reasonable expectation that federal regulation somehow would be immune from the same failings. We see no credible evidence that either of these conditions prevail. There is nothing in the history of the federal regulatory system to instill confidence that federal regulation of insurance would be, on the whole, more efficient than the present state regulatory system. The shortcomings of federal regulation are well documented in a recent book by Pulitzer Prize-winning author Louis M. Kohlmeier, Jr., titled the Regulators. As the jacket succinctly puts it, the book "sheds new light on how the federal regulatory agencies have failed in their purpose - to protect the American consumer." We note that Senator Hart, the principal author of the Uniform Motor Vehicle Insurance Act, has strongly endorsed this book.

The Congressional Record is full of official and unofficial criticism of federal regulatory agencies for their dilatory procedures, their inflexibility, their lack of independence and competency. As a consequence, the public has suffered and the affected industries have suffered. There is at least a reasonable presumption that hidebound federal regulation is a major contributor to the financial plight of the nation's railroads and airlines and the problems of power and energy shortage with which we are now confronted.

Insurance remains one of the most diverse businesses in the nation. In most respects, it is still a local business, built on local bases and serving local needs. The Alliance believes that the regulation of insurance must recognize and respond to this diversity.

Some critics have spoken of diversity in regulations among the 50 states as though it were prima facie evidence that something is wrong. It is, in fact, evidence that the states are carrying out their intended and constitutionally guaranteed function of serving the diverse interests of their own citizens. To argue that there is something abhorrent, per se, about differences in laws among the various states is to quarrel with the whole concept of federalism and the legitimacy of individual states having independent powers and responsibilities.

The Guaranteed Protection Plan advocated by the Alliance would provide a compatible, rational system in which differences in benefit levels and other aspects of the auto reparations system could be readily accommodated and reconciled as among states.

We take specific note of the fact that an arm of the National Legislative Conference, an affiliate of the Council of State Governments, already has taken action to draft model legislation that would provide a guideline, subject to necessary state variations, for the auto reform plan proposed under the Concurrent Resolution now before this committee.

10. Legal and Constitutional Problems

The proposed Uniform Motor Vehicle Insurance Act raises a number of legal and constitutional issues.

Is it permissible to abolish the right to sue for a bodily injury, and substitute a compulsory requirement that vehicle owner purchase insurance to protect himself?

In the DOT report titled "Constitutional Problems in Automobile Accident Compensation Reform," Professor C. Dallas Sands of the

University of Alabama Law School examined the constitutional issues that might be involved in reform of the auto accident compensation system through federal legislation, and concluded that such legislation might well run afoul of the 7th Amendment, which preserves trial by jury under common law.

In any event, the proposal would be certain to generate a substantial amount of legal controversy and litigation, both to define what the statute means and to resolve continuing disputes among the parties to an action and their insurers.

11. Access to Insurance

One of the politically popular features of the Uniform Motor Vehicle Insurance Act is the provision that would require auto insurer to accept all applicants for coverage, provided they have a valid drivers license and are willing to pay the premiums. The proposal also would prohibit cancellation except for loss of a driving privileges or nonpayment of premium. This presumably is intended to do away with the need for the existing automobile insurance plans, which provide a source of insurance for motorists who are having difficulty in obtaining coverage in the voluntary market.

However, the actual consequences of such a law are likely to be very different than the objectives which the authors of this proposal have in mind. The most likely result would be to increase the cost of insurance for the vast majority of drivers who now enjoy preferred rates, since companies which attempted to set their rates at a low level attractive to such drivers would be inundated by high risk drivers. Such a plan also would create chaos in the market place, as companies sought to avoid attracting the attention of peopl

from areas known to produce excessive losses. In order to correct these dislocations, the federal regulator would have to become more and more involved in the operational details of marketing insurance - including the appointment of agents, the nature of the advertising done, the availability of visible sales offices, the mailing lists used by those companies using direct mail solicitations, etc.

If the objective is to keep the cost of automobile insurance at an "affordable" level for drivers with above average loss exposure, it would appear that such drivers have more protection under the existing regulatory setup than they would have under the one contemplated in this bill. In New York, for example, where auto insurers are now permitted to use competitive rating for their voluntary business, the rates for drivers insured in the automobile insurance plan remain under a so-called "prior approval" arrangement. Although drivers insured in the Plan are charged higher rates than those available in the voluntary market, there is a deliberate element of subsidy built into the setting of rates for these high-risk drivers. In other words, they do not pay their own way. Under the Uniform Motor Vehicle Insurance Act, insurance companies presumably would be free to charge these high-risk drivers rates commensurate with their actual loss experience, so that their premiums would be even less "affordable" than is presently the case.

The Guaranteed Protection Plan deals with the problem of insurance availability in a more reasonable fashion. It calls for expansion of the present automobile insurance plans so as to guarantee reasonable limits of protection for both liability and other auto insurance coverages to every licensed driver.

Concrete plans for accomplishing this objective were outlined

University of Alabama Law School examined the constitutional issues that might be involved in reform of the auto accident compensation system through federal legislation, and concluded that such legislation might well run afoul of the 7th Amendment, which preserves trial by jury under common law.

In any event, the proposal would be certain to generate a substantial amount of legal controversy and litigation, both to define what the statute means and to resolve continuing disputes among the parties to an action and their insurers.

11. Access to Insurance

One of the politically popular features of the Uniform Motor Vehicle Insurance Act is the provision that would require auto insurers to accept all applicants for coverage, provided they have a valid drivers license and are willing to pay the premiums. The proposal also would prohibit cancellation except for loss of a driving privileges or nonpayment of premium. This presumably is intended to do away with the need for the existing automobile insurance plans, which provide a source of insurance for motorists who are having difficulty in obtaining coverage in the voluntary market.

However, the actual consequences of such a law are likely to be very different than the objectives which the authors of this proposal have in mind. The most likely result would be to increase the cost of insurance for the vast majority of drivers who now enjoy preferred rates, since companies which attempted to set their rates at a low level attractive to such drivers would be inundated by high risk drivers. Such a plan also would create chaos in the market place, as companies sought to avoid attracting the attention of people

from areas known to produce excessive losses. In order to correct these dislocations, the federal regulator would have to become more and more involved in the operational details of marketing insurance - including the appointment of agents, the nature of the advertising done, the availability of visible sales offices, the mailing lists used by those companies using direct mail solicitations, etc.

If the objective is to keep the cost of automobile insurance at an "affordable" level for drivers with above average loss exposure, it would appear that such drivers have more protection under the existing regulatory setup than they would have under the one contemplated in this bill. In New York, for example, where auto insurers are now permitted to use competitive rating for their voluntary business, the rates for drivers insured in the automobile insurance plan remain under a so-called "prior approval" arrangement. Although drivers insured in the Plan are charged higher rates than those available in the voluntary market, there is a deliberate element of subsidy built into the setting of rates for these high-risk drivers. In other words, they do not pay their own way. Under the Uniform Motor Vehicle Insurance Act, insurance companies presumably would be free to charge these high-risk drivers rates commensurate with their actual loss experience, so that their premiums would be even less "affordable" than is presently the case.

The Guaranteed Protection Plan deals with the problem of insurance availability in a more reasonable fashion. It calls for expansion of the present automobile insurance plans so as to guarantee reasonable limits of protection for both liability and other auto insurance coverages to every licensed driver.

Concrete plans for accomplishing this objective were outlined

by the National Industry Committee on Automobile Insurance Plans consisting of representatives of the American Mutual Insurance Alliance and the other two major insurance trade associations, at the 1969 annual meeting of the National Association of Insurance Commissioners in Philadelphia. The necessary changes are now being put into effect by the various states, either by action of Automobile Insurance Plan governing committees or by legislation.

The Alliance supported these changes and, in addition, would support a program which extends beyond the recommendations of the NIC (which include liberalized eligibility requirements, optional medical payments, physical damage coverage, an installment payment plan, and the new name, "Automobile Insurance Plan.") We also support offering 50/100/25 bodily injury and property damage liability limits of protection and more prompt access to coverage under the plans. However, where higher limits are provided, small insurers without adequate reinsurance arrangements should be protected by the mandatory pooling of limits over the financial responsibility limits.

The insurance industry also has improved the availability of coverages by restricting the right to cancel policies. Since 1967, Alliance member companies have agreed not to cancel any private passenger automobile policy except for nonpayment of premiums by an insured, or suspension or revocation of a driver's license or registration. The Alliance Board of Directors voted to seek legislative enactment of "noncancellation laws" restricting the cancellation of private passenger auto policies, except for the two reasons cited above.

The principal stock and mutual rating bureaus have had in effect

for the past six years a program of voluntary restrictions on the right of members and subscribers to cancel private passenger automobile liability policies. As of January 1, 1968, the right to cancel was further restricted to just two allowable reasons: non-payment of premium, or loss of driving privileges. At the same time, the guarantee against cancellation was extended to other coverages, such as collision, fire and theft.

To make such guarantees effective for all policyholders, some 38 states have now enacted laws providing statutory restrictions on the right of companies to cancel auto insurance policies. The Alliance and other responsible segments of the industry are working to enact similar laws in the remaining states.

12. Changes in Rating Procedures

Proposals for changes in rating procedures under the Uniform Motor Vehicle Insurance Act would not provide the public with meaningful price information, as its authors apparently assume.

As nearly as we can determine from the somewhat vague and confusing description contained in the bill, it is contemplated that the Secretary of Transportation would publish each company's loss experience in great detail, along with the premiums being charged for each category of driver, rating territory, vehicle type and use, and type of insurance coverage.

The trouble is, this type of data has no statistical validity on an individual company basis when subdivided into so many categories. The loss experience would fluctuate so greatly - from one company to another and for the same company at different time intervals - as to be meaningless and misleading for consumers.

This would be especially true of smaller companies. Small companies also would have more difficulty in adjusting to the new system, particularly if - as seems likely - they would be required to perform for themselves many of the services now performed by rating bureaus.

The result very likely would be to promote the growth of large companies at the expense of their smaller competitors, thereby lessening competition and promoting economic concentration of power in an industry which has remained highly diversified and highly competitive up to now.

VII. THE FEDERAL GOVERNMENT'S ROLE IN AUTO REFORM

The Alliance believes that the Federal Government has a major role to play in reducing the excessive losses now occurring on the highways, and in bringing about an improved compensation system for automobile accident victims. Indeed, the Federal Government already has made major contributions in these areas.

The massive study conducted by the Department of Transportation, plus the hearings held by this committee and other committees of Congress, have made a major contribution to the efforts to reform the automobile accident reparations system. This research, plus the impetus provided by federal interest in this subject, seems likely to assure that the states will move promptly to conduct the necessary experimentation and evolvement of reforms in the reparations system. The Alliance has knowledge of reform legislation pending in at least 35 states. Several of these states are considering alternative reform plans.

The Alliance believes the Federal Government has a more active role to play in the reduction of highway losses - through funding

of research, the funding of safety programs such as the current alcohol countermeasures program of the DOT, and through the vigorous application of vehicle standards designed to reduce the grossly excessive loss being generated by low-speed damage to vehicles and the unnecessary injuries to vehicle occupants. In this connection, the Alliance supports the pending legislation which would give the Department of Transportation specific authority to promulgate standards relating to vehicle damage as well as occupant safety. We also support the concept of rating cars on the basis of their damageability and repairability.

VIII. CONCLUSION

The problems generated by automobile crashes are far more complex than was generally realized when the reform issue first came to general public notice two or three years ago. We believe the ensuing research, debate and soul searching has been productive, and has produced something close to a consensus on the steps that must now be taken to bring about a reformed system and to bring under control the excessive losses. The Alliance has been privileged to play a major role in this search for reform. We pledge to you and to the public our continued efforts to accomplish those objectives.

APPENDICES

Exhibit 1 - Two-Thirds of Your Auto Insurance Premium Goes for Vehicle Damage Coverages

Exhibit 2 - Guaranteed Benefits - An Experiment in Auto Insurance Reform

Exhibit 3 - Critique and Analysis of DOT's "Public Attitudes Toward Auto Reform"

Exhibit 4 - Critique and Analysis of DOT's "Economic Consequences of Auto Accident Injuries"

Exhibit 5 - Chart Showing Percentage of Premium Dollar Returned in Benefits and Services, 1969

Exhibit 1.

Two-Thirds of Your Auto Insurance Premium
Goes for Vehicle Damage Coverages

	Total Premium	Cost of Vehicle Damage Coverages	Vehicle Damage % of Total Premium
Jacksonville, Fla.	$208	$131	63%
New York (Queens)	$506	$366	72%
Trenton, N.J.	$228	$152	67%
Philadelphia, Pa.	$501	$346	69%
San Francisco, Calif.	$479	$346	72%
Minneapolis, Minn.	$261	$175	67%
Chicago, Ill.	$479	$351	73%
Detroit (Semi-Suburban)	$260	$180	69%
Columbus, Ohio	$226	$155	69%
Seattle, Wash.	$221	$138	62%
Raleigh, N.C.	$167	$117	70%
Indianapolis, Ind.	$314	$249	79%
Portland, Ore.	$278	$188	68%
Milwaukee, Wis.	$246	$145	59%
Honolulu, Hawaii	$236	$152	64%
Juneau, Alaska	$310	$257	83%
Hartford, Conn.	$370	$241	64%
Wilmington, Del.	$250	$196	78%
Manchester, N.H.	$227	$155	68%
Providence, R.I.	$293	$201	69%
Dallas, Texas	$263	$203	77%

Vehicle damage coverage includes property damage liability limits of $5,000 per accident, $50 deductible collision and full coverage fire, theft and comprehensive physical damage insurance.

Total premium includes the above physical damage coverages plus bodily injury liability coverages of $25,000 per person and $50,000 per accident, plus uninsured motorist insurance and $1,000 per person medical insurance.

Rates shown are for an adult driver with a medium-priced car of the current model year. It is assumed he has a good driving record and does not drive his car to work. (Source: Mutual Insurance Rating Bureau.)

Exhibit 2

GUARANTEED BENEFITS

An Experiment in Auto Insurance Reform

Published By

AMERICAN MUTUAL INSURANCE ALLIANCE
20 N. Wacker Drive, Chicago 60606

Participating Companies

Allstate
American Mutual Liability
Chubb & Son, Inc.
Continental Insurance Companies
Country Mutual
Economy Fire & Casualty
Employers of Wausau
Great American
Home Insurance Company
Insurance Company of North America
Kemper Insurance
Liberty Mutual
National Grange Mutual
Nationwide Insurance
Sentry Insurance
Utica Mutual

SUMMARY OF FINDINGS

Given a choice between Guaranteed Benefits and the benefits available under the existing auto liability system, 25 per cent of claimants elected to accept Guaranteed Benefits in the Illinois Experiment and 15 per cent elected Guaranteed Benefits in the New York Experiment.

Persons who had more serious injuries and economic losses were likely to opt for a liability settlement rather than the Guaranteed Benefits offer. The larger the claim, the more pronounced this tendency became.

Claimants who consulted attorneys were much less likely to accept Guaranteed Benefits than those who did not. However, it is not known whether the decision resulted from the attorney's advice or whether the claimant's decision to consult an attorney was, in itself, an indication that he or she had in mind a settlement larger than that provided under Guaranteed Benefits. Retired persons, housewives, the self-employed and rural residents were more likely than other claimants to elect Guaranteed Benefits.

No definite conclusions can be drawn from this experiment regarding the possibility of savings from adoption of the Guaranteed Benefits concept.

44-345 O - 71 - pt. 3 -- 10

BACKGROUND AND OBJECTIVES

The purpose of the Guaranteed Benefits Experiment was to test the reaction of automobile bodily injury liability claimants to this particula alternative method of paying benefits.

At the time the experiment was initiated, in 1968, there had been extensive criticism of the automobile liability insurance system. Numerou proposals had been made for changes in the system which would eliminate so of the uncertainties of a liability claim. The Guaranteed Benefits Experi was designed to offer liability claimants an opportunity to exchange these uncertainties for the assurance of a known recovery. The benefits were structured so as to offer the injured person a combination of payments whi in most instances, would pay all of his medical expenses, wage losses and other out-of-pocket expenses, plus some additional benefits for permanent impairment or wrongful death. These benefits were to be paid regardless of the fact that the claimant may have had other sources of recovery such as health insurance or wage continuation benefits.

Companies participating in the experiment wanted to know whether claimants having bodily injury claims against their policyholders would b willing to accept these benefits, offered promptly and on a guaranteed ba or whether they would choose the less certain but potentially higher sett ments available if they could prove that the other driver was at fault.

In addition, the companies hoped to gain insight into the cost im plications of a Guaranteed Benefits system.

DESCRIPTION OF THE EXPERIMENT

The Guaranteed Benefits Experiment was conducted during a one-year
:iod in portions of New York and Illinois. The following 16 company
xups participated in one or both portions of the experiment in cooperation
:h the American Mutual Insurance Alliance:

Allstate
American Mutual Liability (New York only)
Chubb & Son, Inc.
Continental Insurance Companies
Country Mutual (Illinois only)
Economy Fire & Casualty (Illinois only)
Employers of Wausau (New York only)
Great American (New York only)
Home Insurance Company (New York only)
Insurance Company of North America (New York only)
Kemper Insurance
Liberty Mutual
National Grange Mutual (New York only)
Nationwide Insurance
Sentry Insurance
Utica Mutual (New York only)

In Illinois, the experiment covered Kane and DuPage Counties, and
: some company groups, portions of Lake and suburban Cook Counties.
l are in the Greater Chicago metropolitan area, although the western
rtions of the test area are rural.

The New York portion covered Monroe and Onondaga Counties, including
racuse and Rochester and their surrounding suburbs plus rural portions
the two counties. Some 3.5 million persons reside in the two test areas.

Claims personnel of the participating companies made Guaranteed Benefits
fers to auto accident victims who resided in the test areas and who had
lid bodily injury liability claims against policyholders of participating
mpanies. The program did not involve the sale of a new or different
oduct to the insurance-buying public. It was strictly a claims-handling
periment involving the offer of an alternative form of settlement to
rsons presumed to be entitled to a liability recovery.

Eligible claimants were offered up to $12,500 in Guaranteed Benefits payments. They could collect up to $5,000 for medical expenses incurred within one year of the accident. They also could collect up to $7,500 in additional benefits for wage losses and other damages, including physical impairments. (See Appendix C for details on the benefits).

Ground rules of the experiment called for the insurer of the driver responsible for the accident to contact claimants as quickly as possible and offer to pay their medical expenses up to the $5,000 limit, without red tape as the medical expenses were incurred. The injured person did not have to make any promises or sign a release to receive these medical benefits.

In addition, the claimsman handling the case offered the injured person a choice of accepting an additional package of optional or elective benefits in exchange for an oral agreement that the amount was satisfactory and he would not make any further claim against the other driver. These additional benefits covered such items as loss of wages, inability to perform usual services such as housework or child care, permanent bodily impairment, and the general inconvenience and pain associated with the injury. A survivor's loss benefit was provided for those who qualified for such benefits under state law. Claimants had 15 days to choose or reject the Guaranteed Benefits offer.

Property damage claims were handled under regular claims-handling procedures in all instances.

RESULTS OF THE EXPERIMENT

Some 2,890 auto accident victims took part in the Guaranteed Benefits
riment - 587 in Illinois and 2,303 in New York.

In essence, these claimants were asked to evaluate the attractiveness
guaranteed payment covering their full economic losses, payable as the
losses and expenses accumulate, in contrast with the possibility of
ining a greater recovery by pursuing a regular liability claim.

The principal finding is that given a choice between the Guaranteed
fits offer and the payment available under the existing auto liability
em, 25 per cent of eligible claimants elected to accept Guaranteed Benefits
he Illinois Experiment and 15 per cent elected Guaranteed Benefits in the
York Experiment.

Since the experiment was conducted by claims personnel of the par-
pating companies, it inevitably gauged the reaction of such personnel to
lternative compensation method within the enviornment of the present
-liability system. The degree of acceptance varied considerably among
vidual claimsmen and this was reflected in the success they had in ob-
ing acceptances of the Guaranteed Benefits offers. In addition, the
riment had to compete to some extent with other claims-handling programs
g heavily promoted by participating companies, notably some sophisticated
s of "advance payment" settlements.

Because of these factors, it is reasonable to assume that the percent-
of acceptance obtained in the experiment represent minimum figures.

The following considerations appear to have been the major factors affecting claimant decisions to accept or reject Guaranteed Benefits offers (See Appendix B for tables 1-4):

1. The involvement of an attorney prior to the claimant's decision almost always led to a rejection of the Guaranteed Benefits offer. Roughly one-quarter of claimants were not consulted directly by the insurer - i.e., first notice of the claim to the insurer came from the attorney himself. In an additional one-third of the cases (proportions vary somewhat between New York and Illinois), the claimant retained an attorney after the Guaranteed Benefits offer was made but before a decision was made to accept or reject it. However, it is not clear whether the attorney influenced the decision or whether the claimant's decision to retain an attorney was, in itself, an indication that he or she had in mind a settlem larger than the Guaranteed Benefits offer. (See Table 2)
2. The size of the claim was an important determining factor. The larger the claim, whether measured by economic loss, the potential liability recovery or the amount available under Guaranteed Benefits, the less likely the claimant was to accept the Guaranteed Benefits offer. (See Table 3)
3. Money, as expected, was an important consideration. The greater the contrast between the claimant's perceived potential liability recovery and the amount he expected to receive under Guaranteed Benefits, the less likely the claim was to accept Guaranteed Benefits. (See Table 4)

4. The Claimant's economic station in life was of major significance. Claimants without earnings such as retired persons and housewives were more apt to elect Guaranteed Benefits than those earning an hourly wage or salary income. This may be due to the fact that Guaranteed Benefits provides an inducement in the form of minimum disability benefits for those with little or no wage loss (Guaranteed Benefits pays $9 per day for persons unable to do housework or attend school). The self-employed also had higher than average tendency to accept Guarahteed Benefits. (See Table 3)

5. Claimants residing in rural areas were more likely to accept Guaranteed Benefits than claimants residing in urban areas. (See Table 3)

No definite conclusions can be drawn from this experiment regarding any possible savings that might result from the adoption of Guaranteed Benefits or some modification of the concept. Some savings appear to have been realized in the experiment in the minority of cases where the claimants elected to accept Guaranteed Benefits. This is based on claims personnel estimates of what would have been paid in those same cases on a tort liability basis (See Table 4). However, it is evident that offers were not made in all instances where liability was not clear. Savings with respect to those who elect Guaranteed Benefits could be offset or more than offset by additional costs for those who might accept Guaranteed Benefits in situations of uncertain liability, in the absence of any other cost-reducing measures.

Appendix A

CONDUCT OF THE EXPERIMENT

The Guaranteed Benefits Experiment was based on research conducted over a period of six years by the American Mutual Insurance Alliance, a national trade association of more than 100 mutual companies writing such coverages as auto and fire insurance, workmen's compensation and general liability. However, companies participating in the field testing of the concept represent a broad cross-section of the entire auto insurance business.

Committees representing member and nonmember companies planned and carried out training sessions for claims personnel in Chicago and in Rochester. A Technical Subcommittee designed the forms and procedures used to gather the pertinent statistics. Local claimsmen filled out the forms on each accident and claimant. A short form was used where injuries were minor. Demographic information collected on this form was limited. A long form was prescribed for the more serious cases.

All forms were forwarded to the Alliance, and were checked for accuracy, consistency and compliance with the rules of the experiment, to the extent that such checking was possible. Coding sheets were prepared from the detail on the forms and were submitted to the Judson Branch Center of the Allstate Insurance Company in Menlo Park, California. Here the data were key-punched and processed on the computer.

Tabulations in accordance with schedules prescribed by the Technical Subcommittee were prepared as print-outs from the computer and furnished to the Subcommittee. The Subcommittee reported that "It is clear from the print-outs and from discussions with the persons responsible for preparation and checking of forms, that 100% accuracy was not obtained with respect to the detail or the compliance with experiment rules. Nevertheless the Subcommittee and Staff have examined the results (as furnished) carefully and feel that the conclusions set forth herein are fully warranted."

Appendix B

ADDITIONAL DATA

The tables contained in this section are based on the tabulations described in Appendix A.

Table 1

ACCEPTANCE OR REJECTION OF GUARANTEED BENEFITS

Location	Accept GB	Reject GB
Illinois	145 (24.7%)	442 (75.3%)
New York	335 (14.6%)	1,968 (85.4%)

Table 2

CHIEF FACTOR AFFECTING CLAIMANT DECISION
Cases With & Without Attorney Compared with Over-All Acceptance Ratio

Illinois	Persons Involved in Decision	New York
222%	Self	253%
100%	(Over-All Average)	100%
25%	Attorney	37%

A technique of analysis was used in Tables 2 and 3 to highlight the more significant factors affecting claimant decisions to accept or reject the Guaranteed Benefits offers. The average acceptance ratio is expressed as 100%. Table 2 indicates that when the claimant made up his own mind he was more than twice as likely to elect Guaranteed Benefits as the average for all claimants. On the other hand, when an attorney was involved in the decision-making process, the claimant was only about one-third as likely to elect Guaranteed Benefits as the average. As noted in the Summary of Findings and in item #1 on page 7, however, the claimant's decision to retain an attorney in the first place may indicate that he

had already decided to seek compensation in excess of the medical expense wage losses and other benefits available under Guaranteed Benefits.

In answering both Tables 2 and 3, it should be noted that some of the percentages are based on very limited samples, particularly with respect to Illinois data. For example, in the Illinois data for Table 2, only 17 persons made their own decisions; the figure is 66 for those consulting an attorney.

Table 3

[illegible]

Illinois		New York
	Size of Loss	
15[illegible]%	$[illegible] - $[illegible]	226%
100%	(Over-All Average)	100%
[illegible]%	$[illegible] and Over	82%
	Economic Station	
135%	Retired, Executives & Self-Employed	218%
100%	(Over-All Average)	100%
88%	Salary or Hourly Wage Earner	84%
	Urban-Rural Environment	
140%	Rural - Kane County	---
100%	(Over-All Average)	---
5[illegible]%	Urban - Cook County	---

Table 4

COST COMPARISONS

Actual and Estimated Settlements for GB and Liability Cases

Illinois	GB Accepted: Average GB Settlement	Estimated Liability Value of Same Cases	Difference in Value
	$241	$304	-$63
	GB Rejected: Av.Liability Settlement	Estimated Value of same Cases Under GB	Difference in Value
	$992	$384	+$608
New York	GB Accepted: Average GB Settlement	Estimated Liability Value of Same Cases	Difference in Value
	$438	$499	-$61
	GB Rejected: Av.Liability Settlement	Estimated Value of Same Cases Under GB	Difference in Value
	$1,017	$426	+$591

Table 4 illustrates the fact that acceptance of Guaranteed Benefits was higher in the small-value cases. It also shows that when Guaranteed Benefits was elected there was an estimated savings averaging about $60 per claim, as compared with what the settlement would have been on a tort-liability basis. On the other hand when Guaranteed Benefits was rejected the claimant received, on the average, between two and two-and-a-half times as much as if he had accepted Guaranteed Benefits.

It seems clear that claimants, or those upon whom they rely for advice, can identify those situations in which the tort-liability system offers a greater reward. In general, they are the larger cases, involving more serious injuries and economic losses.

Here's How the Plan Works

Under the Guaranteed Benefits plan now being tested in Illinois and New York, auto accident victims who have valid bodily injury liability claims against policyholders of the participating insurance companies are being offered the benefits outlined in the six payment provisions below.

The over-all limit per injured person is $12,500, including $5,000 in medical benefits plus $7,500 under one or a combination of all other categories. The medical benefits will be paid automatically to all eligible persons. The additional benefits will be paid to those persons who elect to accept them and who promise ovally to make no further claim against the other driver.

1. Medical Benefits

Eligible persons will be paid up to $5,000 for their reasonable and necessary medical expenses incurred within one year from the date of the accident, including up to $1,000 for funeral expenses. These benefits will be paid even if the injured person has accident and health or hospitalization insurance. However, those persons who are entitled to auto medical payments and Guaranteed Benefits from the same insurance company will collect the auto medical payments first, then collect under the Guaranteed Benefits plan for any additional medical expenses up to $5,000.

2. Basic Disability Benefits

Basic disability payments are intended to sustain the injured person and his family during the period of disability. Payments start as soon as the injured person elects to accept the Guaranteed Benefits option. They continue on a regular basis for as long as 12 months, and are pegged at 70 per cent of the claimant's usual wage. The maximum benefit per week may not exceed 125 per cent of the average weekly wage in the injured person's state of residence, and the total amount paid under this provision may not exceed $7,500.

3. Loss of Services Benefits

This is an alternative to Basic Disability Benefits for persons who are generally not wage earners. Those who choose this alternative may collect 70 per cent of the cost of hiring someone to perform their usual services during the disability period. Inability to perform these services must be med[illegible] certified. A minimum payment will be made o[illegible] the family manages to get along without hiring [illegible]one. Payments may continue up to one ye[illegible] $7,500.

4. Supplemental Disability Benefits

When the injured person's disability payment [illegible] he or she receives an additional lump-sum pa[illegible] amounting to 50 per cent of all the money [illegible] received under either the Basic Disability Ben[illegible] the Loss of Services Benefits. This lump-sum pa[illegible] will not be less than $35 for each week the [illegible] person was receiving disability payments. This [illegible] payment is to compensate accident victims f[illegible] inconvenience and discomfort associated wit[illegible] involvement in an accident. The combination [illegible] disability payments plus this lump-sum bene[illegible] more than reimburse most claimants for their [illegible] losses. And all of the benefits are tax-free.

5. Medical Impairment Benefits

A lump-sum payment may be made for per[illegible] disabilities such as loss of a finger. Guidelin[illegible] vised by the American Medical Association a[illegible] to determine the percentage of impairment re[illegible] after the injury has healed. The amount due [illegible] figured by applying this percentage to a [illegible] limit. Payments already made under the [illegible] mental Disability section will be deducted. [illegible] payment will be made for impairments which [illegible] to less than $100.

6. Survivor's Loss Benefits

If an injured person dies within one year [illegible] accident as a result of injuries received in th[illegible] dent, the other driver's insurance company w[illegible] a lump sum of $5,000 for the benefit of pers[illegible] qualify for the survivor's benefits under sta[illegible] This payment is for the loss of income or ser[illegible] the decedent. The $5,000 will be paid in add[illegible] any other Guaranteed Benefits which may ha[illegible] paid, except that the total of all Guaranteed [illegible] fits may not exceed the over-all limit of $12,5[illegible]

The over-all limit of $12,500 per person [illegible] Guaranteed Benefits combined is sufficient to [illegible] the losses sustained by all but a small percent[illegible] auto accident victims. The few persons whose [illegible] injury losses greatly exceed this figure prob[illegible] will seek larger settlements under traditional [illegible] procedures, if they can prove that the other [illegible] was at fault.

Exhibit 3

Critique and Analysis

of

Public Attitudes Toward Auto Insurance

A Report of the Survey Research Center
Institute for Social Research
The University of Michigan

to

The Department of Transportation

Background

On March 28, 1970, the DOT released its report on a survey of public attitudes toward auto insurance.

The survey was done by the Survey Research Center of the University of Michigan and is one component of the Auto Insurance and Compensation Study being conducted by DOT. The report is based on data collected through personal interviews with 3,075 respondents who were mostly heads of families in a national cross-section sample of dwellings, excluding Alaska, Hawaii, and D.C. Most of the analysis concerns the 2,534 families who owned cars.

Two samples of approximately equal size were drawn; one was interviewed between the middle of May and middle of June and the second between August 7 and September 10, 1969. Modern probabilit sampling with callbacks and household designation was used, therel minimizing the bias of population restriction - i.e. the size and character of the population to be sampled. Even the use of moder probability methods, however, result in about 15% of the populati being excluded (e.g., those institutionalized, hospitalized, home-less, transient, the military, mentally incompetent, etc.) plus those who refuse to answer; are unavailable after their callbacks, or have moved to no known address.[1]

Moreover, use of interviews and questionnaires (the basic tools of 90% of social science research) can introduce a foreign element into the social setting they would describe. They can create as well as measure attitudes.[2] The data collection can stimulate an interest the respondent did not previously feel - thereby distorting the results.

Webb lists the following sources of invalidity connected wit the use of all interviews and questionnaires:

1. The probability of bias due to respondent's awareness of his subject status. If people feel they are being "test the method of data collection stimulates an interest the subject did not previously feel, the measuring process m distort the experimental results.

2. The respondent's awareness of the interview process produces differential reaction (role selection) involving n so much dishonesty but rather a specialized selection fr among the many "true" selves or "proper" behaviors avail able in any respondent.

---

1. Stephen, F.F. and McCarthy, P.J. Sampling Opinions, New Yor Wiley, 1958. Also, Ross, H.L. "The Inaccessible Respondent: Note on Privacy in City and Country," Public Opinion Quarter 1963, 27, 269-275.

2. Webb, et al. Unobtrusive Measures: Nonreactive Research in Social Sciences, Rand McNally and Company, Chicago, P. 1.

3. Measurement as a change agent. This is the "preamble effect" where attitudes created in one part of the interview are carried over into another section.

4. Tendency of respondents to endorse a statement rather than disagree with its opposite and a preference for strong statements.

5. Error from investigator. The interviewer is an important source of cues to the respondent, and he helps to structure the demand characteristics of the interview. There is strong evidence that a substantial number of biases are introduced by the interviewer, such as interaction of age, sex, etc.

6. Change in the research instrument (the interviewer). In other words, to what degree is the interviewer the same research instrument at all points of the research? He may read "heavier" a second time. His skill may increase. He may be better able to establish rapport. He may loaf or become bored. He may have increasingly strong expectations of what a respondent "means." There is, therefore, always the risk that the interviewer will be a variable fitter over time and experience.

These biases are common to all interview and questionnaire survey :hniques. Some of these, plus others peculiar to the DOT survey .ch we will emumerate later, strongly influenced certain key findings :sented in the report.

Index of Satisfaction And Dissatisfaction With Automobile Insurance

As its starting point, the DOT study utilized an Index of isfaction to determine the level of satisfaction and dissatisfac- n with the auto insurance system among respondents surveyed. This a valid method which is used to control variance of data and which researchers felt would give more satisfactory indications of erlying attitudes than do responses to single questions or to one eric question.

According to the Index, 63% of respondents were satisfied to ious degrees and 21% dissatisfied, with 16% neutral. Or to put it ther way, 79% were not dissatisfied with auto insurance. This ex took into account such "dissatisfiers" as delayed claim payment, t of auto insurance, cancellations and nonrenewals and general satisfaction with the system.

These results were contrasted with responses recorded toward end of the interview, after various features of the present auto urance system were discussed with the respondents, which indicated t more people would be in favor of a "no-fault" system of insurance n in favor of the prevailing "fault" system.

Specifically, 44% opted in favor of claiming damages from their own insurance company only and receiving no compensation for pain and suffering, irrespective of which party was at fault. On the other hand, 36% opted for the current system. These percentages were based on an Index of Insurance System Preference utilizing responses from the last three questions in the questionnaire which purported to measure specific and general public attitude towards a "no-fault" system.

The important question to ask is this: What caused the alleged "change in attitudes"? There is strong internal evidence in the survey questionnaire that the manner in which the "no-fault" questions (A67, A68 and A69) were structured strongly biased the response elicited.

In the last analysis, all data must be elicited with questions. Simply put, the nature of the questions will determine what kind of data you get from respondents.[3] Questions A67, A68 and A69 are particularly open to serious question since they are either incomplete or erroneous in describing the system about which they seek to measure attitudes. Moreover, they are of the structured variety which presents the respondent with fixed response alternatives. Structured questions are considered to be potentially more reactive, i.e., prone to bias than the "free response" type which were used in finding out what people thought about the present system.[4]

A close examination of the structure of these three key questions used to construct the Index of Insurance System Preference shows the following:

Question A67 describes for respondents a "no-fault" system which "in case of an accident your losses, including damage to your car, would be paid by your own insurance company, no matter whether you or the other driver were at fault." The question is misleading in that it does not indicate that major total no-fault proposals being put forth require the buyer to carry collision insurance to pay for damage to his car that would have been covered if a negligent driver damaged his car under the present system. The abolishment of 3rd-party property damage liability is in fact one of the big "cost-saving" features of no-fault plans like AIA and Stewart-Rockefeller and Keeton-O'Connell.

Question A68 offers the respondent a choice between two kinds of auto insurance (fault and no-fault) which would cost about the same and asks which he prefers. However, in describing the choices, "pain and suffering" was not adequately defined, the fact that no-fault involves collateral source offset was not mentioned, and how damage to vehicles would be handled was not mentioned. Also, in describing the fault system, mention of any 1st-party coverage was explicitly excluded.

---

3. Backstrom, Charles H., and Hursh, Gerald D., Survey Research; Northwestern University Press, 1963, pp. 66-110.

4. Webb, et al., p. 33.

Moreover, it's unfortunate that the choice was between fault and total no-fault, since there are other plans (such as the Alliance's Guaranteed Protection Plan) which seek to lessen dependency on fault and make other beneficial changes in the system without scrapping it completely. The researchers, as many research organizations do, could have consulted industry sources on structuring the questionnaire without compromising its integrity. It's unfortunate they did not and that an opportunity to gain valuable insights into consumer attitudes was wasted. However, we do get a glimpse of what the consumer wants in the way of change, since those respondents who perceived a need for change proposed a reduction of dependency on fault and wider use of the comparative negligence law approach.

Question A68a asks for a preference between a no-fault system which costs less than the present system, and the present system, both as described by the interviewer. Again, the answer would be highly biased since the key questions leading up to this choice were erroneous, misleading or both. Also, it was strongly implied that no-fault definitely would cost less.

Question A69 asks if respondents would opt for cost reductions if pain and suffering were eliminated without describing just what pain and suffering is. The question also implies that no-fault would automatically take care of vehicle damages without collision insurance being carried. Also conspicuous by its absence is any statement that would have given respondents a chance to comment on their attitudes towards no-fault with its "benefits" as described, but at a higher price - although some respondents did volunteer the information that they thought no-fault would be more expensive than fault.

To summarize, the questions which determined the Index of Insurance System Preference were poorly structured, misleading or incomplete. Two key elements - pain and suffering and vehicle damage - were mishandled in their presentation. These strong internal biases, plus other internal and some external ones we will indicate later, probably account more for the so-called change in attitudes of respondents from the ones they felt at the beginning of the interview. It seems then that the internal invalidity associated with the interview process set into motion attitude changes (between beginning and end of interview) which would not have otherwise occurred. That "change" did occur is probably, in the words of Webb, a "measurement-produced artifact,"[5] and therefore invalid.

The damage done to the survey's credibility in the areas mentioned also extended to giving the impression to young drivers that no-fault would result in lower premiums and to insureds who had been cancelled that no-fault would somehow assuage the market problem. (See DOT Study pp. 80-81.) Significantly, these groups (34% of young drivers and

---

5. Webb, et al., p. 12. Also Crespi, L.P. "The Interview Effect on Polling." Public Opinion Quarterly, pp. 948, 12, 99-111.

66% of these cancelled who found difficulty obtaining new coverage) expressed strong favor for a change in the system, probably in the mistaken impression that no-fault would solve their particular problems.

One of the most interesting insights into public attitudes toward the present system, and the various improvements that might be made, is found in the supplementary tables on page 125. When respondents were asked an open-ended question ("In your opinion, is there a need to change this system? In what ways?"), more than two-thirds - 68% of all respondents - did not express a preference that the system be changed.

Among those who indicated a need for change, 10% indicated some degree of interest in lessening dependence on fault. As the document itself puts it, "modify so that everyone collects regardless of who is at fault, or so that dependency on proving fault is reduced." (Emphasi added.)

Another 10% said, "improve the way in which fault is determined and/or compensate claimants in (inverse) proportion to their degree of fault in an accident." Four percent said "let each company take care of its own insured," and the remaining answers were scattered.

This is hardly a ringing endorsement of an all-out change to a no-fault system. It does appear to support some change toward lessening dependence on fault, and toward adoption of the comparative negligence concept in determining amounts of compensation.

Exhibit 4

Critique and Analysis of

"Economic Consequences of Automobile Accident Injuries"

(DOT Serious Injury Study)

I. SCOPE OF THE STUDY

The foreword to this two-volume study describes it as "the most comprehensive and carefully conducted study of the plight of people injured by motor vehicles ever produced." And the news release issued at the time the study was released on April 28, 1970, said it "represents approximately 500,000 fatalities and seriously injured persons."

In fact, the scope of the study is considerably more narrow than these statements would imply. This is not a study of 500,000 persons, nor even 5,000. The billion-dollar estimates, and the thousands of persons listed under various categories, are in fact based on interviews with only 1,376 accident victims or their survivors.

Moreover, this is not a sample of all people injured in motor vehicle crashes, as the title seems to indicate. The study is confined to a tiny segment of the auto accident universe - those persons who incurred medical expenses exceeding $500, were hospitalized for two weeks or longer, missed three or more weeks of work or, if not working, missed six weeks or more of normal activity. This group of "seriously injured" persons represents about 10% of all persons injured in vehicle crashes, and has characteristics which differ markedly from motorists in general and from the other 90% of auto crash victims. For example, from other DOT reports we

know that more than half of all drivers killed in auto crashes are drunk. Males between the ages of 15 and 44 constituted 20% of the population at the time of the survey, but incurred 39% of the serious injuries and fatalities. And a cross-check with other DOT studies and insurance industry data indicates this tiny group had available far less insurance protection of all kinds than the population generally. (It is quite possible, of course, that the interviews simply did not obtain accurate information on the insurance they had, in which case the estimated payments they received are grossly understated.)

For all of these reasons, and others, the "Economic Consequence: study does not present a valid picture of how the auto accident reparations system performs, nor how well auto crash victims fare as a total group. As will be demonstrated below, the study does not even present a valid picture of what happens to the small group of seriously injured persons represented in the sample of 1,376.

II. ACCURACY OF THE DATA COLLECTED

Public statements made by the DOT staff and others concerning this study have emphasized the finding that persons killed or seriously injured in 1967 highway crashes had aggregate "compensable economic losses of $5.1 billion, and received only $2.5 billion in aggregate compensation from all sources. Similar comparisons are made for numerous sub-categories within the 1,376-person sample.

All of these comparisons - which have been widely published and cited as evidence that the present auto insurance system is a failur depend on the accuracy of both the raw data collected and the aggreg

based upon it (and blown up to 370 times life-size).

Yet the report itself is replete with warnings about the "speculative nature" of the projections of future losses (Vol. 1, p. 19), the "substantial" errors in classifying the various individuals (Vol. 1, p. 24), the "arbitrary" criteria used for defining serious injury (Vol. 1, p. 17), and the candid admission that "... the study does not provide reliable estimates of aggregates" (Vol. 1, p. 15).

In short, the DOT chose to publicize the least reliable findings, and to attribute to them a significance which goes far beyond the level of confidence expressed about them by the professionals who actually conducted the research.

1. Verification of Losses and Payments

Confidence in the entire study is further undermined by the fact that the basic raw data was derived from largely unverified estimates of losses and payments stemming from accidents that occurred more than two years prior to the interviews. In this connection, it is interesting that the U.S. Public Health Survey tosses out all data based on events more than 90 days old, having found that recollection of details beyond that point are less reliable. As the report notes in the foreword, these are "events the respondents surely would rather relegate to the recesses of their minds."

In view of this, it is surprising that there was so little verification of the actual losses and payments received, even though most respondents gave permission for such verification. For example, no attempt was made to verify with insurance companies

the amounts paid to these crash victims under various coverages. Nor was any attempt made to determine whether there was full reporting of amounts received from all sources. Information used to estimate wage losses would appear to be particularly vulnerable, since only 208 replies were received from employers, and only 57 of those replies were actually used.

This criticism does not in any way imply that respondents deliberately falsified their replies. It simply calls into question the decision to accept as completely accurate the respondents' estimates of the economic losses they incurred and the exact amounts of compensation they received from 7 or 8 possible sources, for auto crashes which occurred more than two years previously.

2. Under-Reporting of Benefits Available

Independent evidence suggests that the reporting of compensation received from these multiple sources was substantially understated.

For example, the DOT data indicate that about 65% of the respondents were covered by medical and hospital insurance, and only 51.4% of the seriously injured collected something from medical insurance. But the Health Insurance Institute reports that 85% of the U.S. population is protected by one or more forms of private health insurance.

Only 54% of the respondents reported they had auto medical payments coverage, and only 37.9% indicated they were paid anything from this source. But the DOT study of public attitudes indicates that 78% of the motoring population have auto medical payments coverage - a figure which jibes with insurance industry estimates.

Only 62% of the fatalities in this study had life insurance, according to the DOT, whereas a nationwide survey for the Institute of Life Insurance indicates 71% of Americans own at least one type of life insurance.

Only 29% of the respondents said they collected anything under the auto collision coverage, but the DOT public attitudes study shows that 77% of the motoring public has such protection.

These discrepancies may be explained in part by the difficulties which many respondents may have had in accurately recalling events that occurred more than two years previously. Some part of the problem may also be due to the DOT staff's lack of understanding of the various forms of insurance and what they cover. For example, this report shows no benefits paid under the auto medical payments coverage for instant death cases, apparently because the staff was unaware that the auto medical payments coverage pays funeral expenses.

3. Statistical Credibility of the Study

Another major problem affecting the credibility of the findings has to do with the statistical credibility of the detailed comparisons among various subcategories. The overall sample of 1,376 is relatively small to begin with. When this sample is subdivided into dozens of smaller categories, the numbers of persons falling into many of these categories are so low as to have very low credibility. Yet this study blows up the results obtained from subsamples as small as 13 persons into national projections, and draws conclusions based on such data.

In all fairness, it should be noted that the professionals

who did the statistical work pointed out that the margin of error increases enormously as the sample is subdivided. But the fact that the figures are multiplied by 370 tends to conceal just how thin some of the data really are. And those who are using this study to castigate the present auto reparations system have tended to ignore the cautionary statements and qualifications buried in the 677 pages of this study, and have accepted at face value the damaging "findings" which suit their purposes, whether they have any statistical validity or not.

III. INTERPRETATION OF THE DATA

Several questionable assumptions are implicit in the public statements made about the findings of this study, and in the basic conception of the report.

1. Definition of "Compensable Economic Loss"

The lead line of the news release issued upon publication of this study says, "Auto insurance repaid only one-fifth of the $5.1 billion compensable losses resulting from deaths and serious injuries in 1967 automobile accidents...".

Obviously, the definition of "compensable economic loss" is critical, since this is the yardstick used to measure both the performance of the auto insurance system and how the injured persons fared.

In devising this yardstick, the DOT deliberately excluded all compensation for disfigurement, permanent impairment, suffering and other general damages that go beyond direct economic losses such as medical expenses and lost wages.

On the other hand, the DOT assumed that all economic losses sustained by heads of families as a result of auto crashes should be fully reimbursed for the rest of their lives - a goal never attempted nor achieved by any compensation system in our society, including those established by government for persons injured in public employment and for persons killed or injured in military service.

The DOT's public statements about this study also implies that the auto insurance system ought to be expected to absorb all of the losses defined as "compensable" by the DOT, regardless of the circumstances of the accident, the economic status of the injured person, the availability of other sources of compensation and the existence of statutory provisions such as wrongful death limits.

These are, at best, questionable assumptions.

Moreover, in preparing its unverified estimates of future wage losses, the DOT made no adjustments for income taxes, remarriage of widowed spouses, the decreased life expectancy of seriously impaired persons, the expenses that the persons would have incurred in earning that future income, nor a number of other factors which might reasonably be considered in determining which losses should be "compensable."

2. Interpretation of Averages

One of the most widely-quoted "findings" of this study is that, "On the average, about half of the total personal and family economic loss was recovered" from any source. But a detailed study of the tables reveals the startling fact that only 121 persons (out of the total sample of 1,376) accounted for 94% of the gap between the DOT's estimate of "compensable" economic loss and the compensation reported by respondents.

In short, nearly all of the "uncompensated" loss stems from a small group of catastrophic situations - i.e., those crash victims estimated to have incurred economic losses exceeding $25,000. This small group represents only 8.8% of the real-life sample of 1,376 crash victims, and fewer than 1% of all auto crash victims.

This means the other 91.2% of the seriously injured group were compensated for all but 6% of their economic losses, as a group.

3. Information Omitted

The disproportionately high losses sustained by the "catastrophi few," who account for 94% of the total uncompensated loss, raise questions about the omission of relevant information on the circumstances of these catastrophic situations. It is impossible to get answers from these published volumes as to why these individuals were not reimbursed.

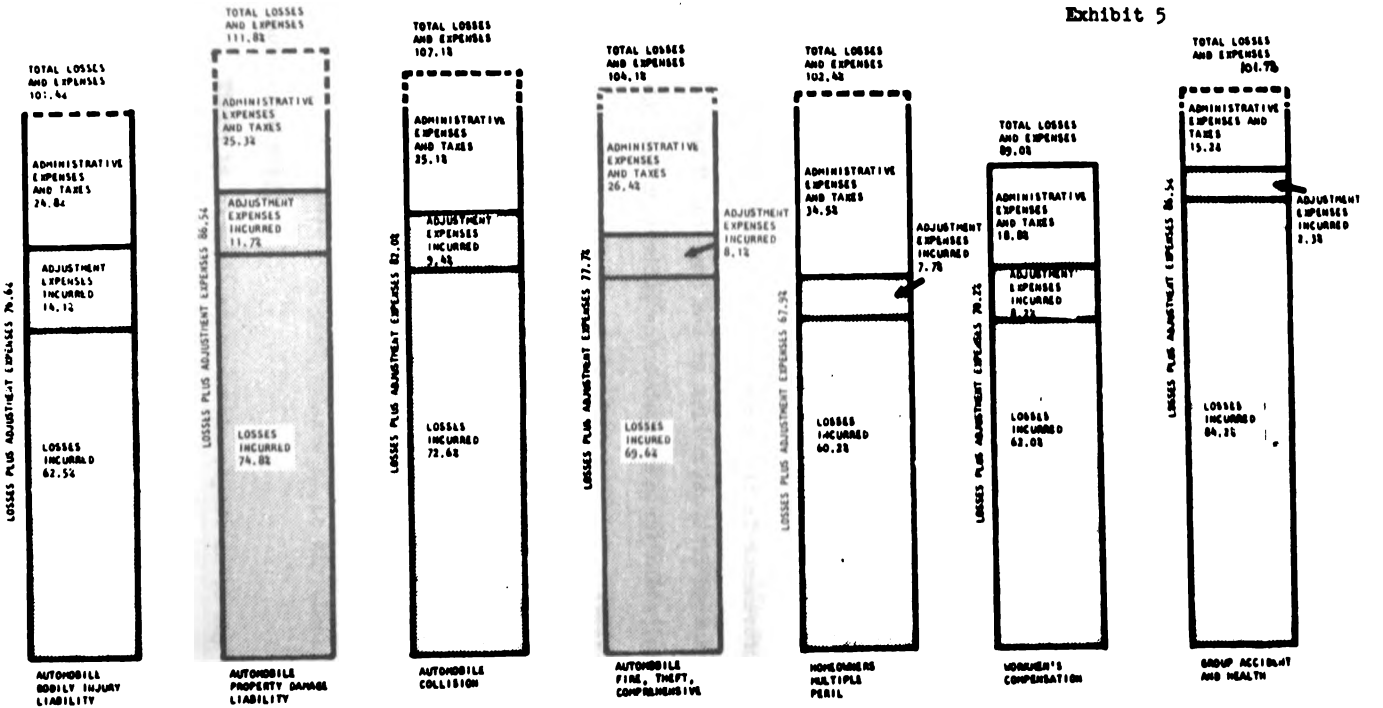
There is no explanation in the report as to why this vital information was withheld, while other less useful information is reported in great detail. For example, why was it decided to withhold information on the number of seriously injured persons who did not recover from auto insurance because they were injured in single-vehicle crash

or were at fault, or had neglected to purchase auto medical payments and collision insurance? How many had neglected to purchase health insurance, life insurance or other available forms of protection? Obviously, these factors have a direct bearing on the reimbursement received by this highly selected group of crash victims.

Finally, it would appear that all of the shortcomings attributed to the recovery systems for auto accident victims apply with equal or even greater force to the recovery systems available to persons injured or killed in other ways. In fact, this study indicates that auto accident victims are better protected already than most other categories of injured persons.

Proposed improvements in the present system, such as those outlined in the Guaranteed Protection Plan of the American Mutual Insurance Alliance, would further improve the protection available to auto crash victims.

Exhibit 5



Source: Aggregates & Averages (Property-Liability) - 1970 Edition - Alfred M. Best Co.
Averages of stock and mutual companies for 1969.

Senator HART. Now we will have the testimony reflecting the point of view of the Automotive Parts and Accessories Association, Inc., and I am glad that its president, Mr. Donald Schlenger, is here.

STATEMENT OF DONALD S. SCHLENGER, PRESIDENT, AUTOMOTIVE PARTS AND ACCESSORIES ASSOCIATION, INC.

Mr. SCHLENGER. Mr. Chairman, my name is Donald Schlenger. I am grateful for the opportunity and privilege of appearing before this committee today as spokesman for the segment of the automotive aftermarket industry served by the Automotive Parts and Accessories Association, Inc. I am the president of the association and am president of Roth-Schlenger, Inc., of Union, N.J., a regional chain of home and auto stores and leased departments in the East and Midwest.

The segment of the industry I refer to as being served by the association is primarily the retail segment or what is sometimes referred to as the volume segment of the automotive aftermarket. Essentially, we provide automotive merchandise and services directly to the motoring public through retail stores, typified prominently by the Sears and Western Auto Stores across the country. There are well over 50,000 establishments of this type, and the companies that own them are, in part, members of our association. The size of these establishments vary considerably to be sure, but they are for millions of motorists, the principal source of automotive merchandise, service, and information.

We are not affiliated with car dealers, service stations, or garages that also sell at retail. Uniquely, to my knowledge, we are the only association in this field that includes in its membership not only the outlets that typify the market it serves, but also includes, with full equity, the manufacturer who sells directly to the retailer and the wholesalers that supply the market's smaller outlets. We also have, as full memers, many independent sales agents—and other service companies such as publishers, ad agencies, consultants—that are significantly involved in this particular segment of the market.

So, you see, we are a very broad-based, multirepresentational group of automotive aftermarket businessmen. This structure, I might add, lends our association a growth and influence potential to be reckoned with in all automotive quarters.

We are Washington, D.C. based, and we have expert staff and counsel here that make our membership among the best informed national voluntary membership bodies in this field—which brings me to the subject at hand with what I hope is a clear picture, in the committee's view, of the specific interest our association has in this legislation.

We will limit our comments to title V, entitled Diagnostic Inspections, Registrations and Titling Standards, wherein it states in section 501(a) (1):

> The standard shall require inspection of a motor vehicle whenever the title to the motor vehicle is transferred for purposes other than resale, and whenever the motor vehicles, automotive repair parts or accessories: Provided, subsystem, or functional nonoperational part, as defined by the Secretary, is damaged.

I believe that since the condition of a vehicle is a significant contributory factor in many accidents, it seems to me that a first and foremost legislative obligation to improve the national vehicular

safety picture would be to write, as you gentlemen have, a law requiring inspections that is absolutely binding on anyone that sells a car to a user, whether that car be a new one or a used one. Certainly, after a car has been in an accident, it should be inspected before it is allowed back on the road.

Hand in hand our concern for safety on the highways is our ever-increasing concern for the pollution of our environment. As cars become older, parts require replacement, repair, tuning, and continual preventive maintenance. Our experience has shown that as a vehicle increases in age its chances of becoming a contributor to pollution also increases if not properly maintained. An improperly functioning carburetor, distributor, spark plugs, leaky valves, faulty piston rings, all contribute to air pollution. Any one of these defects will increase the level of emission significantly. The public must be informed that it is necessary to maintain surveillance over his vehicle so that it may be detected before it becomes a polluter.

The further additions to highway safety program standard No. 1 have evoked our interest and lengthiest comment. You will probably find when all of the rhetoric and special pleading has been analyzed that the question of diagnostic centers, inspection stations, inspectors, however the individual or facility that evaluates a vehicle's condition is referred to, elicits the greatest controversy, especially since this bill would replace inspectors in certain States that now license them to be inspectors and the bill disallows the sale of parts and services on the same premises where the inspection or diagnosis is performed.

Presumably, there is, in the judgment of the authors of this bill, a danger of a conflict of interest where law enforcement and commerce share the same premises. This premise is essentially why we asked to appear here today. It seems to us that a great deal of criticism directed against repair work relates to work not being needed and selfishly recommended. Also many inspections are faced with this failure because of the promotion and sale of unneeded parts. On top of that there will always be apprehension about the quality of inspections or diagnoses rendered not by impartial parties with a singular interest in inspecting for or diagnosing a car's faults, but by dually motivated businessmen. Any system that effectively creates a tempting climate such as the present system does, has rather obvious pitfalls. Bear in mind that we do not intend these comments as a cynical appraisal of all inspectors. We mean only to suggest that under the present system the prevailing margin for private advantage at public expense is unacceptable for a national safety program.

Although many firms in the segment of the industry represented by our association presently perform inspections and also sell repairs and parts, we do not hesitate to recommend that all such businesses divest themselves of one or the other. If, however, a facility is equipped to inspect and diagnose thoroughly and rapidly, we would be perfectly willing, in most instances, to go on record in defense of the quality with which these services are performed as well as the impartiality maintained as respects where motorists get repairs and parts. Yet, we do not hesitate to recommend that all such facilities divest themselves from the repairing or parts-selling business. Or if a facility is equipped to inspect or diagnose thoroughly and rapidly we would recommend that it be allowed to charge realistically for its

function and expect, if that is the case, supplemental funds from the State that would assure reasonable charges and reasonable profits to compensate for the prohibition of selling parts and services.

We are extremely confident that the motorist will select wisely from among available service and parts outlets away from inspection stations or diagnostic centers. We will always be in the parts supply and repair automotive aftermarket industry and we fail to see any economic damage to our industry by allowing the public to choose its merchants rather than allowing merchants to capture the public.

We agree with Senator Hart when you envision an enormous cost savings to consumers upon passage of this bill. You are right when you say a nationwide system of diagnostic inspection systems may well prove to be the greatest money and frustration saver in the bill and that the diagnostic centers also would be used by the States for periodic inspections required under their laws. We have maintained all along that periodic inspections are the only practical means to assure that the vehicles on the road are, in themselves, safe for operation. We have also maintained that Federal standards for vehicles in use would validate public confidence in inspections by letting the public know what the inspection yardstick was, and by letting the public retain its option to get its cars in safe condition at competitive prices, or by doing his own repair work if he is qualified to do so.

Diagnostic techniques to analyze vehicles are increasing in popularity. They should be encouraged in such a way that all devices, techniques, and systems developed may be compatible with vehicles now on the road or developed in the future. We see the day when motor vehicles will have built-in diagnostic features which will allow for hookup to external diagnostic equipment. Such equipment should be so designed with uniform diagnostic principles and with a similar circuitry so that the independent inspector at a diagnostic station can test vehicles. Specific circuitry in a car with unique plugs should be discouraged, for this would reduce the freedom of choice of the consumer. He should have the right to competitive repairs of his car, if necessary, and should not have to go back to the original dealer to have his car tested and repaired. Therefore, we strongly urge the development of uniform diagnostic concepts to analyze and inspect motor vehicles.

In conclusion, we agree with the author that the consumers do want dependable automobiles—autos that are safe and economical to operate—and that do not pollute the air or the ground. We therefore strongly support the conception that diagnostic inspection centers as an independent entity, either operated by individuals or State government, in all instances these facilities will only offer diagnoses and inspection. They will not offer parts for sale or repair services. We further recommend that regular, mandatory vehicle inspection be embodied in this bill with uniformity of standards established by the Federal Government.

Thank you.

Senator HART. I am sorry, I was catching up with you and then you introduced a sentence just at the end which is not in the text. Would you reread that?

Mr. SCHLENGER. We further recommend that regular, mandatory vehicle inspections be embodied in this bill with uniformity of standards established by the Federal Government.

Senator HART. Thanks very much.

First of all, I welcome the support that you voice for features of the bill before us; and you, without putting dollar signs in here, say that inspections such as are required in the bill would be a benefit both from a safety standpoint and as an economic benefit.

Of course, I have been saying the same thing, but can you help me get more specific? If you can't maybe when you get back you will have an opportunity to provide it for the record. How close can you come to saying how much it would cost a vehicle owner to obtain the kind of inspection visualized here and how reliable—I suppose that would have to be in percentage—is the feedback, the verdict you get when you go through such an inspection?

Mr. SCHLENGER. I frankly feel that it could be kept at an approximately $5 figure for a good safety inspection. As to the quality of the work, this is strictly depending on the——

Senator HART. I don't mean whatever quality of repairs which might be made, but the reliability of what you get for the $5 judgment?

Mr. SCHLENGER. The quality of the inspection?

Senator HART. Yes.

Mr. SCHLENGER. You would have to have qualified inspectors that pass certain standards. This would be strictly up to the controls put into effect. It would vary as to how well it is supervised on controls. For example, in the State of New Jersey right now, our inspection there which is on a yearly basis is really one of the better ones in the country. I think it does a fairly good job.

Senator HART. I think it was today—although I could be wrong on that—that I noticed an analysis of some inspections that are being done in California which underscore the direct benefit to highway safety that can be obtained from inspections. The impression I have is that it is a study—I don't know whether the study investigated accidents that had accrued. Does this ring a bell with you? Have you seen it?

Mr. SCHLENGER. I think it was in the document of the gentleman who was on before me, in his presentation. I think it was in there. I think something like 29 percent was the figure I saw in there.

Senator HART. Let's assume it is 29 percent. That does give real meat to the argument that there is a very significant safety factor quite aside from the economic benefit of diagnostic inspection. I think you didn't say anything about the section of one of our bills that requires standards to be set for reparability and fragility and specifically the one known as the bumper standard.

Do you have any comment on that one?

Mr. SCHLENGER. I would be speaking on an individual basis because that would not be falling into our scope.

As an individual, I feel that this would be a great boon to the American motorist, I really do. Today you will see especially in the metropolitan areas we sell all accesories, but today one of the big items that we are selling is these large bumper guards. People are now putting them on because of the enormous cost on a minor front-end accident. I think it is excellent, though.

Senator HART. Mr. Schlenger, you are correct. The study that I was not able to lay a hand on was a California study and it was in

cluded in the materials given us by Mr. Maisonpierre. It was a study that was made by the California highway patrol, comparing more than 400 fatal single traffic accidents for mechanical failure. You are right, 29 percent of the examples examined had one or more mechanicals; more than 6 percent had a mechanical defect which caused the accident. This could produce an enormous chunk of fatal accidents.

Mr. Sutcliffe.

Mr. SUTCLIFFE. I find it very difficult to formulate questions on a statement that is very much in support of the particular legislation. Perhaps this is a weakness in my own ability to critically analyze.

One question does occur to me. You ask that in this legislation we mandate periodic motor vehicle inspections. Under the Highway Safety Act of 1966 there was a requirement that the Secretary of Transportation require the States to periodically once a year inspect motor vehicles. That standard has been in effect and to date it has not been complied with in many jurisdictions. The legislation even provided for a penalty against the contributions to the States to the highway trust fund. But that particular penalty has not been assessed so as to encourage the States to undertake periodic motor vehicle inspections. And if it were, many State officials have stated they would not undertake periodic motor vehicle inspections because the costs for them to undertake such a program would exceed the penalty that was set.

Are we talking about two different animals when we talk about the kind of periodic motor vehicle inspection that takes place in some States and diagnostic, dynamic testing that we envision utilizing in S. 976?

Mr. SCHLENGER. Well, as far as the periodic—I am talking about your yearly inspection, this is one animal. It is two separate things we are talking about. As far as I am concerned, they would both be performed by the same physical faciilty.

Mr. SUTCLIFFE. And that would be probably a little different facility than many of us have seen?

Mr. SCHLENGER. Right, that's correct. You would have two different entities. One would be the periodic safety test which would be performed by the same agent, and the other one would be the diagnostic which would be in the same facility. It would be two different and drastically different costs as far as my appraisal.

Mr. SUTCLIFFE. So your $5 figure would be your required safety inspection required in S. 976 not only annually but after a crash or when title is transferred?

Mr. SCHLENGER. Right.

Mr. SUTCLIFFE. Your other inspection would be those inspections to determine how to maintain a vehicle in mechanical order so that its performance outside the safety area is optimum.

Mr. SCHLENGER. I have here both of these. I have one which would be your simple safety inspection, which would be what would happen——

Mr. SUTCLIFFE. What are those cards, what a person would receive from inspection?

Mr. SCHLENGER. This would be an idea of a card whereby on one side would be the identification of the vehicle and the safety items to be inspected, and it would show what was needed to bring the car into

a completely safe condition. The other side would have to be filled out by the repair facility, and it would indicate what the costs would be and then at the bottom of it—this is an idea that has been submitted—would be a certificate that this work was performed by the repair facility which would have to have an authorized individual signing it.

This would bring about the issuance of the permanent inspection sticker. In other words, when the car moved through inspection initially, the sticker is taken out. If the car goes through, if it is all right, a new sticker is put on. If it is not all right, a temporary sticker is put on. The faults are entered, and then the individual has it fixed at a repair facility. After it is fixed, it is certified that it is taken care of by a certified inspector at the repair facility. Then he in turn will send this back, either by mail and get a sticker, or if necessary he would have to bring the car back into the inspection station. This is one thought of how this system would work.

Now, on the other hand, I also have here what would be considered a diagnostic form. This has 150 different check points. This is a complete diagnostic system.

Mr. SUTCLIFFE. This would be an optional fallout advantage for the diagnostic center established by the Government for safety purposes?

Mr. SCHLENGER. That's right. This would be the kind of thing you would run your car through, find out what was wrong, take it to a mechanic, have a mechanic know what was wrong with the car, fix those things, and you could then, if you wanted to, run it back through the diagnostic center to make sure the car had been properly repaired.

Mr. SUTCLIFFE. May we have, for the record, those documents? Do you have copies?

Mr. SCHLENGER. Surely, both of them, yes.

Senator HART. Thank you. They will be made a part of the record.

(The material follows:)

Vehicle Owner

Address Date

Vehicle Identification Number

Inspection Station Number Address

Inspector and License Number

Brakes	Steering	Exhaust
Occupant Protection	Antitheft	
Lights	Suspension	Engine & Fuel
		Drive Train
Hornes	Control & instruments	
Tires	Glass	Emission Control
	Wipers, Defrost	
Wheels	Mirrors	
	Reflectors	

Signature of Inspector

REPAIR FACILITY

Name Address License Number

Mechanic Certification Number

OPERATIONS

	$		$
	$		$
	$		$
	$		$

CERTIFICATION OF INSPECTION

Name License Number

Auto Trouble Call CARL INCORPORATED

30 L STREET, SOUTHWEST
WASHINGTON, D.C. 20024
554-3400

NAME _____ MAKE _____

ADDRESS _____ YEAR _____

CITY _____ MILEAGE _____

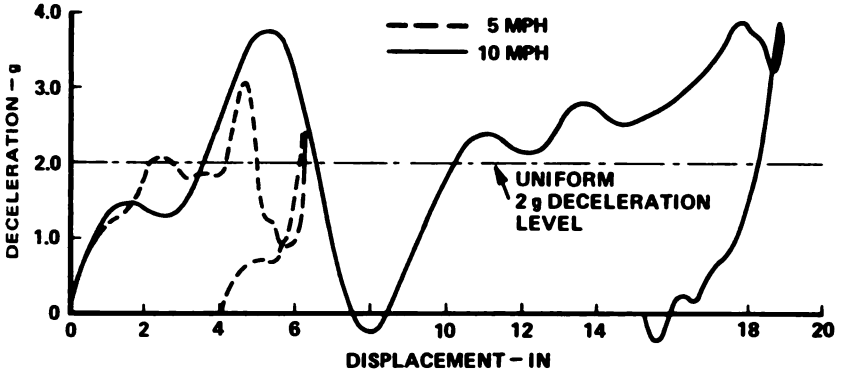
DATE OF TEST _____ No. 2151

		GOOD	MARG	FAIL
150.	GENERAL APPEARANCE			
149.	RETRACTABLE HEADLIGHT OPERATION			
148.	HEADLIGHT ALIGNMENT RIGHT LOW BEAM			
147.	HEADLIGHT ALIGNMENT LEFT LOW BEAM			
146.	HEADLIGHT ALIGNMENT LEFT HIGH BEAM			
145.	HEADLIGHT ALIGNMENT RIGHT HIGH BEAM			
144.	LOWER BALL JOINTS			
143.	UPPER BALL JOINTS			
142.	BRAKE DRUM			
141.	GREASE SEAL			
140.	WHEEL BEARING LUBRICATION			
139.	WHEEL CYLINDER LEAKAGE			
138.	BRAKE SPRING CONDITION			
137.	BRAKE LINING CONDITION			
136.	TIRE CONDITION			
135.	FUEL TANK & LINE			
134.	REAR SPRINGS			
133.	REAR SHOCK ABSORBERS			
132.	LEFT REAR BRAKE LINE & HOSE			
131.	RIGHT REAR BRAKE LINE & HOSE			
130.	DIFFERENTIAL LEAKAGE			
129.	UNIVERSAL JOINTS			
128.	TAILPIPE & BRACKET CONDITION			
127.	RESONATOR CONDITION			
126.	PARKING BRAKE CABLE			
125.	HEAT RISER VALVE			
124.	EXHAUST PIPE & MUFFLER			
123.	FREEZE PLUG CONDITION			
122.	STEERING BOX CONDITION			
121.	UPPER & LOWER CONTROL ARMS			
120.	STEERING LINKAGE CONNECTIONS			
119.	STEERING DRAG LINK			
118.	STEERING IDLER ARM			
117.	TRANSMISSION OIL LEAKS			
116.	ENGINE OIL LEAKS			
115.	FRONT SHOCK ABSORBERS			
114.	FRONT SPRINGS			
113.	LEFT FRONT BRAKE LINE & HOSE			
112.	RIGHT FRONT BRAKE LINE & HOSE			
111.	FRONT WHEEL BALANCE			
110.	WHEEL ALIGNMENT — CAMBER L. R.			
109.	WHEEL ALIGNMENT — CAMBER — R.R			
108.	WHEEL ALIGNMENT — TOE IN REAR			
107.	STEERING WHEEL SPOKE POSITIONING			
106.	WHEEL ALIGNMENT — L. CASTER			
105.	WHEEL ALIGNMENT — R. CASTER			
104.	WHEEL ALIGNMENT — L. CAMBER			
103.	WHEEL ALIGNMENT — R. CAMBER			
102.	WHEEL ALIGNMENT — TOE IN			
101.	MAXIMUM ROAD HORSE POWER			
100.	Automatic Trans. Shift Pattern & Operation			
99.	CLUTCH PEDAL FREE TRAVEL & OPERATION			
98.	DRIVE LINE BALANCE			
97.	Rear Wheel Speedometer Test at 60 MPH			
96.	Rear Wheel Speedometer Test at 30 MPH			
95.	CARBURETOR POWER VALVE OPERATION			
94.	INTAKE MANIFOLD VACUUM — LOAD			
93.	INTAKE MANIFOLD VACUUM — IDLE			
92.	ACCELERATION PUMP OPERATION			
91.	FUEL CONSUMPTION			
90.	FUEL FLOW			
89.	FUEL PUMP PRESSURE			
88.	AIR-FUEL RATIO			
87.	REGULATED CHARGE VOLTAGE			
86.	IDLE RPM			
85.	FAST IDLE CARBURETOR SETTING			
84.	CYLINDER BALANCE			
83.	FOULED OR SHORTED PLUGS			
82.	PLUG WIRE CONDITION			
81.	SECONDARY VOLTAGE REQUIREMENT			
80.	DISTRIBUTOR ROTOR AIR GAP			
79.	DISTRIBUTOR CAP & ROTOR LEAKAGE			
78.	DISTRIBUTOR ADVANCE — CRANKSHAFT-DEGREE			
77.	INITIAL TIMING			
76.	DWELL VARIATION			
75.	DWELL ANGLE			
74.	ARCING POINTS			
73.	MECH. ACTION, POINTS			
72.	REGULATOR CUT-OUT RELAY			
71.	CHARGE CURRENT OUTPUT			
70.	STARTING CURRENT DRAW			
69.	SOLENOID CABLE & CONTACT DROP			
68.	SOLENOID CURRENT DRAW			
67.	PRIMARY RESISTANCE BYPASS			
66.	AVAILABLE SECONDARY VOLTAGE			
65.	CONDENSER LEAKAGE			
64.	CONDENSER CAPACITY			
63.	CONDENSER SERIES RESISTANCE			
62.	COIL POLARITY			
61.	COIL SECONDARY RESISTANCE			
60.	BATTERY TO COIL RESISTANCE			
59.	COIL PRIMARY RESISTANCE			
58.	POINT RESISTANCE			
57.	BATTERY UNDER LOAD			
56.	NO LOAD BATTERY VOLTAGE			
55.	REAR BRAKE FADE			
54.	REAR BRAKE UNBALANCE			
53.	REAR BRAKE EFFORT AT 45 M.P.H.			
52.	BRAKE PEDAL RESERVE			
51.	BRAKE PEDAL FADE			
50.	FRONT BRAKE FADE			
49.	FRONT BRAKE UNBALANCE			
48.	FRONT BRAKE EFFORT AT 45 M.P.H.			
47.	FRONT WHEEL SPEEDOMETER CHECK			
46.	TURN SIGNALS			
45.	TAIL & TAG LIGHTS			
44.	BACK UP LIGHTS			
43.	BRAKE LIGHTS			
42.	PARKING LIGHTS			
41.	ELECTROLYTE LEVEL & SPECIFIC GRAVITY			
40.	BATTERY CABLE CONDITION			
39.	BATTERY VISUAL CONDITION			
38.	CHOKE VALVE OPERATION			
37.	AIR FILTER ELEMENT CONDITION			
36.	PRESSURE CAP CONDITION			
35.	COOLING SYSTEM PRESSURE TEST			
34.	COOLANT LEAKS			
33.	HEATER HOSES & CORE			
32.	LOWER RADIATOR HOSE			
31.	UPPER RADIATOR HOSE			
30.	RADIATOR CONDITION			
29.	ENGINE OIL LEVEL & CONDITION			
28.	POWER STEERING FLUID LEVEL			
27.	BRAKE FLUID LEVEL			
26.	CARBURETOR & FUEL PUMP LEAKS			
25.	BELT(S) CONDITION & TENSION			
24.	POWER STEERING PUMP & HOSE CONDITION			
23.	COOLANT TEMPERATURE PROTECTION			
22.	WATER PUMP CONDITION			
21.	COOLANT LEVEL & CONDITION			
20.	EXHAUST SMOKE			
19.	P. C. V. VALVE			
18.	TRANSMISSION FLUID LEVEL & CONDITION			
17.	HOOD AND LATCH OPERATION			
16.	WIPER BLADE & ARM CONDITION			
15.	MASTER CYLINDER LEAKAGE			
14.	PARKING BRAKE OPERATION			
13.	POWER WINDOW OPERATION			
12.	AIR CONDITIONER OPERATION			
11.	HEATER & DEFROSTER OPERATION			
10.	HORN OPERATION			
9.	SEAT BELT CONDITION			
8.	INSIDE & OUTSIDE MIRROR			
7.	WINDOW GLASS CONDITION			
6.	WINDSHIELD CONDITION			
5.	WIPER & WASHER OPERATION			
4.	FRONT SEAT OPERATION			
3.	INSTRUMENT LIGHTS & GAUGES			
2.	INSIDE LIGHTS			
1.	REAR TIRE CONDITION			

FILE COPY GOOD MARG FAIL

SLIDES TO BE PRESENTED

MEASURED DECELERATION-DISPLACEMENT DATA FOR FRONTAL TESTS WITH 1970 CHEVROLETS



Senator HART. It makes it a little more understandable to those who are not familiar with even a raw sort of outline procedure to understand how this could be translated into a manageable and understandable form from the consumers' point of view. You would know what you were shopping around for if you wanted to shop around.

Mr. SCHLENGER. With that form there, you could do maybe three different repair facilities and check their prices.

Mr. SUTCLIFFE. Senator, I have no further questions.

Senator HART. Mr. Schlenger, nor do I, but I thank you very much for the support you voice for certain of the legislation and giving us the last two documents that were just made a part of the record. Others on the committee will be interested in seeing them.

We adjourn to resume in this room at 10 a.m.

(Whereupon, at 5:40 p.m., the hearing was adjourned to reconvene at 10 a.m., May 7, 1971.)

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

FRIDAY, MAY 7, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m. in room 5110, New Senate Office Building, Hon. Philip A. Hart, presiding.

Present: Senators Hart, Baker, and Cook.

Senator HART. The committee will be in order.

As I probably indicated yesterday, the highlight in a personal sense for me in this hearing is the opportunity to welcome our next witness. Politicians particularly overdo the business of describing people in extremely favorable fashion to the point where it is discounted 99 percent. In this instance I could use many complimentary adjectives, but shall not, and simply say that I welcome the man who was elected secretary of state in Michigan. He is certainly one of our finest public officials and a very good and old friend of mine, Secretary of State Richard Austin.

STATEMENT OF HON. RICHARD H. AUSTIN, MICHIGAN SECRETARY OF STATE

Mr. AUSTIN. Thank you, Senator Hart, not only for inviting me, but for that very kind introduction.

Senator HART. May I introduce the Michigan secretary of state, Mr. Austin, Senator Cook.

Senator COOK. How do you do, Mr. Austin.

Mr. AUSTIN. Mr. Chairman and members of the committee, I am honored to appear before this distinguished body to discuss some of the problems of motor vehicle accident compensation. I would like today to talk about the Michigan experience and current moves toward reform in this area.

In the past few weeks several important bills have been introduced in the Michigan Legislature which would establish no-fault auto insurance. As secretary of state I have watched these developments carefully and am studying the individual proposals as they are developed. In Michigan the secretary of state, among other duties, administers the State's motor vehicle and driver licensing programs. We have on file some 5,900,000 driver records and approximately 6 million motor vehicle records in our files.

As a basic set of guidelines for the appraisal of new legislation I have found most valuable the Department of Transportation automobile and compensation study materials.

Michigan differs from most States in its approach to the general subject of accident compensation. In 1966 our State established the motor vehicle accident claims fund (often referred to as the uninsured motorists fund or MVACF.)

I think I could characterize my testimony today as simply reporting from a State in which we believe we have a reasonably successful uninsured motorist program. But despite the fact we have what may be regarded as a reasonably successful uninsured motorist program, we feel that reform is necessary.

This fund in Michigan was designed to protect citizens from loss due to death, injury, or property damage in excess of $200 resulting from accidents involving drivers who did not have insurance and who were found to be at fault, or unidentified drivers.

Michigan law requires every operator of a motor vehicle to have a minimum amount of property damage and public liability insurance. Those who do not present proof of this insurance must pay a $35 fine or penalty to the State's MVACF. In addition, those who have the minimum insurance pay an annual fee of $1 to the fund. I think it is important to report that actions of the current session of the legislature have increased the uninsured motorist fine to $45, it was increased $10, and at the same time the legislature eliminated the fee of $1 on the insured motorist. We have been analyzing the financial condition of our fund and some of us felt perhaps we could eliminate the $1 charge on the insured motorist and still maintain the fund solvent.

The legislature, however, felt that just to play it safe they would increase the penalty on the uninsured motorist $10. If you are interested in how much money is involved, we are collecting approximately $4 million from insured motorists at $1 a piece, and we have been collecting approximately $2.5 million, I believe it is $2.5 million, from the uninsured motorists. We are going to lose some of our revenue in this process, but by increasing the uninsured motorists $10 we will make up part of the loss. I am informed that the actual amount we collect from the uninsured motorists is about $8 million.

Since its inception in 1966 the fund has succeeded in satisfying certain claims and providing some of the protection it was designed to achieve. I do not, however, regard this as the best solution available in the light of other current alternatives.

In its first 5 years of operation the Michigan fund has collected a total of nearly $68 million. Nearly $11 million has been paid in claims However, a little more than $11 million has been expended for legal administrative and other operating needs. Note this, please: of every average dollar paid by the fund 49½ cents went for claims while 50½ cents went for operating expenses. Moreover, as the fund matures and claims accumulate, legal costs are skyrocketing proportionately from $350,000 2 years ago to $500,000 last year to an estimated $775,000 this year.

We had a unique problem with the fund this year. No sooner was I elected to my present office than the Governor, hard pressed by serious fiscal problems, proposed that the State borrow a considerable part of the MVACF to be used by other State departments. A loan of $4½ million has just been negotiated for this purpose by the legislature.

A danger heretofore underestimated is that sometime in the future lurks the possibility that money assigned to the specific purposes of

accident compensation may not be available for the job intended. I devoutly hope and trust this will not occur, but you gentlemen are well aware of the alluring temptations posed by a voluptuous surplus or contingency fund anywhere during a time of fiscal crisis.

Senator COOK. Mr. Austin, before you go on, may I ask what kind of loan it is? I mean what type of payback provisions does it have?

Mr. AUSTIN. It is to be paid back at the rate of $9 million a year over a 5-year period, plus interest. We had quite a controversy over the interest question.

Senator COOK. Does it have a provision requiring that at no time will the State, in regard to that note, allow the fund to become insolvent?

Mr. AUSTIN. Exactly. The legislature in the bill which authorized the transfer provided for meeting any claims that might arise in the fund that we are unable to meet as a result of this money being borrowed from it.

Senator COOK. So it is conceivable that the state, out of necessity and by legislative action, would have to accelerate its payment so your fund would not become insolvent?

Mr. AUSTIN. Right.

Senator COOK. Thank you.

Mr. AUSTIN. You are quite welcome.

I would like to explain my other reservations about the motor vehicle accident claims fund as it operates in Michigan.

First, insurance companies are now able to refuse coverage to drivers they consider bad risks (for whatever reason) and thereby force them to do one of two things. They may either make application to the so-called assigned risk pool operated by the insurance companies and be assigned to an insurance company which must write them a policy, although the rates are quite high; or they must pay the $35 fee, now $45, to the fund if they want to drive legally. Last year 83,000 motorists applied to the assigned risk pool for coverage while some 260,000 motorists elected to pay the fund. Incidentally, we are not prepared to tell you whether the 260,00 represents all of the uninsured motorists, because many drivers who buy insurance very often drop their insurance after they get their license. And I should also make clear that the fund is not insurance.

Too often the decisions by insurance companies not to insure motorists are based not on true risk or on driver ability but on place of residence, age, or other discriminatory rulings which are not applied equally to all drivers but act particularly against black people and poor people.

Second, if an uninsured motorist is involved in, but not responsible for an accident, he is often forced to agree to pay at least a portion of the damages in order to retain his license and avoid having to buy expensive financial responsibility insurance. And I will say more about this financial responsibility insurance.

In Michigan an uninsured motorist involved in, but not necessarily responsible for, an accident resulting in death, injury, or property damage in excess of $200 has 60 days to either: (1) Submit an affidavit attesting that all claims arising from the accident have been paid, or (2) deposit an amount with the State equivalent to the estimated dam-

ages which will be held for at least 1 year. If neither of these step is taken, his license will be suspended.

To regain his license he must comply with one of the two previousl mentioned requirements, and in addition must purchase what is calle financial responsibility insurance, and maintain this coverage for years.

The cost of the financial responsibility insurance is not based on th same rate structure that governs regular insurance policies. It is no unusual to find such policies costing up to $1,500 per year or mor The only other option open to an individual who must prove financia responsibility to drive legally again is to deposit $25,000 cash or a equivalent bond with the State for 3 years. And no one remember that ever happening.

Keep in mind that this is what can happen to an uninsured motoris if he is involved in one of these accidents even though he is no responsible for the accident.

The shortcomings of our MVACF can be overcome, in my opinio with a complete compulsory and effective no-fault auto insurance pla

This no-fault legislation should, in my opinion, cover both pe sonal injury and property damage, although plans have been pr posed that would make the property damage or collision optiona It should pay the entire loss suffered for injuries resulting from a auto accident, except for compensation occurring from other source such as sick pay or health insurance. I would hope that standar coverage would amount to at least $1,000 per month for wage loss an at least $1,000 for funeral expenses. The insurer would, of course, mak available to the policyholders as options larger benefits as well as ce tain deductibles.

I do not favor no-fault legislation which offers less than a comple overhaul of our present system. A prescription for vitamin pills wi not suffice where massive blood transfusions are required, and I thin you will agree that that is what is required in this industry.

A proper, comprehensive, consumer-oriented no-fault law woul not only contribute to solving today's crisis in auto insurance but woul in Michigan also eliminate the need for our motor vehicle accide fund. If it does not eliminate the fund, it would at least reduce relian on the fund. And I do not want it to be understood that my presen here today is to advocate abolishing this fund. What I am simp saying is that if we can get a comprehensive no-fault plan we m be able to eliminate the fund and have better coverage for everyon

There would be other advantages to a good no-fault program. Y are familiar with most of them, so I will not be repetitious. Let m however, mention one or two of the advantages that I regard as vit

Insurance companies under no-fault as I understand it would longer be able to refuse coverage, but instead would establish a ra structure based upon driving performance. This would have the add strong incentive for each motorist to improve his driving record obtain a better rate.

The tragic continuance and increase of fatalities and injuries our streets and highways requires strong governmental responses.

Incidentally, on Easter Sunday in the city of Detroit we had single accident in which seven people were killed, including the driv

We must judge every new program first by what it will do to redu

the horrible carnage resulting from auto accidents. That is why I prefer an insurance program which recognizes and rewards good driving performance.

Another principal advantage of no-fault would be the elimination of the need for financial responsibility insurance. If all drivers are required to have some form of low cost minimum coverage, this extra insurance should be unnecessary.

The legislation which I favor has been recently introduced by State Senator Coleman A. Young and is now before the Michigan Senate. I think I should make clear that Senator Young's bills have just been introduced; they have not yet been subjected to the close scrutiny that bills are normally given in our legislature; there have been no public hearings and the bills do not mesh together perfectly, but they do embrace the general concept that I favor. And I feel that the legislature will, before it has completed its deliberations, perfect these bills.

Let me add, however, that I would strongly urge this committee to recommend a national no-fault program rather than allow 50 varied and unsynchronized plans to be developed unevenly, unrythmically and possibly dischordantly. This insurance symphony should play one set of music requiring all members of the orchestra to play under one director.

We in Michigan have no alternative at the present moment but to proceed with our own State plan. I would prefer, however, to see a national no-fault bill along the lines of the one proposed by our own senior Senator, Philip Hart. This bill in my opinion should be strengthened by including coverage for property damage—I feel very strongly about property damage—to fulfill all of the "Recommendations for Change" as advanced by Secretary of Transportation John A. Volpe.

If Senator Hart's bill is adopted we in Michigan would be able to assure our motorists the same protection wherever they go, in whatever State they visit and at a time of personal crisis when this assurance would be of special comfort. I would like to be able to tell Michigan residents they will have the same protection in any State they visit.

We in Michigan have good insurance laws, fair programs, a reasonably effective anticancellation act, group auto insurance plans and an uninsured motorists fund which, despite its shortcomings, provides needed protection. We are also taking important steps to work toward enactment of the most complete consumes no-fault auto insurance program in the country.

The Department of Transportation and this committee have provided us with valuable assistance. On behalf of our State, I want to thank you for this help and I want to express my deep appreciation for allowing me this appearance today.

Thank you.

Senator HART. Mr. Austin, thank you. I should indicate that as you were testifying we were joined by the able Senator from Tennessee, Mr. Baker.

Mr. Austin, as a citizen of Michigan, I would make this one comment. I think we can describe Michigan as a good State as far as uninsured motorists, and yet having said it that way, we realize how unsatisfactory the average is. In Michigan, as I gather from your testimony, the number of drivers operating without liability insurance runs

between 5 and 10 percent. Nationally the average is about 15 to 20 percent.

I am struck by one point you make here and——

Mr. AUSTIN. May I interrupt?

Senator HART. Yes.

Mr. AUSTIN. It is quite possible the number of uninsured motorists could be higher in Michigan. We know how many are paying the penalty, but there are more, perhaps, who are not insured. They may be able to provide proof of insurance at the time they renew their license, but that insurance could lapse, and more of them may be driving without insurance. I wanted to make sure on that point.

Senator HART. Maybe that is why I threw in the 5 to 10 percent.

One point you make is that you want an insurance program which recognizes and rewards good driving performance. One of the criticisms against a no-fault system is that good, bad, and indifferent there is no reward for disciplining yourself to be a safe driver. You don't have to worry about the cancellation or failure to recoup your losses because of your own negligence. Have you given thought to this aspect of the debate?

Mr. AUSTIN. Yes, Senator. In Michigan we are very fortunate in having a very sophisticated computer system and a point system for rating drivers. We have approximately 5,900,000 driver records on line on our computer for immediate access.

Senator HART. Does that mean we have listed 5,900,000 people?

Mr. AUSTIN. That is correct.

Senator HART. As drivers?

Mr. AUSTIN. As drivers.

It is possible from a terminal anywhere in the State to communicate directly with our computer and within 30 seconds to a minute get a copy of any driver record, any one of those 5,900,000 records.

I want to qualify this: Sometimes it takes 2 or 3 minutes to print out one of those records, but the record can be searched out in about 30 seconds to a minute.

We have a point system which requires us to review a driver's record when he accumulates 12 points, and at that point we can suspend his license, or we can put him into some type of driver improvement program. If he responds, his license may not be suspended.

Well, with the facility that we have available, it would not be difficult to provide insurance companies with some accurate information that could be used for setting rates, variable rates, depending on the driver's performance. So even under a no-fault program, it would be possible for the insurance companies to vary the rates depending on a person's driving skill and ability and performance.

I feel that even under a no-fault plan there would be an incentive to drive carefully, avoid accidents, in order to keep the premium low.

Senator HART. Thank you.

There is one second criticism that you might have some reaction to. There is developing—I think I state this fairly—there is developing an agreement that we should go to a no-fault system in this country. But the suggestion is made that we experiment at the State level. If, in the next few years, there is a no-fault system as a result of the action of the 50 State legislatures, then we will have moved to national no-

fault. And if there is not, and the Federal Government decides to apply no-fault through Federal legislation, we will have had the benefit of a series of experiments at the State level.

That assumes that half a dozen or more States will adopt a form of no-fault insurance. You have reminded me that State Senator Coleman Young has introduced legislation in Michigan. This is true elsewhere. How does that argument strike you, that we ought to wait and see what the States do and what we learn from what they have done?

Mr. AUSTIN. I don't believe we should wait for national guidelines, if I can use that expression, national direction. I am personally afraid to have 50 States experimenting. We have no choice if the Federal Government does not move, if Congress does not move. Because we have got to reform our insurance programs.

But it would seem to me that it would be much better if we could have a synchronized program in effect throughout the Nation, as many drivers cross State lines, and I have a feeling that unless the laws are uniform in the States, at least in some very basic respects, drivers will not know exactly what their responsibilities are in the States in which they are driving, except the State of their residence.

I feel also that some of the States may fall into some practices that will be hard to correct, once the Federal Government acts and decides on guidelines for all of the States to observe. Since we are plowing fertile ground, it just seems to me it would be so much better if we could get the resources focused on this problem, to come up with a solution that is best for all of the people of the country and then all of us can proceed harmoniously to work within those guidelines.

So I do not favor waiting. I believe we ought to move immediately with Federal legislation.

Senator HART. Thank you very much.

Senator Cook?

Senator COOK. Mr. Austin, you reveal some very interesting statistics. I notice in one item later on you state that the fund is not insurance. Yet, your record of payouts per dollar paid in is about equal to the insurance companies.

You state that you have paid out 49½ cents for claims, and you have paid 50½ cents for operating expenses. What do you include in operating expenses? First of all, before we get to this, so I think we can both have some background, will you explain to me under what terms you make a claim with the fund, what the fund stands ready to pay in relation to the $35 or the $45 that is paid in? Could you give me an idea of some of the judgments that have been rendered against the fund, as to their size, and then let's talk about the expenses.

Mr. AUSTIN. First of all there are limits. It is the $10,000 and $20,000 limits.

Senator COOK. All right. That is your limit then.

Mr. AUSTIN. There is also a $200 deductible, that is the minimum. That is for property damage. There is no minimum for personal injury, just for property damage.

Senator COOK. It is 10–20, and the ceiling.

Mr. AUSTIN. That is correct. The legislature, incidentally, this year has raised those limits to $20,000 and $40,000, but we have had no experience with 20 and 40. In fact, the Governor has not yet signed the bill.

Senator COOK. Can you give me an idea of some of the judgmen on personal injuries that have been rendered against the fund?

Mr. AUSTIN. You mean aside from the maximum? We have ha several maximums.

Senator COOK. I am talking about personal injuries. You said the was no ceiling on personal injuries.

Mr. AUSTIN. I am sorry. There is no deductible on personal injurie

Senator COOK. I see. All right.

Mr. AUSTIN. The ceiling is 10 and 20.

Senator COOK. Now, did the fund pay out $380,000 2 years a and a half a million dollars last year to lawyers that defended t fund?

Mr. AUSTIN. Yes. This was paid to—we have a special arrangeme with the Attorney General who appoints attorneys across the Sta to represent the fund in the various counties and communities. A these are the fees that we paid to our own counsel. It does not inclu fees paid by motorists who may have engaged counsel to collect mon from the fund.

Senator COOK. What I am trying to suggest is that this really does constitute an insured fund. If you feel it is the responsibility of t State to defend these claims, if you feel it is the responsibility of t State to try these claims, if you feel that it is the responsibility of t State to pay out of this a half million dollars a year for legal couns to defend these claims, then it really does constitute a degree of insu ability, does it not?

Mr. AUSTIN. I suppose you could construe it as a degree if insurab ity, except that every claim that is paid is collectible, or at least is p sumed collectible. We have had very poor experience in making c lections. Every claim that we pay must be repaid.

Senator COOK. I think it is very interesting in all of this that a fu to protect against the uninsured motorist on the State level, on t governmental level, has cost so much to administer as compared wi what the insurance companies are paying out per premium doll

In other words, you are paying out 49½ cents and it is estimat that the insurance companies throughout the country are payi out somewhere around 50 cents out of every premium dollar.

Mr. AUSTIN. You understand that this is because fault must determined, that is, the responsibility for the accident must be fix and then the amount of the claim must be established.

Senator COOK. You treat it on a straight tort liability basis the

Mr. AUSTIN. Exactly.

Senator HART. It is a small wonder there isn't any variation.

Senator COOK. I am not arguing the point.

Senator HART. No. I understand you are not arguing the poi Senator Cook.

Senator COOK. Apparently counsel has done a pretty good job f the fund, because it has paid out $11 million and collected $68 millio

Mr. AUSTIN. I think maybe I better do a little explaining here, t

Senator COOK. All right.

Mr. AUSTIN. The cash that was in the fund was encumbered claims that are in process of litigation.

Senator COOK. Then it is treated the same as insurance.

Mr. AUSTIN. We have approximately $30 million of claims t are now in the process of litigation. Of course one of the big ar

nents that I had when the State insisted upon borrowing $45 million was that the money was encumbered. But it was borrowed anyhow because it was needed to mete out State responsibilities.

Senator COOK. You are also collecting approximately $14 million, adding to it every year, and some of the $30 million encumbrance is more than a year old, I assume; is it not?

Mr. AUSTIN. Exactly.

Senator COOK. In other words the encumbrance of your fund, and I direct this to both of you, the encumbrance of your fund is really in direct proportion to the ability to try?

Mr. AUSTIN. Exactly.

Senator COOK. In other words, if you have $30 million encumbered, some of the claims may be as old as the fund itself if you haven't been able to get trial on a particular case. Would that be correct?

Mr. AUSTIN. Exactly. There are unpaid claims and there are also claims pending and the insurance commissioners, the actuaries who examine our funds, established the full liability at approximately $30 million.

Senator COOK. What do you do when a claim is filed? Do you immediately assign that claim a value based on an investigation, and immediately encumber the fund to that exent?

Mr. AUSTIN. Exactly.

Senator COOK. And it constitutes an encumbrance?

Mr. AUSTIN. That's right.

Senator COOK. Now, as you foresee it in your own mind, in what you would like to have, with the elimination of State authorized programs, State authorized no-faults, give me your opinion of section 3(b) of S. 945. It reads as follows:

> No State shall require the purchase or acquisition of insurance or any other security as a condition to the operation or use of any motor vehicle upon the public streets, roads, or highways of such State, other than the insurance required under section 5 of this act.

Do you believe that a Federal bill should provide or at least give the signal to the driving public that it need only carry whatever is authorized under a no-fault program and not attempt to secure other coverage?

Mr. AUSTIN. Oh, I would not in anyway suggest that a person should not be encouraged to get coverage additional to that which may be provided in the bill. As I understand it, your Senate bill does not provide for property damage. Am I correct?

Senator COOK. That is right.

Mr. AUSTIN. Obviously an individual should carry property damage insurance.

Senator COOK. Then you think that a State ought to have the authority legislatively to protect its own citizens over and above a Federal statute if it feels it is for the benefit and safety and protection of its citizens?

Mr. AUSTIN. Oh, I would agree. I would agree.

Senator COOK. Thank you, Mr. Chairman.

Senator HART. I take it that when you describe our fund as not insurance, you have in mind this distinction, that the State has to then go out and act against, attempt to recover or collect from the uninsured motorist——

Mr. AUSTIN. Let me express it another way, Senator, if I may. Th
$35 that an individual pays is not an insurance premium. That is
penalty that he pays for not having insurance coverage at the tim
he applies for his automobile license. Other individuals who ar
insured are required or have been required up to this point to pa
$1 into the fund, and they may derive absolutely no benefit from i

Senator COOK. But, Mr. Austin, let me ask you this:

You said last year 83,000 motorists applied to the assigned ris
pool and 260,000 motorists elected to pay to the fund. In other word
they don't really have to place their name in the assigned risk po
if they elect to pay the $35 since they are protected under the fun

Mr. AUSTIN. They are not protected. It is the unsuspecting drive
who happens to be injured or damaged by one of them that is protecte

Senator COOK. That may be true, but they are receiving the benefi
of 10 and 20, are they not, by reason of paying the $35 and now $4

Mr. AUSTIN. I would rather put it this way, if I may——

Senator COOK. Well, the fund might be able to collect from the
but——

Mr. AUSTIN. An individual who is injured by one of these drive
will be able to collect the 10 and 20, but the uninsured motorist is n
absolved of the responsibility to pay the 10 and 20.

Senator COOK. No, but you can have a lot of bankruptcies wh
you decide to try to collect it.

Mr. AUSTIN. So it is not insurance in that respect. Normally if y
have liability insurance and pay your premium, the insurance co
pany meets the claim and that is the end of it.

Senator COOK. Well, if somebody collects, $20,000 from a man w
has nothing but an automobile there is not really much of a char
of the fund ever collecting the $20,000?

Mr. AUSTIN. Our experience has been a collection of somewhe
between 10 and 12 percent of the claims we have paid out.

Senator COOK. All right. That kind of substantiates what we a
talking about.

Mr. AUSTIN. Yes.

Senator COOK. What you really find in the range of 10 to 12 perc
would be those drivers who probably have been denied coverage
reason of previous accidents, have not been given insurance in t
assigned risk pool when it comes time for them to be licensed—

Mr. AUSTIN. Or they may have an alcohol problem.

Senator COOK. Yes. They wind up paying the $35 or $45, becau
they cannot get insured any place else, and happen to have ass
But you wouldn't suggest that you will be able to recover from m
of the 260,000 motorists that elected to pay into the fund. You s
you might be 10 to 12 percent successful in recovering directly fr
them?

Mr. AUSTIN. That's right.

Senator COOK. Thank you.

Senator HART. Senator Baker.

Senator BAKER. Mr. Chairman, thank you very much.

Let me instead of asking questions, which I would like to do, ap
gize to you for having been absent from these hearings from
necessity of having to chair hearings on S. 1113 for the last 6 da
I am very sorry to have missed this testimony. I will read it v
carefully. S. 1113 is a piece of legislation to create national envir

mental laboratories, so I feel it necessary to be present at those hearings.

Now I apologize to the witness for being late today, but assure him I intend to explore the points he makes very cogently in his statement and to try to make a further contribution to these hearings as you progress further.

I thank you for the opportunity and respectfully decline under those circumstances at this time.

Senator HART. Mr. Austin, in view of the exchanges we have had, is there anything you would like to add that you think might be helpful.

Mr. AUSTIN. One thing I would like to do is to leave you a few copies of our Motor Vehicle Claims Act and also some of the literature that we distribute in connection with the fund, in which we try to explain to the motorists that by paying the $85 you are not acquiring insurance. You may be getting yourself into a lot of trouble. And also explaining why we ask the insured motorists contribute $1 to the fund. I feel that unless you have more questions to ask that perhaps I should not take more of your time, except to thank you for giving me the opportunity.

I have only been in my office now 4 months, and there is a great deal more about this that I want to learn and I wish that I knew before sitting here. However, I think that perhaps the information that I have acquired has been useful. We believe very strongly that we need to revise our insurance program. And I have support of some 2,400 employees in the Department of State who have had experience with our insurance program in Michigan over a period of years; I have support of many other citizens in our State who believe that we need to revise this program. So I would like to end my comments by urging you to proceed with some national legislation.

Senator HART. Thank you very much for closing on that note.

May I depart from the witness list as scheduled with this explanation, and I apologize to my colleagues on the committee. I have not had an opportunity to discuss this with them.

Late last night, but not received by the staff until this morning, a telegram was received from Richard Markus, president of the American Trial Lawyers Association, asking for any opportunity to respond to the testimony of yesterday. While I am sure my colleagues would not want to establish as a precedent the claim of personal privilege, nonetheless I think under the circumstances we would want to give Mr. Markus this opportunity to testify.

STATEMENT OF RICHARD M. MARKUS, PRESIDENT, AMERICAN TRIAL LAWYERS ASSOCIATION; ACCOMPANIED BY JERRY FINN, OF NEW JERSEY, CHAIRMAN, LEGISLATIVE SECTION

Mr. MARKUS. Thank you very much, Senator Hart.

With the permission of the committee, I would like to offer a prepared statement which I have submitted to the committee, and be given an opportunity to paraphrase that statement, so I may express myself more adequately.

Senator HART. If there is no objection, we will have the statement printed in full and you may proceed.

Mr. MARKUS. May I also indicate I have brought with me Mr. Jerry Finn of New Jersey, who is the elected chairman of the legislative section of the American Trial Lawyers Association and the purpose of his presence, like my own, will be to answer any questions the committee may have.

Mr. Chairman, as you kindly pointed out, I did send a telegram to this committee requesting an opportunity to appear here, after I had learned that Robert Joost had testified before the committee as to certain activities of the American Trial Lawyers Association.

The committee has most graciously given me an opportunity to appear at this time.

I would like to begin by saying I am personally proud of the efforts of lawyers and lawyer associations who become involved in America's political process. For too long, the legislatures have been dominated—even controlled—by insurance interests and other special interest groups. Within the immediate past, lawyer groups have taken a more aggressive interest in expressing themselves politically by contacting legislative bodies. Where they believed that particular candidates stood for principles of good government, they have exercised their privilege—and their duty—to contribute their nondeductible after tax money to support the campaigns of such candidates. I believe our system of government could not function otherwise.

I only regret that the efforts of lawyers and lawyer groups have typically been politically too little and too late. Manufacturers, commercial trade associations, insurers, and unions are just a few special interest groups that expend far more time and money toward their own political goals. Lawyers—the kind that belong to the American Trial Lawyers Association—have usually been slow or unwilling to put themselves actively into the process that forms legislation.

Frankly, while they also represent a special interest group, I consider that their interests are usually closest to the interests of the general public. Our members are the consumer protection lawyers in the consumer protection cases, the civil rights counsel in the civil rights cases, the antipollution lawyers in environmental law cases. In auto injury cases, we are the lawyers for innocent victims—the maimed, widowed, and orphaned. We believe that we are the people's advocates.

The committee chose to inquire as to political activity by our members and our association. We suggest that the committee might wish to explore the unquestionably greater political pressures exerted by much larger and far stronger commercial interests. If our political power is that great, one might reasonably ask why public spirited legislation which we have consistently supported has made little progress in many legislative bodies.

In the automobile area, why haven't we succeeded in causing repeal of a single host-guest statute, which has been one of our principal goals in the last decade or more. Why do most States resist our call for replacement of contributory negligence with comparative negligence rules? Why do legislatures reject our demands to end governmental immunity, family immunity, and charitable immunity? Virtually every scholarly commentator agrees that our position on these issues is in the public interests. But, powerful commercial insurance interests have blocked this public legislation. Is it any wonder

that lawyers are finally waking up to their public duty to make some impact on government? For too long they have simply tried to apply and implement laws—including bad laws. Finally, they are trying to help make good laws—laws that are good for the public. I only hope that they can amass enough strength to help the public.

It was regrettable that Robert Joost was the medium through which this committee obtained information about our modest political activities, not because I would criticize him, but only because I would hope you would ask me, since I am in more complete control of information.

I personally testified before this committee on the previous day as the president of the American Trial Lawyers Association. I am pleased to answer any questions about those activities now. In fairness, however, I suggest that the committee may want to recall earlier witnesses—and particularly insurance industry witnesses to ask them how many men and how much money they have spent to promote no-fault schemes in the various States. We know of $100,000 full-page ad campaigns by insurance interests in both Massachusetts and New Jersey. We estimate that insurers have spent at least $10 million to convince the American public and State legislatures that no-fault programs designed for the insurers profit have public merit.

This committee has been kind enough to permit us to express our views on the merits of the present legislation. We hope that State legislatures give us a similar opportunity to express our views on the merits of related legislation. Actually, we should all be searching for legislation that best serves the public. We believe, from opinion polls cited by us in our earlier testimony and from our own experience in representing injured victims, that we are speaking in the public interest.

I can only supplement that prepared material with two or three brief comments.

First, reference was made by the testimony of Mr. Joost to a handbook, or I have forgotten the word he used to describe it, a book describing the key men meetings. We are rather proud of those key men meetings. This is an effort to give information to our members and other interested persons about legislative proposals that we think have a public impact. And I have with me the handbook that was referred to by Mr. Joost, which lists the legislation that is concerned.

First, advance payments by insurance carriers—skipping down through some of them—comparative negligence, discovery statutes and rulings, governmental immunity abolition, interest running on judgments, judges and judicial administration statutes, jury statutes, providing for nonunanimous civil verdicts, jury statutes implementing and improving jury selection, minimum insurance limit coverage, consumer protection legislation, environmental law protection, discrimination in housing and public accommodations, inadequate housing laws.

These are just some of the rules which we have been trying to promulgate in State legislatures in recent times. I repeat again that we are proud of these efforts and we do not apologize to anyone for them. We wish we could be more effective.

Now if the committee has any questions about any of the activities of our association, I would be most pleased, and Mr. Finn, the legislative section chairman, to the extent that I do not have the information, would be most pleased to supplement anything the committee is interested in.

f automobile accidents and to require registrants of motor vehicles in this state o procure insurance covering legal liability arising out of ownership or use f such vehicles, and also providing benefits to persons occupying such vehicles, nd to persons injured in incidents involving such vehicles.

13-25-3. *Definitions.* (1) As used in this article, unless the context otherwise equires:

(2) "Commissioner" means the commissioner of insurance.

(3) "Complying policy" means a policy of insurance approved by the comissioner of insurance and providing the coverages and subject to the terms nd conditions required by this article.

(4) "Department" means the department of revenue acting directly or through s duly authorized officers and agents.

(5) "Director" means the executive director of the department of revenue.

(6) "Insured" means the named insured and relatives of the named insured ho reside in the same household as the named insured.

(7) (a) "Motor vehicle" means:

(b) A private passenger automobile, including a sedan, station wagon, or eep-type automobile not used as a public livery conveyance for passengers;

(c) A utility automobile, including a pickup, sedan, delivery, or panel truck;

(d) A truck, including a tractor-trailer rig; and

(e) A self-propelled motor home.

(8) "Operator" means every person who is in actual physical control of a iotor vehicle upon a highway.

(9) "Owner" means a person who holds the legal title of the vehicle; or in ie event a vehicle is the subject of an agreement for the conditional sale or lease ereof with the right of purchase upon performance of the conditions stated in e agreement and with an immediate right of possession vested in the condiional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to posession, then such conditional vendee or lessee or mortgagor shall be deemed the wner for the purpose of this vehicle.

(10) "Person" means every natural person, firm, partnership, association, or orporation.

13-25-4. *Administrative authority.* Except where specific administrative auiority is conferred on the commissioner of insurance, the executive director of ie department of revenue shall administer and enforce the provisions of this rticle, and may make rules and regulations in writing necessary for the adminisation of this article.

13-25-5. *Registration of vehicles.* (1) The director shall not register any motor ehicle unless and until the owner of usch vehicle shall produce a certificate of lf-insurance, or a certificate of insurance, on a form provided by the departent, indicating he has insurance on such vehicle as provided by this article. nly policies validly issued by companies authorized to write in this state all e kinds of insurance embodied in the required coverages shall satisfy the reirements of this article.

13-25-6. *Minimum coverages required.* (1) (a) Subject to the limitations and clusions authorized by this article, the minimum coverages required for comiance with this article are as follows:

(b) Indemnity for legal liabiilty for bodily injury or death arising out of the e of the motor vehicle to a limit, exclusive of interest and costs, of fifteen ousand dollars to any one person, thirty thousand dollars to all persons, and e thousand dollars for property damage in any one accident;

(c) Compensation to injured persons for reasonable and necessary expenses r medical, hospital, dental, surgical, ambulance, and prosthetic services, Chris in Science care and treatment, loss of earnings, and extra expense for personal rvices not connected with his business or occupation which would have been rformed by the injured person for himself or for members of his household, ising out of an accident involving the motor vehicle and incurred within *thirty* r months of said accident, to limits of *fifteen* thousand dollars to any one perh, and *thirty* thousand dollars to all persons, in any one accident.

13-25-7. *Direct benefits.* (1) The benefits described in section 13-25-6 (1) (c) all be available to all persons occupying the described motor vehicle and all rsons injured in accidents involving the described motor vehicle, except ocpants of another motor vehicle.

(2) When a person injured is also an insured under a complying policy, his plying policy shall afford primary coverage for direct benefits under section -25-6 (1) (c), and the insurer under his policy shall respond in accordance h its terms and limitations. Any other complying policy under which such son shall be entitled to recover shall afford excess coverage, and, where more

than one such excess policy is involved, the excess coverage shall be prorated among the insurers on the excess policies.

13–25–8. *Elective reduction of benefits.* (1) At the election of the named insured, the benefits described in section 13–25–6 (1)(c) may be provided subject to deductibles, waiting periods, sublimits, percentage reductions, excess provisions, and similar reductions offered by insurers applicable to expenses incurred as a result of injury to the insured.

(2) To permit the insured to minimize, so far as is reasonably practical, duplication of benefits available through other insurance, contract rights, statutory benefits, and government benefit programs including but not limited to medicare and medicaid, the insurer selling coverage under this article shall determine whether the purchaser of coverage under this article desires to minimize duplication of such benefits. In the event the purchaser indicates a desire to minimize such duplication of benefits, it shall be the duty of the insurer to ascertain the other benefits available to the purchaser and to avoid duplication of such benefits by methods enumerated in subsection (1) of this section so far as such minimization of benefits is reasonably practical.

(3) The commissioner shall promulgate rules and regulations describing the various equivalent benefits which satisfy the requirements of subsection (2) of this section and providing for the ascertainment of desire to minimize duplicate benefits.

(4) Employers providing coverage under section 13–25–6 (1)(c) shall be permitted to elect deductibles, waiting periods, sublimits, percentage reductions, excess provisions, and similar reductions to avoid duplication of benefits provided by *such* employers to their employees through other insurance, including but not limited to accident and sickness insurance, workmen's compensation insurance and contractual sick leave.

(5) Insurers issuing complying policies may not require reduction of benefits.

(6) Insurers issuing complying policies shall not be required to offer any particular form of reduction in benefits.

13–25–9. *Required coverages are minimum.* Nothing in this article shall be construed to prohibit the issuance of policies providing coverages more extensive than the minimum coverages required as a condition for registration, nor to require the segregation of such minimum coverages from other coverages in the same policy.

13–25–10. *Required provision.* Any complying policy shall contain a provision to the effect that, notwithstanding any of its other terms and conditions, the coverage afforded shall be at least as extensive as the minimum coverages required by this article.

13–25–11. *Conditions and exclusions.* (1) The coverage described in section 13–25–6 may be subject to the conditions and exclusions which are customary in the field of liability insurance and which are not inconsistent with the requirements of this article.

(2) (a) The coverage described in section 13–25–6 may also be subject to exclusions where the injured person:

(b) Causes injury to himself intentionally;

(c) Is operating a motor vehicle as a converter without a good faith belief that he is legally entitled to operate or use such vehicle;

(d) Is operating a motor vehicle while committing a felony.

13–25–12. *Subrogation.* (1) Insurors providing benefits described in section 13–25–6(1)(c) shall be subrogated to the rights of the person or persons for whom benefits are provided to the extent of benefits provided.

(2) Insurers seeking to recover pursuant to their subrogation rights under this section shall maintain any causes of action in the name of the insurer and not in the name of the insured.

(3) The subrogation claim of the insurer, whether based on the statutory subrogation right under this section or on contract, shall lie against parties alleged to be third-party tort-feasors and not against the person or persons for whom benefits are provided.

(4) Nothing hereunder shall be construed, however, to preclude an insurer providing benefits under section 13–25–6 (1) (c) from making a claim against the person or persons for whom benefits are provided in the event of fraud or material misrepresentation leading to the provision of benefits.

13–25–13. *No tort recovery for direct benefits.* (1) Any person eligible for benefits described in section 13–25–6 (1) (c) *is precluded from pleading or introducing* as evidence in an action for damages against a tort-feasor the amount

benefits which would be recoverable under the coverages described in section 13-25-6 (1) (c), without regard to any elective reductions in such coverage, under section 13-25-8, whether or not such benefits are actually recovered.

(2) The limitation on tort recovery provided in subsection (1) of this section is confined to benefits required to be provided under section 13-25-6 (1) (c). Nothing hereunder shall be construed to preclude recovery in an action against a tort-feasor of benefits recoverable in excess of the minimum coverages required in section 13-25-6 (1) (c).

13-25-14. *Quarterly premium payments.* (1) Authority is hereby invested in the commissioner to issue rules and regulations establishing quarterly premium payments for persons who are required to purchase insurance under this article and who are qualifying low income persons as that term is defined in subsection (2) of this section.

(2) For purposes of this article a qualifying low income person shall include any registrant of a motor vehicle in this state other than an organization engaged in trade or business organized for charitable purposes and other than a dependent as that term is defined in the United States internal revenue code of 1954, as amended, except if such dependent receives more than one-half of his or her support from a person who qualifies as a qualifying low income person under this article, then such dependent may qualify as a qualifying low income person. A qualifying low income person shall include only those registrants whose annual adjusted gross income for federal income tax purposes shall fall within guidelines to be established by the commissioner. Such guidelines shall not be lower than the poverty determinations made annually by the United States department of labor.

13-25-15. *Financial responsibility law not applicable.* Persons who have valid insurance coverage in force complying with the requirements of this article shall be exempt from the duty to comply with the requirements of section 13-7-9 (1) of the "Motor Vehicle Financial Responsibility Act".

13-25-16. *Self-insurers.* (1) Any person in whose name more than twenty-five motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the director.

(2) The director may, in his discretion, upon the application of such person, issue a certificate of self-insurance when he is satisfied that such person is possessed and will continue to be possessed of ability to pay any and all judgments which may be obtained against such person. Upon not less than five days' notice and a hearing pursuant to such notice, the director may, upon reasonable grounds, cancel a certificate of self-insurance. Failure to pay any judgment within thirty days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

13-25-17. *Penalty.* Any person who *is a resident of Colorado and who fails to have insurance as required by this article* violates any provision of this article for which another penalty is not prescribed by law, is guilty of a misdemeanor and shall, upon conviction thereof, be punished by imprisonment in the county jail for not more than ninety days, or by a fine of not less than one hundred dollars nor more than one thousand dollars, or by both such fine and imprisonment.

SEC. 2. *Purpose—applicability—definitions—construction.* (1) The purpose of this act is to promote the public welfare by regulating insurance rates to the end that they not be excessive, inadequate, or unfairly discriminatory, to prohibit price-fixing agreements and other anticompetitive behavior by insurers, to promote price competition among insurers, to provide rates that are responsive to competitive market conditions and to improve the availability and reliability of insurance. For such purposes the division of insurance of the department of regulatory agencies and the head of the division, the commissioner of insurance, shall be charged with the execution of this act.

(2) (a) This act shall apply to all kinds of insurance except:

(b) Reinsurance, other than joint reinsurance, as provided in sections 72-11-11 and 72-12-12, C.R.S. 1963;

(c) Workmen's compensation;

(d) Title insurance;

(e) Life insurance and annuities;

(f) Insurance against loss of or damage to aircraft and against liability with respect to aircraft;

(g) Life insurance and accident and health insurance;

(h) Assigned risk motor vehicle liability insurance.

(3) Articles 11 and 12 of chapter 72, C.R.S. 1963 as amended, to the extent not inconsistent with this act, shall apply to any rate regulation pursuant to this act,

and shall be specifically indicative under circumstances as set forth in sub[illegible]
section [illegible] of section [illegible] of this act.

[illegible] *[illegible] or rate—competition—procedure.* [illegible] Rates shall not b[illegible]
excessive, inadequate, unfairly discriminatory, destructive of competition, [illegible]
detrimental to the solvency of insurers as measured by net profit. In determinin[illegible]
whether rates comply with the foregoing standards, the commissioner shall co[illegible]
other insurers' earnings on investments of premiums and unearned premiu[illegible]
reserves.

[illegible] The division of insurance shall promulgate rules and regulations settin[illegible]
a current reasonable margin of profit which shall be set in the first week [illegible]
January of each year. Such margin of profit shall be set in order to determin[illegible]
excessiveness or inadequacy of rates, or unfairly discriminatory rates until su[illegible]
margin of profit is established in accordance with this section.

[illegible] Except as otherwise provided in this subsection or in subsection (3) [illegible]
of section 4 of this act, prior filing of rates, schedules of rates, rating plans, ratin[illegible]
rules and rate manuals with the commissioner or his prior approval thereof sha[illegible]
not be required.

[illegible] Insurer or rating organization shall be a rating classification [illegible]
[illegible] unless it has been filed with the commissioner and either he has a[illegible]
[illegible] or within [illegible] days subsequent thereto he has not disapproved it as unfair[illegible]
discriminatory or [illegible]

[illegible] If the commissioner determines, after a hearing and on the basis of fin[illegible]
ings of fact and conclusions, that, with respect to any territory or to any kin[illegible]
subdivision, or class of insurance, competition is either insufficient to assure th[illegible]
rates will not be excessive, or so competitive as to be destructive of competition [illegible]
[illegible] the sufficiency of insurers to assure that the rates for su[illegible]
insurance or territory shall be regulated pursuant to articles 11 and 12 of chap[illegible]
[illegible] 1968, as amended. Such order shall have a specified duration of n[illegible]
more than one year but may be renewed by the commissioner upon appropria[illegible]
findings of fact, conclusions, and order.

[illegible] No policy form shall be delivered or issued for delivery unless it has be[illegible]
filed with the commissioner and either he has approved it or thirty days ha[illegible]
elapsed and he has not disapproved it as misleading or contrary to public polic[illegible]

[illegible] Any requirement in subsections (1) [illegible] and (3) of this section of filin[illegible]
with or prior approval by the commissioner may be waived by regulation adopte[illegible]
by the commissioner after a public hearing.

[illegible] Rating classifications and territories and policy forms lawfully in u[illegible]
immediately prior to January 1, 1971, may continue to be used thereafter, no[illegible]
withstanding the provisions of subsections (1) [illegible] and (3) of this section.

[illegible] *[illegible] and review.* [illegible] Any person aggrieved by any ra[illegible]
charged, rating plan, rating system, or underwriting rule followed or adopte[illegible]
by an insurer or rating organization may request the insurer or rating organiz[illegible]
tion to review the manner in which the rate, plan, system, or rule has been a[illegible]
plied with respect to insurance afforded him. Such request may be made by h[illegible]
authorized representative and shall be written. If the request is not grant[illegible]
within thirty days after it is made, it may be treated as rejected. Any pers[illegible]
aggrieved by the action of an insurer or rating organization in refusing t[illegible]
review requested, or in failing or refusing to grant all or part of the relief r[illegible]
quested, may file a written complaint and request for hearing with the comm[illegible]
sioner, specifying the grounds relied upon. If he finds that probable cause f[illegible]
the complaint does not exist or that the complaint is not made in good fai[illegible]
he shall deny the hearing. Otherwise, and if he finds that the complaint charge[illegible]
violation of this article and that the complainant would be aggrieved if [illegible]
violation is proven, he shall proceed as provided in subsection (2) of this secti[illegible]

(2) If after examination of an insurer, rating organization, advisory organi[illegible]
tion, or group, association, or other organization of insurers which engages [illegible]
joint underwriting or joint reinsurance, or upon the basis of other informati[illegible]
or upon sufficient complaint as provided in subsection (1) of this section, [illegible]
commissioner has good cause to believe that such insurer, organization, gro[illegible]
or association, or any rate, rating plan, or rating system made or used by s[illegible]
such insurer or rating organization, does not comply with the applicable [illegible]
quirements and standards of this article, he shall, unless he has good cause [illegible]
believe such noncompliance is willful, give notice in writing to such insu[illegible]
organization, group, or association, stating therein in what manner and to w[illegible]
extent such noncompliance is alleged to exist and specifying therein a rea[illegible]
able time, not less than ten days thereafter, in which such noncompliance sh[illegible]

be corrected. Notices under this section shall be confidential as between the commissioner and the parties unless a hearing is held under subsection (3) of this section.

(3) If the commissioner has good cause to believe such noncompliance to be willful, or if within the period prescribed by the commissioner in the notice required by subsection (2) of this section the insurer, organization, group, or association does not make such changes as may be necessary to correct the noncompliance specified by the commissioner or establish to the satisfaction of the commissioner that such specified noncompliance does not exist, then the commissioner may hold a public hearing in connection therewith. Within a reasonable period or time, not less than ten days before the date of such hearing, he shall mail a written notice of the hearing to such insurer, organization, group, or association. The notice given under this subsection shall state in what manner and to what extent noncompliance is illeged to exist, and the matters to be considered at such hearing. The hearing shall not include subjects not specified in the notice. The hearing shall be conducted in accordance with section 3-16-4, C.R.S. 1963, and the commissioner shall have all the powers granted in said section.

(4) (a) If after a hearing pursuant to subsection (3) of this section, the commissioner finds:

(b) That any rate, rating plan, or rating system violates the provisions of this article applicable to it, he may issue an order to the insurer or rating organization which has been the subject of the hearing, specifying in what respects such violation exists, and stating when, within a reasonable period of time, the further use of such rate or rating system by such insurer or rating organization in contracts of insurance made thereafter shall be prohibited;

(c) That an insurer, rating organization, advisory organization, or a group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance, is in violation of the provisions of this article applicable to it other than the provisions dealing with rates, rating plans, or rating systems, he may issue an order to such insurer, organization, group, or association which has been the subject of the hearing, specifying in what respects such violation exists and requiring compliance within a specified time thereafter;

(d) That the violation of any of the provisions of this article applicable to it by any insurer or rating organization, which has been the subject of hearing, was willful, he may suspend or revoke, in whole or in part, the certificate of authority of such insurer or the license of such rating organization with respect to the class of insurance which has been the subject matter of the hearing;

(e) That any rating organization has willfully engaged in any fraululent or dishonest act or practices, he may suspend or revoke, in whole or in part, the license of such organization in addition to any other penalty provided in this article.

(5) In addition to other penalties provided by law, the commissioner may suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in such order which fails to comply within the time limited by such order or any extension thereof which the commissioner may grant, by an order of the commissioner lawfully made by him pursuant to this subsection (4).

(6) Any fiindings, determination, rule, ruling, or order made by the commissioner under this article shall be subject to judicial review, and proceedings on review shall be in accordance with the provisions of section 3-16-5, C.R.S. 1963.

SEC. 5. *Prohibition of anticompetitive behavior.* (1) (a) No insurer or rating organization shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize in any territory, the business of insurance of any kind, subdivision, or class thereof.

(b) No insurer or rating organization shall agree with any other insurer or rating organization to charge or adhere to any rate, although insurers and rating organizations may continue to exchange statistical information.

(c) No insurer or rating organization shall make any agreement with any other insurer, rating organization, or other person to restrain trade.

(d) No insurer or rating organization shall make any agreement with any other insurer, rating organization, or other person the effect of which may be substantially to lessen competition in any territory or in any kind, subdivision, or class of insurance.

(e) No insurer may acquire or retain any capital stock or assets of, or have any common management with, any other insurer or insurers, if the effect of

such acquisition, retention, or common management may be substantially to lessen competition in any territory or in any kind, subdivision, or class of insurance.

(f) No insurer or rating organization shall make any agreement with any other insurer or rating organization to refuse to deal with any person in connection with the sale of insurance.

(g) No rating organization or member or subscriber thereof shall interfere with the right of any insurer to make its rates independently of such rating organization or to charge rates different from the rates made by such rating organization.

(h) No member of or subscriber to a rating organization shall refuse to do business with, or prohibit or prevent the payment of commissions to, any licensed agent or broker on the ground that such agent or broker does business with an insurer which makes its rates, or any portion thereof, independently of such rating organization.

(i) Nothing contained in this act shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization, or as preventing any insurer, while a member of or subscriber to a rating organization, from making its own rates for any kind, subdivision or class of insurance, for which it does not elect to authorize the rating organization to act on its behalf.

(j) Any insurer which is a member of or subscriber to a rating organization may make its own rates for any kind, subdivision or class of insurance. No rating organizations shall have authority to act on behalf of any insurer which is a member of or subscriber to such rating organization except as authorized in writing by such member or subscriber, which authority may be supplemented, modified or revoked, in whole or in part, at any time by such member or subscriber at its option.

(k) No rating organization shall have or adopt any rule or exact any agreement, or formulate or engage in any program, the effect of which would be to require any member, subscriber, or other insurer to utilize some or all of its services, or to adhere to its rates, rating plans, rating systems, underwriting rules, or policy forms, or to prevent any insurer from acting independently.

(2) (a) Any rate made in violation of subsection (1) of this section shall be disapproved by the commissioner pursuant to the procedures prescribed in subsection (2) of section 7 of this act, and each violator shall be subject to the penalties provided in subsection (3) of said section 7.

(b) The commissioner, through the attorney general, and any person injured in his business or property by reason of anything forbidden in subsection (1) of this section may maintain an action to enjoin any violation of such subsection.

(c) Any person injured in his business or property by reason of anything forbidden in subsection (1) of this section may maintain an action and shall recover threefold the damages by him sustained.

SEC. 6. *Public disclosure.* (1) All policy forms and rating classifications and territories filed with the commissioner shall be available for public inspection at the division of insurance.

(2) Every rating organization and every insurer which makes its own rates within a reasonable time after receiving written request therefor and upon payment of such reasonable charge, as it may make, not to exceed one hundred dollars, shall furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

(3) Every insurer and rating organization shall monthly furnish the commissioner all changes in the rating rules and schedules of rates such insurer or rating organization is then using in this state, and shall quarterly furnish the commissioner statistical, rating, and other information in support of changes in rating rules, schedules of rates, and rating classifications and territories. Such rules, schedules, and information shall be available for public inspection at the division of insurance.

SEC. 7. *Enforcement.* (1) The commissioner may, as often as he deems it expedient, examine any insurer or rating organization to ascertain whether its rating and underwriting practices are in accordance with law. Filed reports or examinations shall be available for public inspection at the division of insurance.

(2) (a) If the commissioner determines after a hearing that any rate used by an insurer does not comply with this act, he shall order that such rate be disapproved, and such order may include provision for premium adjustment.

(b) Pending a hearing, the commissioner may order the suspension, prospectively, of a rate used by an insurer and reimpose the last previous rate in effect

in which event he must, unless the requirement is waived by the insurer, hold a hearing within fifteen days after such order. Within fifteen days after the close of the hearing the commissioner shall make his determination as to whether the rate should be disapproved.

(c) At any such hearing, the insurer shall have the burden of justifying the rate in question. All such determinations of the commissioner shall be on the basis of findings of fact and conclusions. If the commissioner disapproves a rate, the disapproval shall take effect not less than fifteen days after his order and the last previous rate in effect for the insurer shall be thereupon reimposed for a period of six months unless, prior thereto, the commissioner shall approve a different rate.

(3) If the commissioner, after notice and hearing, finds that any insurer, rating organization, or other person has violated this act, he shall order the payment of a penalty not to exceed fifty dollars for each such offense, and if he so finds that such insurer, rating organization, or other person knowingly violated this act, he shall order the payment of a further penalty not to exceed five hundred dollars for each such offense. The issuance, procurement, or negotiation of a single policy of insurance shall be deemed a separate offense.

SEC. 8. *Evaluation.* (1) The commissioner shall, from time to time, report to the governor and the general assembly evaluating the operation of this act, and shall submit a final report no later than March 1, 1975.

(2) The commissioner shall appoint a consumers advisory council to advise and assist him in evaluating the operation of this act pursuant to subsection (1) of this section.

SEC. 9. *Priority of act.* This act shall take precedence as to all types of insurance subject to its provisions, and the provisions of sections 72-11-2 (3) and 72-12-2 (a), C.R.S. 1963, allowing designations by insurers as to the applicability of laws, shall not be applicable with respect to this act.

SEC. *10. Effective date.* This act shall take effect *April* 1, 1972.

SEC. *11. Severability clause.* If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SEC. *12. Safety clause.* The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

SYNOPSIS (CH. 73, ADDS PAR. 755B)

Amends Illinois Insurance Code. Requires, in all automobile liability policies issued after December 31, 1971, certain mandatory minimum benefits, including $2,000 medical expenses and limited loss of income for disability. Provides for coverage of insured's family, guest passengers and pedestrians. Provides for arbitration of claims in certain circumstances. Denies subrogation to insuror for compensation paid to insured for damage to his own motor vehicle if such compensation does not exceed $3,000. Provides for commission to study vehicle property damage problems and report to Governor by January 1, 1972.

LRB 4223-77

AN ACT to add Section 143b to the "Illinois Insurance Code", approved June 29, 1937, as amended

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SECTION. 1. Section 143b is added to the "Illinois Insurance Code", approved June 29, 1937, as amended, the added Section to read as follows:

Sec. 143b. (1) After December 31, 1971, every automobile liability policy covering any private passenger motor vehicle issued or delivered in this State on a non-fleet basis shall provide minimum hospital, medical and disability benefits to the person insured thereunder and members of his family residing in the same household who are injured in a motor vehicle accident, including guest passengers injured while occupying the insured motor vehicle and pedestrians struck by the insured motor vehicle as follows:

(a) All reasonable and necessary expenses for medical, hospital, dental, surgical, ambulance, prosthetic, nursing and funeral services incurred within 6 months after the automobile accident up to an aggregate of $2,000.

(b) 85 percent of the loss of income from work for a period not exceeding 26 weeks, but not to exceed $150 per week.

(c) All payments prescribed hereunder shall be made within 30 days after proof of loss has been submitted to the insurance company. Where losses can be reasonably presumed to be over a 30 day period, partial payments should be made no less often than every 30 days.

(2) Benefits as set forth in paragraph 1 shall be reduced or eliminated if there are similarly provided under any other type of insurance policy covering such injured person, or such person is entitled to benefits under the Workmen's Compensation Act, approved July 9, 1951, as now or hereafter amended, governmental benefits or gratuitous benefits. However, the existence of a cause of action in tort by such persons arising out of the accident does not relieve the insurer's obligation to pay benefits under this Section.

(3) The insurance company may exclude benefits to any injured person mentioned in paragraph 1, whether the named insured or another person covered under the policy, where such person was the operator of the insured vehicle and his conduct contributed to his injury in any of the following ways:

(a) intentionally causing injury to himself;

(b) operating a motor vehicle while under the influence of intoxicating liquor or narcotic drugs;

(c) operating a motor vehicle without a license or after suspension or revocation of this license;

(d) operating a motor vehicle upon a bet or wager or in a race; and

(e) seeking to elude lawful apprehension or arrest by a police officer.

The benefits provided in paragraph 1 of this Section may also be excluded if the injury suffered is in an out-of-state accident by one who is not a named insured, not a member of the named insured's family residing in his household, and not a guest passenger in an automobile owned or operated by the named insured.

(4) Nothing in this Section prevents the insurance company from providing broader benefits than those minimum benefits described herein.

(5) If any person receiving benefits under the provisions of this Section files an action for damages for bodily injury or death arising out of the same automobile accident in any court in this State, such benefits shall not be disclosed to the court, or to the jury, if any. In the event of arbitration of such action such benefits may be disclosed to the arbitrators.

(6) In the event of any claim or legal action by the injured, as described in paragraph 1, against a third party, then the insuring company shall have a right of lien, upon notice by certified mail and return receipt, against the involved third party, and the injured party. The amounts paid out by the insurer to the injured party described in paragraph 1 are to be paid out on a loan-receipt basis and in the event the injured party, through a claim against a third party, recovers an amount by settlement, judgment or arbitration, then the insurance company shall be reimbursed in full from the amount recovered without deduction of fees or expenses of any type.

(7) In the event that the injured party as described in paragraph 1 brings legal action against an involved third party where the amount in controversy in such action is $3,000 or less, then such action shall be arbitrated in accordance with the rules of the Supreme Court of Illinois when there is a determination by the Administrator of the Illinois courts that there exists unreasonable court delay in the judicial circuit where the action is commenced. The determination by the Court Administrator shall be conducted pursuant to Supreme Court rule. All arbitration awards shall be subject to trial de novo pursuant to Supreme Court rule. In the event of a trial de novo, the decision of the arbitrator shall be inadmissible in evidence. Arbitration shall not be required under this paragraph after June 30, 1975.

(8) In the event the injured party as described in paragraph 1 has not filed suit within 6 months of the injury or within 6 months of the last payment of benefits mentioned in paragraph 1, then the insurer may institute its own action under inter-company arbitration procedures when the amount in controversy is less than $3,000 or by court arbitration pursuant to Supreme Court rules where the amount in controversy is more than $3,000. The insurance companies involved may by agreement have inter-company arbitration without regard to any limit of the amount in controversy.

(9) All property damage claims where the amount in controversy is $5,000 or less shall be arbitrated in accordance with the rules of the Supreme Court of Illinois when there is a determination by the Administrator of the Illinois Court

that there exists unreasonable court delay in the judicial circuit where the action is commenced. The determination by the Court Administrator shall be conducted pursuant to Supreme Court rule.

(10) Notwithstanding anything in the insurance policy to the contrary, an insurer who makes payments to its insureds to compensate for damage to its insured's motor vehicle and equipment and property situated therein shall not be subrogated to the rights and causes of action which its insured may have against other persons for such damage unless the amount in controversy exceeds $3,000.

(11) In any case where an insurance company has paid benefits accruing hereunder to a claimant injured by a person who is not covered by liability insurance provided by an insurer licensed to issue automobile liability insurance in this State, the company paying such benefits shall, to the extent of such payments, be subrogated to any right of action for damages by the claimant against such person.

(12) Benefits provided under this Section may be deducted from any recovery received by an injured person under uninsured motorists coverage as defined by Section 143a of this Code.

(13) The Governor shall, by executive order, establish a study commission, composed of 7 members, to investigate ways and means of reducing the current magnitude of automobile property damage costs sustained by claimants and paid for by insurance companies. The commission shall report its recommendations to the Governor by January 1, 1972.

SYNOPSIS (CH. 110, PAR. 2)

Amends the Civil Practice Act to provide that the Supreme Court may provide for the arbitration of civil cases where the amount in controversy is less than $5,000. Arbitrators shall be chosen by the court from a list of attorneys. Any party may appeal from the award of the arbitrators.

LRB 4224-77

AN ACT to amend Section 2 of the "Civil Practice Act", approved June 23, 1933, as amended

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SECTION 1. Section 2 of the "Civil Practice Act," approved June 23, 1933, as amended, is amended to read as follows:

SEC. 2. Power of courts to make rules. (1) The Supreme Court of this State has power to make rules of pleading, practice and procedure for the circuit, Appellate and Supreme Courts supplementary to but not inconsistent with the provisions of this Act, and to amend the same, for the purpose of making this Act effective for the convenient administration of justice, and otherwise simplifying judicial procedure, and power to make rules governing pleading, practice and procedure in respect of small claims, including service of process in connection therewith. Unless otherwise indicated by the text, references in this Act to rules are to rules of the Supreme Court.

The Supreme Court of this State has the power to make rules providing for the arbitration of any case filed in the circuit court where the amount in controversy shall not exceed $3,000, exclusive of interest and costs. The Supreme Court shall maintain a list of attorneys who have agreed in writing to serve as arbitrators, subject to the right of each attorney to refuse to serve in a particular assigned case, and subject further to the right of any party to show good cause why an appointed arbitrator should not serve in any case to which he is assigned. The rules shall provide that any case, subject to arbitration, shall be assigned for hearing to a single arbitrator selected by the court from the list of arbitrators in reasonable rotation. Arbitration proceedings may also be assigned to any associate judge or circuit court judge. Cases not at issue and controversies not filed in any court may be referred to arbitration by an agreement of reference signed by counsel for both sides in the case of controversy. The agreement of reference shall define the issues involved for determination in the arbitration and may also contain stipulations with respect to agreed facts, issues, or defenses. In such cases, the agreement of reference shall take the place of the pleadings in the case and be filed of record.

The rules may provide for the taking of evidence in the form of reports, statements, itemized bills, or in any other manner without the procedural and evidentiary limitations which obtain in jury trials.

The arbitration award shall be in writing, signed by the arbitrator, and filed with the court. The award shall be entered by the court in its record of judgments, and shall have the effect if a judgment upon the parties unless reversed upon appeal. Any party may appeal from the arbitration award to the court in which the award is entered by filing, within the time limited by rule of court, a demand for trial de novo on law and fact.

Each arbitrator who is not a member of the judiciary shall be paid $35 per day for each day necessarily expended by him in the hearing and determination of the case. The compensation of the arbitrator shall be paid by the county, in which the court has jurisdiction, from its general revenues and shall not be taxed as costs. Upon appeal, at the time of filing the demand for trial de novo, and as a condition of filing, the appellant shall deposit a cash sum equal to the total award with the clerk of the circuit court of the county. The appellant shall also deposit a cash sum equal to the total compensation of the arbitrator, but not exceed 10% of the amount in controversy, which sum shall be forthwith repaid to the county.

(2) Subject to rules the circuit and Appellate Courts may make rules regulating their dockets, calendars, and business.

Senator HART. And Mr. Joost, in addition to a variety of points he called to our attention, was speaking also, I think, to the point of the need for Federal rather than State-by-State approach. As you say, we can agree or disagree with that point of view, but he was explaining why, in his judgment, it was essential.

Mr. MARKUS. If I may comment on that, Senator Hart, if one were to ask me whether I would like a bad Federal bill or a bad State bill I would say that is a choice between arsenic or cyanide. The only decision I have to make is whether it is a good bill, not whether it is Federal or State.

Senator HART. To the specific point you made in your brief statement that perhaps we should have asked you rather than Mr. Joost about LIFT and ADOPT, it is my recollection we did ask you about both.

Mr. MARKUS. Yes, and I believe I very candidly gave all of the information that I thought was requested.

I would be happy to give you any further information if anybody wishes it. Again we are very proud of this involvement by lawyers in the political process. Frankly we wish it were more effective.

I can say, however, in that context, that I understand the Texas Legislature finally adopted some of the legislation which we think the public considers desirable, without regard to the no-fault discussion such as comparative negligence, this sort of thing. And I think most of the members of this committee would agree that is good legislation.

Regrettably the Governor has vetoed that legislation and the newspaper story that followed Mr. Joost's testimony would suggest that all of the legislators in Texas are somehow in the employ of trial lawyers. Obviously that is foolish, and it is only harmful to good legislation.

Senator HART. I think he said the batting average was six out of eight supported were elected. But I wouldn't want anybody to go down my campaign contribution list and conclude I was therefore an agent of anybody. He was just making a point, however, that I think is supported factually. And we did ask you about the Federal-State relations program.

Mr. MARKUS. And I believe I answered with the same completeness.

If there are any further questions, I would be happy to answer further. I have no question——

Senator HART. Do you dispute any of the facts that Mr. Joost gave us?

Mr. MARKUS. I believe that some of the statements, if the Senator requests, are, I think overstatements and I would prefer, unless the Senator really wishes me to, I would prefer not to quibble with him. I think he suggested, for example, that lawyers claim to have control over various legislative bodies. I have had occasion to talk to other people who where at those meetings and who unequivocably denied that is true. The lawyers have said they believe their position was being given greater favor in certain legislative bodies, but I have never met a lawyer who claimed any lawyer or lawyer group controlled any legislative body. In fact, as the Senator I am sure knows, lawyers are considered an anathema, are considered persona non grata in most legislative conclaves, because they are always looked at with aspersions.

Senator HART. Senator Cook?

Senator COOK. Well, Mr. Markus, I think there are some things that we ought to get straightened out. They make good print, but for instance he stated, "when I was hired by the American Trial Lawyers Association in 1967, I had to agree to make no further public statements in opposition to the position of the association on no-fault."

If in fact that was the position of the Americal Trial Lawyers Association, and it was a strong position of the association, that is not an unheard of request, is it?

Mr. MARKUS. Actually, Senator, I would think it would not be an unheard of request, but I don't believe it was made. To the best of my knowledge no such request has ever been made to any staff member. To the best of my knowledge our staff members are individuals who have a right to express their opinions. Obviously if they are going to say our association is doing wrong things, we would prefer they not do it while they are empoyees of the association.

Senator COOK. I doubt seriousy any member of the Senate would hire somebody as a staff member who would disagree totally with the Senator as to what he put in his monthly letter.

Mr. MARKUS. No, and I might say to the best of my knowledge, from my limited contact with Mr. Joost, I always thought his position was substantially similar to that of the association. I he had a contrary position, he did not explain it to me.

Senator COOK. Mr. Finn, if at the meeting in Chicago you said let's all adopt the program you referred to as LIFT, and no one disagreed, there doesn't seem to really be anything wrong with that, does there?

Mr. FINN. Senator Cook, I may not have used those words. I am in favor of lawyer participation to the extent that President Markus has indicated. I think it is a laudable thing that all citizens interest themselves in good government.

Senator COOK. Mr. Chairman, as you may remember, I didn't totally agree with all of the language, but I did put into the record a resolution of the Kentucky Bar Association which just met and unanimously adopted a resolution opposed to no-fault insurance.

I don't know what political machinations have been going on within the confines of the Kentucky Bar Association, but I somehow or other feel that if a bar association in meeting at a State convention takes that position, that resolution should be put into the record. I am not quite sure whether there are any political activities in the Ken-

tucky Bar Association in that regard or not, but I don't find, whethe I agree with them or not, that there is anything wrong with a ba association taking that position. Neither am I sure that that positio relies totally and completely on the fact that all of those lawyers i that room were negligence lawyers and all of those lawyers came t the conclusion that this somehow or other was going to take ther out of the fat womb, as the witness yesterday said, of collecting a of the money from negligence cases in the automobile industry. Woul you?

Mr. MARKUS. Senator Cook, I would like to strengthen what yo are saying, if I can, by saying that whenever our governing bod has met, to the best of my recollection, if anyone dared to suggest tha we should take any position because it was in the self-interest of ou members or our association, he would be promptly excluded from th room. We have rather strongly felt——

Senator HART. He would be sent to an insance asylum, wouldn't he

Mr. MARKUS. Senator, seriously, if someone from our group said w should favor something that is against the public interest, we coul not countenance that. We very strongly consider we are the people advocates and we cannot countenance anything which we think against the public interest.

Mr. FINN. If I may, Senator Hart, I would just like to comme on part of the testimony yesterday which related to the keyme meetings. I am likewise proud of these keymen meetings. I was th one who set them up. During the meetings of the past year, my fir year as national legislative chariman, no discussion was held at an time with reference to no-fault.

Senator HART. I beg your pardon. I missed that.

Mr. FINN. During my first year, last year, as national legislati chairman of the American Trial Lawyers Association, no discussi was held at any of those meetings with regard to no fault. Those mee ings were full day meetings, in the cities indicated in yesterday testimony, those meetings dealt solely with the matters which we indicated by president Markus, and at least half of those meetings we devoted to an intensive investigation and discussion of private reme statutes, particularly consumer protection laws, environmental pr tection laws, discrimination laws, and inadequate housing laws.

Senator HART. I am not sure it would be useful to go through fa by fact the statement——

Mr. MARKUS. If the Senator wishes to, I will be pleased to comme on any of them; we have no secrets.

Senator HART. I find Mr. Joost's prepared statement, he is talki about the key men meetings. The 1971 meetings were devoted exc sively to how to defeat no fault at both the State and Federal lev

Mr. FINN. May I explain that? I was referring to the series of f meetings held last year in Cambridge, Mass., Atlanta, Ga., Las Veg Nev.; Denver, Colo.; and Chicago, Ill. That was during last year.

This year there have been two keymen meetings held, one in Ca bridge, Mass., and one in Chicago. Both of those meetings did d with no-fault legislation.

Senator HART. So his statement with respect to 1971 is correct.

Mr. FINN. There have been two such meetings; yes, not five.

Senator HART. Because politicians are always explaining fees that they receive or in some cases decline, and since you would know, what is your arrangement with Prof. David Sargent of Suffolk University.

Mr. FINN. To the best of my knowledge, Professor Sargent is paid for his travel expense and I believe also an honorarium, generally by the group that has invited him, which is usually local groups. It is not funded from the association. I believe it is done the same way Professor Keeton of Harvard Law School and Prof. Jeffery O'Connell of Illinois are treated. They also appear at seminar programs, usually taking the opposite position.

May I supplement that statement, Senator, because Professor Sargent was mentioned yesterday in the testimony of Mr. Joost. Professor Sargent is an outstanding professor and he was a member of the original study commission participated in by Professors Keeton and O'Connell, and he was one of the closest men to that study. He, during the course of that study concluded that no-fault legislation was not in the public interest. And he has been a dedicated advocate against no-fault legislation, based on principle. The implication that he is a hired hand is terribly unfair.

Senator HART. The witness yesterday did—and I have to paraphrase—but did describe the professor as an able, keen student in the field. He did make that point. This is what he said:

> Dave Sargent—I see no objection to his appearance or to his being paid. David Sargent is a very able professor. He has a view on the subject matter that demands the most careful and complete discussion, but I do find it less than honorable that Professor Sargent appears wearing his Suffolk hat rather than the Trial Lawyers' hat, and his audiences are not told who is paying him nor how much.

I suppose that could be said of anybody who wears the academic badge, but who is paid by an interest. Whether he speaks out of principle or out of hire. It gets to the point where the politician himself has found it is much more prudent to disclose and let the public evaluate in light of how big the fee is.

Mr. MARKUS. As I said before, Senator, like other academicians who appear at the request of local groups, it is common that they are paid their travel expense and I guess an honorarium that has some relationship to their own time. Though I do not have the factual knowledge, I have every reason to believe that Prof. Robert Keeton and Prof. Jeffery O'Connell who take the opposite position are similarly treated by similar local groups and I do not criticize them for that. Indeed I have considerable esteem for both of them.

I am a classmate of Professor O'Connell and when we have appeared on debates together, I have always said since graduation one of us has gone wrong and we are not quite sure which.

Senator COOK. Mr. Markus, doesn't it impress you to be just as dishonorable to work for an association and put forth all of your time and effort within the framework of that association and totally disagree with the position of that association?

Mr. MARKUS. I prefer not to comment, Senator.

Senator HART. At one of the keymen meetings, recent keymen meetings—maybe Mr. Finn was present—somebody was complaining that Sargent's rates were going up. The delegate said he is now asking $500.

Mr. MARKUS. I have no knowledge of what Professor Sargent's honorarium is. I know on occasions I have heard of high honorariums for other academicians; I have no idea what he expects. I know that I usually don't get any.

Senator HART. Perhaps Mr. Finn knows whether that comment was made in his presence?

Mr. FINN. That comment was made. I don't know if it was made in his presence. I can't remember, Senator Hart, who made the comment.

The meeting in Chicago was designed to cover the Midwest part of the country and the area which was covered extended as far as, I think, Iowa, and it may be if Professor Sargent was called upon to travel across the country, taking a considerable amount more of time than if he had come to Washington, the honorarium may have been increased by virtue of that fact. I do not have any direct knowledge of what was paid and by whom. I do know that Professor Sargent was invited to debate in New Jersey, that he was paid an honorarium for his appearance in New Jersey, and that the American Trial Lawyers Association did not pay that honorarium.

Senator HART. Just this last one as a point of information. Referring again to Mr. Joost's testimony, he says that at that meeting, a meeting of the trial lawyers in Chicago on April 24, the executive committee of the American Trial Lawyers Association unanimously approved a resolution creating a completely new department, the department of Federal-State relations with a proposed budget for the fiscal year to begin April 1 of $322,200. Is that correct?

Mr. MARKUS. I presided over that meeting and I can give you rather accurate information as to what occurred.

Senator HART. Let me conclude his statement——

Mr. MARKUS. He was not present at that meeting.

Senator HART. He said:

> I was notified. The Executive Committee voted to finance the budget for this new department by (1) reducing the budget of the Department of Public Affairs and Education by $112,000 and by dues increases expected to net an additional $200,000. As part of the cutback in the Public Affairs and Education Department, its Director was ordered to dismiss, the only lawyer, at the end of the fiscal year, and Mr. Caldwell and two additional staff members. The director of the new Department of Federal-State Relations, a department incidentally which goes from nonexistence to becoming the largest department, consuming 25 percent of the Association's total budget, the director will be Mr. Allen Locke. Mr. Locke is not a lawyer, but his brother, Barry Locke, is an aide to Secretary Volpe.

Are there any inaccuracies in that?

Mr. MARKUS. There are considerable inaccuracies. And I don't criticize Mr. Joost. He has no reason to know the accurate information. He was not present at the meeting, he wouldn't be expected to be present at the meeting and he is supplying the information from hearsay.

First, it is correct that the executive committee recommended to the budget committee who would then subsequently recommend to the board of governors, and that meets in 2 weeks, and who will, if they agree, subsequently recommend to the general membership, who must approve, at Portland, Oreg. this summer, a budgetary change. This budgetary change, which is so far in the recommending stage, and in no way the approved stage, would describe some activities that are

already performed by the organization, and rechannel the jurisdiction in which those are handled. They would transfer from what are now the public affairs department to another department that would take over some responsibilities handled now by the public affairs department, certain activities which were called I believe, for lack of a better name, Federal-State relations. Mr. Allen Locke, who was referred to, was considered as one possible person who would not head that department, but who would work in that department. And I might say his previous experience has been in our continuing legal education program, he has been helping to run the seminars that we have been giving to lawyers, not on political matters, but on how to help them be better lawyers.

Since he has done so across the country, he has gotten to know many lawyers and the thought was he would be a good person to help with State organizations, in developing the State organizations and in developing their relationship with the national organization, that would be his function.

With reference to the—I don't recall whether any other personnel were described in this. Again if the committee wants me to, I will be happy to describe all of the personnel involved in these things. There are no secrets.

Senator HART. He said it was a proposed budget. Does that reflect the proposed budget?

Mr. MARKUS. The numbers he stated are close. They are not precise. As I say, they do not represent a great new activity, rather a shift of jurisdiction over activity, and to an extent an increase in that activity. I might say that we are hoping to provide to this Congress people who will be able to communicate with the Congress, and find out whether there are questions that we feel very competent people can help provide answers to. I might say I consider myself one of those, and that myself and others who have studied this want to be able to communicate our position and our thoughts and our factual information to the Congress. We will also be using what we think will be helpful people to assist the Congress in understanding our position and we hope in drafting good legislation, and not Mr. Allen Locke. That is not his function.

Senator HART. You are communicating well, and yesterday Mr. Joost communicated well, at least on my wave length.

Senator Cook?

Senator COOK. Mr. Markus and Mr. Finn, your activities are no different than the activities which have been carried on for years and years by the AMA, and of more recent vintage by those groups who opposed the SST, I expect. I might suggest to you they are no different—I see some smiles from the press table—they are no different than the newspaper industry which right now is talking to everybody on the Hill because it is proposed that the mailing rate for newspapers take a substantial increase shortly. They are very, very disturbed about this, and they say this is really going to hurt them. Yet, they have been mailing out 100 newspapers for what its costs you and I to send one letter.

So these activities don't seem to be any different, do they?

Mr. MARKUS. Only in size. I am afraid we can't compete with any of those groups that you have described. I am afraid we cannot pro-

vide the personnel or the funds that they have done. I might say, however, that your last example is one that strikes me particularly at home. It seems to me that to say a lawyer should not be listened to because some lawyers' financial interests are affected is the same as saying that a newspaperman should not be heard to defend freedom of press.

We think we should be heard to defend the rights of individuals.

Senator COOK. This is one of my real arguments with that industry, because they are the only industry in the United States that is not subject to the child labor laws. They have always been excluded from the child labor laws and it has always seemed rather strange to me that an industry which editorially, at least, and sometimes on the front pages, is very critical of some thing that can go on, employs 14- and 15-year-old youngsters to get your newspaper to you in the morning. I only make the comparison because I think however much Mr. Joost enjoyed writing this letter and thought it was a tremendous uncovering episode, you are not here to criticize the gentleman who testified yesterday.

Mr. MARKUS. No.

Senator HART. He had every right to testify and say what he wanted to say?

Mr. MARKUS. Absolutely.

Senator COOK. You are not defending yourself against his testimony?

Mr. MARKUS. That is correct.

Senator COOK. You merely indicate that your basic purpose is to promote what you feel the majority of your organization feels. They feel the proposed legislation before this committee needs a great deal of work. If you took a poll of your members and I note that Mr. Joost said the lawyers in the organization have never been polled, what position do you think it would reflect in your organization.

Mr. MARKUS. I think I can give you a relatively accurate answer. First I can tell you the manner in which our association takes positions is by action of the board of governors who are elected by the members in a geographical fashion, so they are representative. On the basis of the correspondence I have received as president, and on the basis of my conversations with members, my estimate is that if we were to take a poll, the vote would be about 99 to 1 in favor of our position.

Senator COOK. Then you are backing up the position of your association?

Mr. MARKUS. Absolutely.

Senator COOK. And if yesterday's witness did not in any way agree then he had every right to come here and he had every right to express himself and you have every right to terminate his services?

Mr. MARKUS. I must say, Mr. Senator, we did not terminate his service because of his testimony. His services were terminated prior to that time. We had no knowledge of his intention to present testimony. We terminated his service because of budget, fiscal reasons, that had nothing to do with his position on any subject whatever. We were unaware of his position on this subject.

I do not know whether that has anything to do with his testimony. I only say we were not aware of it at the time he was terminated.

Mr. FINN. May I add, Senator, that I wish I could find the way or means of disabusing those who are interested in this legislation o

their misconception that the American Trial Lawyers Association is in opposition to this legislation based on selfish, personal interest. The American trial lawyers are opposed to this legislation on one basis alone: We are sincerely convinced that this legislation is not in the public interest.

Senator COOK. Thank you, Mr. Chairman.

Senator HART. Senator Baker?

Senator BAKER. No questions, Mr. Chairman.

Senator HART. I would characterize the testimony of Mr. Joost yesterday not as an exposé of the trial lawyers association, but rather as an explanation of why he believes that we ought to approach the problem of insurance reform.

Specifically, he favors no-fault, on a Federal rather than a State by State approach. There were many other reasons assigned, but included among them was the degree to which the State units could be influenced as a consequence.

Mr. MARKUS. Senator, I only wish I had the confidence that he apparently expressed in our legislative strengths in the various States. I am afraid I don't have that confidence. I wish I did, because I think we are speaking in the public interest.

Senator COOK. The only addition I would want to make to your comment, Mr. Chairman, is that I noted from his testimony that when he was first called by the staff he did not feel that this should be done on a Federal basis but on a State-by-State basis. It was apparently during the course of time that his position was being eliminated that he agonized, thought very, very seriously, and then came to the conclusion that it ought to be done on a Federal basis. His position prior to that time, and all of the time that he had been agonizing with the problem of no-fault, was it should be handled on a State basis and it should not be federally regulated. Apparently, since he was called a month ago, it has only been during the last 2 or 3 weeks, because he finally agonized to the extent that he thought it should be done on a Federal basis, whereas all of those thoughts prior to that time had been it should be handled on a State-by-State basis.

Senator HART. Gentlemen, thank you.

Mr. MARKUS. Thank you for this opportunity, Senator.

Senator HART. Returning now to our scheduled list of witnesses, let me welcome the dean of the Law School of the University of Washington, Dean Richard Roddis.

Dean, the chairman of the committee, Senator Magnuson, had hoped very much to be able to get over before you went on and asked me in the event that he was not able to make it, that I extend his welcome.

I should add that the dean has served as the insurance commissioner of the State of California.

STATEMENT OF RICHARD RODDIS, DEAN, UNIVERSITY OF WASHINGTON SCHOOL OF LAW, SEATTLE, WASH.

Mr. RODDIS. Thank you very much, Senator.

You have already indicated a little bit about my background and I won't repeat it. I was also at various other times in the private practice of law in San Diego, Calif., and a deputy attorney general of California.

I think I should also mention two other connections. I was a member of the advisory committee on economic regulation to the automobile insurance and compensation study of the Department of Transportation.

Also I am a director of a mutual property and casualty insurance company.

My views in this matter, of course, are unaffected by any of my professional or other affiliations, and I do not represent or reflect any position or interests other than my own. I might add that is an understatement if you observe some people's reaction to my views.

It is an honor for me to have been asked to appear before you.

My remarks will be directed to S. 945, a bill by Senators Hart and Magnuson to enact a Uniform Motor Vehicle Insurance Act. Though I am certainly not an expert, or at least not as expert on the subject as many other people, it is a subject in which I have had a considerable interest from various perspectives for some years and to which I have devoted some attention.

Over a period of time I have gradually, and I think with some reluctance, come to the conclusion that the methods by which we compensate the victims of automobile accidents of this country are incongruous in theory and unacceptable in performance.

The present system is commonly referred to as the fault liability insurance system. The deficiencies and weaknesses in the system have been chronicled in a host of studies, in endless hearings, and in the common experience of thousands of people. I do not propose to burden you with further detailed offers of proof.

However, I would like to at least enumerate some of the problem areas that I perceive. The present system is anachronistic, operating neither as an effective nor systematic implementation of the policy of social morality which supposedly dominates its tort law aspect, nor the compensation objective which has become dominant in its insurance aspect.

It is inefficient in the distribution of benefits and uneconomical in its exaction of exorbitant costs. It allocates benefits unevenly and inequitably. It unduly burdens the judicial system and diverts its scarce resources away from other imperative responsibilities. It fosters an array of undesirable attitudes and practices on the part of claimants, lawyers, and insurers.

Despite the theoretical claims made by its adherence that it promotes driver care and highway safety, there is considerable evidence that those characteristics of driver psychology and behavior which are really significant in accident causation are largely unaffected by the imposition of fault liability.

Moreover, the record of the years does not suggest that the present system creates in itself any particularly salient pressures for the effective accomplishment of other desirable social objectives, such as safety in vehicle design, emphasis on physical and psychological rehabilitation of seriously injured victims or control of medical and other loss costs.

Indeed what progress has been made in recent years in these areas has been the result of pressures, either independent of or at least purely incidental to the operation of the fault system. Hopefully one can construct a new system which will create more enduring internal pressures for efficiency, economy, loss prevention and control, and rehabilitation.

The present system has posed chronically intractable problems to those concerned with its insurance aspects. The construction of rating and underwriting systems which are at once economically sound, competitively viable, and publicly acceptable, has proven to be beyond our ken, despite many years of the application of devoted ingenuity by legions of casualty actuaries and other experts. I have tried to make the point on many occasions to insurance groups that the basic problem in the rating and underwriting of automobile insurance is that the very things which make the most economic sense from the standpoint of the insurer are bound to be hopelessly unacceptable in the public consciousness.

Most seriously of all, the ills and failures of the system have jeopardized not only the economic health and public confidence in the private insurance economy, but have diminished public respect for the law and for lawyers. It is little wonder so many of us have come to the point where we find it difficult to criticize or oppose just about any of the myriad of changes, whether called palliative, remedial or radical reformist which have been proposed or implemented in recent years. Just about anything is an improvement.

Having said all of this, I want to make two observations about my attitude toward the subject generally.

First, as is probably evident from what I have said so far, I tend to view the problems involved as being essentially systemic.

That is, I believe that the central cause of many of the problems is the incongruity of the combination of a tort liability based on a fault concept, as the theoretical basis for reparations, with an insurance mechanism ostensibly designed to indemnify the liability of tortfeasors, but now in fact generally perceived as oriented primarily toward the objective of broadly distributing the financial costs of assured compensation for injured persons, while yet confining the disparity of premium levels with bearable limits for the average consumer.

Senator BAKER. Since you do not have a written statement, would you reread that statement for me again?

Mr. RODDIS. Yes, sir. I believe that the central cause of many of the problems is the incongruity of the combination of a tort liability, based on a fault concept, as the theoretical basis for reparations, with an insurance mechanism ostensibly designed to indemnify that liability of the tortfeasors, but now in fact generally perceived, both by the public and by legislatures and by the courts I might add increasingly, as functionally oriented primarily toward a social objective of broad distribution of the financial costs of compensation for everyone, while at the same time trying to confine the disparity in premium levels within bearable limits.

Senator BAKER. May I ask a question to make sure I understand that, Mr. Chairman?

The thrust of your remark is that the indemnification aspect of the tort system is no longer the principal basis for compensation, but rather we have an equivalent no-fault system now, the cost of which is borne by the policyholders, rather than by the pulic generally?

Mr. RODDIS. A dualism of those two things. We persist in adhering to a legal conceptualism based on fault but increasingly we have overlaid it at the insurance level with what amounts to a compensation-oriented treatment. Yes.

Senator BAKER. You mean by the assigned risk pool, by financial responsibility acts, the Michigan system, and others. Is that the reason we now have a compensation system instead of a tort and indemnity system?

Mr. RODDIS. A whole array of things. In the first place, the increasing pressure to put more and more and higher and higher first-party benefits into the coverage. Second, the whole array of judicial precedents which you might say tend to favor the claimant.

Senator BAKER. They tend to diminish the actual cause and effect of the tort concept.

Mr. RODDIS. Yes, all of these things diminish the actual significance of the fault concept, yet leaves the fault concept there, and it becomes an irritant, it becomes a pressure for a kind of adversary relationship, and it becomes a confusing pressure, too.

Senator BAKER. I might refine that, and I won't pursue it further, Mr. Chairman, but I want to be sure I clearly understand.

Mr. RODDIS. I have a few more remarks about it anyway.

Senator BAKER. Let me make sure I am attuned to your frequency on this.

As a rule, the remnant and vestige of the negligence system and the tort concept, coupled with indemnification, form the basis for compensation in this field, coupled with the overlay of a number of factors such as judicial precedents and State statutes, custom, usage, and probably public attitude, so that we in effect have so distorted and diluted or at least changed the tort system and the causal relationship between negligence and indemnification, that we really do not have a fault system now. We have something between a fault system and a no-fault system already without realizing it.

Mr. RODDIS. Yes, sir, that is a good summary.

Senator BAKER. And we have not appropriately reapportioned costs in response to this change in the system.

Mr. RODDIS. Moreover, you continue, you might say, a melded or combined system on a haphazard basis, with all of its cost implications and its implications in terms of frictions and dissatisfactions, and you might say counterincentives to various people within the system.

Senator BAKER. And the delay in bringing cases to trial and disposing of them probably promotes the incentive to settle to the point where it intensifies the no-fault character of the system as well?

Mr. RODDIS. Yes, sir.

Senator BAKER. Thank you, Mr. Chairman.

Mr. RODDIS. We have sought to meld two different and largely inconsistent social objectives into a single integrated system. That the results of such an attempt would be unsatisfactory would almost be expectable simply as an analytic proposition, even without the proof of sad experience. It is this pervasive tension between fault-based reparations ideology and full compensation expectation that actually creates many of the problems of the present system, for it casts upon the various human and institutional components of the system an array of inconsistent roles, it creates unnecessarily adversary relationships, it fosters incentives for undesirable behavior, and it unduly proliferates the legal decision points and uncertainties.

Hence, unlike many people, I do not attribute the problem to the greed or incompetence or bad faith of lawyers or adjusters or agents or

insurance company managers. I recognize that human frailty contributes to the problem and will be a problem under any system, but it is not the dominant cause of our present circumstances, for in my experience most people in all of these groups have been honest and conscientious and well-intentioned.

Many urge that we should seek to accomplish both objectives, unlimited reparations based on fault with a pain and suffering damage element and adequate compensation for all. The pressures for that very result are evident both in the evolution which the present system has already undergone and in the provisions of many of the proposals for reform, including, I might add, S. 945.

If this is what we do, though, I think that we need to make the policy decisions consciously, for the consequences are significant. One consequence is the escalation of costs to unacceptable levels; and another is the array of compromises and resulting frictions in the accomplishment of either objective which the specter of cost overburden forces.

This is exactly what has been happening in the evolution of the present system, and I might add will be compounded by many of the limited reform measures now being advocated. Personally I believe, and I am not a philosopher or psychologist, that public satisfaction, in a sense public happiness, with an institutional mechanism is better promoted by clearer commitment to a primary purpose and concentration on seeing that that goal is accomplished to maximum effect.

Second, I am not a utopian; I recognize some of the problems which exist are intrinsic to the automobile environment in this country and either will exist under any reparations system or must be solved by measures independent of a loss allocation and distribution mechanism.

Moreover, there are a diversity of legitimate interests and viewpoints entitled to consideration which I recognize the political process must accommodate. Yet the fact that any proposal, therefore, will be vulnerable to criticism from some quarter should not deter action.

Now I want to turn to a discussion of some considerations relative to S. 945, the bill presented by Senators Hart and Magnuson. Initially let me say I admire those who drafted the bill. It displays a great deal of ingenuity in concept and drafting. There are many provisions in it which I think are very, very good. There are three aspects which I wish to specifically discuss. I also have a number of more or less technical comments about it which I can supply to the committee staff in letter or other written form.

The three points I want to talk about briefly are:

(1) The accommodation which the bill makes between first-party compensation theory and the retention of a fault-based tort liability;

(2) The provisions included in the bill calculated to assure the availability of automobile insurance; and

(3) the question of the appropriateness of a Federal law as opposed to awaiting solutions at the State level.

On the first point I am something of a purist in that I prefer to move as far as possible in the direction of a pure compensation approach. Ideally I would abolish the fault-based liability and the right to unlimited damages for pain and suffering altogether; however, I recognize the powerful emotional and other pressures involved and do not oppose reasonable compromise. However, the approach taken by

the bill I think has some defects, particularly in that it retains too much room for litigation of a customary type in the catastrophic harm area. It does not provide adequate direct compensation.

Specifically I would suggest the following pattern of modifications:

(1) Amend the section on compensable earnings loss, which is (2)(c), to do these things:

(*a*) Raise the required minimum limits to $1,500 per month and 48 months or $48,000. I apologize for that—it would have to be 48 times $1,500.

(*b*) Redefine the compensable earnings loss so as to cover all present and expectable loss or diminution of earnings and then define expectable lost earnings as present earnings except to the extent that circumstances clearly demonstrate the probability that higher levels would be achieved. This is to take care of two problems: First, a person who has low or no present earnings but a clear short-range expectation of entering or substantially improving himself in the remunerated labor force; for example, the student; and second, the factor of inflationary increases in wage rates.

(*c*) Permit insurers to stipulate in the policy with the primary insured and those whom he may reasonably be regarded as representing as to the actual potential lost earnings.

(*d*) Amend section 2(12)(a) to add a provision reducing net economic loss by an amount equal to 80 percent of earnings from any substitute occupation.

(2) Define catastrophic harm somewhat differently so as to dovetail more precisely with the direct compensation section; that is, define permanent and total or partial disability as disability extending 48 months, or 30 months if you retain the present limit, and as including disfigurement.

(3) Limit the damages recoverable for economic loss due to catastrophic harm so as to exclude any earnings loss factor within the 48-month or 30-month period.

Second, I want to turn to a discussion of the provisions designed to assure the wide availability of automobile insurance. These provisions have the not inconsiderable virtue of simplicity. Essentially the bill imposes a duty on all auto insurers to write every risk submitted.

I am reluctant to criticize the approach, for it accords with a view I have entertained for some time that our present system has created too many competitive pressures for overly selective underwriting and that it should be possible to create an environment in which insurers may reasonably be expected to make their product generally available to all at appropriate prices. However, I fear that the section as it stands now is apt to have undesirable collateral consequences within the insurance economy.

First, and apart from everything else, I think that this approach is feasible only if the Congress also preempts out State rate regulation. Under a law of this type, I think rate regulation probably will be unnecessary. The bill has a number of sound provisions built into it designed to enhance independent ratemaking and transparency of the market so that competition may be effective at the consumer level.

These provisions could be fortified by making auto insurance explicitly subject to Federal antitrust laws.

To impose a Federal duty to write every risk submitted, and leave the insurers exposed to the vagaries of State rate regulations, is an invitation to disaster.

If rate regulation were eventually demonstrated to be necessary, I would prefer to lodge the power in the Secretary of Transportation.

Second, and apart from the rate regulation problem, the provision for the availability of insurance will create other dislocations. It will severely affect specialty carriers, some of which have done a very good job and are geared to deal only with their special areas of competence.

Senator BAKER. Like who?

Mr. RODDIS. United Service Auto, for example.

Moreover it will strike hardest at those insurers which so far have been doing the best job of supplying the markets.

It will encourage various rather elementary business manipulations on the part of insurer managements calculated to reduce the impact of the provision on them. And I do not mean to imply, incidentally, that the techniques which would occur to me would be wrongful; indeed I think they would almost be forced upon management from an economic standpoint.

I suggest either of two alternate approaches.

First, retain the present approach, but do these things: (a) Permit insurers to file with the Secretary designations of classes, kinds, or territories of business which they do not choose to write. I would empower the Secretary to promulgate rules and regulations to control such filings, in order to prevent targeting. (b) Permit an insurer to file at any time a statement that it has suspended writing automobile insurance until a further rescinding filing could not be made for, say, at least 90 days.

A second and entirely different approach would be to abandon the provision requiring every insurer to write every risk, and create a federally chartered public corporation, jointly owned by the Government and by all automobile insurers, with power to assess the insurers.

The corporation could write business generally on a businesslike basis and would be specifically enjoined to see that all markets were supplied. Such an insurer could serve two functions: First, to assure the availability of auto insurance and, second, to control rates by the so-called yardstick method of rate regulation.

A final comment in this connection: Apart from everything else, and even if you don't change the bill in any other regard, you should amend section 5(b)(2), which is the one that says that the only circumstances under which an insurer may refrain from accepting further applications is if its domiciliary commissioner has made a written finding that to do so would impair its solvency, should be amended to use a test other than solvency; something like hazard or unsoundness. The word "solvency" poses some technical problems that will make it absolutely unworkable.

Finally, I want to comment on the question of the propriety of Federal as opposed to a State solution. I think a Federal bill is needed. First, all of the factors are present which have conventionally and historically been thought to render a subject appropriate for the exercise of the congressional power to deal with interstate commerce on a uniform national basis.

In other words, there is really nothing so terribly remarkable about what is being proposed in this bill, to have a Federal solution. The auto, if you will forgive a bad pun, is very mobile. Many accidents have immediate multi-State implications. Moreover, the economic consequences are clearly national in scope. The sheer magnitude of the financial stakes establish this fact, if nothing else does.

The next factor is that the States are not apt to act with any great rapidity or uniformity. The real problem in my view is not so much the fact we might go through a period in which we have some States with first-party laws and others with the conventional fault-based tort liability system.

I think if it were merely a two-way dispersion, in other words, if there were really just two choices, we could live with it. But the greater problem is the likelihood that a wide array of diverse plans will emerge among the States. There are a host of subissues involved in the problem. Moreover, there are numerous groups which have an interest in the matter and the relative positions of legislative influence among these groups vary remarkably from State to State.

Hence I think it is likely that we will see a pattern of the emergence of a wide variety of solutions at the State level and that emergence of numerous variable plans will create serious problems from legal and insurance standpoints, as well as bewilderment and dissatisfaction in the public mind.

You know I sometimes think that it is lawyers and legislators that think a lot more about State lines than people do generally today. The average person I don't think really thinks that things ought to be so different simply because he drives from one State to another.

The problem is aggravated by the fact that the applicable choice of law rules have become murky in recent years. When I was in law school, and I suspect that when those other gentlemen here who were lawyers were in law school, the conflict-of-laws people had the problem of choice of law in accident cases fairly simple, the law of the place of the accident pretty well controlled.

I am not a conflict-of-laws man, but my understanding is that in recent years the courts and the legal scholars have devoted a great deal of attention to confusing the situation and have evolved a doctrinal position that pays a lot of attention to the aggregate of contacts, and other such tests, and clearly creates an incentive to a proliferation of forum shopping litigation.

I think that given that kind of a context, as to the choice of law principle involved, and the emergence of a wide variety of statutory plans among the States, we would find ourselves with some very serious legal and insurance problems. That completes my intended testimony.

As I said, I have a number of other comments which I will try to submit to the committee by letter or in some other form. I appreciate the opportunity of having been here.

Thank you.

Senator HART. Dean, thank you very much.

We will welcome and accept your offer of help with some of the technical points that you want us to focus on.

I said this yesterday, let me repeat it: I appreciate very much your commendation to the draftsman of this bill. I don't want to imply that Senator Magnuson didn't write it in longhand, but I sure didn't.

But it gives both of us an opportunity to tell those men who did the drafting that in your judgment it is technically a good job. On that conflict-of-law thing, I am a conflict-of-law man in the sense that I took a course on conflicts, at a time when you described the situation as relatively clear.

It was never clear to me even then, and if it has gotten worse, then we will certainly have to do something.

Senator Cook?

Senator COOK. Dean, I must say your statement has been kind of refreshing to me.

First of all, I think you totally disagree with many of the remarks that have been made previously that somehow or other under a fault system this automatically makes a driver more careful. I think you refute it, and I think you refute it well.

As a matter of fact, I think the fear of having one's policy cancelled is a far greater fear to make someone a better driver than the fact that he may find himself within the confines of the fault, tort liability machinations of the present legal system.

Secondly, in your colloquy with Senator Baker, you point out to those who argue that you are tampering with the tort liability system, that unfortunately that system has become relegated to the system of insurability and it has become second place, not first place.

I think we as lawyers should admit that tort liability existed long, long before the lawyer had to find out before he filed that lawsuit whether there was a degree of insurability.

I think you made this point very well. I really think you ought to be commended for this.

Let me ask you, under a no-fault system which retains for the benefit of its citizens the tort liability facilities and availabilities, do you foresee any constitutional questions involved in such a program?

Mr. RODDIS. I think not at the Federal level. There may be State constitutional provisions that would be a problem in some States, at the State level. That could be, in fact, another reason for suggesting the desirability of Federal legislation as being the only practical way of overriding some potentially applicable State provisions.

For example, my recollection is that the New York Constitution has what amounts to a constitutional guarantee. I think of either jury trial or simply nonimpairment of the right to a cause of action for wrongful death. For that reason, for example, in the New York plan, variously called the Stewart plan or Rockefeller plan, they had to exclude wrongful deaths, because of apprehensions about their own State constitutional provision.

Senator COOK. There is one thing you did say that seems to defeat the purpose of what we are discussing today rather than enhance it. That is the ability of a carrier to notify the Secretary relative to your proposition to permit a carrier to exclude types of insurance and areas.

Now, if this is available to one carrier, obviously it is available to all carriers. If we get into this business of even giving a 90-day or 60-day period of eliminating the ability to write coverage, aren't we really defeating the purpose for which these hearings are being conducted?

Unless we immediately say in that same regard, and I don't mean to prolong the question, that whenever this is done in a given area, if

there is no coverage available, it automatically goes to a Federal corporation which would immediately have to step in and render coverage within that 90-day period.

Obviously, we do not want to find ourselves in a position where a given area by reason of types or by reason of area was going to be totally excluded from the availability of coverage.

Mr. RODDIS. My thought had been that this right which I would propose giving to the insurers would be rather severely delimited by the suggestion I also made that the amendments should include the conferring on the Secretary of a power to regulate the exercise of that device pursuant to rules and regulations he might adopt to prevent abuse.

I would think you could confer a regulatory power under standards that would be broad enough to avoid the consequences you are apprehending.

Let's take a simple thing for an example. Suppose you did give them the possibility of territorial exclusion. If I were the Secretary and had the regulatory power, I might say no territorial exclusion shall be less than, say, an area of 50 square miles or perhaps even maybe a State or a half a State, something like that. The point being that I would prevent them from this business of red lining out, or targeting areas or something like that.

By the same token, as to classes of business, I wouldn't let them say we aren't going to write unmarried women under 25 or something like that. What I am thinking of is the power to say we write only motorcycle insurance, we wont write any automobiles, or we write, like United Services Auto, we write only this class of business, I think there it is defined probably as military officers, retired officers, and reservists.

I think it would be possible by regulation to control any abuse of this right, and you won't have enough companies that fit these different kinds of categories or think of themselves as doing so to block out a whole area.

Moreover, once they make that filing, they can't write any risks in that category. It isn't a right to get out from under the duty to accept all risks if they write that category at all. They have to make an either/or selection. If they say this is an area in which we do not choose to write, then they can't write anything.

They could voluntarily say we will suspend all writings for a period of time. I think that is far superior to having them running down to convince the insurance commissioner that they are going to go broke if they write any more insurance.

Senator COOK. I am little concerned with the explanation, because I am wondering if carriers could be eliminated from particular areas, you might be creating a monopolistic system within those same areas.

Mr. RODDIS. I think that the number and size of automobile insurers operating broadly, both at the national level and locally and regionally, is such that there would always be adequate numbers. Now, I will agree this can become involved with one other point I tried to make and that is what I perceive is the need to abrogate State rate regulation.

In a sense if you don't abrogate State rate regulation, I would think you almost have to have the kind of power I am proposing on the

part of the carriers. Otherwise the distortions you build into the insurance economy nationally will be something to see.

Senator COOK. You think it would be necessary to preempt.

Mr. RODDIS. Yes. But it would be the failure to preempt that would be the only thing that I can think of that would lead to the kind of situation you are apprehending, and that situation would arise if you did not preempt, that is if you permitted State rate regulation, and you had a State insurance commissioner who said to himself: "This is the best of all worlds. The Federal Government says they have to write every risk, and I control the rates."

If he suppresses the rates below reasonable levels, as has on some occasions been done historically in various States, you could get a situation where carriers in the appprehension of the consequences of that would frankly have to make a filing blocking out that whole State. Now, however, that is another good reason for giving them that right, because if you don't given them that right, they will have to turn to withdrawal from the State, perhaps cutting off the writing of other valuable lines in which they are engaged.

Senator COOK. As a consequence of investing the authority in the Secretary to either allow or disallow, based on an application, an insurance company to continue or to classify or to delete areas, I think we just automatically have to follow on the idea of a preemption of rates. I do not think that determination could be handled at this level logically unless you also had control over the structure that applied to that area. Wouldn't that really follow?

Mr. RODDIS. Well, I did not suggest preemption of the rate regulatory power in the sense that you necessarily have to have the Secretary do it. I think, myself, that under this kind of a law, and the insurance economy that I would hope would emerge under this, that you could preempt in the sense that you knock out State rate regulation and rely upon competition and the Federal antitrust laws to be a reasonable governor of price.

If that proved to be unsatisfactory, it was my statement that I would then prefer to have the Secretary control the rates rather than the States. And I agree that I think the coexistence of a federally imposed duty to write every risk with the continuance of State rate regulation is going to be a very unsatisfactory combination.

Senator COOK. One other question. You did not address yourself to one section of the bill that gives me a great deal of concern and that is 3(b), where:

> No State shall require the purchase or acquisition of insurance or any other security as a condition to the operation or use of any motor vehicle upon the public streets, roads and highways of such state, other than the insurance required under Section 5 of this Act.

Do you foresee, if such a section were to stay in the bill, that if a no-fault were to be perfected by this committee it would have to be of unlimited consequence?

Mr. RODDIS. No, I do not have that problem with it. But that was one of the sections I was going to comment on in the letter under the general heading of technical and other comments.

I really don't understand the point of that section. I see no reason why an individual State should not be permitted to legally require additional coverages that do not detract from or impair the purpose or effect of the Federal requirement.

In other words, I would not permit a State, I suppose, to do something that was really inconsistent with the purpose of the Federal bill, but I do not understand why the States should be prohibited from requiring reasonable additional coverages.

Senator COOK. Don't you think that with such a section, and the fact that the States conceivably could not act if this section stayed. the consuming public, with the retention of the tort liability feature, might be lulled into minimum coverage and consequently find themselves in a horribly dangerous position if they found themselves brought into court on a matter that far exceeded any coverage that could reasonably be presented in a Federal statute?

Mr. RODDIS. Well, no; I do not think that is the problem, because my recollection is the section, or one of the other sections, does specifically permit optional liability insurance with reference to this catastrophic harm liability. So at least that particular problem would not arise. But there could be other things.

Senator COOK. Suppose an insurance company's options only went so far?

Mr. RODDIS. Oh, I see what you mean. In other words, suppose the Secretary approved a policy that had limited coverage——

Senator COOK. I heard Mr. Sutcliffe say that he cannot, but if he is going to regulate and make these determinations——

Mr. SUTCLIFFE. There is a requirement in the bill that the insurer has to offer the optional coverage.

Senator COOK. Of at least $50,000 for any one person, $300,000 for all persons. We have judgments that have been rendered in the last 30 days that make $300,000 look like peanuts.

Mr. SUTCLIFFE. But the present limits in the States are $10,000 and $20,000 for liability.

Senator COOK. The only point I am making is you are putting a limit on the upward side, and they are putting a limit on the downward side. They may require $10,000 and $20,000——

Mr. SUTCLIFFE. I think it could be improved a great deal, Senator.

Mr. RODDIS. I agree with you, Senator Cook, on that matter. This was one of the provisions that bothered me. I see no reason why the States should be prevented from requiring at least reasonable additional coverages if they felt that the interests of their citizens so indicated. And one of the illustrations would be to require higher limits.

Senator COOK. One of the greatest examples would be property damage, which this bill does not require.

Mr. RODDIS. Yes. The things that occurred to me were, one, property damage liability insurance, and the other really would be the idea of making the optional coverage mandatory.

I hate to see, as long as you are going to have this liability for catastrophic harm, I hate to see the States in effect forced back from the requirement that some of them have that you have to have that kind of coverage.

So basically I am in agreement with you on this whole matter.

Senator COOK. Mr. Chairman, I have to say I find his remarks very refreshing and I think they add a great deal.

Thank you very much.

Mr. RODDIS. Thank you, Senator.

Senator HART. I certainly share Senator Cook's feeling that what you have told us this morning is going to be, as we attempt to work through this thing, extremely helpful and referred to often.

As a matter of fact, I wish we had had the chance to have it in front of us.

Mr. RODDIS. And I apologize for that.

Senator HART. I appreciate Senator Baker's twice asking for a runthrough of that one long sentence.

Senator Baker?

Senator BAKER. Thank you, Mr. Chairman. I join you and Senator Cook in commending the witness for a very meaningful statement.

I must say that one of the difficulties that comes from not having been at these hearings on each day is trying to understand the statute, so if the witness will bear with me I would like to get down to some fundamental questions he raised.

Is it fair to say in the broadest terms that the situation we have today in the tort system as it relates to the automobile situation is an insurance industry that provides indemnification under a modified tort system and that the thrust of S. 945 is to eliminate some patent inequities in that system and to serve a secondary purpose, a social purpose, of relieving pain, suffering, anguish, and lack of compensation in cases where there is not a traditional response in the tort liability system; and, third, if we do that, to provide a new system of regulation? Is that the broadest scope of the presentation of S. 945?

Mr. RODDIS. Yes; if that includes the idea that I suppose the basic thing here is to eliminate, at least to the extent that you do impose a required direct first-party compensation system, the play of the fault liability concept altogether.

You see the problem I was trying to identify earlier is that the problems arise from the present sort of hodgepodge meld of fault theology and compensation insurance. Though it is true that the system is moving more and more in the compensation direction as a practical matter, the residue of fault theory pervading the thing is what creates so many problems.

You have an insurance mechanism, for example, that doesn't even go the right way contractually. The insured is the tort feasor, yet the person increasingly viewed as the real beneficiary of the insurance is not someone that is indemnified against the liability, but rather the third-party claimant.

Senator BAKER. If I might be so presumptuous as to caution the dean of a distinguished law school to be careful not to misunderstand what I am saying, I am not criticizing the bill. I am groping for the fundamental principles involved. What you have suggested is that there is a moral issue involved in the lack of direct responsiveness or privy between the injured party and the insurance carrier. That, of course, launches into category 2 that I tried to described, which is the social issue involved.

I am trying to establish if we are in fact talking about three separate and only slightly related issues: One, the insurance industry's relationship to the indemnification aspects of the court system in the United States; two, whether or not we are concerned with the

necessity, if any, for providing additional response above the negl gence system on a human and social basis, that is, compensation witl out fault, directly to the injured party and many other application and three, if the answer to two is yes, whether we are completely ar totally changing the relationship of the industry to the public ar the Government to the point where extensive reordering of regulatic of the insurance industry will be mandatory, not desirable, but mar datory?

I ask you, if you will let me, to come back and correct me or agr or disagree on any of those three categories of concern in this fiel Then it will lead me to two or three other questions.

I say, again, I am not implying disagreement with any aspects S. 945, I am not yet dealing with nuts and bolts. I am trying to g my fundamental thinking straight in this field.

Mr. RODDIS. I think your statement of the issues is very good. Yo said independent issues. I view them as more interrelated.

First, you say——

Senator BAKER. Indemnification and response to the tort system.

Mr. RODDIS. It would do that. It would create a first-party kind insurance relationship. So that is a basic thing this bill does.

No. 2, it clearly does move heavily, though, as I indicated in m testimony, not as heavily as I would prefer, in the direction of a pu compensation without regard to fault approach, and that is obvious a social policy judgment. There is no question about it.

Senator BAKER. Having little if any relationship to point 1, the to system?

Mr. RODDIS. No; I stick to the principle that all of these issues a closely interrelated, and that is for one single reason if no other, ar that is cost. There is no escape from the cake-and-eat-it-too proble

Senator BAKER. Not really. That is a semantic difference betwe you and me, I think.

I am saying they are not related on the theory that the tort syste awards indemnification or reparation or compensation only when the is negligence causally connected with the loss or injury, while t no-fault concept is based on humanitarian and social concerns, havir no relationship to the causal connection between negligence and r sponsibility for damages.

Mr. RODDIS. I apologize for not seeing your point sooner. You a saying these issues are severable issues as a matter of philosophy theory; yes, that is true.

Senator BAKER. And one of them has to do with the modification the tort concept as a part of the generic laws of the United States a the laws of the States, and the other has to do with the pressures f social change and the response Congress makes to that. They are on slightly related. In policy and principle they are not related at all.

As a practical matter they are closely related because the similiari of the events, more often than not, will both occur in an automobi accident, and in cost it is sometimes difficult to distinguish what is direct response and what isn't a direct response to tort liability. Th by the way, gets back to the extraordinary point you made when y pointed out, as I never thought of it before, that we can in effect ju cially legislate the no-fault system with the evolution and develo ment of the tort law as we know it.

And, point three, if we answer two in the affirmative, we have to do some radical surgery on the system.

Mr. RODDIS. I guess it is on three that I have perhaps a more limited view. As I have indicated, this particular bill has some provisions in it which I think do substantially affect at least the rate regulatory function and I think they are desirable effects on that. Partly they are required, however, by the attempt in the bill to deal with the availability of insurance problems, rather than these other problems.

I once had the theory that it really was not necessary to have any particularly great impact on the basic regulatory pattern simply to enact a Federal no-fault, first-party kind of legislation. My position for some time has been that basically all that was needed at the Federal level was to rewrite the tort law involved, that is the basic principle of liability, and require the needed first-party insurance that is the substitute for the present system and then leave it to the private industry and to the States to respond to that new legal environment, which I think American industry tends to do rather well.

In other words, my point is that the congressional function was to recreate the legal environment, and I thought if you did that the right way, most of the other things would flow from it.

Now, this bill has things in it that I guess require or provide more assumption at the Federal level of the regulatory function; and I do not disagree with those provisions, in fact I think maybe they are sound, but even those I do not think will displace the State regulatory system nearly as much as you might think.

Senator BAKER. What I am really groping for in these broad categories, and defining the areas of concern in the bill, is to determine whether the most basic judgment that must be made by the Congress is whether we are going to fund the demands of category 1 and category 2 out of the user concept by adding it to rates and charges of the insurance industry, or whether we are going to respond partly from the insurance industry and partly from the general treasury, that is, either for social or human considerations.

For example, in the case of an automobile accident where there is no-fault, and still there are parties who may suffer and be unable to work for long periods of time, it is theoretically possible to compensate those people through medicare or medicaid and it is also possible to compensate them from other benefits.

It is the old question of whether or not we make the user pay or the treasury pay. We stretch it over the entire public domain or limit it to a particular segment of the industry. That would require further examination on my part to decide whether or not category 2, that is the human and social considerations, the no-fault aspect of the problem, ought to be taken care of by the user or ought to be more broad-based.

It really gets down to the continuing conflict, the philosophical confrontation in Congress between trust funds and general treasury funds.

Do you care to disagree with that as a description of the most fundamental question we have to raise if we decide something has to be done?

Mr. RODDIS. You touch on a point that I think is very interesting and a fundamental one; yes. I guess as long as I was setting up a sys-

necessity, if any, for providing additional response above the negl gence system on a human and social basis, that is, compensation wit out fault, directly to the injured party and many other application and three, if the answer to two is yes, whether we are completely ar totally changing the relationship of the industry to the public ar the Government to the point where extensive reordering of regulati of the insurance industry will be mandatory, not desirable, but ma datory?

I ask you, if you will let me, to come back and correct me or agr or disagree on any of those three categories of concern in this fiel Then it will lead me to two or three other questions.

I say, again, I am not implying disagreement with any aspects S. 945, I am not yet dealing with nuts and bolts. I am trying to g my fundamental thinking straight in this field.

Mr. RODDIS. I think your statement of the issues is very good. Y said independent issues. I view them as more interrelated.

First, you say——

Senator BAKER. Indemnification and response to the tort system.

Mr. RODDIS. It would do that. It would create a first-party kind insurance relationship. So that is a basic thing this bill does.

No. 2, it clearly does move heavily, though, as I indicated in n testimony, not as heavily as I would prefer, in the direction of a pu compensation without regard to fault approach, and that is obvious a social policy judgment. There is no question about it.

Senator BAKER. Having little if any relationship to point 1, the to system?

Mr. RODDIS. No; I stick to the principle that all of these issues a closely interrelated, and that is for one single reason if no other, ar that is cost. There is no escape from the cake-and-eat-it-too proble

Senator BAKER. Not really. That is a semantic difference betwe you and me, I think.

I am saying they are not related on the theory that the tort syste awards indemnification or reparation or compensation only when the is negligence causally connected with the loss or injury, while t no-fault concept is based on humanitarian and social concerns, havi no relationship to the causal connection between negligence and r sponsibility for damages.

Mr. RODDIS. I apologize for not seeing your point sooner. You a saying these issues are severable issues as a matter of philosophy theory; yes, that is true.

Senator BAKER. And one of them has to do with the modification the tort concept as a part of the generic laws of the United States ar the laws of the States, and the other has to do with the pressures f social change and the response Congress makes to that. They are on slightly related. In policy and principle they are not related at all.

As a practical matter they are closely related because the similiari of the events, more often than not, will both occur in an automobi accident, and in cost it is sometimes difficult to distinguish what is direct response and what isn't a direct response to tort liability. Thi by the way, gets back to the extraordinary point you made when y pointed out, as I never thought of it before, that we can in effect jud cially legislate the no-fault system with the evolution and develo ment of the tort law as we know it.

And, point three, if we answer two in the affirmative, we have to do some radical surgery on the system.

Mr. RODDIS. I guess it is on three that I have perhaps a more limited view. As I have indicated, this particular bill has some provisions in it which I think do substantially affect at least the rate regulatory function and I think they are desirable effects on that. Partly they are required, however, by the attempt in the bill to deal with the availability of insurance problems, rather than these other problems.

I once had the theory that it really was not necessary to have any particularly great impact on the basic regulatory pattern simply to enact a Federal no-fault, first-party kind of legislation. My position for some time has been that basically all that was needed at the Federal level was to rewrite the tort law involved, that is the basic principle of liability, and require the needed first-party insurance that is the substitute for the present system and then leave it to the private industry and to the States to respond to that new legal environment, which I think American industry tends to do rather well.

In other words, my point is that the congressional function was to recreate the legal environment, and I thought if you did that the right way, most of the other things would flow from it.

Now, this bill has things in it that I guess require or provide more assumption at the Federal level of the regulatory function; and I do not disagree with those provisions, in fact I think maybe they are sound, but even those I do not think will displace the State regulatory system nearly as much as you might think.

Senator BAKER. What I am really groping for in these broad categories, and defining the areas of concern in the bill, is to determine whether the most basic judgment that must be made by the Congress is whether we are going to fund the demands of category 1 and category 2 out of the user concept by adding it to rates and charges of the insurance industry, or whether we are going to respond partly from the insurance industry and partly from the general treasury, that is, either for social or human considerations.

For example, in the case of an automobile accident where there is no-fault, and still there are parties who may suffer and be unable to work for long periods of time, it is theoretically possible to compensate those people through medicare or medicaid and it is also possible to compensate them from other benefits.

It is the old question of whether or not we make the user pay or the treasury pay. We stretch it over the entire public domain or limit it to a particular segment of the industry. That would require further examination on my part to decide whether or not category 2, that is the human and social considerations, the no-fault aspect of the problem, ought to be taken care of by the user or ought to be more broad-based.

It really gets down to the continuing conflict, the philosophical confrontation in Congress between trust funds and general treasury funds.

Do you care to disagree with that as a description of the most fundamental question we have to raise if we decide something has to be done?

Mr. RODDIS. You touch on a point that I think is very interesting and a fundamental one; yes. I guess as long as I was setting up a sys-

necessity, if any, for providing additional response above the neg gence system on a human and social basis, that is, compensation wi out fault, directly to the injured party and many other application and three, if the answer to two is yes, whether we are completely a totally changing the relationship of the industry to the public a the Government to the point where extensive reordering of regulati of the insurance industry will be mandatory, not desirable, but ma datory?

I ask you, if you will let me, to come back and correct me or agr or disagree on any of those three categories of concern in this fie Then it will lead me to two or three other questions.

I say, again, I am not implying disagreement with any aspects S. 945, I am not yet dealing with nuts and bolts. I am trying to g my fundamental thinking straight in this field.

Mr. RODDIS. I think your statement of the issues is very good. Y said independent issues. I view them as more interrelated.

First, you say——

Senator BAKER. Indemnification and response to the tort system.

Mr. RODDIS. It would do that. It would create a first-party kind insurance relationship. So that is a basic thing this bill does.

No. 2, it clearly does move heavily, though, as I indicated in m testimony, not as heavily as I would prefer, in the direction of a pu compensation without regard to fault approach, and that is obviousl a social policy judgment. There is no question about it.

Senator BAKER. Having little if any relationship to point 1, the to system?

Mr. RODDIS. No: I stick to the principle that all of these issues ar closely interrelated, and that is for one single reason if no other, an that is cost. There is no escape from the cake-and-eat-it-too problen

Senator BAKER. Not really. That is a semantic difference betwee you and me, I think.

I am saying they are not related on the theory that the tort syste awards indemnification or reparation or compensation only when the is negligence causally connected with the loss or injury, while th no-fault concept is based on humanitarian and social concerns, havin no relationship to the causal connection between negligence and r sponsibility for damages.

Mr. RODDIS. I apologize for not seeing your point sooner. You a saying these issues are severable issues as a matter of philosophy theory; yes, that is true.

Senator BAKER. And one of them has to do with the modification the tort concept as a part of the generic laws of the United States an the laws of the States, and the other has to do with the pressures f social change and the response Congress makes to that. They are onl slightly related. In policy and principle they are not related at all.

As a practical matter they are closely related because the similiarit of the events, more often than not, will both occur in an automobi accident, and in cost it is sometimes difficult to distinguish what is direct response and what isn't a direct response to tort liability. Thi by the way, gets back to the extraordinary point you made when y pointed out, as I never thought of it before, that we can in effect jud cially legislate the no-fault system with the evolution and develo ment of the tort law as we know it.

And, point three, if we answer two in the affirmative, we have to do some radical surgery on the system.

Mr. RODDIS. I guess it is on three that I have perhaps a more limited view. As I have indicated, this particular bill has some provisions in it which I think do substantially affect at least the rate regulatory function and I think they are desirable effects on that. Partly they are required, however, by the attempt in the bill to deal with the availability of insurance problems, rather than these other problems.

I once had the theory that it really was not necessary to have any particularly great impact on the basic regulatory pattern simply to enact a Federal no-fault, first-party kind of legislation. My position for some time has been that basically all that was needed at the Federal level was to rewrite the tort law involved, that is the basic principle of liability, and require the needed first-party insurance that is the substitute for the present system and then leave it to the private industry and to the States to respond to that new legal environment, which I think American industry tends to do rather well.

In other words, my point is that the congressional function was to recreate the legal environment, and I thought if you did that the right way, most of the other things would flow from it.

Now, this bill has things in it that I guess require or provide more assumption at the Federal level of the regulatory function; and I do not disagree with those provisions, in fact I think maybe they are sound, but even those I do not think will displace the State regulatory system nearly as much as you might think.

Senator BAKER. What I am really groping for in these broad categories, and defining the areas of concern in the bill, is to determine whether the most basic judgment that must be made by the Congress is whether we are going to fund the demands of category 1 and category 2 out of the user concept by adding it to rates and charges of the insurance industry, or whether we are going to respond partly from the insurance industry and partly from the general treasury, that is, either for social or human considerations.

For example, in the case of an automobile accident where there is no-fault, and still there are parties who may suffer and be unable to work for long periods of time, it is theoretically possible to compensate those people through medicare or medicaid and it is also possible to compensate them from other benefits.

It is the old question of whether or not we make the user pay or the treasury pay. We stretch it over the entire public domain or limit it to a particular segment of the industry. That would require further examination on my part to decide whether or not category 2, that is the human and social considerations, the no-fault aspect of the problem, ought to be taken care of by the user or ought to be more broad-based.

It really gets down to the continuing conflict, the philosophical confrontation in Congress between trust funds and general treasury funds.

Do you care to disagree with that as a description of the most fundamental question we have to raise if we decide something has to be done?

Mr. RODDIS. You touch on a point that I think is very interesting and a fundamental one; yes. I guess as long as I was setting up a sys-

tem to provide either compensation or tort reparations, either one, for automobile-injured people, and that is all I was doing. I would try to internalize the costs to the system.

In other words, I think it is fair that the enterprise of automobiling or as my friend Stewart uses the quaint phrase "motoring," should bear its own cost burdens as fully as possible, whether they be of a compensation nature or a fault-based nature.

Now, I think the thing your suggestion really brings to light is the thought I have had and expressed on a number of occasions, and that is you hear the argument made from time to time that one reason you should not do anything in this area is the dilemma posed by the question of why we should have a legal system that provides full compensation without fault to people who become injured or disabled in auto accidents, where if they fall off a ladder at home they do not have that kind of benefit.

Of course one answer I always give is the purely pragmatic one that quantitatively, and in the public perception, auto accidents are a bigger problem and it is no excuse for not dealing with a problem that you do not go all of the way and deal with everything.

But there is a certain analytic suggestion to that argument, and I have thought for some time that one thing that may really take attention away from this whole auto accident reparations problem if something is not done fairly fast, is it may become swallowed up one of these days by a wider movement for a total medical care and disability benefits system on a national scale.

Of course, if that occurred, you would be talking about funding it through a much broader mechanism than automobile insurance.

Senator BAKER. We may be talking about some future speculative date in history when we have accumulated a considerable amount of money in a Federal trust fund to be a reinsurer of the insurance industry or pay direct claims or the like. Somebody will come along and say we ought not to spend this money for interstate highways, we ought to spend it for urban rapid transit, and maybe we ought to take this money and spend it for getting people over the highways, instead of compensating them.

So we have already had a foretaste of how specialized funding operates.

I may say, parenthetically, I think specialized funding is superior in this case. But there is the philosophical question it seems to me of whether or not we are funding a general social purpose on a specialized narrow base.

Let me extend that one step further, and I will not go much further because I am going to seek the opportunity to talk to you further one of these days, when we don't have to pay the reporter over here.

What about the economic disincentive of the tort system which you have thoroughly and effectively destroyed, and I think you really did a good job. I am inclined to think you have convinced me that the insurance industry unwittingly has distorted the tort system to the point where people don't care whether they are brought to court. They only care whether their insurance gets canceled. Then insurability becomes a disincentive. What happens if we remove that disincentive and provide no-fault insurance for everybody on any basis? What su

plies the disincentive then? Is it socially acceptable to say there need be no disincentive, or is it possible we can modify that dilemma by saying the contract for public indemnity will extend only to the direct consequences and not extend to punitive damages, for instance? What about a provision that you insure against punitive damages?

What if a man had to stand for damages on the punitive side for his actions and couldn't get insurance? Would that supply the economic disincentive?

Mr. RODDIS. Well, it is a very good point. I guess I have two comments on it, taking perhaps the tail one first. That highlights what I think is the question of the molding of driver behavior, the creation of deterrents from socially undesirable conduct.

It seems to me that is not something that should be the province of the civil law and insurance companies anyway. That is something that should be done through the criminal law. Unfortunately I think the criminal law has been led to do a poor job of it, partly because everybody sort of relied upon the civil law insurance mechanisms to do it. That is comment one.

Senator BAKER. If I can interrupt, I agree with you. I think it was probably man's first error in the tort field in that he burdened the tort concept with a social purpose, that is, punitive damages, which was a social purpose, not an indemnity purpose. But we are long past that now.

So what I am saying is let's look at the other fellow's mistakes way back and see if as we modify this system we can't improve on the system that exists.

Senator COOK. Before you all go any further on this, you will admit this distortion occurred because of the field of insurability.

Senator BAKER. Not originally. It occurred in England in the 11th century, when there wasn't any insurance.

Senator COOK. This is the point I have tried to raise with him though. We have made the tort liability and the punitive damages secondary to the degree of insurability.

Senator BAKER. Insurability is the disincentive to negligence.

Senator COOK. To follow through, and I don't mean to interrupt, I think the best example of what you are talking about, this incentive to rely on a program other than the field of insurability, is paramount in the Michigan program. Secretary Austin testified that last year 83,000 motorists applied to the assigned risk pool for coverage, while 260,000 motorists elected to pay into the fund.

We see people who say, when I get my license, I will pay my $35, because there is no way any major judgment can be collected against me anyway.

Senator BAKER. I want to thank Senator Cook for that, and Mr. Chairman, I want to apologize for taking so much time. It is 20 minutes to 1.

Senator HART. No, we all feel we are extremely fortunate to have the professor here, and incidentally it is a great burden in terms of demand of your time in coming back and forth to Washington.

So far as I am concerned, while we have the dean, let's get that free counsel.

Mr. RODDIS. Could I remark on this other aspect of this problem which you both have highlighted?

In this perhaps I go a little further than Senator Cook. I don't think that the fault concept has much impact on driver behavior under the present system, even assuming there are some consequences to being at fault, if nothing else, you may either lose your insurance or have your rates raised, or even if you in fact bore some part of the liability; for example, I have known people who made serious proposals for deductibles on liability policies, with the statement that if the driver had some of his own dough riding on the front bumper, he might be more careful.

I wouldn't discredit the idea that that has some effect on people's conduct. But my own feeling is that fault liability or the exposure to fault liability, doesn't really have a significant impact on those personality characteristics or those factors of driver behavior that are really at the heart of accident problems. And I think that is suggested by two things.

First, there is one of the subsidies of the DOT study that explores this issue. It is by a sociologist named Dr. Klein, I believe.

And second, in a peculiar way, and it would take too much time to elaborate on this thesis, my theory is really illustrated by what actually goes on in sophisticated insurance ratemaking and underwriting today.

In other words, the fault system concentrates on a highly technical concept of fault. Somebody goes through a red light, or looks aside to straighten a child up while driving and has an accident, or has some other sort of immediately casual technical lapse. That is the reason why I often think a lot of these accidents are very much "there but for the grace of God go I" type situations, no matter how careful I think I am as a driver.

The evidence I think is that the things really at the heart of the serious accident problem are the kinds of causations that go back from these little lapses. They are personality traits, broader behavioral characteristics.

The suggestion would be if you are really going to have an impact on those, you have got to do it through techniques other than raising somebody's rate or canceling his insurance, or even exposing him to some financial liability.

I have always thought myself if a person's own sense of moral conscience doesn't lead him to drive with real regard for the rights and interests of other people, then I can't believe that this kind of contingent pocketbook effect has any big effect. After all, look at the randomness of the things. You can run all of the red lights you want so long as you don't wind up in a crash, as far as the fault liability system is concerned.

Senator BAKER. That is an eloquent argument in favor of the point that the system now is carrying a social component.

Mr. RODDIS. Yes, it is trying to.

Senator BAKER. And in this evaluation, it may be we ought to split out that social component entirely and put it over here in category 2, that is, the causal relationship, if any, between fault and compensation as a deterrent on future negligence.

What I am groping for still is fundamentals, and you have helped me immeasurably in trying to compartmentalize my thinking. What I am aiming toward, I think, without realizing it until now, is a way to preserve the responsiveness and utility of the tort system on a sound

and honest and equitable basis in terms of rate setting and response, to identify those areas where there is a social or moral obligation to respond, and then to decide whether or not we do it in a specialized way by manipulating rates and coverage with the insurance companies or do it in some other way that I haven't fully explored.

For my purposes at this moment, and reserving the right to change my mind, you have convinced me that there is no economic disincentive to negligence, there probably remains only the disincentive of coverage, as Senator Cook points out, whether or not you can get insurance at all, and that means whether or not you can drive a car in most States, and the question of whether we put the social and the legal components of the problem in one package or whether we split them out and deal with them separately.

I really can't go any further than that.

It is quarter to 1 and late and I have used up all my energy, so thank you very much.

Mr. RODDIS. Just to throw out a thought, and I am not a criminal law expert, but you may find food for thought in the public tort fine concept.

It is possible that one reason the criminal law mechanism doesn't work more aggressively is sort of a feeling that you really don't want to expose people to the stigma aspect of criminal treatment. But if you had some concept of a public tort fine, which was essentially payable to a public fund for some useful purpose, you might have a possible avenue.

I have never thought about it in those terms before, you just lead me to do so.

Senator BAKER. If you get that deep into the psychological implications, there is the postulation that one of the reasons we make people respond to damages under the tort system is because we project our own guilt on to them and we derive some benefit from seeing them suffer.

Thank you, Mr. Chairman.

Senator HART. We thank you.

Mr. Sutcliffe?

Mr. SUTCLIFFE. Dean Roddis, as to the point raised by Senator Baker in the assessment of a user tax or assessment to collect the insurance dollars compared to a general treasury approach, the Department of Transportation study suggests that an internalization of the cost through a user tax approach would have a very beneficial effect upon the accident environment by causing direction or attention to be paid to the automobile with respect to its injury severity, and to its property loss reduction characteristics.

Do you agree with the thrust of the Department of Transportation study which suggests that by internalizing the costs—be they for wage replacements or for medical costs, or property damage coverage—you would have a salutary effect on the vehicle population and the accident loss circumstances?

Mr. RODDIS. On principle, yes. Really the only place the question comes up is on this question of whether you make the auto insurance mechanism primary or secondary with reference to the fringe benefit structures both governmental and private.

The only substantial arguments in favor of not fully internalizing would be, one, some of the fringe benefit structures are in a sense mor efficient mechanisms now.

I think the New York report adopted a theory of deference to th more efficient system.

And the second point is almost political. You can have quite an effec on the auto insurance premium rate by the decision you make as to th extent to which you internalize. And that certainly is a pressure tha shows up certainly in a lot of the State hearings on this question, th need to keep the projected rate levels down. And that has led to th idea of at least deferring to the fringe benefit structure on that ques tion. But in principle I fully agree with the statement you made.

I think that it is wise to internalize the cost to the greatest exten possible to the automobile enterprise itself.

Mr. SUTCLIFFE. And your only caution was that in those areas wher an insurance mechanism is already in existence, that may be mor efficient, such as——

Mr. RODDIS. Well, it is basically in the medical insurance class, bot private fringe benefit and governmental.

Mr. SUTCLIFFE. So you would agree with S. 945 which requires thos provisions in an auto policy to be treated as secondary to any othe coverages, unless expressly made secondary.

Mr. RODDIS. Yes; you make that choice, yes. You do not fully inter nalize, in other words, in theory.

Mr. SUTCLIFFE. Let me return to your suggestion for handling problem that has occupied considerable discussion in these hearing This relates to the treatment of intangible losses, or general damage or pain and suffering, whatever label you choose to use.

You have advocated meeting that social problem or communit conscience problem of the severe accident, the surgeon who loses hand, and so on, by increasing, first of all, the first-party coverag to 48 months and a maximum of $1,500 a month income replacemen coverage of all medical and rehabilitation costs.

What do you do in terms of compensation for the individual wh suffers losses beyond that and suffers something such as permane disfigurement? In other words——

Mr. RODDIS. My proposal left that under the catastrophic harm cau or action.

Mr. SUTCLIFFE. Now you suggested then that the tort mechanis should be preserved above that line for certain general damages pain and suffering. How do you draw that line above the first-part coverages? And if you draw that line, do you do it on a fault basi or do you do it on a no-fault basis?

Mr. RODDIS. Well, it is a good question. Let me compare what think the present bill does with what I thought I was suggesting shoul be done. Maybe I am wrong on both, I don't know.

Mr. SUTCLIFFE. We would certainly appreciate that.

Mr. RODDIS. It might take a moment.

As I understand your concept of catastrophic harm, you define as including either temporary or permenent, partial or total disabi ity, with some kind of a concept of 70-percent disability, or disfigu ment. Then you have a section that says that in the case of catastroph harm, you retain the tort action based, as I understand it, on fault, that is what the State law is, for all damages that would otherwi be recoverable, including economic loss.

Now that would mean——

Mr. SUTCLIFFE. This was including economic loss above what had been paid for on the first-party basis.

Mr. RODDIS. Right; that is just an offset, though. What that means is that suppose I have a high demonstrable earning level, far in excess of the level of insurance carried. If I incur the kind of injury that fits your catastrophic harm definition, then I have a tort action, with admittedly the offset, for my full income loss, whereas somebody who, say, has a lower level of loss, or doesn't fit the catastrophic harm definition, is limited to the prescribed benefit.

I don't see the need for that unless you are trying to get around another problem that is built into the bill, and that is that you didn't think it was possible, apparently, to cope with the concept of earnings loss except as a function of provable earnings.

Now I recognize there are some problems when you start talking about projecting future earnings. But still it is not an impossible task. What I would do is reverse out of both problems in a sense and more closely integrate the direct benefit and the catastrophic harm retained tort liability concept. In effect, what I would do is raise the level of direct benefits, and make them apply to expectable income loss also, subject however to some limitations, and then redefine catastrophic harm. I wouldn't fool around with the 70-percent business or the permanent business. The whole concept of what constitutes permanent and total or partial disability is one of the nightmares of disability insurance litigation.

I would basically define catastrophic harm as the disfigurement cases, if you are really committed to the principle that you have to recognize the right to recover some extra for those, and then I would define all of this concept of permanent disability as simply anything that goes beyond the 48 months. In other words, I wouldn't give a right of action for additional income loss within the 48-month period.

Mr. SUTCLIFFE. What mechanism would you create to prevent malingering to reach that 48-month level, or would you limit the tort action to only continuing wage replacement and medical rehabilitation costs?

Mr. RODDIS. As far as malingering is concerned, I would have the same provision you do, which is what amounts to a coinsurance factor. In fact I would go further, because the bill seems to me it could discourage rehabilitation by limiting the lost earnings factor to earnings lost by disablement from the present or substantially the same occupation.

I think that is sound in itself, but I suggest a further little gimmick that would amend section 2(12)(a), to add a provision reducing net economic loss by an amount equal to only 80 percent of earnings from any substitute occupation. In other words, I wouldn't put a premium on the injured person not accepting rehabilitation that would gear him for some occupation that might be substantially different from what he had done before.

Mr. SUTCLIFFE. What would you do with the housewife as far as compensating her?

Mr. RODDIS. You handled that properly now in another subsection. That is the substitute economic loss problem. That is another problem.

Mr. SUTCLIFFE. You think that is handled satisfactorily in the bill?

Mr. RODDIS. Yes; that is the proper way to handle that. Value the substitute services.

Mr. SUTCLIFFE. Let me pose this question: What is the rationale of utilizing the concept of fault to compensate those people who are disfigured or whose losses exceed that covered under a mandatory first-party coverage?

Mr. RODDIS. Perceived public pressure, I suppose. I told you earlier I am more of a purist.

Mr. SUTCLIFFE. But if there is the perceived public pressure, would that pressure be satisfied on a first-party basis as well as a fault basis?

Mr. RODDIS You could, and I have made that suggestion from time to time, but it gets artificial. About all you can do is go to a schedule of stated benefits concept; you know, so much for the loss of a finger, so much for a scar on the face. You see what you are facing is the very significant but in a sense emotional argument, usually posed by some horrible hypothetical that can be devised about the beautiful, young woman who is unmarried and gravely scarred in a terrible accident by a reckless, drunken driver. And so her whole life, her psyche for life is impaired and so on. And there is a need for her to be compensated fully and for this offender to be exposed fully to the liability.

Now that is an extreme illustration, you can have others. I think that that is a kind of emotional, maybe others call it better a value judgment, that apparently many people feel very strongly about. And I suppose that you need to provide a remedy in order to accommodate that pressure for retention of the fault liability concept.

Mr. SUTCLIFFE. What if that judgment were placed on a first-party optional coverage basis at the time a person chose the insurance? In other words, not put it on a fault basis, but allow the policyholders for this general damages to undertake some relationship with their insurance company that would compensate them for that particular loss.

Mr. RODDIS. It is a very good thought. It is possible.

Mr. SUTCLIFFE. Thank you very much, dean, for the comments.

Senator HART. Dean, all of us have told you how helpful you have been, and we are very grateful.

Mr. RODDIS. Thank you very much, Senator, I appreciate the opportunity and I enjoyed the discussion very much.

Senator HART. Normally, of course, we would take a recess here for lunch but because of a meeting to which I must go at about 2:30, I would hope we could continue for a period until that time and then we would recess if we haven't concluded to return later in the afternoon. Let me suggest a recess of just 5 minutes.

(Recess.)

Senator HART. The committee will be in order. Next we are fortunate to have as our witness, the president of the Royal-Globe Insurance Cos., Mr. Clay Johnson.

STATEMENT OF H. CLAY JOHNSON, PRESIDENT, ROYAL-GLOBE INSURANCE COS.; ACCOMPANIED BY BILL WALTON

Mr. JOHNSON. Thank you, Mr. Chairman.

Senator HART. I should add that Mr. Bill Walton is sitting with you, and we would be glad to have comments of course from Mr. Walton.

Mr. JOHNSON. I appreciated the opportunity of testifying before this committee, Mr. Chairman.

My name is H. Clay Johnson. I am president of Royal-Globe Insurance Cos., whose headquarters are in New York City. Royal-Globe is a group of 13 stock companies actively writing property and liability insurance in the United States for almost 120 years and automobile insurance for more than 60 years. These companies are licensed and doing business in the 50 States and the District of Columbia with a 1970 premium volume of $515 million of which automobile insurance comprises $180 million.

In 1968 I appeared before the Consumer Subcommittee of the Senate Commerce Committee on Senate Joint Resolution 129, authorizing a study of the existing compensation system for motor vehicle accident losses. At that time, our companies endorsed the Department of Transportation study as being necessary not only to clearup the misconceptions that existed concerning the function of automobile insurance but also hopefully to suggest some useful alternative to the present system.

It was heartening to read Secretary Volpe's recent testimony before the House Committee in which he said it was unfortunate that insurers have failed to convey to the public and to their legislative representatives that the auto insurance institution inherited a faulty public policy—one that has vainly attempted the impossible task of molding tort liability and indemnity insurance into a workable and efficient reparations system.

Senator HART. Mr. Johnson, let me interrupt you there, and I suppose I will be charged with having waited until you have reached a thin audience period to make this observation, but it is certainly appropriate. You make the point as did the dean before you that what we are wrestling with here is the system. It is not somebody with a black hat that got the wires crossed. It is an evolutionary process, which as with all human institutions didn't evolve very perfectly.

And we are now trying to see how we can improve it. In the nature of congressional hearings, the impression is inescapable that there must be somebody who is bad. Simply stating that that is not necessarily so is not going to relieve the sting. I know. But I feel obliged to put on the record that this isn't the problem; it is an accumulation of decades of unwise development.

Mr. JOHNSON. Thank you, Senator, we appreciate that. We know that we are generally misunderstood by the public. We are a beleagured business, particularly just now.

You yourself have mentioned the identity crisis that everybody seems to be suffering from. I am the first to confess that our business is suffering from an identity crisis and what I was saying in quoting Secretary Volpe in part is merely trying to recognize, as he put it, that most of the current auto insurance spring from defeats in the tort reparations system rather than defects in the insurance institutions themselves.

But I don't hold the insurance companies in the present situation. For many years we remained aloof from the reparations problem on the theory that the legislators and the courts shape the legal destiny and we merely deal with the consequences. Lately, however, our business has come to realize that since we possess a certain expertise in

this area we have a responsibility to try to rectify the shortcomings of the present reparations system. I might say the same should apply to the legal profession. While individual lawyers are not responsible for what the law is—any more than a meteorologist is responsible for the weather—the members of any profession have an obligation to contribute to the solution of social problems falling within their sphere of activity.

Because I recognize such responsibility for our business, I am pleased to testify before your committee. In doing so I am stating the sincere views of myself and my companies and not those of any trade association since we belong to none.

Nor do we, in the words of Secretary Volpe, assume the role of advocates for whatever cause seems best suited to enhance or preserve our market position since we are not one of the largest writers of automobile insurance. We are merely writers of general property and liability business, which consists in substantial part of automobile insurance, and as such we recognize the inadequacies of the present reparations system and wish to see it changed to one which will better serve the public interest.

It would answer no useful purpose for me to deal at length with the deficiencies of the present fault system. In general, we agree with Secretary Volpe and others that the basic problems of the present system lie in the underpayment for those seriously injured or killed, the overpayment to the minimally injured and the wasteful administrative costs of the system. We also share his confidence that by changing the reparations system to first-party no-fault insurance, the major problems will be eliminated since they are primarily due to the cost and difficulties involved in adversary proceedings which will be largely dispensed with. We agree also that many other advantages will flow from a no-fault system, included among which are the following:

Greater accuracy in rating first-party insureds because of their knowable characteristics as distinguished from the unknowable characteristics of third-party plaintiffs;

Greater rate recognition of the protective qualities of the insured's own motor vehicle;

Potential rate savings for low-income insureds because of recognition of their lower loss exposure as compared with high-income insureds, correlating rates more nearly with ability to pay;

Added economic stimulus for enforcement of traffic safety laws;

Reduction of market problems involving unavailability of insurance and policy cancellation and nonrenewal;

Elimination of spurious claims by making each first-party claimant submit proof of economic loss;

Reduction of inequities flowing from the contributory negligence rule as well as the vagaries of jury verdicts; and

Reduction of the number of cases requiring legal representation and contingent fee arrangements with consequent savings in settlement time, litigation expense, and cost to taxpayers of the court system.

From an insurance company standpoint, the principal benefit of a no-fault system is elimination of the enormous cost of investigating, settling, and litigating third-party claims, the substantial savings expected to be realized in this area being the principal source of expected reductions in premium cost.

To achieve this, however, it is necessary that the no-fault system goes a considerable distance and not just a small part of the way as it does in Massachusetts. Any substantial retention of third-party liability or subrogation rights will, in our opinion, result in increased claims-handling costs and thereby retard the expected reduction in premium rates. However, we believe some statutory dollar limit on no-fault recovery is necessary in order to assist in the rating process by avoiding exposure to unlimited contractual claims for economic loss.

On balance, therefore, we would look with favor on the $30,000 limit proposed in S. 945 since it would encompass the great majority of claims and thus obviate the necessity of incurring investigative and litigation expense but would still impose a limit and thus enable risks to be accurately rated.

In this same connection we recognize that where a dollar limit is imposed on no-fault recovery some provision must be made on a third-party basis for claims which exceed the limit as well as for meritorious claims for permanent injury and that this requires some definition of allowable third-party claims. However, we believe that catastrophic harm as that phrase is used in section 2(9) of Senate bill 945 is so ambiguous that it would be counterproductive and would require insurers to incur sizable and perhaps unnecessary investigative costs to prepare for the possibility of tort actions. We would suggest, therefore, that the definition of catastrophic harm be revised to include more precise standards.

Senator HART. If you could help us with that language, we would welcome suggestions.

Mr. JOHNSON. Thank you. I listened to the suggestions of Professor Roddis on this point, and while we would still like to study the cost aspects, I think I could say in principle I agree with most of his suggestions.

One other objection we have to S. 945 is that it would place automobile insurance in a secondary position to other collateral sources of recovery. We believe that under any no-fault system automobile insurance should be the primary source of indemnification for accident victims since such requires the motoring public to bear the costs of its own insurance.

This I believe was referred to earlier as internalization. If insurance coverage is made secondary to other collateral sources such as Blue Cross, medicare, medicaid, or social security, a large element of indirect subsidy would be created for automobile insurance and many of the expected benefits of a no-fault system would become obliterated. Moreover, the problem of rating no-fault automobile insurance would be immensely complicated if underwriters are required to consider the presence or absence of other collateral sources, and it would also remove a major source of expected savings.

Next, we would suggest that S. 945 be expanded to require property damage claims, other than those involving motor vehicles to be settled on a first-party basis by making the claimant an additional assured for this purpose. We also think there should be attached to that some limit, say $1 million. This again would avoid the expense of investigation and litigation of property damage claims which might otherwise frustrate the main objective of no-fault to achieve premium reductions. Property damage claims involving motor vehicles should be prohibited on a third-party basis since car insurance will be compulsory and each

car owner will have the opportunity to purchase automobile physical damage insurance, with suitable deductibles, for his own protection.

Finally, while we have some reservations from a practical standpoint about the formula in S. 945 for the handling of claims involving commercial vehicles, we are uncertain of what to suggest in its place. Obviously, the desire is to avoid the extremes of imposing absolute liability which would seem too onerous, or equating the commercial with the personal car owner on a no-fault basis which would seem unduly favorable, or retaining tort liability which would frustrate the purpose of a no-fault scheme. While equitable sharing of cost is difficult to formulate we would seek a middle ground as S. 945 has attempted to do.

Secretary Volpe has mentioned the remarkable degree of consensus on a no-fault solution to the auto accident reparations problem and has said that immediate reform is demanded, the sole remaining issue being whether reform should take place at the State or Federal level. In his testimony he initially seemed to assume that reform at the Federal level would have to consist of actual Federal regulation of the automobile insurance business. We do not agree that such regulation by the Federal Government is either necessary or desirable for the purpose of achieving the intended result and we were glad to see that in the colloquy which followed his testimony before the House committee, the Secretary said that if a proposal for the imposition of minimum Federal standards could be worked out without a takeover by the Federal Government of insurance regulation from the States, he would not object.

Since automobile insurance is only one form of business written by property and liability companies it would in our view make no sense to have the Federal Government regulate automobile insurance alone and leave to the States the regulation of the remainder. The comprehensive system of State regulation now in existence which ranges all the way from the examinations for solvency to the approval of rates, rating practices, and policy forms, as well as the licensing of both carriers and producers, is one fabric and cannot be effectively split so as to applyto automobile insurance alone. Therefore, we favor the retention of State regulation of insurance generally, including the regulation of automobile insurance.

I might interpolate there, Mr. Chairman, that I am known in this business as one who does not look with disfavor upon Federal regulation. A few years ago I believe I was the first to say that I thought that was inevitable, and that we ought to prepare for it. So in saying this about retention of State regulation, it is merely a matter of proposing something that is orderly against something that we fear would be disorderly.

However, we also favor a mandate at the Federal level for the adoption by the several States of a no-fault reparations system since we feel desired uniformity and speed of action will be achieved in no other manner. In our view, if the States are allowed to exercise their own volition in adopting no-fault legislation, the job will never get done or, even worse, it will be done in a manner producing a crazy quilt of State laws which will only serve to compound present problems.

There seems little question concerning the power of the Congress to legislate the abolition of tort liability as applied to automobile insurance countrywide. The power of Congress over interstate commerce is plenary under the Constitution and if there were any lingering doubt about intrastate limitations that seems to have been removed by the recent U.S. Supreme Court decision in the *Perez* case dealing with the anti-loan-sharking provisions of the 1968 Consumer Protection. Act. There the Court held that Congress can constitutionally find that a certain class of activities is inherenly tied in with interstate commerce and it need not leave to the courts a determination that particular intrastate activities have a prohibited effect. Therefore, Congress could make a legitimate finding that automobile traffic is inherently tied in with interstate commerce and thereupon legislate the abolition of tort liability as applied thereto and the substitution of a new first-party no-fault system of automobile insurance reparations.

There is ample precedent for the plentary power of Congress being exercised in the interstate commerce field either directly by Federal regulation or indirectly by inducing State action. We would suggest that Congress permit State action but prescribe fixed standards for it. In other words, we believe Congress should adopt a model bill for State enactment which would limit tort liability as applied to automobile accidents and substitute therefor a first-party, no-fault system of insurance.

We also believe each State should be allowed 3 years—there's no magic about that, it could be shorter—3 years in which to act, failing which the Federal law would become effective in that State (the latter could overcome any State constitutional obstacle which may exist). Additionally, Congress might induce earlier State action by use of its control of highway funds. Our suggestion would, of course, preserve to the several States the actual regulation of the new automobile insurance system.

In our view the plea that States should be allowed time and opportunity for experimentation in the field of automobile accident reparations completely ignores the urgency of the present situation which, as mentioned above, Secretary Volpe himself has said demands immediate reform. Furthermore, we think it is equally unwise to suggest a pattern of diverse State legislation which would subject an insured motorist to varying degrees of reparations treatment depending on the State in which the accident occurred.

If there is anything which cries out for uniformity countrywide, certainly it is the subject of auto accident reparations, not only to assure an uncomplicated national solution to existing problems but also to simplify the coverage of motorists who customarily drive their automobiles from State to State. Since no-fault coverage is intended to be contractual in nature and not dependent upon the law of the State where the accident occurs, it is important to have all State laws uniformly conductive to that objective in order to maximize its benefits.

As in many situations, it seems that the difficulty most people have about a forced solution to the automobile reparations problem is to find a proper rationale for it. I suggest that this rationale springs readily from the concept that in this day and age the automobile is not just a piece of private property but an essential means of trans-

portation upon which our social and economic structure is vitall dependent. One only has to drive through the countryside and se factories, laboratories, and other places of business surrounded b huge parking lots full of employee-owned cars to realize how essentia automobile transportation is to our economy and why it is foolish t consider any longer that it is some form of luxury. Thus, when on uses his car for essential transportation to and from work or in othe ways which bear upon his daily existence, he is little different fro one who elects to use a common carrier as a means of transportatio

For many years the courts have recognized the essentiality of th latter and have allowed passenger accident victims of common ca riers to recover under a doctrine of strict liability. I suggest that no-fault reparations system for automobile accident victims closel follows the same reasoning since it results in recovery of the victim economic loss under all circumstances and restores him to a self sustaining economic position.

What is thought to be socially desirable in one case should b equally so in the other. The workmen's compensation laws which wer enacted in the several States many years ago adopted such a view i substituting first-party, no-fault recovery by the employee under a insurance scheme for third-party liability recovery against the em ployer. It is time that our society adopted such a view of automobil transportation.

I say all of this with complete recognition that insurance is an es sential public service and that its only justification is its usefulness t the public. The legal profession is also engaged in a public servic and its usefulness is likewise gaged by how it devotes its talents an energies to the public's good. It behooves both our insurance industr and the legal profession to work together to improve their service to the public. I think this can best be accomplished by having th Congress legislate in the manner I have described.

Mr. Chairman, I have some supplemental remarks about the othe legislation that is before your committee. I can give that later an pause now for any questions concerning S. 945, or I can proceed, a you wish.

Senator HART. All right. When I say I appreciate having your testi mony, it would be expected of me to say that, in general, it conform with what I think we should do. But speaking from the backgroun of the insurance business as you have, I hope you will be very persua sive with Congress to see if we can move promptly to make the co rections in the system which you put your finger on.

I would underscore only one point, and that is the fact that as yo said:

Secretary Volpe has mentioned the remarkable degree of consensus on th no-fault solution to the auto accident reparations problem and has said th immediate reform is demanded, the sole remaining issue being whether refor should take place at the state or federal level.

Until the very recent past, you could hardly get away with sayin that there was that consensus. But I think now we should recogniz that there is.

Mr. JOHNSON. I wanted to identify with the group insurance con cept as well, because I assume you are interested in the insurance com panies' point of view on that.

Senator HART. We are.

Mr. JOHNSON. We are not opposed—meaning myself and my companies—in principle to S. 946, which has for its principal purpose the elimination of State prohibitions and obstacles preventing the writing of group automobile insurance since we favor maximum flexibility in the marketing and pricing of insurance. Our companies have, in fact, been in the vanguard as to "mass merchandising" of personal lines insurance and we would prefer to be free to adopt new rating techniques in this area.

However, I would not wish to leave with this committee the impression that artificial statutory and regulatory restraints at the State level are the only impediment to the writing of true group auto coverage. The essential ingredients for true group coverage are the homogeneity of the group and the statistical credibility of the group experience. Because automobile rates customarily take into consideration the experience differentials applied to geographical areas as well as the age, driving habits and other characteristics of the named insured, it has been found difficult to develop a true group approach to the writing of automobile insurance even in those States where presently permitted.

It is to be expected, however, that given the opportunity, the insurance business would experiment with various new techniques in this direction and would in all probability develop modified group plans permitting the use of average rates while at the same time taking into consideration geographical areas and individual risk characteristics.

Since my statement with respect to no-fault automobile insurance advocated Federal legislation for the purpose of achieving uniformity of approach by the several State, I cannot consistently deny support for Federal legislation which would achieve a desirable degree of uniformity in the field of group automobile coverage as well.

On S. 976, I merely wanted to say that this is a bill to amend the existing National Traffic and Motor Vehicle Safety Act and we as insurance companies are not directly involved in this since it pertains only to safety standards applying to the manufacture of motor vehicles. Insurance companies are affected only to the extent that the Department of Transportation is required to make information with respect to the testing of the damageability of cars available to them for use in determining premium rates for automobile insurance; and, of course, the related provision requiring a report to the President and Congress on the extent to which our industry is utilizing such information in the determination of insurance rates also implies some monitoring of our performance in this respect.

Since there is in the bill no direct regulation of the insurance business this question is not presented. Our companies, are, of course, deeply interested in the subject of damageability of automobiles and consequential injuries to the occupants thereof. Some years ago, we, along with other automobile carriers of all types, founded the Insurance Institute for Highway Safety now headed by Dr. Haddon and, as your committee knows, the institute has lately been conducting very pervasive studies in this field which have evoked wide public comment, particularly its film showing the actual damage incurred by various makes and models of cars at low speeds.

In fact, our companies were a cosponsor of a symposium on this subject held by the Institute last year. Quite naturally therefore, we would welcome any impetus which the Federal Government can give toward the reduction of the damageability of automobiles and injuries to their occupants. Moreover, we would welcome the availability of information which would assist us in reflecting in our rates the known degrees of damageability, et cetera.

I am sure, however, that this committee appreciates the difficulty of any firm projections of rate reductions which might be made possible by use of such information. This difficulty stems not only from the fact that damage to cars and their occupants occurs at varying speeds, only the lower of which are susceptible of measurement, but also from the fact that the frequency and severity of car accidents is attributable to many other factors not the least of which are the enactment and enforcement of traffic safety laws, driver licensing, individual driving habits and highway construction.

Nevertheless I am certain that if scientific information of the type contemplated by S. 976 is made available to our industry, it will be put to good use in our rating techniques.

Just in conclusion, Mr. Chairman, I want again to thank the committee for the opportunity to appear. I want to express our gratitude for the committee's interest in the subject of automobile insurance. Your sponsorship of the National Traffic and Motor Vehicle Safety Act in 1966 and the subsequent authorization of the 2-year study by the Department of Transportation of the no-fault insurance subject has been most welcome as far as my companies are concerned. We feel that only in this manner has needed public attention been given to an area which has been perplexing our industry all through the sixties.

Your committee knows of the billions of dollars of loss we have incurred trying to keep pace with the toll of highway accidents which was made worse by the constant impact of inflation. We agree with you, Senator Hart, as to our—what I mentioned earlier—identity crisis. We find ourselves issuing a policy to cover potential tort liability, but the public looks upon it as a source of compensation only. Your committee has put the spotlight on this dilemna and we are grateful for that.

And we sincerely hope that these hearings will culminate in useful legislation along the line I have described. Thank you.

Senator HART. Thank you.

I repeat, your testimony with respect to the several bills is most welcome. And I think the role that you and others in the insurance field have played in funding that insurance institute to which you referred, the Insurance Institute for Highway Safety, has been an important contributor toward lifting the sights for everybody.

I have seen those films and I understand they are being shown just as widely as the distributors can persuade the exhibitors to get them in line. Although I would doubt you would win any Emmies in Detroit for the film, in the long run everybody will be the better for it Mr. Sutcliffe.

Mr. SUTCLIFFE. Thank you, Senator Hart.

Mr. Johnson, so that we can understand your proposal for a Federal model bill better, by a model bill, do you mean one that sets down certain requirements, for example, one that sets down requirements as those in S. 945?

Mr. JOHNSON. And that, as to those requirements, does not permit variation by the State legislatures. That is what I mean, an exact pattern for State enactment.

Mr. SUTCLIFFE. Then as to the point Senator Cook has discussed about allowing the States to go beyond in requiring mandatory coverages, you would suggest that the bill allow—the model bill and the legislation passed establishing the model bill allow this kind of activity?

Mr. JOHNSON. No, I was suggesting the opposite, as a matter of fact. I think that the mandate at the Federal level and the compliance there with it at the State level should be identical. I don't think that the States should be in the position to enact anything less or anything more—the reason being that if that were possible, you would develop this thing I abhor—a diverse system which becomes a hodgepodge countrywide and makes it almost impossible for administration by the insurance companies. Naturally I am thinking of our job of trying to rate a driver who is likely to drive his car any moment into another State where the law and exposure could be different. And I just think that one way to avoid this and to provide a common denominator for coverage is by having a federal pattern that must be adhered to.

Mr. SUTCLIFFE. You argue for motor vehicle property damage liability to be abolished in favor of the option on the policyholder to insure or not insure his car against collision?

Mr. JOHNSON. Yes.

Mr. SUTCLIFFE. And you would have that made a part of the model bill?

Mr. JOHNSON. Yes. I think you have to legislatively rule out tort liability as regards property damage in order to permit the companies not to be concerned about that exposure when they issue a policy. As you probably know, the property damage claims have been tied very directly to bodily injury claims—not only because they arise out of the same accident, but because in very many cases the bodily injury claim is merely a means of trying to induce a more generous settlement on the property damage claim. So you can't divorce these two, in our judgment. You have to look at them together. If property damage claims were left under the tort liability system, we think that a lot of the savings and advantages sought to be achieved by no-fault insurance will be lost.

Therefore, we think that vehicular property damage claims should be rid of any tort liability, the same as the bodily injury claim. That leaves us only with the nonvehicular property damage claims—how to deal wth those?

Obviously if you rule out tort liability on that, then you are in a position where you are dealing not with your own insured as to something he owns, but you are dealing with a third party as to some property that has been damaged, and that isn't manageable in the same way. You can't say, well, let's let him insure that, because your opportunity to provide coverage for him doesn't arise in the same manner. So we think there should be some preserved area of tort liability recovery there.

Mr. SUTCLIFFE. What about general damages or pain and suffering in certain specified cases? Can you insure that on a first-party basis?

Mr. JOHNSON. Well, we do in effect with medical payments coverage under the present automobile insurance.

Mr. SUTCLIFFE. I am talking about the intangible loss, the gener damages, pain and suffering, what a jury awards on the basis of con munity conscience to an individual for severe harm to help make hi feel whole or feel compensated for that loss.

Mr. JOHNSON. My testimony recognized that there should be a area of recovery, tort liability recovery, over and above the rather hig threshold provided, which I approve of, in your bill, so as to perm recovery first for permanent and total disability, where the econom loss exceeded that amount, and second, for dignitary damages, sha we say, where the nature of the injury was such as to deserve compens tion in a manner that cannot be recognized under the economic lo test.

Now, just how that should be defined, as I said, is extremely difficul I do not think it is enough to just call it catastrophic harm, and w would like to see a more precise definition of that.

I heard the colloquy this morning, in reference to Professor Roddi and all I would say is that in the hypothetical case of the young lad who was disfigured, she is not compensated now unless she is luck enough to be run into by an owner who has high limits coverage. I d not say that is right; I am just saying it is a fact.

This is an imperfect world, and if we are merely trying to creat a better system than the present one, then you have got to measure in terms of the present system. You cannot measure it in terms of th ideal. I suppose the ideal is that everybody would recover what wa due him under every conceivable type of situation. But then you loo at the present law and say, what is now recovered? Well, sometim recovery is made in that type of disfigurement case for dignitary dam ages which go to a very high figure, but from a practical standpoi only where there is insurance. And certainly if this indigent drunke driver mentioned this morning runs into this lovely lady, she is n going to recover anything but the basic limits.

Mr. SUTCLIFFE. So, in other words, we are assigning those damag not on the basis of the fact of the person who caused the damag but on the basis of his economic stature or liability coverage?

Mr. JOHNSON. We are now, yes. It is not intended to work that wa but it does.

Mr. SUTCLIFFE. That is a very cogent point.

Mr. JOHNSON. It is not intended that way, but this is the realist picture.

Mr. SUTCLIFFE. Let me ask why, if you are proposing a model bill enacted by Congress that permits no deviation, that you suggest 3-year time delay for the States to enact that model? Is it for ve practical reasons in the insurance industry? Is it for the purpose allowing the States to be involved in the process? What is the rationa for the 3-year delay in enacting the model bill?

Mr. JOHNSON. I think it is a combination of all of those. I said the was nothing magic about the 3 years, and I would prefer to see shorter time. First, let me say the only reason I suggest an opportuni for States to enact this legislation rather than have it done by Feder fiat is merely out of recognition of what seems to be popular today i Washington, and that is the concept of dual federalism. There seems t be in both parties a desire to let legislation be as close to the people a possible, as has been said, and to recognize States' rights whenev

possible and to enable States to administer programs to the extent that is possible.

Now, my proposal is merely out of recognition of that, among other things. Also out of recognition of the fact that the States are not strangers to this field; they have been in this field of regulating automobile insurance for many years, and it just seems appropriate to let them stay in the act so to speak to the extent that is possible, even though you force the type of action they can take.

Thirdly, the idea of the time element was to enable those States which are more advanced in their thinking on this to go ahead and get the thing started without waiting for the Federal law to take effect. Where would that be? Well, it might be New York, for example, where the insurance department and the governor have endorsed no-fault legislation—and there is a Republican legislature there, and whether it will be done this year or not I do not know, but at least the circumstances are more conducive there than in another State. If New York wanted to go ahead, I would think that would be better than having the effectiveness of a Federal law held back for the requisite period for people to get ready.

Also Massachusetts, which already has a modified no-fault law, might see fit to broaden theirs and go into a deeper area. And there are other States I could mention as well where the no-fault concept seems to have pretty well taken hold.

I think that this piecemeal approach is all right as long as it conformed to a uniform pattern and is not hodgepodge, as I say; I see nothing wrong with the progressive achievement of that objective. From our industry's standpoint I see some advantage too—although this I put in a secondary position—some advantage in acquiring some progressive experience. But I realize when I say that I am a little inconsistent, because I have already said that I think we ought to have nationwide uniformity, and if you asked me which I would rather have, the progressive experience or nationwide instant uniformity, I would have to say the latter.

Mr. SUTCLIFFE. But your comments go to training of people?

Mr. JOHNSON. Yes.

Mr. SUTCLIFFE. Training techniques?

Mr. JOHNSON. We have a vast array of people—our companies and other large writers of automobile insurance— in our claims department who mainly are engaged in the investigation and settlement of tort liability automobile claims. If those forces are going to be redeployed to a different type of work, naturally I think it might be helpful to have an interim period in which to arrange that. Mind you, I think it could be done, I am not making it an insurmountable obstacle.

Also we have the rating techniques. This is a new ballgame. If we get to no-fault the rating of risks is on an entirely different basis than ever before. And there will be an absence of statistics as well. True, we have statistics now as to frequency and severity of car accidents, but we do not have those related to the first-party insured in the sense of his economic situation.

So obviously under a no-fault system you will be considering how much it is going to cost to put that insured together again if he gets into an accident, how much his medical expense will be, how much the loss of income is in his case. As it is now we are considering an un-

known third party whom we are going to put together in the event o an accident. Now we will be looking at the fellow we are insuring an we are going to have to rate him.

Mr. SUTCLIFFE. You mention it will be a new ballgame and one tha will not have a statistical basis, but nonetheless it is one you think i worth playing.

Mr. JOHNSON. Yes, oh, yes, we are all for it. We just do not want t underrate the difficulties of the transition, that is all.

Mr. SUTCLIFFE. As to the problem that Dean Roddis mentione earlier this morning of mandatory writing of insurance policies o application, you argued for the retention of State regulation. Questio one would be, would that include all aspects of rate regulation? Ques tion two would be, if there is an affirmative answer to the first questio what is your position on mandatory writing? And if your position i affirmative as to mandatory writing, what do you do with the argu ment that Dean Roddis presents that this would increase the selectiv ity, the selective underwriting practices in the United States today?

Mr. JOHNSON. You are correct in saying that by recommending th continued state regulation of insurance I was impliedly saying that did not favor this Federal regulation of insurance that is in S. 945 a regards the compulsory writing of insurance and the nationwide pre scription of the type of policy and the breadth of coverage. You ar right in inferring that I am in favor of the continuance in the severa States of the present system of regulating rates and forms of coverage By that I do not mean they should be frozen into any position, becaus our companies favor open rating and we have been strong advocates o opening rating.

So we would hope that all States eventually will get to no-prior approval rating laws. But until they do we will be satisfied even t submit to prior approval rating laws in preference to a Federal syste of regulation that is superimposed on top of present State regulatio

As I identified myself earlier, I have not been an opponent of Fe eral regulation of insurance as such. But I think our last position coul be far worse than our first if we ever got under a dual system or regu lation. I certainly do not want to see the insurance companies put i the position of the railroads in the United States, which is one of th things they have suffered from in my opinion. I would far rathe be in a position of a national bank which is under the Comptrolle of the Currency's regulation or an airline under the CAB. But t be under a dual system of regulation I think would be impossible Particularly it would be impossible if the Federal Government, whic is prescribing the mandatory coverage, is doing so without any con trol over rates and presumably without any real interest in the abilit of the companies to write the mandatory coverage within the rat structure established in the various States.

I have always said that in this business of insurance you shoul have one extreme or the other: you should have the same rate fixe for all companies for a given coverage by a public authority, Stat or Federal, and let the companies compete as to their service and i other aspects; or companies should be able to compete ratewise a well as servicewise. But you cannot have it both ways—and in th first instance, if you have the rate established so it is the same fo everybody, then there might be some justification for making coverag

mandatory, the same as is done with a public utility which has to render service.

But where you have a competitive business such as ours—and there is no business you can think of where competition is more rife than it is in insurance—with companies competing for mere survival, to be told that they have to write coverage for anyone and everyone without any choice and at a price which, let's face it, is not within their control in many States because of the political interferences with rate approvals, this creates an impossible situation because there is no escape valve.

And you cannot ignore capital incentive—after all, whatever one thinks about the private insurance business it is here, it is something that has existed for a long time. Behind the premiums there is a considerable amount of capital; it may not sound like much compared with the trillion dollar GNP we talk about today, but it is still a lot of money. And the capital will not stay there, the goose will be killed that lays that golden egg if the companies are not able to see their way clear to making a profit on the business they write.

Mr. SUTCLIFFE. Right now the Department of Transportation informs us that 15 to 20 percent of the drivers in this country are operating their vehicles without liability insurance coverage. One of the reasons for this is lack of availability, the economic inability to participate in either assigned risk programs covering liability or high risk companies covering liability and other insurance.

One, do you think the availability problem would be solved if we had mandatory no-fault? And two, hypothetically, if it is not solved, do you think there is a basic inconsistency with your desire to maintain State regulation and the creation of a Federal corporation, as suggested by Dean Roddis, for the providing of insurance coverages at a rate that people can afford for picking up that driver who cannot obtain insurance on the voluntary market?

Mr. JOHNSON. Taking the first question first, I do believe that a mandatory, nationwide, uniform limited no-fault system of the type I described, would cure the market problem for automobile insurance and would go a long way toward curing the problem of availability of insurance coverage. Now, I do not say this in a critical sense, but one of my troubles with S. 945 is that I think it displays little faith in the no-fault mechanism because it does not trust that to provide a cure for the marketability problem and the availability of insurance but it goes on to make it mandatory that coverage be made available and so on. I think if one really believes in no-fault as a near panacea for the problems of availability of insurance, cancellation, nonrenewals, and the like, then he ought to give it a test. But it is never going to be tested if it is done in an atmosphere where mandatory writing of coverage is in effect. You wil never know whether no-fault is good or bad.

But answering your second question, if it should fail, then I concede that some remedy would have to be found, and on that remedy I do not disagree with Professor Roddis; I think our business is always in the position where if it does not provide coverage it cannot complain if the Federal Government steps in and fills that vacuum.

This is a position we have taken on crime insurance. We think crime insurance of the type that the Federal Government seems to

want written is not insurance at all; it is really a subsidy offered to merchants in an area where that type of insurance cannot really be written. And we say that if that subsidy is going to be provided it should be provided by the government, not by the insurance business, because it is not really insurance.

I would say that about automobile insurance. If it ever gets to the point where no-fault was given a good try and there was a hard core of drivers who could not get insurance because of the neighborhoods in which they lived and accident proneness or some other situation, if this became a social problem and coverage is still considered socially desirable in order to give them economic means of transportation, then I thing certainly it should be done by the government.

I do not think we should complain then, but I think we ought to be given a chance first.

Mr. SUTCLIFFE. What about the provisions prohibiting cancellation or nonrenewal except in certain specified situations? Do you support that?

Mr. JOHNSON. We have supported—I mean most companies of every type have supported—the noncancellation statutes in the various States which in effect say that once a policy is written, after a certain period of time it cannot be canceled during the term. Nonrenewal up until now has not taken that extreme form—the most that is required is that the insured be given appropriate notice of intention not to renew. This is because, up until recently anyway, insurance companies have thought this to be an essential part of their underwriting prerogatives. It goes back to what I was saying earlier. If you consider insurance private enterprise, and if you consider it a competitive business, then you have got to concede the underwriting prerogative—the decision as to whether a company is going to continue a risk on its books.

Mr. SUTCLIFFE. Is it based on the inability of the rating structure to respond to eligibility for classification?

Mr. JOHNSON. That is right.

Mr. SUTCLIFFE. So because nonrenewal has not taken that course it is really a reflection of the present state insurance regulatory mechanism?

Mr. JOHNSON. Yes, but S. 945 does not cure that inability and it will never be cured short of some kind of a rate that is high enough to encompass all types of risks. And this I cannot see happening.

Mr. SUTCLIFFE. Thank you very much.

Senator HART. Is there anything you would like to add?

Mr. WALTON. No, thank you, Senator Hart.

Senator HART. Mr. Johnson, all of your testimony has been good. Several of your answers I think will help us better understand and better evaluate the proposal for no-fault we are considering. Particularly that answer which reminded us to test what in fact happens now before you reject the proposed no-fault because it too is not perfect. The question really that this committee should compel itself to answer is, will on balance this no-fault proposal improve existing situations? There is one answer you gave that states that much more effectively than I.

Mr. JOHNSON. Thank you, sir.

Senator HART. We will recess at this time and resume at 4 o'clock.

(Recess.)

Senator HART. The committee will be in order.

As we resume, we will receive testimony from several people, but may I recognize first the president of the National Association of Independent Insurers, Mr. Vestal Lemmon.

Mr. Lemmon, if you will introduce those with you.

STATEMENTS OF VESTAL LEMMON, PRESIDENT, NATIONAL ASSOCIATION OF INDEPENDENT INSURERS; ACCOMPANIED BY ARTHUR C. MERTZ, VICE PRESIDENT AND GENERAL COUNSEL; AND DR. PATRICK MILLER, CORNELL AERONAUTICAL LABORATORY, BUFFALO, N.Y.

Mr. LEMMON. Thank you, Mr. Chairman.

We would like to have as our first witness, Mr. Arthur C. Mertz, vice president and general counsel. He is going to testify primarily on S. 976.

Mr. MERTZ. Senator, we appreciate the opportunity of appearing here today, and we especially appreciate your graciousness in continuing the hearing to this late hour in order to hear us.

Senator HART. Thank you for being patient with us.

Mr. MERTZ. And we also admire your stamina for being able to last this long. I will abbreviate my statement somewhat.

Senator HART. It will be printed in the record in full.

Mr. MERTZ. Thank you, sir.

We are representing the National Association of Independent Insurers, a trade association of 533 companies of all types and sizes, stock and nonstock, which serve more than half of the insured motorists in America.

With me today is Dr. Patrick Miller, of Cornell Aeronautical Laboratory, Inc., who will talk about the status of research being conducted by that organization on our behalf which is pertinent to this legislation.

We appear today to give basic support to S. 976, subject only to certain qualifications and suggestions which I shall note in the course of my statement. We endorse this bill in its major features, in its broadening of DOT's authority to include promulgation of property loss reduction standards; establishment of tests and procedures to produce comparative damageability data on production models of new cars; the determination by DOT of feasibility of similar procedures relative to vehicle safety testing and data reporting; the broadening DOT standards for State vehicle registration laws to include title provisions; and establishment of further incentives for States to adopt and implement periodic vehicle inspection laws.

In regard to the matter of expansion of the vehicle inspection systems to cover certain postcrash situations, we support the underlying safety objectives, but urge further research and experimentation before determining whether this should become part of the mandatory standards, as I will point out.

Our general endorsement of S. 976 arises out of our profound concern over the rapid upsurge in auto material damage losses. S. 976 should help to make possible the stabilization or reduction of auto damage insurance rates.

Another avenue we are pursuing is a study of the feasibility of a crash repair research center. Recently we sent a four-man team to England and Sweden to examine the research facilities there. The favorable report they brought back has encouraged us to pursue this avenue further. We hope soon to complete a more detailed study of the practicability of such a center in this country. I personally believe there is in this facility, an opportunity for benefits not only to our business, but to auto manufacturers, repair shops, and the consumer as well.

The most critical area, costwise, and the one on which we have focused primary attention is auto design as it affects damageability. This is, of course, one of the prime subjects dealt with by S. 976.

In our 1969 testimony before your subcommittee, the Antitrust and Monopoly Subcommittee, we listed and analyzed many of the common design features that make modern-day cars unnecessarily vulnerable to damage and costly repair, and we at that time decried the utter lack of functional bumpers, and urged the manufacturers to equip cars with bumpers that would withstand everyday, low-speed traffic mishaps.

As you know, one of our companies subsequently widely advertised its offer to make a discount, offer a discount on cars equipped with bumpers that could withstand specified barrier crashes. Certain other companies have followed suit.

Your 1969 auto repair hearings, Senator, and the chain of events that followed, including the issuance of bumper standards, have certainly signaled a major turning point in the crusade for safer, saner cars. Damageability considerations and bumper technology have now been thrust to the forefront of attention by the auto manufacturers in their design planning. Indications are they are now mounting extensive research efforts to bumper technology and damage minimization, and we are encouraged by these efforts. Equally important, the issue has been forced to the forefront of public attention, which should give encouragement to the manufacturers and the Government that the public is ready for safer, more practical care design features.

The initial bumper performance levels set by DOT, particularly the bumper requirements, have fallen short of what had been anticipated and hoped for. One of the reasons cited by DOT for only requiring 5 mile an hour barrier rear bumper capability on 1973 models is the conclusion that a 5 mile capability "would involve extensive structure redesign without a commensurate increase in safety."

Of course these bumper standards are expressly keyed to safety considerations, because the act of 1966 does not expressly empower DOT to give weight to vehicle damageability.

Your bill would close that gap in DOT's jurisdiction, and we support such a move.

I have point out on the balance of that page some of the reasons for that, and Mr. Miller will discuss some of these points when he testifies.

A substantive question presented by S. 976 is whether to spell out specific minimum bumper requirements in the statute itself, as your bill now does, or whether to leave such technical specifications to the DOT.

Repair garage charges for labor have continued to rise, as evidenced by enclosure 1 to our statement, which shows the trend in some 13 cities, major cities in the United States.

In the decade 1960 to 1970, the average hourly rates in the 13 large cities increased about 90 percent. Here again 65 percent of that increase occurred in the latter half of the decade, and only 25 percent in the first half of the decade.

Next, as far as the cost of cars and replacement parts, in our 1969 testimony we showed that between 1965 and mid-1969 the new car list price on a Plymouth Fury increased 11 percent and that of a Chevrolet Impala and a Ford Galaxie, about 10 percent. Meanwhile, the list prices on the eight major component parts most commonly replaced in collision repairs rose between 20 percent and 36½ percent respectively, 2½ times as fast as the new car prices. This disparity between new car prices and crash parts prices, has special significance to our business, because about 85 percent of our property damage collision claim dollars go for repairing vehicles and only about 15 percent in payment of total losses, that is, where the car is totaled and is not repaired.

Enclosure 2 to this statement, Senator, consisting of three charts, brings these price trend figures forward from 1969 to 1971. And we have these charts attached to the statement.

You will observe that during the past year and a half the increase in list prices for these new cars and for the major crash components bear a much closer relationship to each other. In other words, new car prices and crash parts prices no ware going up at about the same rate.

However, this is an improvement in consistency, but we now look at the picture and find that prices both for new cars and parts prices are increasing at an accelerating rate.

So we are getting it both ways now. Not only have the manufacturers' list prices for parts been climbing rapidly, but the effective prices for these parts at the repair shop level have been going up even faster, due to the decline of real price competition at the repair shop level in parts prices. This was due to the widespread disappearance of discounts at that level.

We pointed this out in our testimony before you, Senator, in late 1969. And the revelations, the data we presented then, plus the data subsequently presented by one of our companies, State Farm Mutual, we believe played an important part in bringing about the now pending Federal Trade Commission investigation into the whole crash parts distribution and pricing system. We have been cooperating in that investigation. We hope that it will lead to the opening up of effective competition and improved efficiency in that distribution system. Because we think there could be a great saving to the consuming public if that occurred.

Meanwhile, our staff has been maintaining a continued watchfulness over crash parts price trends. As I pointed out in my statement: our watchdog in this area has in one instance already brought about correction of errors in the published parts price manuals where the prices for certain bumpers were in error, overpriced, and our revelation of that brought the price down. We think a saving resulted from that.

Another avenue we are pursuing is a study of the feasibility of a crash repair research center. Recently we sent a four-man team to England and Sweden to examine the research facilities there. The favorable report they brought back has encouraged us to pursue this avenue further. We hope soon to complete a more detailed study of the practicability of such a center in this country. I personally believe there is in this facility, an opportunity for benefits not only to our business, but to auto manufacturers, repair shops, and the consumers as well.

The most critical area, costwise, and the one on which we have focused primary attention is auto design as it affects damageability. This is, of course, one of the prime subjects dealt with by S. 976.

In our 1969 testimony before your subcommittee, the Antitrust and Monopoly Subcommittee, we listed and analyzed many of the common design features that make modern-day cars unnecessarily vulnerable to damage and costly repair, and we at that time decried the utter lack of functional bumpers, and urged the manufacturers to equip cars with bumpers that would withstand everyday, low-speed traffic mishaps.

As you know, one of our companies subsequently widely advertised its offer to make a discount, offer a discount on cars equipped with bumpers that could withstand specified barrier crashes. Certain other companies have followed suit.

Your 1969 auto repair hearings, Senator, and the chain of events that followed, including the issuance of bumper standards, have certainly signaled a major turning point in the crusade for safer, saner cars. Damageability considerations and bumper technology have now been thrust to the forefront of attention by the auto manufacturers in their design planning. Indications are they are now mounting extensive research efforts to bumper technology and damage minimization, and we are encouraged by these efforts. Equally important, the issue has been forced to the forefront of public attention, which should give encouragement to the manufacturers and the Government that the public is ready for safer, more practical care design features.

The initial bumper performance levels set by DOT, particularly the bumper requirements, have fallen short of what had been anticipated and hoped for. One of the reasons cited by DOT for only requiring 2½-mile-an-hour barrier rear bumper capability on 1973 models is its conclusion that a 5-mile capability "would involve extensive structure redesign without a commensurate increase in safety."

Of course those bumper standards are expressly keyed to safety considerations, because the act of 1966 does not expressly empower DOT to give weight to vehicle damageability.

Your bill would close that gap in DOT's jurisdiction, and we support such a move.

I then point out on the balance of that page some of the reasons for that, and Dr. Miller will discuss some of these points when he testifies.

A subsidiary question presented by S. 976 is whether to spell out specific minimum bumper requirements in the statute itself, as your bill now does, or whether to leave such technical specifications to the DOT.

We believe the wiser approach is to avoid statutory specifications and give DOT the responsibility for such determinations. The choice of the best bumper involves interplay of a great number of factors. We believe an administrative agency should decide it.

We would suggest, therefore, that paragraph 125(c) on page 5 of the bill be deleted and that paragraph 125(b) be broadened to make it include bumper standards. But we suggest it should be spelled out that the Secretary not only should promulgate, but should periodically revise and update all such standards, which I am sure was implicit in your intent, but perhaps it would be wise to spell it out, to make it clear the overall objective is timely progressive improvements of design as expeditiously as is feasible in the light of minimum leadtime reasonably needed by the manufacturers to effectuate the change.

Section 5 of S. 976 provides that by July 1, 1972, DOT shall promulgate procedures under which all manufacturers must test production models of new vehicles, and also they should determine the feasibility of similar tests as to injury safety considerations. It also provides that the results of the tests must be reported to DOT and DOT is to make them available to the public and insurance companies and ultimately is to advise Congress on the extent to which our industry is utilizing such information.

We support these provisions. We respectfully, however, urge deletion of paragraph (b)(3) on pages 8 and 9 of the bill requiring automobile dealers to provide comparative insurance cost information to prospective car buyers.

The reasons for our suggesting that are set forth in my statement. I won't read them but will submit them for your consideration.

Subject to that one suggestion, we endorse section 127.

More than that, I want to emphasize that NAII, as a qualified rate advisory organization, is preparing to be of aid in every way possible in enabling the companies to give appropriate recognition to cars with improved bumpers and other damage-reducing design changes, just as soon as they have credible data on which to base such action.

We have been studying ways and means for developing the kind of data the companies will need. If possible, a method should be found to rate the new car models at the time they enter the marketplace. And your bill, I note, envisions the same need.

When the cars come to the marketplace is the time that premium rate variations will have the greatest significance to the buying public. To this end, in 1970 we commissioned Cornell Aeronautical Laboratory to conduct research on our behalf into an area that has never been previously probed. The question is: Can the analytical engineering process or a combination of that process and a minimum amount of crash testing, a useful tool for predicting the damageability of different vehicles. The encouraging results of that research will be described by Dr. Miller in just a moment.

As we indicated, we intend to make the products of that research available to manufacturers, to DOT, to this committee and other interested agencies.

DOT has already made some informal inquiries into the progress of this project.

Our final comments pertain to those provisions of S. 976 dealing with Federal standards for State vehicle registration and title laws

Another avenue we are pursuing is a study of the feasibility of crash repair research center. Recently we sent a four-man team t England and Sweden to examine the research facilities there. Th favorable report they brought back has encouraged us to pursue thi avenue further. We hope soon to complete a more detailed study c the practicability of such a center in this country. I personally believ there is in this facility, an opportunity for benefits not only to ou business, but to auto manufacturers, repair shops, and the consumer as well.

The most critical area, costwise, and the one on which we hav focused primary attention is auto design as it affects damageabilit This is, of course, one of the prime subjects dealt with by S. 976.

In our 1969 testimony before your subcommittee, the Antitrust an Monopoly Subcommittee, we listed and analyzed many of the com mon design features that make modern-day cars unnecessarily vulner able to damage and costly repair, and we at that time decried the utte lack of functional bumpers, and urged the manufacturers to equi cars with bumpers that would withstand everyday, low-speed traffi mishaps.

As you know, one of our companies subsequently widely advertise its offer to make a discount, offer a discount on cars equipped wit bumpers that could withstand specified barrier crashes. Certain othe companies have followed suit.

Your 1969 auto repair hearings, Senator, and the chain of event that followed, including the issuance of bumper standards, have cer tainly signaled a major turning point in the crusade for safer, sane cars. Damageability considerations and bumper technology have no been thrust to the forefront of attention by the auto manufacturer in their design planning. Indications are they are now mounting ex tensive research efforts to bumper technology and damage minimiza tion, and we are encouraged by these efforts. Equally important, th issue has been forced to the forefront of public attention, which shoul give encouragement to the manufacturers and the Government tha the public is ready for safer, more practical care design features.

The initial bumper performance levels set by DOT, particularly th bumper requirements, have fallen short of what had been anticipate and hoped for. One of the reasons cited by DOT for only requirin 2½-mile-an-hour barrier rear bumper capability on 1973 models its conclusion that a 5-mile capability "would involve extensive struc ture redesign without a commensurate increase in safety."

Of course those bumper standards are expressly keyed to safet considerations, because the act of 1966 does not expressly empowe DOT to give weight to vehicle damageability.

Your bill would close that gap in DOT's jurisdiction, and w support such a move.

I then point out on the balance of that page some of the reason for that, and Dr. Miller will discuss some of these points when h testifies.

A subsidiary question presented by S. 976 is whether to spell ou specific minimum bumper requirements in the statute itself, as you bill now does, or whether to leave such technical specifications to the DOT.

We believe the wiser approach is to avoid statutory specifications and give DOT the responsibility for such determinations. The choice of the best bumper involves interplay of a great number of factors. We believe an administrative agency should decide it.

We would suggest, therefore, that paragraph 125(c) on page 5 of the bill be deleted and that paragraph 125(b) be broadened to make it include bumper standards. But we suggest it should be spelled out that the Secretary not only should promulgate, but should periodically revise and update all such standards, which I am sure was implicit in your intent, but perhaps it would be wise to spell it out, to make it clear the overall objective is timely progressive improvements of design as expeditiously as is feasible in the light of minimum leadtime reasonably needed by the manufacturers to effectuate the change.

Section 5 of S. 976 provides that by July 1, 1972, DOT shall promulgate procedures under which all manufacturers must test production models of new vehicles, and also they should determine the feasibility of similar tests as to injury safety considerations. It also provides that the results of the tests must be reported to DOT and DOT is to make them available to the public and insurance companies and ultimately is to advise Congress on the extent to which our industry is utilizing such information.

We support these provisions. We respectfully, however, urge deletion of paragraph (b)(3) on pages 8 and 9 of the bill requiring automobile dealers to provide comparative insurance cost information to prospective car buyers.

The reasons for our suggesting that are set forth in my statement. I won't read them but will submit them for your consideration.

Subject to that one suggestion, we endorse section 127.

More than that, I want to emphasize that NAII, as a qualified rate advisory organization, is preparing to be of aid in every way possible in enabling the companies to give appropriate recognition to cars with improved bumpers and other damage-reducing design changes, just as soon as they have credible data on which to base such action.

We have been studying ways and means for developing the kind of data the companies will need. If possible, a method should be found to rate the new car models at the time they enter the marketplace. And your bill, I note, envisions the same need.

When the cars come to the marketplace is the time that premium rate variations will have the greatest significance to the buying public. To this end, in 1970 we commissioned Cornell Aeronautical Laboratory to conduct research on our behalf into an area that has never been previously probed. The question is: Can the analytical engineering process or a combination of that process and a minimum amount of crash testing, a useful tool for predicting the damageability of different vehicles. The encouraging results of that research will be described by Dr. Miller in just a moment.

As we indicated, we intend to make the products of that research available to manufacturers, to DOT, to this committee and other interested agencies.

DOT has already made some informal inquiries into the progress of this project.

Our final comments pertain to those provisions of S. 976 dealing with Federal standards for State vehicle registration and title laws

and for State vehicle inspection programs. We urge that paragrap (b) of section 501, on pages 5 and 6, be amended so as to provide tha the Secretary of Transportation in promulgating standards for Stat registration and uniform title programs, may consider the unifor vehicle code and model traffic ordinance provisions, but is not boun by them as the bill would seem to require.

We consider the uniform code and model ordinance to be valuabl tools, but we do not believe, as a matter of policy, the work produc of any private or semi-private organization should by Federal statut be automatically mandated upon all of the States, as required by th legislation.

In other words, we think this deserves consideration by DOT i connection with the standards, it should have advisory weight onl and not binding effect on DOT.

The remainder of title V of S. 976 would call for the broadening o existing standards for State vehicle inspection programs, and fo the adoption of additional incentives to the States for adopting an further implementing such programs. Generally speaking, we suppor that.

I pointed out that it has been our longstanding policy to suppor and promote any measures that increase the level of safety of vehicle on our highways.

We also want to make it clear that we share the desire of this com mittee to do everything possible to assure that vehicles sustaining col lision damage involving safety-related parts do not go back on th highways in unsafe conditions. We would be very foolish to take contrary position because every unsafe vehicle on the highway pre sents not only a personal hazard, but also an insurance hazard.

We, therefore, wholeheartedly agree with the safety objective in volved. The question is: How can the objective best be achieved whether by a requirement that all vehicles involved in crashes wher safety-related parts may be damaged should undergo State inspec tion following repairs, or by a requirement that the body shop o garage certify the safety of the repairs or by some other means or combination?

We are not sure at this point. We do not know the answer. An we have not found the answer in any research that has come to ou attention.

The one study we have seen, which is the Southwest Research In stitute study, does demonstrate how latent damage to safety-relate parts can sometimes occur in collisions, and it suggests that it woul be desirable to have reinspection of vehicles following collision re pairs. But it also indicates that to do so would require more stringen procedures than are now used for periodic inspection. And it als proposes a certification procedure by repair shops in lieu of inspection where no periodic inspection requirements are in force.

One thing I might add here, we noted in the SWI report it note that some six States have laws which call for some kind of postcras inspection. In no other report could you find that the research tea had ever gone out to find out how these laws were working, and thi is one of the questions we think DOT should go into, in determinin how this should be done.

We point out the periodic motor vehicle inspection, although important and a laudable concept, has also proved one of the most complex and difficult in implementation. Some of the States had adopted such programs immediately after the Safety Act of 1966 and had opposition over practical problems which have led to the introduction of legislation to repeal the inspection laws.

Although that has been generally forestalled and the laws remained, several of the programs were amended to water them down a little.

So in light of these practical considerations, we would respectfully suggest the bill authorizing and directing DOT, before taking any action extending the vehicle inspection standards to cover the post-crash problem, to make a comprehensive study of the whole problem and the best means of alleviating it or minimizing safety-related hazards, which research, we think, should include evaluation of the results in States that have and are trying the post-crash inspection procedure, and perhaps the DOT sponsorship or support of experimental pilot programs in one or a few States, to try to find out what the optimum program would be, how it best can be implemented.

What we are suggesting on this subject is it be treated in somewhat the same manner as the bill treats the subject of testing procedures for manufacturers in determining injury potential of various vehicles under section 125(d).

In conclusion, we wish to commend this committee and the sponsors of S. 976 for having identified and highlighted what is by far today's more serious source of spilling losses and rising auto insurance premiums, and for having proposed legislation aimed at that program.

We believe enactment of S. 976 with the modifications we have suggested would serve the interests of the American consuming public.

If your committee should desire any further particulars on any points we have raised, we will be very glad to furnish them and cooperate in any way possible.

That completes my remarks and Dr. Miller is with me. I will follow the wishes of your committee as to whether you would rather ask me questions first or have Dr. Miller proceed first.

Senator HART. A point I would want to comment on here that was raised by your testimony related to the 100 percent cost increase in the last decade of costs.

As I look at it, and as we have heard this testimony, in the area of vehicle repair, to the extent that labor, service, are involved, whether it is the garage repairman or post crash, the insurance adjuster's time, the lawyer's services, individuals will continue to have to do that kind of work and the technology is not going to be able to effectuate cost savings.

So to the extent that we can identify the means of reducing the likelihood of the crashes, preventing the crashes, it is in that area where we could look for the big cost savings. We are sort of kidding ourselves into thinking that even the most disciplined supervision would enable us to substantially reduce the costs reflected in the personal service area.

Am I correct in that? We really have to look at what Cornell is looking at.

Mr. MERTZ. Yes, I think I would be in basic agreement with what you just said. I might say this, I think there is room for improvement,

cost savings, in the area of repair technology as we have gathered from looking at the experience in England and in Sweden.

But there is a very definite limit to how much saving we can achieve there, given the same cars we are dealing with today.

Because I think there are many savings they have made, for example, in England and Sweden in things like the paint process, and better welding techniques, and better use of quarter panels. And there is an opportunity for saving there, but it is nothing, in my opinion; it does not compare with the opportunity for saving through improved design of the automobile and particularly bumper technology.

In other words, I suppose it could be roughly comparable to preventive medicine.

Senator HART. I just whispered to Mr. Sutcliffe it is the same thing.

Mr. MERTZ. Right. In other words, you can do just so much——

Senator HART. Yes; group practice will help somewhat, but staying healthy is the chief effort.

Mr. MERTZ. Yes. Of course, one of the reasons we are interested in the technological side of it is this: No. one, as car design is improved, we come up with improved bumpers, each year at the most that is going to replace only 10 percent of the vehicles on the highway. So if we have an ideal bumper a year from now, and let's say it has a tremendous effort on cutting down the losses for cars that have it, it is still going to take 10 years before that achieves a full effect.

In the meantime, we have to stay in business. So the repair technology side is very important. The other thing is I think that just for the health and preservation of the repair industry, something needs to be done. We feel that one of the greatest benefits that could come from a crash repair research center would be the innovations for the repairmen themselves.

We are talking about something where there would be experimentation in improved technology and very definitely try to get them to participate in seeing what is going on, improve their techniques, and they would be one of the prime beneficiaries of it, because we know that they are losing men. They are having a hard time.

Part of it, I think, is because of the technology not having kept up. The efficiency of operations of their enterprise has not kept up with the times. We think this would be a great help to them, too.

Senator HART. I am reminded that with many others we have been urging the insurance industry and the automobile manufacturers to establish, to set up such a research center for the reasons you have explained. What does Ithaca have to tell us?

Mr. MERTZ. Senator, I just wanted to say one other thing in introducing Dr. Miller, that he is a native of Michigan, and grew up near Traverse City and was educated in the Michigan schools.

Dr. MILLER. Thank you. I am here today to present information on the vehicle damage study at Cornell Aeronautical Laboratory that is being sponsored by the National Association of Independent Insurers. In addition, I would like to make some comments concerning the relationship between designing structures for vehicle damage reduction and for passenger safety or protection.

Before proceeding with the discussion on the vehicle damage study perhaps some background information would be helpful to the committee. Cornell Aeronautical Laboratory is an independent, nonprofit

scientific organization wholly owned by Cornell University. The laboratory, as an independent research organization, has participated in various scientific investigations. One of the most notable activities has been in the area of automobile research where substantial contributions have been made during the past 20 years.

With recent increased emphasis on automobile safety, research in this area has expanded dramatically during the past few years. Indeed, research directed toward providing occupant protection during automobile crashes constitutes the most significant and important efforts within the present automobile research projects. The U. S. Department of Transportation is the major sponsor for these projects which include, for example, studies related to automobile structural crashworthiness, underride guards for heavy vehicles, development and testing of inflatable occupant restraint systems, development of computer models for simulating both the automobile and its occupants during various crash situations, development of an accident reconstruction model, and the investigation and analysis of accidents in the western New York area.

It was principally the automobile safety research efforts that provided the impetus for our becoming interested in the problem of automobile damage during low speed collisions. From a structural point of view, there is a close relationship between the structural requirements during low speed collisions and the structural performance needed to provide for occupant protection during the higher speed impacts. Indeed, if consideration is given simultaneously to both problems, structural requirements designed to reduce vehicle damage could result in corresponding improvements related to occupant protection.

Dr. William Haddon, President of the Insurance Institute for Highway Safety, recently appeared before this committee and referred to a statement of mine which essentially indicated that there is no apparant incompatibility between designing vehicle structures for occupant protection, while at the same time, providing for vehicle damage reduction during the low speed collisions. I would like to take this opportunity to reinforce this point but to present the arguments in a slightly different manner.

Senator HART. I should explain that I think Dr. Haddon was responding to a question that I asked as to whether there is an inconsistency. We have been on their back to make cars safer. One way to do this is to make car front ends collapisible, and now we are on their back because it is so fragile.

Dr. MILLER. Yes. The points I am making there are, the strength of present automobile structures is too low, that injuries do not occur during low speed impacts, because of the low severity of the collision, and not because of the structure design.

The third point is that the occupants' response during low speed collisions is independent of the vehicle structural response.

The fourth point I would like to make there——

Senator HART. Wait a minute now. Read that third one again.

Dr. MILLER. The occupant response at low speed is independent of the vehicle's structural response. What I am really saying——

Senator HART. What happens to the passenger is——

Dr. MILLER. What happens at low speed is, two cases must be considered. You have an unrestrained occupant in one instance. The vehicle will stop and the interior stops before the occupant starts to move, so he will hit the inside of the vehicle at about the same speed that the vehicle was traveling upon impact. Since the vehicle interior stops before the occupant hits it, the unrestrained occupant cannot benefit from the structural response.

Now, the other case is where you have an occupant wearing a restraint system. The vehicle comes in at low speed, but the restraint system has some slack in it, because of the flexible belt and the soft nature of the human tissue. It will take a velocity change of at least 5 miles an hour between the occupant and the vehicle interior before the restraint system tightens up. So you have a velocity change in the order of the low-speed change before the restraint starts to work.

So even in the case of the unrestrained occupant, I seriously question whether the occupant gains any benefits from the structural response of the vehicle.

Mr. SUTCLIFFE. At that point let me ask you is that information based upon present vehicle design?

In other words, there is no ridedown effect in existing vehicles?

Dr. MILLER. No. There can't be, because as I pointed out in the technical discussion, and this is partially based on information generated by the people at General Motors, they came up with a general indication that the distance between the occupant and the interior must be half the crush distance of the vehicle before he can benefit from ridedown.

So for a 5-mile-an-hour collision, in the test we will show later, we had about 5 inches of collapse. That means for ridedown to occur, an occupant would have to be 2½ inches away from the instrument panel to benefit from ridedown, and for 10 miles an hour collision, he would have to be 9 inches away.

People just don't sit that close to the interior of vehicles.

Mr. SUTCLIFFE. And that situation and analysis was with present vehicle structures?

Dr. MILLER. Yes, our tests were on 1970 cars.

Mr. SUTCLIFFE. And the information they presented was on present vehicle structures?

Dr. MILLER. We have looked at both present vehicle structures and structures that might be constructed.

Mr. SUTCLIFFE. Let me be specific as to why I asked that question.

We have now been given a bumper standard by the Department of Transportation designed to insure the safety of the vehicle in operation. There is no requirement in that standard as to the impact, on the passenger himself, of the bumper design that is utilized to meet the bumper standards.

On the basis of the information you have presented to us, it would seem that there would be no need, at that speed, to have any kind of standard related to the passenger.

However, let me pose this hypothetical question and have you respond to it: What if the 5-mile-per-hour front-barrier capability set forth by the Department of Transportation was met by a device in the front of the vehicle that had a bounceback, G force, coextensive to the impact speed.

In that situation, would the G force level of the passenger be markedly increased, whether in a restrained capacity or unrestrained capacity?

Dr. MILLER. What you would do in that case, at 5 miles per hour, you would effectively take a 5-mile-an-hour collision and turn it into an acceleration equivalent to a 10-mile-an-hour collision. That is the worst situation you could have. My feeling here also is that we have to get somewhat above 10 miles an hour before you have a real problem with injury.

Now, if the specification—so I would say that omitting the rebound at 5 miles an hour is not a problem. However, if the standard was set for 10 miles an hour, I would question whether you did not have to consider the rebound phase, because a 10-mile-an-hour collision, you see, would have the potential, if you had full recovery, full rebound, resulting in something close to a 20-mile-an-hour collision. I believe collisions between 10 and 20 miles an hour are in the range where you are getting into the injury threshold.

Mr. SUTCLIFFE. You make the statement in your prepared testimony that a 10–G force level is possible at a 5-mile-per-hour barrier crash. Are you suggesting that a 20–G force upon the restrained or unrestrained occupant is tolerable? Not injury producing?

Dr. MILLER. Yes, I didn't go so far as to recommend that. I indicated in the testimony that I would recommend limits consistent with the safety vehicle, the proposed 2,000-pound safety vehicle, because I don't see how those could be questioned. Even a 20–G response does not present any problem concerning occupant injury as far as I can see.

We are going to look at that in a little more detail next year. I really think that the occupant's response will be found, during low-speed collision, to be completely independent of the vehicle response, so I don't think it will make any difference.

But I think that with the higher acceleration level, rebound may increase, because you won't be able to dissipate the energy as effectively.

But personally, I don't feel that this will constitute a problem.

Mr. SUTCLIFFE. For the record, could you provide the committee with the biokinetic information that allows you to make the judgments as to what the G force tolerances for the passenger would be?

What the G force tolerances are before you would consider it a problem in injury production?

Dr. MILLER. Well——

Mr. SUTCLIFFE. You don't have to do this at this point, just submit it for the record, so we have that information in the hearing record.

Dr. MILLER. Yes. Well, the point here I think, though, that should be understood, is we are not only talking about the deceleration force, but we are talking about some measure of that deceleration force.

What we are really talking about is something that is looked at a severity index. What that index does is weight the deceleration values and give more weight to a higher value than it gives to a lower value.

Now, the severity index, commonly called the Gadd number is currently being used. We speak of numbers on the order of 1,000 on the head as being near a fatal situation. In all of these situations I am talking about, I am sure you will find Gadd numbers well below that, on the order of 200 or 300, or something like that.

And we could provide that kind of information to you.

Mr. SUTCLIFFE. Thank you very much.

Dr. MILLER. Then finally, the other point that I would like to make is that increasing the structural strength means the bumper could be placed a reasonable distance away from the sheetmetal, which would improve the vehicle damage situation. But, more importantly, I believe the increase in the strength would provide more distance for energy absorption during the higher speed impacts where occupant injuries normally occur.

All I am getting at here is that if we have a very soft car, and 10 miles an hour is really a very small amount of energy when you are talking about something like a 40 mile an hour crash, in fact, a 10 mile an hour collision has one-sixteenth of the energy that you have in a 40 mile an hour collision.

So if you are going to give up 18 or 20 inches of that structure, just to take care of about 6 percent of the energy in a 40 mile an hour crash, then the remaining distance between the occupants and that 20 inches has to be used to dissipate over 90 percent of the energy. That is the way the present situation is.

So now if we can reduce the 10 mile an hour collision so it takes 4 to 5 inches, then we gain something on the order of a foot for energy dissipation at the higher impact speeds. It is within that context that I see the two problems directly related and feel improvements of the vehicle damage situation would result in a corresponding improvement for occupant's protection.

I am talking about protection of restrained occupants, now, during the higher speed collisions.

Mr. SUTCLIFFE. Perhaps I can ask a question at this point. You have done experimental work under contract with the National Highway Traffic Safety Administration on an occupant protection system built into the vehicle, oftentimes designated as a "plastic hinge;" is that correct?

Dr. MILLER. That is a structural concept that we developed and worked on. We are working on that at the present time for the National Highway Safety Administration. The program is Basic Research in Crashworthiness, Contract FH-11-7622. Well, we have increased the strength, but what we are trying to do in that program is get a uniform rate of energy absorption during the crash distance of the vehicle.

Mr. SUTCLIFFE. What happens when you bang that plastic into a barrier at 5 miles an hour or 10 miles an hour?

Dr. MILLER. Well, we did that. We were not, I guess, strictly speaking, required in our work statement to do it, but it was an opportune time one day when we were out on the track. We ran 5, 10, and 15 mile an hour impact tests. At 5 miles an hour, we observed no damage; at 10 miles an hour we began to observe some permanent collapse. The peak deceleration levels I think were about 12 to 15 G's for 5 miles an hour and perhaps 20 G's at 10 miles an hour.

The problem I see is not the deceleration level, but we did have more rebound than I would like. We are going to look at that area and I hope during the next year come up with a better way of mounting the

bumper to the connecting struts. I think we can eliminate that rebound problem or reduce it substantially.

Mr. SUTCLIFFE. So in your crash-worthiness program, a technology developed for better crash-worthiness, had a direct payoff in the property damage susceptibility area, or appears to have?

Dr. MILLER. I think it has potential for it. I don't want to make premature claims here, because as you know on that crash-worthiness program we are primarily interested in looking at the problem in terms of severe accidents, to see what we can do for the occupant. Once we come up with a system that will give the occupant benefit under the severe collision situation, then we want to make sure that at the low end of the velocity scale we have not changed the injury potential.

Because the fact remains that about 10 percent of all accidents result in injury. We don't want to increase that, and there is no point in our opinion in that program looking at the low end of the velocity range until we have demonstrated we can do something at the high end.

Now, we first looked at severe single vehicle accidents, and we came up with a structure that we thought, and we know demonstrates better performance. Then we considered what would happen if we took this vehicle structure and introduced it onto the highway, where it would not be likely to hit the same kind of vehicle, but rather hit other production vehicles. So this year we have conducted a number of car to car tests, where we have impacted the modified structure into essentially production vehicles. We have found that in front-end collisions, the performance of the production vehicle is not degraded from what it would be if involved with a present vehicle.

Now in side impacts, we find we have degraded performance somewhat, so we are working further on the front structure——

I am talking about an impact where a modified front structure hits the side of a production vehicle. We feel that we may have to back off on the strength requirements perhaps in the first 6 inches of the vehicle to insure that the side impact situation is no worse than it is now.

We don't feel we will have to reduce the strength in more than the first 6 inches, of the front of the vehicle and we are not talking about a reduction to the levels of present vehicles; we are talking possibly—it is hard to say, but maybe 10 to 20 G responses, in that initial collapse distance. But these changes will be dictated, I am convinced, by the side impact problem, not by the response at lower speed collisions.

Mr. SUTCLIFFE. Thank you very much. I didn't mean to interrupt your prepared testimony.

Dr. MILLER. I would like to make one more comment on this. When I was talking about the increased potential for occupant protection with increased strength of the bumper this relates to the front structure. I do not want that to be interpreted as meaning that I am not advocating improved bumpers on the rear of the vehicle; but with an improved bumper on the rear of the vehicle, it could not be argued that the bumper would have a corresponding increase for the protection of occupants simply for the reason that very few occupants are seriously injured in rear-end collisions, where with front-end collisions you have a high number of occupants that are injured.

I just wanted to point that out so it would not be construed that I was advocating lower requirements in the rear of the vehicle, that is

not the case; it is just that we could not argue you had a safety benef accompanying it.

Now, I would like to present some information on the National Asso ciation of Independent Insurers' vehicle damage analysis project. Th objective for this study is to determine the feasibility of using mathe matical analysis as a tool in determining the damage susceptibility o automobiles. The fact that this is a feasibility study should b emphasized.

Last spring NAII contacted Cornell Aeronautical Laboratory con cerning the possibility of implementing a vehicle damage study. Thei purpose was to determine what approaches might be employed if on was to evaluate the damage susceptibility of a wide range of vehicle under a number of different impact conditions. One approach, quit obviously, would be to purchase a large number of vehicles and the subject each vehicle model to the various test conditions. When a possible test conditions are considered it soon becomes apparent tha this approach—if continued year after year with all classes o vehicles—would be an extremely time-consuming and expensiv proposition.

A possible alternative approach would be to develop an analytica model that could be used in conjunction with limited experimenta testing to eventually accomplish the same general objective. It shoul be noted that the intent in developing such an analytical model wa not to replace the need for conducting controlled tests, but rather t greatly limit the number of vehicle tests that would be required.

Anoher benefit of such a model would be that it could identify th contributions that various vehicle components might make in terms o reducing vehicle damage. For example, the effect of changing th structural properties of the bumper could be quickly evaluated by computer run without resorting to the fabrication of a vehicle an subsequent testing. Likewise, the effects of structural changes for othe components could be quickly and economically investigated throug such computer runs.

Controlled tests to validate these computer simulations were con ducted. Now we will show some of the films taken from these tes results. It should be noted that the only purpose of these tests wa to validate the mathematical model.

(Showing of film.)

The first scene is of the impact at 5 miles an hour. The speed is normal jogging speed. The vehicle is operating under its own powe during all of the tests. This is a 45-degree view, high-speed photo graph, a thousand frames a second. The vehicle collapsed about inches, very nearly the same as we predicted with the computer mode

Here is an underneath view. It is really this view that is of th most interest to the structural engineer. We paint the vehicle structur different colors so we can identify the various vehicle component This is the vehicle after a 5-mile-an-hour frontal test into a rigi pole. This is a real time rear-end impact at 5 miles and hour. Thi collision resulted in about 4 inches of exterior deformation and tha is very close to what was predicted by the computer model.

We see the vehicle after the impact. An identical vehicle was sub jected to 10 miles an hour front and rear tests. We actually did th rear test before the front. The reason we did that is because th radiator was lost in this test, but I am showing it in reverse order

Again this is a high-speed photographic view. This test resulted in about 17 inches of deformation. The computer program predicted a value of 14 inches. Here we see the view from underneath the vehicle graphically showing the displacement of the radiator.

Those wheels, incidentally, in the middle of the screen are guide rollers that are used to guide the vehicle prior to impact.

This is the vehicle after the 10-mile-an-hour collision into the rigid pole. Here we see the 10-mile-an-hour rear impact.

I am showing this underneath view because it shows that substantial deformation of the fuel tank took place. The tank was loaded with a fluid that demonstrates some of the characteristics of gasoline, and it should be noted that no leakage occurred.

This is the vehicle after the 10-mile-an-hour rear collision.

(End of showing of film).

Now, we have summarized the comparison between the predicted deformations and measured deformations, and you can see for the 5-mile-an-hour cases the computer predictions are very close to those measured; however, at 10 miles an hour we are comparing values of 14 to 17½ and 10½ to inches. So it is worth noting that the analytical predictions were reasonably correct for 5-mile-an-hour impact; however, for the 10-mile-an-hour cases they tended to predict values somewhat lower than those recorded in the tests.

These results for the 10-mile-an-hour collison were further investigated after the test. As a result of this investigation the modeling of the hood and radiator support structure has been refined. Similar refinements were made for the trunk region on the rear structure.

We are now in the process of checking the validity of the refined program. For this purpose a 1969 Ford has been purchased. A Ford was selected for these tests because it represents a structure that is quite different from that of the Chevrolet. Measurements have been made and the input data are being prepared for the computer. It is expected that the computer analysis will be employed before the end of the month. At that time we will conduct 10 mile-per-hour front and rear tests on the 1969 Ford. These results will be compared to those predicted by the computer.

At the present stage of the study our tentative conclusions are:

(1) Within the scope of this program the feasibility of predicting vehicle damage has been established. That is, the present model is highly accurate at 5 miles per hour and is expected to be refined to be accurate for the 10-mile-per-hour collisions. When this latter phase is completed a valid model will be available for this type of impact condition.

(2) An attempt should be made to generalize these limited results to other situations; that is, to consider different impact conditions and different types of vehicle designs. The result of this generalization would be a computer program that would allow various potential users the flexibility to quickly and economically analyze various vehicle damage situations.

At this point I would like to briefly summarize how such a generalized analytical model could be used as a tool in evaluating the low-speed structural performance of automobiles. An important application for this model would be in reducing the number of full-scale tests required. For example, a vehicle might be impact tested at 10

miles per hour and mathematical analysis used to determine how th vehicle would perform at other impact velocities. Furthermore, usual ly only minor structural differences are evident between many o the automobiles produced by the same manufacturer. The mathe matical model could be used to determine the effects that these smal differences would have on performance without requiring full scal tests of all vehicles produced by a single manufacturer.

We plan to issue a final report covering the project early thi summer. Copies will be available from either the National Associatio of Independent Insurers or Cornell Aeronautical Laboratory. Upo request copies will be furnished to Congress, automobile manufacturers governmental agencies and other interested parties.

Senator HART. Thank you very much, sir.

I confess I am going to have to read much of what you told us mor than one more time, but I do get one message clearly. You see as com pletely within hand the accuracy of computer testing rather tha testing the production automobiles.

Dr. MILLER. I think it is essential that we begin to do this, because a I said perhaps somewhat facetiously at times, that if we keep up thi business of crashing cars for safety and for vehicle damage, we ar soon going to be crashing as many cars as the automobile manufac turers are selling to the consumers.

So it seems to me we have to find ways of cutting down the number o tests. And this I would hope would help.

Senator HART. I am not sure I want to go on the record as opposin selling twice as many cars as we presently do.

Mr. MERTZ. Senator, from a layman's standpoint, I am certainl not an engineer, it seemed to me—and Dr. Miller can disagree if h sees fit—I don't think he will disagree, because he points this out i his statement, I think it is very significant—it is one thing to deter mine that when a certain vehicle crashes against a certain kind o barrier or in a certain situation, a certain amount of damage occurs, bu that is only part of the battle. The most important thing is to find ou why did it occur, why was the damage as great as it was? What fea ture of its construction contributed to the damage and what mini mized it?

In other words, the analytical approach we felt at the outset hope fully would help us not to tell just what happened, but why it hap pened. And therefore enable zeroing in on the feature that could b improved. Because a given car might have embodied in it a number o good design and bad design features and they are balancing each othe and they might produce a sort of lukewarm result.

If we can separate out which are good and which are bad, it woul help them reinforce the good and minimize the bad.

Does this sound right, Dr. Miller, that it would help give you th answer as to the why something happened?

Dr. MILLER. Yes, that is essentially it. We need a way of analyzin the situation to really understand the interaction between the variou components. This is one possible application of the mathematical too

Senator HART. I am just trying to fish out from the many sets o figures we have, how much we are talking about in dollars each year a a result of the kind of accidents that we saw on the film, or all accident

I am referred to a figure of $5,500 million as the annual economic loss in car damage. That is the figure projected for this year.

Mr. Sutcliffe?

Mr. SUTCLIFFE. Dr. Miller, it is important for the purposes of our hearing record for you, in your capacity and with the testing you have done, to answer the following question or series of questions to the best of your ability.

Let me suppose that I took six very refined pictures of an automobile that had been involved in a minor front-end collision, and I put them before either your trained eye or the trained eye of a claims adjuster. And I did this not just with one vehicle, but with a whole series of vehicles that had been involved in front-end collisions and rear-end collisions.

Could you, with any degree of precision, tell me the speed into the particular object that those cars had been traveling?

Dr. MILLER. Well, first I would like to say that that is not the type of thing that I do, and I would be probably less accurate at it than the professional people that do it.

We have at Cornell an accident research branch that I referred to earlier in the statement, and we have people that are trained in doing that type of thing. In fact, the only way you get the impact speed of accidents is to look at photographs or look at the vehicles and essentially have these people that are so trained make these estimates.

Our experience at Cornell is to the degree that you probably could make the following separations: You could probably group cars somewhere in the order of 0 to 5 miles an hour.

Mr. SUTCLIFFE. Could you tell between 2½ miles an hour and 5 miles an hour, in your opinion?

Dr. MILLER. I doubt it. I do not think they could. I think they could tell the difference between a 5- and a 10-mile-an-hour collision. But supposing it was 5 and 7, I seriously doubt that these people could provide that type of precision. At least the people at Cornell tell me that and that is your experience. Of course, no one really knows how accurate you can be, because there is no way to really check this. But our experience would be that you could not tell the difference between, say, 5 miles an hour and perhaps 2 or 2½ miles an hour. But, again, this must be accepted as a judgment on the part of the people doing that work, because there is no way you could check to see how precise it really was.

Mr. SUTCLIFFE. Even as to one individual going over all of the claims and the pictures, you still question the accuracy of determining precise speeds of impact for those accidents?

Dr. MILLER. Right. Particularly in the low-speed range.

Mr. SUTCLIFFE. Particularly between 2½ to 5 miles an hour.

Dr. MILLER. Yes.

Mr. SUTCLIFFE. Or 5 to 7 miles an hour.

Dr. MILLER. Yes.

Mr. SUTCLIFFE. Thank you.

Mr. Mertz, let me ask you a couple of questions based upon your testimony.

Mr. MERTZ. Yes, sir.

Mr. SUTCLIFFE. You mentioned that some insurance companies have advertised a cost savings for their collision premium ranging from

perhaps 10 to 20 percent. Has your association surveyed your member companies to determine how many other companies within your association would follow suit if property loss reduction standards were set on motor vehicles or rating systems developed for those vehicles?

Mr. MERTZ. We have not surveyed the full membership and asked that specific a question, but we have, I would say, a pretty good cross-section of sample in our board of governors, which consists of about 35 companies, companies of all sizes. I would say those 35 companies probably write 75 percent of the premium volume, maybe 70 percent of the premium volume of our companies, so it is a pretty substantial segment. It has been discussed in our board, and our board is on record as a matter of NAII policy urging our member companies to give appropriate rate recognition to design improvements, bumpers and other design improvements, just as quickly as credible data can be produced to make those adjustments.

Now, I dare say that there may be some variations among the companies as to how they do it. Several companies, on that board, have indicated they have already filed in several States a discount, and they are ready to give it if the bumper meets certain qualifications.

Others have said in response to our questioning of them that they do certainly intend to give rate recognition, they want to, they will just as soon as there is credible data upon which to base that.

I can say that it is my expectation that there will be a very good response by our companies to giving rate recognition just as soon as we can provide the data on which to do it.

Now, of course, this would mean that the improved bumpers are going to have to come out. They have to be a fait accompli. You have to see them and be able to make some pretty good evaluations as to what the loss-producing propensity will be.

We hope, too, when the manufacturers come out with those models of cars with those bumpers, that the manufacturers will come forward—of course, if S. 976 has become law and is in operation, they have to provide the data that you call for, that is going to be a great source of that data. But absent that, we would hope the manufacturers would provide some good hard data as to what they expect their bumpers to do in terms of reducing the loss exposure.

Then our job would be to evaluate it and see whether it is sound. This is, of course, where Cornell comes into the picture and its experimentation.

Mr. SUTCLIFFE. Have you or anyone within your organization had an opportunity to do any cost-benefit analysis, analyzing the amount of potential premium that could be saved by consumers compared to any potential increase in cost for new bumper technology?

Mr. MERTZ. No. One serious obstacle we run up against is we have no access to any figures as to what the new bumpers are going to cost and what they should cost. Some of the manufacturers have in discussion with us given figures, not just with us, but I think in public statements General Motors has made some projections as to what they think it will cost, or what they will have to add to the price to put a bumper of a certain capability on a car. But we have no way of going behind that and determining whether we would agree or might disagree with them on those figures.

If we could be supplied with the data that would show—if we could be shown, let's say, some prototype information about that car, its bumpers, the drawings of it, in some detail, I believe we could, through Cornell, as they perfect this technique they are working on, apply that to real world data. This is our next step, to develop the real world data about crash configurations, how many front-enders, what angle and so forth, that they could translate into information on what that would do to the hazard, how much it would reduce the hazard. So we could develop that information on the car and its performance if we were given the proper information.

But, as far as the other part of the question, the additional cost of that bumper, putting it on the car, we are really in the dark and we do not know any way to ascertain that other than from the manufacturers supplying that information.

That brings in the question of whether there will be some additive cost or whether it is something that should be considered——

Mr. SUTCLIFFE. Let me say we hope these hearings will be helpful in providing that kind of information to the insurance community.

Let me ask you, in your experience in purchasing a new car, when the person makes up his mind to buy the car, in a time frame, and when he then obtains the insurance for that car, does the decision to buy the car precede or follow the decision or the search for insurance?

Mr. MERTZ. I think in most cases the decision to buy the car precedes the search for insurance, because in most cases the buyer already has a car, he already has insurance, he is not required under his insurance policy even to notify the company about having changed cars until commonly at least 30 days to notify them and his insurance automatically covers any new car he buys for at least a period of 30 days.

So I think most purchasers, they would not at the time they buy the car, they would not be either simultaneously buying insurance or previously.

Mr. SUTCLIFFE. Given that circumstance, how are insurance rate differentials based upon the characteristics of the motor vehicle going to influence the free market system to encourage the purchase of vehicles with low susceptibility to damage? In other words, how is the consumer going to know that if he purchases "X" car his insurance rates will be lower than if he purchases "Y" car, if in fact the search for insurance takes place after he has made up his mind to buy the car?

Mr. MERTZ. If I know human nature, and in the auto manufacturing business, just as in the insurance business, the auto manufacturer whose car gets a good rating is not going to hide that fact under a bushel, they will let the public know about it. I would anticipate the first thing they would do, once they find out what their rating is, is to notify all of their dealers, and their dealers will be using that as a sales tool for the sales of those cars.

I believe this has happened in England and in Sweden. And there where they rate cars, in Sweden, for example, where they rate cars for insurance, partly because of design, largely because of design——

Mr. SUTCLIFFE. Let me stop you there.

You mean General Motors is going to let its Oldsmobile Division advertise the fact that it has much better bumper capability than the Chevrolet Division?

Mr. MERTZ. Well, maybe so or at least better than Ford. And it isn't going to be so much the distinction between Oldsmobile and Buick as it will be between Chevrolet Impala and a Ford Galaxie. That is where they will do the advertising.

By the way I have in my briefcase and I will leave with you, an advertisement in a magazine that I clipped out just before coming here, in which an automobile manufacturer has already bragged about the fact that the rates on its car, which is in somewhat the sporty category, that this car gets standard insurance rating, and that is the headline in the ad "Our car has standard insurance rating."

Mr. SUTCLIFFE. So this is the reason you don't think it is necessary to provide any kind of touchstone cost information to the car purchaser at the time of purchase, that he will have already been given the information as to the insurance cost of that particular vehicle through the advertising media.

Mr. MERTZ. Yes. And let me make myself clear on what we were objecting to on that provision. As we read the provision, it seemed to require the dealers in effect to become insurance experts and provide a lot of detailed information about rates of different companies and rates of various cars. Perhaps that was not the intention of it.

Mr. SUTCLIFFE. Let me stop you there and perhaps explain that cost savings for the youthful driver may be much greater than for the average driver, middle-aged driver.

Therefore if the youthful driver had that information, it might profoundly affect his choice of vehicle. That is why we had some differentiation as to the age of the person. We weren't asking that they sit down with the rate book and figure out how much a particular person's insurance was costing. We were thinking of some kind of touchstone to get various degrees, so it would have the maximum impact on the consumer's buying.

Mr. MERTZ. Yes, and understand we don't mind the idea of that impact. We would like to see that impact felt. We think one of the major purposes of insurance rating according to design would be lost if the public didn't get the message. We sincerely think they will get the message through advertising. If it turns out they don't, we will be very amenable to working with anybody who wants to work on it to see that they do get that information.

Mr. SUTCLIFFE. Would you be adverse to the Secretary of Transportation or the FTC having authority to monitor closely the advertising practices of the companies in promoting their vehicles and their insurance rates?

Mr. MERTZ. This would be the automobile manufacturers?

Mr. SUTCLIFFE. Yes. That is one area you suggested. You said the manufacturers might tout their cars as having a certain degree of property damage susceptibility protection, and lower insurance rates. Some of our advertising messages right now get somewhat garbled in the transmission.

Mr. MERTZ. Yes. Of course I would gather right now—I have never thought it through, but I suppose any interstate advertising by auto manufacturers right now is probably subject to FTC jurisdiction insofar as anything deceptive.

What you are saying is maybe to create an affirmative duty on the part of the manufacturer to provide certain information? You are

not talking about deceptive advertising as much as making them come forward with advertising?

Mr. SUTCLIFFE. It was just a thought? It is not necessary for you to comment.

Mr. MERTZ. My reaction would be I would hope that wouldn't be done unless it was felt it was a last resort, I do think it would be a fair question to ask of the manufacturers when they testify, whether indeed they do intend voluntarily to make information of this type available to the public. I think that would throw a lot of insight into it. If I were in their position I think I would, especially if I got a good rating.

I suppose if I got a bad rating, my car was the worst on the list, I wouldn't be advertising that. But if the ones that get the good rating, the cars that get the good rating, mention this in their advertising, supply it to the dealers, the dealers post it on the walls in the showroom, "Our car got a high rating," that probably would create a desirable effect without having to have someone force a dealer who has a bad rating to disclose this to his customers. That is a little tough on him, to have to tell the customer he has a bad rating or to volunteer it to the customer.

But I will say that we would hope that the public is apprised of this. We have a feeling it will be. I know, for example, in Sweden that one auto manufacturer had a bad rating and reduced its parts prices something like 15 percent overnight in order to get his rating improved. I don't think in Sweden there is any requirement that the dealers have to give all of this information out. I think the word gets around.

I might say the experience on the muscle car situation indicates the word certainly gets around in a hurry. Those young drivers that want the muscle cars, it didn't take more than a week or two before they had the word that the muscle cars were getting rated up 50 percent. And that really hit the sales of muscle cars in a hurry.

Mr. SUTCLIFFE. In your statement, Mr. Mertz, you mention that there is an Achilles heel to the automobile insurance problem, that being property damage loss. Since the auto compensation system is a human system, I would suggest that there perhaps are more than one Achilles heel in the system, and for the record I would like to point out that the two-thirds premium collected for property damage and the one-third premium collected for personal injury, results from a rather marked disparity in the payment of the loss that occurs within the system.

For example, the car damage premium is $8 billion, the net benefits paid were $4.6 billion of the $8 billion in premiums, but the economic loss exceeded the payment by $1 billion. So we are compensating 83 percent of the property damage loss.

In the bodily injury area, it breaks down at $6 billion for premium collected; net benefits paid, $2.4 billion; compensable economic loss, $6.5 billion; for a 37 percent compensation on the basis of bodily injury.

So to state that the premium cost for insurance is two-thirds and one-third is an accurate statement, but in terms of our present compensation system, that ratio is because we pay much less, or are required to pay much less of the compensable loss as to bodily injury

than we are as to the vehicle itself. And this is what has prompted the statement that we are treating cars and the repair thereof much better than we are treating people and their repair.

Mr. MERTZ. First, in my remark about Achilles heel, I did say cost-wise. In other words, we are saying here is where we are suffering the staggering losses, whereas the bodily injury side, loss-wise, used to be considered the bad boy, but by comparison now we are not losing as much money on that as the damage side.

There is where the dollar outflow is going, even far more than in relation to the premium difference. Also we felt that probably the greatest opportunity for achieving reductions in premium costs, that is, trying to stabilize premiums and bring them down, the greater opportunity for doing it probably lies on the material damage side, for one thing because the losses are bigger, and because, perhaps, it will respond to some physical things like designing the car better, which is not going to make anybody mad. In other words, everybody benefits by that. There is no real controversy.

On the bodily injury side, we acknowledge that if you measure the cost efficiency of the system solely in terms of comparing the net dollars going into the claimants' pockets with the amount of premium that was paid into the other end, that the so-called cost benefit ratio is not as high as it is in the physical damage field, partly because, of course, physical damage has comprehensive and collision which pays off directly without intervention of a lawyer.

Now, although my statement didn't actually cover this, we would certainly agree that there should be, there needs to be a marked improvement in the cost efficiency on the bodily injury side.

We perhaps do not see eye to eye with some on the committee as to how harshly or how sympathetically you should judge the fault system. We think for one thing that to look at it solely from the standpoint of cost efficiency, that perhaps it should not only be looked at from that standpoint. But talking only about the cost efficiency, we are certainly dedicated to improvements of that, and without getting into the whole subject of Mr. Lemmon's paper, I would want to point out that the program we are espousing, the dual protection plan, which does not go as far as S. 945, the no-fault direction, but goes a substantial step in that direction, that program will greatly improve the cost benefit relationship, because roughly 90 percent, or more than 90 percent of the medical expenses and—let me put it this way: More than 90 percent of the cases, injury cases, involve medical expense and wage loss which falls within the first part of the coverage we would mandate through our program.

In other words, we would mandate on every policy enough medical enough disability coverage, to take care of over 90 percent of the cases, accident cases. This means that those people would be getting that money immediately, on a no-fault basis, they wouldn't have to hire a lawyer to get it, they wouldn't have to go to court, file a suit or anything else.

Obviously if that took place, it would make quite a change in the cost benefit ratio. I can't say precisely how much.

Mr. SUTCLIFFE. With the Senator's permission, one of the written questions to Mr. Lemmon would have involved that exact cost data that he mentions.

Mr. MERTZ. I might say it will also cut down litigation.

I noticed in one of the DOT reports that they pointed out in cases where suits are filed—this is a different way of looking at it—in cases where suits are filed, that one-half of the recoveries are $3,000 or less. Our program, as far as the amount of first-party coverage we put in the policy, is going to go well above that. So it gives you an idea of how many of those law suits would be obviated under the program we are suggesting. Of course, our program then provides for automatic offer with right of rejection of a catastrophe economic loss coverage that would take those limits up to $100,000 per person per accident. So for all people who didn't reject that, you would again be provided with a great deal of immediate payment without having to hire a lawyer to get it.

Mr. SUTCLIFFE. On those first-party coverages, does that establish a level of tort exemption?

Mr. MERTZ. The person who is entitled to recover those benefits must set them off against any tort action he may bring.

Mr. SUTCLIFFE. What about if he is sued? If he is a defendant in an action?

Mr. MERTZ. If he is defendant?

Mr. SUTCLIFFE. Yes. And someone else has those first-party mandatory coverages?

Mr. MERTZ. The other person, that is any person who sues, any plaintiff, who is entitled to recover first-party benefits under the policy that we are talking about, whether he be the owner of the car, passenger in the car or pedestrian hit by the car, that person is entitled to those first-party benefits. He automatically would have to offset that amount of those benefits against any recovery he could make in a lawsuit against the third person.

In other words, let's say if his total economic loss fell within the limits of that mandatory coverage we prescribe of about $8,000 worth of first-party benefits that are mandatory, then he has no lawsuit left for economic loss.

Mr. SUTCLIFFE. His only recovery would be in the intangible loss area?

Mr. MERTZ. Right, and there we have a formula to apply to the less serious cases.

Mr. SUTCLIFFE. That is important, because in Mr. Lemmon's testimony it was unclear as to the exact relationship between the two.

Mr. MERTZ. We definitely would prevent duplicate recovery within the tort system.

Mr. SUTCLIFFE. We will explore that in questions submitted to you. One last question: You have supported S. 976 calling for Federal standards for property loss reduction.

There will be some that will argue that because the States are experimenting on a State-by-State basis with bumper legislation, that we should allow the State-by-State experimentation to proceed without establishing national standards. How would you respond to that?

Mr. MERTZ. Let me say first that I think the State bumper laws have provided, have served a worthwhile purpose. I think they have stimulated action on the part of the auto manufacturers and they have, I think, aided in highlighting this problem and focusing attention on bringing a solution to it.

It may seem to some people that is inherent characteristic of our associa-
tion to support anything Federal. I think some people probably prior
to today would have thought we would automatically be against
anything Federal. That is not the case.

The question is what the functions of a great activity or pursuit
should be, whether it is a private or public level of government
[illegible] we don't think there
should be a [illegible] carried on by that
level of government based on certain factors.

No. 1, what is government best suited. In the first place, is the
activity something which can be regulated logically, and reasonably
regulated at one level or the other.

Let's take the manufacture of the basic design of an automobile.
We are talking about basic design. Of course when you talk about
putting a better bumper on the car you have to consider how you
connect it with the frame and that may mean modifying the frame.

As many in the DOT studies they have a two and a half mile-an-
hour rear crash [illegible] the bumper is not connected to the
frame on some cars. It is just connected to the skin of the car. So to get
beyond two and a half miles an hour in the rear they will probably
have to connect the bumper to the frame, which we think would be a
good idea.

Now, since regulation of bumpers inevitably leads to the regulation
of the basic structure of the car, we feel there is no way you can design
a car on a State-by-State basis. It has to be one car, and basically
designed to be sold in all States.

Now, when you get to something like headlight requirements, you
might be able to vary them from one State to another. The basic struc-
ture of the car, it is just by its nature has to be regulated we think one
place, nationally.

No. 2, it requires an agency with a great deal of expertise, a great
deal of resources, engineering know-how.

This is an expensive proposition and it probably exceeds the capa-
bility of any one State to do the right kind of job and match themselves
with the expertise that exists in Detroit.

No. 3, the Federal Government has substantially occupied this field.
DOT is regulating the safety characteristics of the cars. It would not
make much sense to say DOT should regulate the safety characteristics
and the other characteristics should be regulated on a State-by-State
basis, because the two might be in conflict and throw the manufacturer
into a dilemma.

No. 4, the States have never regulated in this area, I mean really
regulated the design of a car.

So for all of these reasons, we think it is just common sense to do
it this way. We think we could take the same arguments and say
conversely, why we support State regulation of insurance. It has been
at the State level, many people find fault with certain things that have
been done, but it has been regulated there, we think quite effectively.
We have never hesitated to criticize the States when they don't perform
their functions properly.

But we do not think for example that insurance is something which
has to be regulated nationally. Now, people have different views as
to whether it would be better regulated nationally or locally. But i

isn't by its nature something that necessitates national regulation in our opinion.

Mr. SUTCLIFFE. Thank you very much.

If we have further questions, perhaps we could submit them.[1]

Mr. MERTZ. We would be very glad to answer them.

Senator HART. In thanking you, let me indicate that prior to the recess we estimated we would conclude by 5 o'clock and I know that Mr. Lemmon was perfectly willing to stay, but I realized also that we have airplane trouble on Friday night getting out of here, and I indicated to him we would place his statement in the record in full.

Incidentally, I should underscore the fact that he recommends or describes S. 945 and S. 946 as unnecessary and unwarranted, and we ought not to give them favorable consideration. We will put that statement in the record in full.

As I indicated to him, such questions as remain, which we think appropriate to ask him, we will write him and he can respond in writing.

And if there are additional questions of either of the two other witnesses, Mr. Mertz or Dr. Miller, we will do the same.

Thank you very much, gentlemen, for your patience.

Mr. MERTZ. Thank you for your patience, Senator, we appreciate it.

(The statements follow:)

STATEMENT OF VESTAL LEMMON, PRESIDENT,

NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

We appreciate the opportunity to appear before this Committee and testify concerning S-945, S-946 and SCR-23.

NAII is a voluntary national trade association of some 533 insurers[2] of all types, both stock and non-stock, whose membership provides a representative cross-section of the casualty and fire insurance business in America. Our companies range in size from the smallest one-state entrepreneurs to the very largest national writers; they reflect all forms of merchandising—independent agency, exclusive agency, and direct writer; and they include companies serving a general market and those specializing in serving particular consumer groups such as farmers, teachers, government employees, military personnel, and truckers.

The independent companies have long been recognized as the most competitive and progressive segment of the fire-casualty insurance business. They have originated by far most of the many policy coverage innovations and improvements in the past 25 years. Their aggressive price competition has saved the insuring public more than $10 billion in premiums in the last decade alone. Our companies have continued to expand the voluntary market availability of automobile insurance at a rate faster than the rate of increase in new vehicle registration, so that currently they are serving more than half the insured motorists in this country.

Our basic position on S-945 can be summed up as follows:

(1) We recognize that certain problems exist in the present system of dealing with the financial consequences of automobile accidents;

(2) Great progress has been made in recent years under this system in expanding insurance protection, through such innovations as automobile medical payments coverage (now carried by 85% of our policyholders), uninsured motorist coverage (carried by some 90% of our policyholders), and the advance payment technique in liability cases;

(3) The remaining problems can be alleviated at the state level by reasonable reform measures which further broaden the scope of protection and streamline the system while retaining its fundamental concept of personal accountability and vital rights of recovery;

[1] See p. 1187 for questions and answers.

[2] 354 members and 179 subscribers to our statistical services.

(4) Imposition of a federal no-fault system governing the automobile accident reparations problem is not necessary and would be contrary to the long-range public interest;

(5) We therefore respectfully urge that S-945 be not favorably considered by this Committee and the Congress.

SCOPE AND COMPLEXITY OF THE PROBLEM

Our Association welcomed the comprehensive DOT investigation of the automobile accident injury reparations system and we so testified during the hearings of your Committee in 1968 on the legislation authorizing that investigation. We recognized that an exploding vehicular population and spiraling medical and disability costs were imposing tremendous new strains on the liability system and the insurance system serving it. We noted that the system has been in a continual state of evolution since its origin, and anticipated that the DOT study might well point up the need for further improvements.

The results of that study, to which our companies and Association contributed a number of valuable inputs, suggests the following as the major areas of concern by DOT:

More widespread compensation of basic economic losses;
Meeting the special problem of the catastrophic loss;
Improved speed and efficiency;
Better distribution of loss dollars by size of claim;
Encouragement of rehabilitation;
Reducing court congestion.

NAII is dedicated to improvement of the system in all these areas, and is actively promoting state legislation aimed at that goal. Our proposals for reform are embodied in our Dual Protection Plan.

Dual Protection calls for inclusion in all private passenger liability policies of at least $8,000 of medical/disability coverage per person per accident ($2,000 medical/hospital/funeral; $6,000 income loss; $4,500 for loss of essential services by non-wage-earners[1]) payable regardless of fault, to the insured and family, guest passengers and pedestrians. Every insurer would also be required to offer optional catastrophe economic loss coverage to the insured and family to take over if and when the basic limits coverage just described is exhausted, and pay medical/disability benefits (regardless of fault) up to a limit of at least $100,000 per person per accident.

Losses paid by the first-party insurer could be shifted to an at-fault third person or his insurer, thus preserving the important principle that those who present the greatest hazard to others should carry the largest share of the total loss.

Among its cost-reducing features the Plan (1) prevents duplicative recovery of economic losses under both the first-party coverage and the tort liability system; (2) requires recognition in wage loss awards of the fact that no income tax is payable, and (3) prescribes prima facie standards for determining tort damage awards for pain and suffering in the less serious liability cases. The Plan also calls for mandatory arbitration of small claims, and for certain other steps to streamline and improve the system. We are furnishing more details concerning Dual Protection for this Committee's information.

Our program constitutes a major response to the criticisms highlighted by DOT and this Committee. Well over 90% of the medical/disability losses suffered in auto accidents fall below the minimum limits of basic economic loss automatically included in each policy under our Plan. Thus, the vast majority of accident victims will get instant payment of basic economic losses regardless of fault and without necessity of litigation. Those motorists and motoring families needing and desiring the optional catastrophe coverage of at least $100,000 per person would also be assured of it, and the premium cost involved would be nominal.

While our Plan will thereby deliver much broader benefits to more people more quickly—and with a substantial improvement in the operating efficiency of the system—it also preserves the vital principle of personal accountability for negligence, the equitable rule of loss-bearing based on fault, and the important right to recover tort damages for pain and suffering—subject only to prima facie standards in smaller cases. Costwise, the basic features of our program are intended to stabilize or reduce the premiums for the average motorist.

[1] Income loss coverage subject to a minimum limit of 85% of lost earnings or $750 per month; non-wage-earner coverage subject to a minimum limit of $12 per day.

As indicated by Secretary Volpe in his report and testimony to the Congress, the DOT study has pointed up the wisdom of exercising caution in deciding exactly what steps should be taken in the way of reform measures.

Even the massive data and findings piled up by DOT do not lead automatically to "easy solutions" of the auto accident compensation problem, according to Mr. Volpe.

"Much legitimate uncertainty" exists as to "how far and how fast the public wants or is willing to go in changing the reparations system".

The price and cost implications of any major change in the system are "unknown and essentially unknowable".

The complexity of the problem, and the existence of honest disagreement among informed people as to what remedial measures are best, point to the wisdom of healthy experimentation and change at the state level, rather than federal action abruptly over-turning the whole auto reparations system nationally.

We strongly concur with Secretary Volpe's admonitions on those points.

BASIC OBJECTIONS TO S-945

We submit that adoption by the Congress of S-945 would constitute a form of "over-kill" of problems which are capable of adequate solution at the state level within the framework of the present system.

The existing fault liability system governing auto accidents and most other forms of accidents rests on several basic principles that developed out of many centuries of hard-won experience by society. One is the principle of personal accountability—the duty of each citizen to use reasonable care not to injure his fellow man, and if he does wrongfully injure him, the responsibility to respond in damages. Liability insurance was created as a means of enabling a person to better meet that responsibility if it arises.

We ask: Has this long-recognized principle of human behavior now become unsound, or outdated, as applied to auto accidents? If so, upon what basis?

The only arguments we have ever heard advanced for abolition of this vital principle are based purely on expediency—the supposed need to eliminate at all cost the expense and the time factor involved in administration and enforcement of the principle.

We know this Committee will examine carefully the grave propensities of Congressional action abolishing this principle, as proposed in S-945. We believe it would constitute a serious blow to driver safety motivation and to traffic law enforcement for this Congress to enact measures which embody the principle that henceforth, except where they commit "catastrophic harm" some 100,000,000 American motorists are to be freed of all personal accountability to their injury victims for negligence on the streets and highways.

Such a move could easily be interpreted by the public as a declaration that it no longer really matters who is at fault in the great mass of auto accidents. If so, it could well lead to a deterioration of driver attitudes and weakening of police enforcement efforts, and to a tragic increase in deaths, injuries and property damage.[1]

---

[1] In "Automobile Accident Costs and Payments; Studies In The Economics Of Injury Reparations" (U. of Michigan Press, 1964) the report of the comprehensive study of automobile accidents in Michigan, at pp. 91-92, the value of the fault system in aiding in the traffic law enforcement function is recognized. It is there pointed out that: "Therefore, an innocent party to an accident has a private incentive to supply police with any information which would tend to throw fault upon other parties. In the absence of the tort claim incentive, many motorists might think it more sporting to have no memory of fault-implying aspects of the accident."

That report goes on to state the following conclusion:

"From these considerations, it appears that tort law probably furnishes important incentives to avoid involvement in accidents involving injury to others, and to avoid conduct which will be charged as negligent, even if it does not unfailingly punish the guilty and limit its reward to the completely innocent.

"None of the other reparations systems appears to furnish an equal incentive in this direction. Workmen's compensation doubtless furnishes an incentive to employers to minimize injuries to their own employees, but their incentive to minimize injuries to others *by* their employees must reside elsewhere. As for life insurance, social security, and public assistance, the effect of injuring another on one's own taxes or insurance premiums is infinitesimal.

"Therefore, any proposal to eliminate the tort remedy from any area of accidents would call for a close examination into the sufficiency of the other incentives to injury avoidance. At the same time, it cannot be said that minor changes in the tort pattern, by increasing or decreasing the damages, or by relaxing or tightening the negligence standards, are likely to affect significantly the pressure which the ordinary citizen presently feels to avoid injuring others."

These consequences would be most unfortunate, especially since extreme measures such as this are not in our opinion necessary. Those criticisms of the present system which have substance can be alleviated by state legislation which greatly increase the coverage, speed and efficiency of the system while preserving the vital concept of personal accountability.

PAIN AND SUFFERING

A second major respect in which S–945 constitutes an "over-kill" of the problem is its proposed abolition of all right of recovery of pain, suffering and other general damages except where "catastrophic harm" has been inflicted.

Congressional action sweeping away this vital right of the American public would fly squarely in the face of what several reliable indicators show to be the wishes of most of the people. A substantial majority if the public when fairly polled on the subject have stated that they are not willing to give up their right of recovery for pain and suffering *even if it would reduce insurance costs.*[1] This being so, even a larger majority in our opinion would oppose the loss of that right under a program like S–945, which we believe can only increase insurance costs.

PRIMACY OF AUTO INSURANCE COVERAGE

Another highly important public policy concept which S–945 would abrogate is the principle that *motoring should pay its way* in our society. With minor exceptions the bill would make the prescribed auto insurance no-fault coverage secondary to all other sources of medical and wage loss benefits. The injured party could not collect a penny from his auto insurance until and unless he had exhausted every bit of available benefits from empoyer sick leave and wage continuation plans, union benefit funds, Blue Cross, Blue Shield, group and individual accident and health coverages, Medicare and/or other social insurance programs. Auto insurance would be permitted to be primary only if one of those other plans, coverages or programs expressly chose to make it primary—a conjectural possibility, to say the least.

Making the auto coverage excess over collateral sources would create a host of vexing practical problems including difficulties in ascertaining collateral benefits in connection with rating and with claim investigation, with resulting delay and confusion. Most important of all, though, there are basic public policy reasons why the auto insurance system should be the primary source of recovery for automobile-inflicted injuries, as recommended by Secretary Volpe in his report and testimony to the Congress.

Motoring serves a utilitarian function or a pleasure-producing function, or both, for those who engage in it. But it likewise saddles serious hazards and burdens on our society in the form of deaths, injuries, noise, traffic congestion, air pollution, consumption of natural resources, and so on.

Sound public policy dictates that to the fullest extent possible those who engage in an inherently dangerous or socially burdensome pursuit should bear the full costs of that pursuit—including the costs of all attendant safeguards and measures necessary to minimize or underwrite the damage it inflicts on others. It would be unfair and unwise to shift the costs away from those who engage in the pursuit and thereby subsidize it.

Thus, there is absolutely no justification for shifting a substantial part of the cost of auto accidents away from the activity of motoring and burying it in the cost of non-auto insurance systems, or employer wage continuation programs or social insurance programs like Medicare. It would be no more justifiable than to relieve industrial polluters of the responsibility for installing adequate pollution control devices, and forcing the general public to pay the entire costs of protecting themselves from the consequences of that pollution.

Keeping the full costs of a hazardous, burden-producing pursuit like motoring squarely on the shoulders of those participating in it also provides at least one form of disincentive against unreasonable *over-use.* Gross over-use by some citizens of the automobile already creates serious problems in America—such as the worsening congestion of our inner cities and arterial highways by the glu

[1] In the 1970 naional survey by Market Facts, Inc., of a large, representative cross-section of the public—the *only* survey which has determined both the attitude *and* the *understanding* of the interviewees concerning the concept of tort damages for pain and suffering—a resounding 70% of those expressing an opinion were opposed to the idea of eliminating recoveries for pain and suffering, *even if it reduced the cost of automobile insurance.* In the massive Michigan Law School survey of auto accident victims noted at footnote 1, some 76% of those interviewed believed tort recoveries should include damages for pain and suffering.

of commuter-driven cars which could and should be replaced by mass transportation. To shift a major portion of auto accident losses from auto insurance to outside benefit sources, as S-945 would do, is a step in the wrong direction which would tend to compound both the traffic congestion problem and the safety problem. We are certain that Secretary Volpe, who has major responsibilities in both the mass transportation and safety areas, had these considerations in mind when he gave support to the principle of primacy of auto insurance in any auto reparations reform programs developed.

FAIR ALLOCATION OF THE LOSS BURDEN WITHIN THE AUTO REPARATIONS SYSTEM

A closely related question is that of how the total loss burden within the auto reparations system should be distributed among the different classes of insureds and types of vehicles. One of the virtues of the present system is that, basically, those who present the greatest sources of hazard to others end up carrying the largest share of the total losses. We strongly believe this principle should be preserved.

Here again we find S-945 reversing long-standing rules, and decreeing that what has always been considered right is now wrong and what was wrong is now right. The innocent victim must insure himself against the losses negligently inflicted on him by the wrongdoer, and bear most of the additional insurance cost of that peril.

One area where this question is highlighted under S-945 is its attempt to deal with the fact that commercial and pub ic vehic es as a group present a greater third party liability hazard than private passenger vehicles.

S-945 tries to handle the problem by creating a concept of "larger than ordinary" vehicles and a formula approach by which DOT would assign ot those vehicles a percentage of the net economic losses sustained by occupants of other vehicles. This would mean that in individual cases large vehicles—which could include vehicles ranging in size from privately owned campers to double bottom trucks—would be paying part of the losses of others in accidents which were in no way the fault of the driver of the larger vehicle.

In short, this bill like all drastic no-fault measures will thrust loss burdens onto the shoulders of people who don't deserve to bear them. Once you depart from the principle that loss burdens should follow the pathways of fault, you do gross injustice to one group or another.

And once you start down that wrong road, how can you justify stopping with auto accidents? If the extrahazardous categories of motorists are now to be largely freed of their responsibility to their victims and the victims must bear that loss burden, consistency would dictate that surgeons be immunized from liability for negligence in the operating room, and that manufacturers of foods, drugs, automobiles and all other products be immunized from liability for defects causing harm to the consuming public.

Carried to its ultimate conclusion, this philospohy of no responsibility would require freeing industrial polluters of all responsibility to stop polluting, and "solve" that problem by forcing every citizen to buy himself a gas mask.

STATE, NOT FEDERAL, ACTION INDICATED

The final major objection—and perhaps the most basic—which we wish to interpose to S-945 is that adoption of a Federal auto accident reparations program is unnecessary and unwarranted, and would be contrary to the long-range interests of the American public. The proper situs for remedial action is at the state level.

Not only would this bill strip the states of jurisdiction over the whole field of law governing the rights and responsibilities of the public in motor vehicle accidents, but it would move the seat of regulation of our business from the state capitals to Washington, D.C.

As one example of the kind of "regulation" S-945 contemplates, it will force every auto insurer to accept and insure for life virtually any motorist who walks in the door, regardless of driving record and potential hazard. In reviewing applications, insurers will no longer be able to consider factors such as fraud, misrepresentation, illegal enterprises and activities, habitual drunkenness or dope addiction, or a long-standing record of accidents and convictions. A company apparently will just have to keep issuing lifetime policies to more and more applicants until and unless it can prove to a regulator that it is on

the verge of insolvency—which then may well be too late to take preventiv action.

This provision—so consumer-oriented at first glance but so serious in it implications—is an example of what can result from precipitate attempts t "cure" the intricate problems of insurance regulation or of auto accident repara tions nationally with one stroke of a pen. It can do irreparable damage to whole industry, and backfire against the long-range public interest as well.

It is perfectly true that mistakes sometimes occur in state legislatures, toc But when that happens it has a relatively limited geographical impact on th public and on the insurance business before it is corrected.

A complete, instantaneous upheaval of the existing reparations systems o 50 states as proposed in S-945 is an entirely different matter. Radical country wide experimentation of this kind would be at best a dangerous gamble wit the public interest—and all the worse because it is an *unnecessary* gamble.

There are some institutions and fields of activity or enterprise which by thei very nature must be regulated nationally. But the legal system governing th rights and responsibilities of persons involved in auto accidents is not one o them. Nor is the insurance operation serving that system.

No case has been made for Federal usurpation of this field.

It has been suggested that this step is necessary because motoring some times involves interstate travel.

If this reasoning were sound—and we submit that it is not—consistenc would require that it be applied to scores of other activities, institutions an fields which have every bit as much of an interstate flavor or impact a motoring:

> It would follow that because the graduates of local schools scatter t the four corners of the country to pursue a career the entire educationa system of this country should be federalized.
>
> It would follow that because citizens traveling from one state to anothe are subject to varying local criminal laws, the Congress should forthwit replace all those statutes with a rigid federal code.
>
> It would likewise follow that the Congress should take over and rigidl control under a federal master plan virtually every other local institutio business transaction, legal right of action, pursuit and activity one coul name, because *all* have interstate aspects or impact.

Another allegation made in support of federal action is that the states can not be depended upon to respond promptly and adequately to meet public need and wants. We've heard this suggestion many, many times before—in fact, i has accompanied every bid for federal invasion of state jurisdiction since thi nation's founding. If it had prevailed, all state and local government woul long ago have been swallowed up, and the daily lives of every citizen woul be regulated, lock, stock and barrel, from Washington.

The members of the state legislatures, are after all, elected by the sam people who elect the members of this Congress. I'm sure they would insis with justification, that they are every bit as close and well attuned to the need and wishes of their constituency.

The record will show that once a need for change has been clearly manifeste and opposing viewpoints fairly presented and debated, the state legislatures ar quite capable of moving forward with sound, progressive measures.

> Look at the record of the states in enacting legislation promoting uni versal availability of uninsured motorist coverage.
>
> Look at the record of the states in broadening coverages and liberalizin eligibility requirements for those in the assigned risk plans.
>
> Look at the record of the states in closing the gap on the insolvency problem.
>
> Look at the record of the states in the passage of competitive rating laws
>
> Look at the record of the states in enacting laws and regulations govern ing cancellations. As of this date, some 41 states have taken such action.

Where the auto reparations system is concerned, we would point out tha various proposals for reform—including our Dual Protection Plan—were intro duced in a majority of states this year. To suggest, as have some advocate of federal action, that because those states have not taken decisive action as o today they are "foot-dragging", seems to be an unfair and unjust accusatio After all, the U.S. Department of Transportation, under the direction of thi Congress, has been engaged in a massive two-year, $2,000,000 study of the prob lem, the final report of which was not made public until a scant seven weeks ag

One might ask: What was expected of the states—to jump the gun and revolutionize their liability systems by guessing at the unseen final findings and recommendations of DOT? And had the 50 states acted precipitately—or even if they now act precipitately—without carefully weighing the final DOT report, would not that $2,000,000 study have been a waste of time and money?

As acknowledged in the DOT report itself, there are many pivotal aspects of this problem which remain highly controversial if not imponderable.

The most basic is: How far and how fast does the public really want to go toward no-fault? The DOT itself, even after making its public attitude surveys, isn't certain. Other surveys, too, show that while the public obviously would welcome lower premiums, a majority also wants the party at fault to be held accountable, and they don't want to give up damages for pain and suffering, either.

How can we find the best measures for reconciling the many different public desires in this area—some of which seem rather inconsistent? Isn't the safest, most sensible approach to do as Secretary Volpe has urged—to go to the state level where the existing reparations systems operate—close to the problem and close to the people—to test our measures which seek a proper balance between the fault and no-fault concepts—and thereby to evolve on an orderly basis a system of sound, up-to-date state laws?

We submit that this is the best, and, in fact the only reasonable approach to so complex a problem.

One form of healthy experimentation is already going on in a majority of states, and it is our companies who are providing the leadership. An increasing number of companies are automatically including quick-pay protection covering basic medical expenses and wage loss with all their auto liability policies. Public reception of this voluntarily-expanded coverage has been excellent.

As an extension of this experimentation, NAII is actively promoting Dual Protection, calling for state legislative reform which strikes a reasonable balance between the many proposed solutions to this problem. We have already described the major features of that program, including the fact that it is designed to stabilize or reduce bodily injury insurance premiums.

Of course, the major opportunity for effecting auto insurance premium savings lies on the property loss side of the picture, where most of the money is now being expended. NAII and its companies have been devoting a great deal of effort and resources in research into the underlying causes of the spiral in collision and property damage losses and means of reversing that spiral. This subject is fully treated in our testimony on S-976, The Motor Vehicle Information and Cost Savings Act.

We have seen nothing to evidence a hue and cry by the public at large for adopting a compulsory federal no-fault program. In our opinion, the public *does* want improvement of the auto accident reparations process, but not at the price of sacrificing what is worthwhile in the existing system. The safest and surest way to determine precisely *what* form of reparations system best satisfies most people's needs is to do what has been done with success on so many occasions in the past—to use several states as laboratories to test out in the crucible of real-world experience some of the reasonable reform concepts being advanced. Our Association is committed to this approach, and we intend to work for timely action by the states to this end.

POSITION ON S-946

Just as we believe the states should be left with the task of improving the automobile accident reparations system, the NAII holds that implementation of group automobile insurance plans is a matter for individual state determination. We see no justifiable need for Federal interventions in this area, and thus we must oppose S-946.

The state regulatory climate already allows for innovative activity in this area. Half the states are experimenting by having approved several forms of group programs. In addition, six states in current legislative sessions have introduced bills authorizing such programs, and a number of other states have indicated no opposition, provided the programs comply with their respective state laws.

It is noteworthy, perhaps, that states which have approved programs of group auto insurance have nevertheless continued the retention of fictitious group laws or other laws designed to prevent the formation of fictitious groups for purposes of insurance. Through various tools at their disposal (e.g., rating laws, unfair trade practices acts, examination laws and other measures), the states are in

Mr. MERTZ. Well, maybe so or at least better than Ford. And it isn't going to be so much the distinction between Oldsmobile and Buick, as it will be between Chevrolet Impala and a Ford Galaxie. That is where they will do the advertising.

By the way I have in my briefcase and I will leave with you, an advertisement in a magazine that I clipped out just before coming here, in which an automobile manufacturer has already bragged about the fact that the rates on its car, which is in somewhat the sporty category, that this car gets standard insurance rating, and that is the headline in the ad "Our car has standard insurance rating."

Mr. SUTCLIFFE. So this is the reason you don't think it is necessary to provide any kind of touchstone cost information to the car purchaser at the time of purchase, that he will have already been given the information as to the insurance cost of that particular vehicle through the advertising media.

Mr. MERTZ. Yes. And let me make myself clear on what we were objecting to on that provision. As we read the provision, it seemed to require the dealers in effect to become insurance experts and provide a lot of detailed information about rates of different companies and rates of various cars. Perhaps that was not the intention of it.

Mr. SUTCLIFFE. Let me stop you there and perhaps explain that cost savings for the youthful driver may be much greater than for the average driver, middle-aged driver.

Therefore if the youthful driver had that information, it might profoundly affect his choice of vehicle. That is why we had some differentiation as to the age of the person. We weren't asking that they sit down with the rate book and figure out how much a particular person's insurance was costing. We were thinking of some kind of touchstone to get various degrees, so it would have the maximum impact on the consumer's buying.

Mr. MERTZ. Yes, and understand we don't mind the idea of that impact. We would like to see that impact felt. We think one of the major purposes of insurance rating according to design would be lost if the public didn't get the message. We sincerely think they will get the message through advertising. If it turns out they don't, we will be very amenable to working with anybody who wants to work on it to see that they do get that information.

Mr. SUTCLIFFE. Would you be adverse to the Secretary of Transportation or the FTC having authority to monitor closely the advertising practices of the companies in promoting their vehicles and their insurance rates?

Mr. MERTZ. This would be the automobile manufacturers?

Mr. SUTCLIFFE. Yes. That is one area you suggested. You said the manufacturers might tout their cars as having a certain degree of property damage susceptibility protection, and lower insurance rates. Some of our advertising messages right now get somewhat garbled in the transmission.

Mr. MERTZ. Yes. Of course I would gather right now—I have never thought it through, but I suppose any interstate advertising by auto manufacturers right now is probably subject to FTC jurisdiction insofar as anything deceptive.

What you are saying is maybe to create an affirmative duty on the part of the manufacturer to provide certain information? You are

not talking about deceptive advertising as much as making them come forward with advertising?

Mr. SUTCLIFFE. It was just a thought? It is not necessary for you to comment.

Mr. MERTZ. My reaction would be I would hope that wouldn't be done unless it was felt it was a last resort, I do think it would be a fair question to ask of the manufacturers when they testify, whether indeed they do intend voluntarily to make information of this type available to the public. I think that would throw a lot of insight into it. If I were in their position I think I would, especially if I got a good rating.

I suppose if I got a bad rating, my car was the worst on the list, I wouldn't be advertising that. But if the ones that get the good rating, the cars that get the good rating, mention this in their advertising, supply it to the dealers, the dealers post it on the walls in the showroom, "Our car got a high rating," that probably would create a desirable effect without having to have someone force a dealer who has a bad rating to disclose this to his customers. That is a little tough on him, to have to tell the customer he has a bad rating or to volunteer it to the customer.

But I will say that we would hope that the public is apprised of this. We have a feeling it will be. I know, for example, in Sweden that one auto manufacturer had a bad rating and reduced its parts prices something like 15 percent overnight in order to get his rating improved. I don't think in Sweden there is any requirement that the dealers have to give all of this information out. I think the word gets around.

I might say the experience on the muscle car situation indicates the word certainly gets around in a hurry. Those young drivers that want the muscle cars, it didn't take more than a week or two before they had the word that the muscle cars were getting rated up 50 percent. And that really hit the sales of muscle cars in a hurry.

Mr. SUTCLIFFE. In your statement, Mr. Mertz, you mention that there is an Achilles heel to the automobile insurance problem, that being property damage loss. Since the auto compensation system is a human system, I would suggest that there perhaps are more than one Achilles heel in the system, and for the record I would like to point out that the two-thirds premium collected for property damage and the one-third premium collected for personal injury, results from a rather marked disparity in the payment of the loss that occurs within the system.

For example, the car damage premium is $8 billion, the net benefits paid were $4.6 billion of the $8 billion in premiums, but the economic loss exceeded the payment by $1 billion. So we are compensating 83 percent of the property damage loss.

In the bodily injury area, it breaks down at $6 billion for premium collected; net benefits paid, $2.4 billion; compensable economic loss, $6.5 billion; for a 37 percent compensation on the basis of bodily injury.

So to state that the premium cost for insurance is two-thirds and one-third is an accurate statement, but in terms of our present compensation system, that ratio is because we pay much less, or are required to pay much less of the compensable loss as to bodily injury

than we are as to the vehicle itself. And this is what has prompted the statement that we are treating cars and the repair thereof much better than we are treating people and their repair.

Mr. MERTZ. First, in my remark about Achilles heel, I did say cost-wise. In other words, we are saying here is where we are suffering the staggering losses, whereas the bodily injury side, loss-wise, used to be considered the bad boy, but by comparison now we are not losing as much money on that as the damage side.

There is where the dollar outflow is going, even far more than in relation to the premium difference. Also we felt that probably the greatest opportunity for achieving reductions in premium costs, that is, trying to stabilize premiums and bring them down, the greater opportunity for doing it probably lies on the material damage side, for one thing because the losses are bigger, and because, perhaps, it will respond to some physical things like designing the car better, which is not going to make anybody mad. In other words, everybody benefits by that. There is no real controversy.

On the bodily injury side, we acknowledge that if you measure the cost efficiency of the system solely in terms of comparing the net dollars going into the claimants' pockets with the amount of premium that was paid into the other end, that the so-called cost benefit ratio is not as high as it is in the physical damage field, partly because, of course, physical damage has comprehensive and collision which pays off directly without intervention of a lawyer.

Now, although my statement didn't actually cover this, we would certainly agree that there should be, there needs to be a marked improvement in the cost efficiency on the bodily injury side.

We perhaps do not see eye to eye with some on the committee as to how harshly or how sympathetically you should judge the fault system. We think for one thing that to look at it solely from the standpoint of cost efficiency, that perhaps it should not only be looked at from that standpoint. But talking only about the cost efficiency, we are certainly dedicated to improvements of that, and without getting into the whole subject of Mr. Lemmon's paper, I would want to point out that the program we are espousing, the dual protection plan, which does not go as far as S. 945, the no-fault direction, but goes a substantial step in that direction, that program will greatly improve the cost benefit relationship, because roughly 90 percent, or more than 90 percent of the medical expenses and—let me put it this way: More than 90 percent of the cases, injury cases, involve medical expense and wage loss which falls within the first part of the coverage we would mandate through our program.

In other words, we would mandate on every policy enough medical, enough disability coverage, to take care of over 90 percent of the cases, accident cases. This means that those people would be getting that money immediately, on a no-fault basis, they wouldn't have to hire a lawyer to get it, they wouldn't have to go to court, file a suit or anything else.

Obviously if that took place, it would make quite a change in the cost benefit ratio. I can't say precisely how much.

Mr. SUTCLIFFE. With the Senator's permission, one of the written questions to Mr. Lemmon would have involved that exact cost data that he mentions.

Mr. MERTZ. I might say it will also cut down litigation.

I noticed in one of the DOT reports that they pointed out in cases where suits are filed—this is a different way of looking at it—in cases where suits are filed, that one-half of the recoveries are $3,000 or less. Our program, as far as the amount of first-party coverage we put in the policy, is going to go well above that. So it gives you an idea of how many of those law suits would be obviated under the program we are suggesting. Of course, our program then provides for automatic offer with right of rejection of a catastrophe economic loss coverage that would take those limits up to $100,000 per person per accident. So for all people who didn't reject that, you would again be provided with a great deal of immediate payment without having to hire a lawyer to get it.

Mr. SUTCLIFFE. On those first-party coverages, does that establish a level of tort exemption?

Mr. MERTZ. The person who is entitled to recover those benefits must set them off against any tort action he may bring.

Mr. SUTCLIFFE. What about if he is sued? If he is a defendant in an action?

Mr. MERTZ. If he is defendant?

Mr. SUTCLIFFE. Yes. And someone else has those first-party mandatory coverages?

Mr. MERTZ. The other person, that is any person who sues, any plaintiff, who is entitled to recover first-party benefits under the policy that we are talking about, whether he be the owner of the car, passenger in the car or pedestrian hit by the car, that person is entitled to those first-party benefits. He automatically would have to offset that amount of those benefits against any recovery he could make in a lawsuit against the third person.

In other words, let's say if his total economic loss fell within the limits of that mandatory coverage we prescribe of about $8,000 worth of first-party benefits that are mandatory, then he has no lawsuit left for economic loss.

Mr. SUTCLIFFE. His only recovery would be in the intangible loss area?

Mr. MERTZ. Right, and there we have a formula to apply to the less serious cases.

Mr. SUTCLIFFE. That is important, because in Mr. Lemmon's testimony it was unclear as to the exact relationship between the two.

Mr. MERTZ. We definitely would prevent duplicate recovery within the tort system.

Mr. SUTCLIFFE. We will explore that in questions submitted to you. One last question: You have supported S. 976 calling for Federal standards for property loss reduction.

There will be some that will argue that because the States are experimenting on a State-by-State basis with bumper legislation, that we should allow the State-by-State experimentation to proceed without establishing national standards. How would you respond to that?

Mr. MERTZ. Let me say first that I think the State bumper laws have provided, have served a worthwhile purpose. I think they have stimulated action on the part of the auto manufacturers and they have, I think, aided in highlighting this problem and focusing attention on bringing a solution to it.

It may seem to some people that it is uncharacteristic of our association to support anything Federal. I think some people probably prior to today would have thought we would automatically be against anything Federal. That is not the case.

Our position is that the regulations of a given activity or pursuit should be carried on by—in determining which level of government should do it, and I agree with Clay Johnson, we don't think there should be a dual regulation—we think it ought to be carried on by that level of government based on several factors.

No. 1, which government level is best suited. In the first place, is the activity something which can only be sensibly, logically, and reasonably regulated at one level or the other.

Let's take the characteristic of the basic design of an automobile. We are talking about basic design, because when you talk about putting a better bumper on the car you have to consider how you connect it with the frame and that may mean modifying the frame.

Actually in the DOT standard, they have a two and a half mile-an-hour rear capability, but in fact the bumper is not connected to the frame on some cars. It is just connected to the skin of the car. So to get beyond two and a half miles an hour in the rear they will probably have to connect the bumper to the frame, which we think would be a good idea.

Now, since regulation of bumpers inevitably leads to the regulation of the basic structure of the car, we feel there is no way you can design a car on a State-by-State basis. It has to be one car, and basically designed to be sold in all States.

Now, when you get to something like headlight requirements, you might be able to vary them from one State to another. The basic structure of the car, it is just by its nature has to be regulated we think on place, nationally.

No. 2, it requires an agency with a great deal of expertise, a great deal of resources, engineering know-how.

This is an expensive proposition and it probably exceeds the capability of any one State to do the right kind of job and match themselves with the expertise that exists in Detroit.

No. 3, the Federal Government has substantially occupied this field. DOT is regulating the safety characteristics of the cars. It would not make much sense to say DOT should regulate the safety characteristics and the other characteristics should be regulated on a State-by-State basis, because the two might be in conflict and throw the manufacturer into a dilemma.

No. 4, the States have never regulated in this area, I mean really regulated the design of a car.

So for all of these reasons, we think it is just common sense to do it this way. We think we could take the same arguments and say conversely, why we support State regulation of insurance. It has been at the State level, many people find fault with certain things that have been done, but it has been regulated there, we think quite effectively. We have never hesitated to criticize the States when they don't perform their functions properly.

But we do not think for example that insurance is something which has to be regulated nationally. Now, people have different views as to whether it would be better regulated nationally or locally. But i

isn't by its nature something that necessitates national regulation in our opinion.

Mr. SUTCLIFFE. Thank you very much.

If we have further questions, perhaps we could submit them.[1]

Mr. MERTZ. We would be very glad to answer them.

Senator HART. In thanking you, let me indicate that prior to the recess we estimated we would conclude by 5 o'clock and I know that Mr. Lemmon was perfectly willing to stay, but I realized also that we have airplane trouble on Friday night getting out of here, and I indicated to him we would place his statement in the record in full.

Incidentally, I should underscore the fact that he recommends or describes S. 945 and S. 946 as unnecessary and unwarranted, and we ought not to give them favorable consideration. We will put that statement in the record in full.

As I indicated to him, such questions as remain, which we think appropriate to ask him, we will write him and he can respond in writing.

And if there are additional questions of either of the two other witnesses, Mr. Mertz or Dr. Miller, we will do the same.

Thank you very much, gentlemen, for your patience.

Mr. MERTZ. Thank you for your patience, Senator, we appreciate it.

(The statements follow:)

STATEMENT OF VESTAL LEMMON, PRESIDENT,

NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

We appreciate the opportunity to appear before this Committee and testify concerning S-945, S-946 and SCR-23.

NAII is a voluntary national trade association of some 533 insurers[2] of all types, both stock and non-stock, whose membership provides a representative cross-section of the casualty and fire insurance business in America. Our companies range in size from the smallest one-state entrepreneurs to the very largest national writers; they reflect all forms of merchandising—independent agency, exclusive agency, and direct writer; and they include companies serving a general market and those specializing in serving particular consumer groups such as farmers, teachers, government employees, military personnel, and truckers.

The independent companies have long been recognized as the most competitive and progressive segment of the fire-casualty insurance business. They have originated by far most of the many policy coverage innovations and improvements in the past 25 years. Their aggressive price competition has saved the insuring public more than $10 billion in premiums in the last decade alone. Our companies have continued to expand the voluntary market availability of automobile insurance at a rate faster than the rate of increase in new vehicle registration, so that currently they are serving more than half the insured motorists in this country.

Our basic position on S-945 can be summed up as follows:

(1) We recognize that certain problems exist in the present system of dealing with the financial consequences of automobile accidents;

(2) Great progress has been made in recent years under this system in expanding insurance protection, through such innovations as automobile medical payments coverage (now carried by 85% of our policyholders), uninsured motorist coverage (carried by some 90% of our policyholders), and the advance payment technique in liability cases;

(3) The remaining problems can be alleviated at the state level by reasonable reform measures which further broaden the scope of protection and streamline the system while retaining its fundamental concept of personal accountability and vital rights of recovery;

[1] See p. 1187 for questions and answers.

[2] 354 members and 179 subscribers to our statistical services.

(4) Imposition of a federal no-fault system governing the automobile accident reparations problem is not necessary and would be contrary to the long-range public interest;

(5) We therefore respectfully urge that S-945 be not favorably considered by this Committee and the Congress.

SCOPE AND COMPLEXITY OF THE PROBLEM

Our Association welcomed the comprehensive DOT investigation of the automobile accident injury reparations system and we so testified during the hearings of your Committee in 1968 on the legislation authorizing that investigation. We recognized that an exploding vehicular population and spiraling medical and disability costs were imposing tremendous new strains on the liability system and the insurance system serving it. We noted that the system has been in a continual state of evolution since its origin, and anticipated that the DOT study might well point up the need for further improvements.

The results of that study, to which our companies and Association contributed a number of valuable inputs, suggests the following as the major areas of concern by DOT:

More widespread compensation of basic economic losses;
Meeting the special problem of the catastrophic loss;
Improved speed and efficiency;
Better distribution of loss dollars by size of claim;
Encouragement of rehabilitation;
Reducing court congestion.

NAII is dedicated to improvement of the system in all these areas, and is actively promoting state legislation aimed at that goal. Our proposals for reform are embodied in our Dual Protection Plan.

Dual Protection calls for inclusion in all private passenger liability policies of at least $8,000 of medical/disability coverage per person per accident ($2,000 medical/hospital/funeral; $6,000 income loss; $4,500 for loss of essential services by non-wage-earners[1]) payable regardless of fault, to the insured and family, guest passengers and pedestrians. Every insurer would also be required to offer optional catastrophe economic loss coverage to the insured and family to take over if and when the basic limits coverage just described is exhausted and pay medical/disability benefits (regardless of fault) up to a limit of at least $100,000 per person per accident.

Losses paid by the first-party insurer could be shifted to an at-fault third person or his insurer, thus preserving the important principle that those who present the greatest hazard to others should carry the largest share of the total loss.

Among its cost-reducing features the Plan (1) prevents duplicative recovery of economic losses under both the first-party coverage and the tort liability system (2) requires recognition in wage loss awards of the fact that no income tax is payable, and (3) prescribes prima facie standards for determining tort damage awards for pain and suffering in the less serious liability cases. The Plan also calls for mandatory arbitration of small claims, and for certain other steps to streamline and improve the system. We are furnishing more details concerning Dual Protection for this Committee's information.

Our program constitutes a major response to the criticisms highlighted by DOT and this Committee. Well over 90% of the medical/disability losses suffered in auto accidents fall below the minimum limits of basic economic loss automatically included in each policy under our Plan. Thus, the vast majority of accident victims will get instant payment of basic economic losses regardless of fault and without necessity of litigation. Those motorists and motoring families needing and desiring the optional catastrophe coverage of at least $100,000 per person would also be assured of it, and the premium cost involved would be nominal.

While our Plan will thereby deliver much broader benefits to more people more quickly—and with a substantial improvement in the operating efficiency of the system—it also preserves the vital principle of personal accountability for negligence, the equitable rule of loss-bearing based on fault, and the important right to recover tort damages for pain and suffering—subject only to prima facie standards in smaller cases. Costwise, the basic features of our program are intended to stabilize or reduce the premiums for the average motorist.

[1] Income loss coverage subject to a minimum limit of 85% of lost earnings or $750 per month; non-wage-earner coverage subject to a minimum limit of $12 per day.

As indicated by Secretary Volpe in his report and testimony to the Congress, the DOT study has pointed up the wisdom of exercising caution in deciding exactly what steps should be taken in the way of reform measures.

Even the massive data and findings piled up by DOT do not lead automatically to "easy solutions" of the auto accident compensation problem, according to Mr. Volpe.

"Much legitimate uncertainty" exists as to "how far and how fast the public wants or is willing to go in changing the reparations system".

The price and cost implications of any major change in the system are "unknown and essentially unknowable".

The complexity of the problem, and the existence of honest disagreement among informed people as to what remedial measures are best, point to the wisdom of healthy experimentation and change at the state level, rather than federal action abruptly over-turning the whole auto reparations system nationally.

We strongly concur with Secretary Volpe's admonitions on those points.

BASIC OBJECTIONS TO S-945

We submit that adoption by the Congress of S-945 would constitute a form of "over-kill" of problems which are capable of adequate solution at the state level within the framework of the present system.

The existing fault liability system governing auto accidents and most other forms of accidents rests on several basic principles that developed out of many centuries of hard-won experience by society. One is the principle of personal accountability—the duty of each citizen to use reasonable care not to injure his fellow man, and if he does wrongfully injure him, the responsibility to respond in damages. Liability insurance was created as a means of enabling a person to better meet that responsibility if it arises.

We ask: Has this long-recognized principle of human behavior now become unsound, or outdated, as applied to auto accidents? If so, upon what basis?

The only arguments we have ever heard advanced for abolition of this vital principle are based purely on expediency—the supposed need to eliminate at all cost the expense and the time factor involved in administration and enforcement of the principle.

We know this Committee will examine carefully the grave propensities of Congressional action abolishing this principle, as proposed in S-945. We believe it would constitute a serious blow to driver safety motivation and to traffic law enforcement for this Congress to enact measures which embody the principle that henceforth, except where they commit "catastrophic harm" some 100,000,000 American motorists are to be freed of all personal accountability to their injury victims for negligence on the streets and highways.

Such a move could easily be interpreted by the public as a declaration that it no longer really matters who is at fault in the great mass of auto accidents. If so, it could well lead to a deterioration of driver attitudes and weakening of police enforcement efforts, and to a tragic increase in deaths, injuries and property damage.[1]

---

[1] In "Automobile Accident Costs and Payments; Studies In The Economics Of Injury Reparations" (U. of Michigan Press, 1964) the report of the comprehensive study of automobile accidents in Michigan, at pp. 91–92, the value of the fault system in aiding in the traffic law enforcement function is recognized. It is there pointed out that: "Therefore, an innocent party to an accident has a private incentive to supply police with any information which would tend to throw fault upon other parties. In the absence of the tort claim incentive, many motorists might think it more sporting to have no memory of fault-implying aspects of the accident."

That report goes on to state the following conclusion:

"From these considerations, it appears that tort law probably furnishes important incentives to avoid involvement in accidents involving injury to others, and to avoid conduct which will be charged as negligent, even if it does not unfailingly punish the guilty and limit its reward to the completely innocent.

"None of the other reparations systems appears to furnish an equal incentive in this direction. Workmen's compensation doubtless furnishes an incentive to employers to minimize injuries to their own employees, but their incentive to minimize injuries to others *by* their employees must reside elsewhere. As for life insurance, social security, and public assistance, the effect of injuring another on one's own taxes or insurance premiums is infinitesimal.

"Therefore, any proposal to eliminate the tort remedy from any area of accidents would call for a close examination into the sufficiency of the other incentives to injury avoidance. At the same time, it cannot be said that minor changes in the tort pattern, by increasing or decreasing the damages, or by relaxing or tightening the negligence standards, are likely to affect significantly the pressure which the ordinary citizen presently feels to avoid injuring others."

These consequences would be most unfortunate, especially since extreme meas ures such as this are not in our opinion necessary. Those criticisms of the present system which have substance can be alleviated by state legislation which greatly increase the coverage, speed and efficiency of the system while preserving the vital concept of personal accountability.

PAIN AND SUFFERING

A second major respect in which S–945 constitutes an "over-kill" of the prob lem is its proposed abolition of all right of recovery of pain, suffering and othe general damages except where "catastrophic harm" has been inflicted.

Congressional action sweeping away this vital right of the American publi would fly squarely in the face of what several reliable indicators show to b the wishes of most of the people. A substantial majority if the public whe fairly polled on the subject have stated that they are not willing to give u their right of recovery for pain and suffering *even if it would reduce insuranc costs.*[1] This being so, even a larger majority in our opinion would oppose the los of that right under a program like S–945, which we believe can only increas insurance costs.

PRIMACY OF AUTO INSURANCE COVERAGE

Another highly important public policy concept which S–945 would abrogat is the principle that *motoring should pay its way* in our society. With mino exceptions the bill would make the prescribed auto insurance no-fault cove age secondary to all other sources of medical and wage loss benefits. The in jured party could not collect a penny from his auto insurance until and unle he had exhausted every bit of available benefits from empoyer sick leave an wage continuation plans, union benefit funds, Blue Cross, Blue Shield, group an individual accident and health coverages, Medicare and/or other social insu ance programs. Auto insurance would be permitted to be primary only if one those other plans, coverages or programs expressly chose to make it primary— a conjectural possibility, to say the least.

Making the auto coverage excess over collateral sources would create a hos of vexing practical problems including difficulties in ascertaining collateral bene fits in connection with rating and with claim investigation, with resulting dela and confusion. Most important of all, though, there are basic public policy re sons why the auto insurance system should be the primary source of recover for automobile inflicted injuries, as recommended by Secretary Volpe in his re port and testimony to the Congress.

Motoring serves a utilitarian function or a pleasure-producing function, o both, for those who engage in it. But it likewise saddles serious hazards an burdens on our society in the form of deaths, injuries, noise, traffic congestio air pollution, consumption of natural resources, and so on.

Sound public policy dictates that to the fullest extent possible those wh engage in an inherently dangerous, or usually burdensome pursuit should bea the full costs of that pursuit, including the costs of all attendant safeguards an measures necessary to minimize or ameliorate the damage it inflicts on other It would be unfair and unwise to shift the costs away from those who engag in the pursuit and thereby subsidize it.

[illegible] a sub-stantial part of th cost of auto accidents away from the activity of motoring and burying it in th cost of the auto insurance systems, the employer wage continuation program [illegible] It would be no more justifiable tha to insure [illegible] the responsibility for installing adequate po [illegible] and forcing the general public to pay the entire costs o [illegible] the consequences of that pollution.

[illegible] of a hazardous burden-producing pursuit like motorin [illegible] provides at least on [illegible] Cross over-use by som [illegible] serious problems in America—suc as [illegible] and arterial highways by the glu

[illegible] a large representative cross-sectio [illegible] both the attitude and the unde [illegible] damages for pain and suffering [illegible] the idea of eliminatin [illegible] of automobile insurance. In th [illegible] noted at footnote 1, som [illegible] should include damages for pain an suffering.

of commuter-driven cars which could and should be replaced by mass transportation. To shift a major portion of auto accident losses from auto insurance to outside benefit sources, as S-945 would do, is a step in the wrong direction which would tend to compound both the traffic congestion problem and the safety problem. We are certain that Secretary Volpe, who has major responsibilities in both the mass transportation and safety areas, had these considerations in mind when he gave support to the principle of primacy of auto insurance in any auto reparations reform programs developed.

FAIR ALLOCATION OF THE LOSS BURDEN WITHIN THE AUTO REPARATIONS SYSTEM

A closely related question is that of how the total loss burden within the auto reparations system should be distributed among the different classes of insureds and types of vehicles. One of the virtues of the present system is that, basically, those who present the greatest sources of hazard to others end up carrying the largest share of the total losses. We strongly believe this principle should be preserved.

Here again we find S-945 reversing long-standing rules, and decreeing that what has always been considered right is now wrong and what was wrong is now right. The innocent victim must insure himself against the losses negligently inflicted on him by the wrongdoer, and bear most of the additional insurance cost of that peril.

One area where this question is highlighted under S-945 is its attempt to deal with the fact that commercial and public vehicles as a group present a greater third party liability hazard than private passenger vehicles.

S-945 tries to handle the problem by creating a concept of "larger than ordinary" vehicles and a formula approach by which DOT would assign ot those vehicles a percentage of the net economic losses sustained by occupants of other vehicles. This would mean that in individual cases large vehicles—which could include vehicles ranging in size from privately owned campers to double bottom trucks—would be paying part of the losses of others in accidents which were in no way the fault of the driver of the larger vehicle.

In short, this bill like all drastic no-fault measures will thrust loss burdens onto the shoulders of people who don't deserve to bear them. Once you depart from the principle that loss burdens should follow the pathways of fault, you do gross injustice to one group or another.

And once you start down that wrong road, how can you justify stopping with auto accidents? If the extrahazardous categories of motorists are now to be largely freed of their responsibility to their victims and the victims must bear that loss burden, consistency would dictate that surgeons be immunized from liability for negligence in the operating room, and that manufacturers of foods, drugs, automobiles and all other products be immunized from liability for defects causing harm to the consuming public.

Carried to its ultimate conclusion, this philospohy of no responsibility would require freeing industrial polluters of all responsibility to stop polluting, and "solve" that problem by forcing every citizen to buy himself a gas mask.

STATE, NOT FEDERAL, ACTION INDICATED

The final major objection—and perhaps the most basic—which we wish to interpose to S-945 is that adoption of a Federal auto accident reparations program is unnecessary and unwarranted, and would be contrary to the long-range interests of the American public. The proper situs for remedial action is at the state level.

Not only would this bill strip the states of jurisdiction over the whole field of law governing the rights and responsibilities of the public in motor vehicle accidents, but it would move the seat of regulation of our business from the state capitals to Washington, D.C.

As one example of the kind of "regulation" S-945 contemplates, it will force every auto insurer to accept and insure for life virtually any motorist who walks in the door, regardless of driving record and potential hazard. In reviewing applications, insurers will no longer be able to consider factors such as fraud, misrepresentation, illegal enterprises and activities, habitual drunkenness or dope addiction, or a long-standing record of accidents and convictions. A company apparently will just have to keep issuing lifetime policies to more and more applicants until and unless it can prove to a regulator that it is on

the verge of insolvency—which then may well be too late to take preventive action.

This provision—so consumer-oriented at first glance but so serious in its implications—is an example of what can result from precipitate attempts to "cure" the intricate problems of insurance regulation or of auto accident reparations nationally with one stroke of a pen. It can do irreparable damage to a whole industry, and backfire against the long-range public interest as well.

It is perfectly true that mistakes sometimes occur in state legislatures, too But when that happens it has a relatively limited geographical impact on the public and on the insurance business before it is corrected.

A complete, instantaneous upheaval of the existing reparations systems of 50 states as proposed in S-945 is an entirely different matter. Radical country wide experimentation of this kind would be at best a dangerous gamble with the public interest—and all the worse because it is an *unnecessary* gamble.

There are some institutions and fields of activity or enterprise which by their very nature must be regulated nationally. But the legal system governing the rights and responsibilities of persons involved in auto accidents is not one of them. Nor is the insurance operation serving that system.

No case has been made for Federal usurpation of this field.

It has been suggested that this step is necessary because motoring sometimes involves interstate travel.

If this reasoning were sound—and we submit that it is not—consistency would require that it be applied to scores of other activities, institutions and fields which have every bit as much of an interstate flavor or impact as motoring:

> It would follow that because the graduates of local schools scatter to the four corners of the country to pursue a career the entire educational system of this country should be federalized.
>
> It would follow that because citizens traveling from one state to another are subject to varying local criminal laws, the Congress should forthwith replace all those statutes with a rigid federal code.
>
> It would likewise follow that the Congress should take over and rigidly control under a federal master plan virtually every other local institution business transaction, legal right of action, pursuit and activity one could name, because *all* have interstate aspects or impact.

Another allegation made in support of federal action is that the states cannot be depended upon to respond promptly and adequately to meet public needs and wants. We've heard this suggestion many, many times before—in fact, it has accompanied every bid for federal invasion of state jurisdiction since the nation's founding. If it had prevailed, all state and local government would long ago have been swallowed up, and the daily lives of every citizen would be regulated, lock, stock and barrel, from Washington.

The members of the state legislatures, are after all, elected by the same people who elect the members of this Congress. I'm sure they would insist with justification, that they are every bit as close and well attuned to the needs and wishes of their constituency.

The record will show that once a need for change has been clearly manifested and opposing viewpoints fairly presented and debated, the state legislatures are quite capable of moving forward with sound, progressive measures.

> Look at the record of the states in enacting legislation promoting universal availability of uninsured motorist coverage.
>
> Look at the record of the states in broadening coverages and liberalizing eligibility requirements for those in the assigned risk plans.
>
> Look at the record of the states in closing the gap on the insolvency problem.
>
> Look at the record of the states in the passage of competitive rating laws
>
> Look at the record of the states in enacting laws and regulations governing cancellations. As of this date, some 41 states have taken such action.

Where the auto reparations system is concerned, we would point out that various proposals for reform—including our Dual Protection Plan—were introduced in a majority of states this year. To suggest, as have some advocates of federal action, that because those states have not taken decisive action as of today they are "foot-dragging", seems to be an unfair and unjust accusation After all, the U.S. Department of Transportation, under the direction of the Congress, has been engaged in a massive two-year, $2,000,000 study of the problem, the final report of which was not made public until a scant seven weeks ag

One might ask: What was expected of the states—to jump the gun and revolutionize their liability systems by guessing at the unseen final findings and recommendations of DOT? And had the 50 states acted precipitately—or even if they now act precipitately—without carefully weighing the final DOT report, would not that $2,000,000 study have been a waste of time and money?

As acknowledged in the DOT report itself, there are many pivotal aspects of this problem which remain highly controversial if not imponderable.

The most basic is: How far and how fast does the public really want to go toward no-fault? The DOT itself, even after making its public attitude surveys, isn't certain. Other surveys, too, show that while the public obviously would welcome lower premiums, a majority also wants the party at fault to be held accountable, and they don't want to give up damages for pain and suffering, either.

How can we find the best measures for reconciling the many different public desires in this area—some of which seem rather inconsistent? Isn't the safest, most sensible approach to do as Secretary Volpe has urged—to go to the state level where the existing reparations systems operate—close to the problem and close to the people—to test our measures which seek a proper balance between the fault and no-fault concepts—and thereby to evolve on an orderly basis a system of sound, up-to-date state laws?

We submit that this is the best, and, in fact the only reasonable approach to so complex a problem.

One form of healthy experimentation is already going on in a majority of states, and it is our companies who are providing the leadership. An increasing number of companies are automatically including quick-pay protection covering basic medical expenses and wage loss with all their auto liability policies. Public reception of this voluntarily-expanded coverage has been excellent.

As an extension of this experimentation, NAII is actively promoting Dual Protection, calling for state legislative reform which strikes a reasonable balance between the many proposed solutions to this problem. We have already described the major features of that program, including the fact that it is designed to stabilize or reduce bodily injury insurance premiums.

Of course, the major opportunity for effecting auto insurance premium savings lies on the property loss side of the picture, where most of the money is now being expended. NAII and its companies have been devoting a great deal of effort and resources in research into the underlying causes of the spiral in collision and property damage losses and means of reversing that spiral. This subject is fully treated in our testimony on S-976, The Motor Vehicle Information and Cost Savings Act.

We have seen nothing to evidence a hue and cry by the public at large for adopting a compulsory federal no-fault program. In our opinion, the public *does* want improvement of the auto accident reparations process, but not at the price of sacrificing what is worthwhile in the existing system. The safest and surest way to determine precisely *what* form of reparations system best satisfies most people's needs is to do what has been done with success on so many occasions in the past—to use several states as laboratories to test out in the crucible of real-world experience some of the reasonable reform concepts being advanced. Our Association is committed to this approach, and we intend to work for timely action by the states to this end.

POSITION ON S-946

Just as we believe the states should be left with the task of improving the automobile accident reparations system, the NAII holds that implementation of group automobile insurance plans is a matter for individual state determination. We see no justifiable need for Federal interventions in this area, and thus we must oppose S-946.

The state regulatory climate already allows for innovative activity in this area. Half the states are experimenting by having approved several forms of group programs. In addition, six states in current legislative sessions have introduced bills authorizing such programs, and a number of other states have indicated no opposition, provided the programs comply with their respective state laws.

It is noteworthy, perhaps, that states which have approved programs of group auto insurance have nevertheless continued the retention of fictitious group laws or other laws designed to prevent the formation of fictitious groups for purposes of insurance. Through various tools at their disposal (e.g., rating laws, unfair trade practices acts, examination laws and other measures), the states are in

an eminently better position to determine whether groups of individuals are entitled to special insurance treatment.

Each state is familiar with its own problems in the areas of marketing availability of insurance, protection against unfair discrimination, the tailoring of programs to best meet the needs of the public at the local level, etc.

The states, moreover, are much better geared to see that the insurance market is not controlled by plans under which the giant companies could well run the smaller insurers out of business.

CONCLUSION

In view of the foregoing, we respectfully submit that S-945 and S-946 are unnecessary and unwarranted, and should not be favorably considered by the Congress.

We believe it would be against the long-range public interest for the Congress to take specific action either in the area of auto accident reparations or in the field of group automobile insurance merchandising.

Should the Congress elect to act, we urge that it not go beyond the broad approach embodied in SCR-23.

STATEMENT OF ARTHUR C. MERTZ, VICE PRESIDENT AND GENERAL COUNSEL, NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

We appreciate the opportunity to appear before this Committee today and testify concerning S-976, the Motor Vehicle Information and Cost Savings Act.

I am Arthur C. Mertz, Vice President and General Counsel of the National Association of Independent Insurers, a voluntary trade Association of 533 companies[1] of all sizes and types—stock and non-stock— which serve more than half the insured motorists in America. With me today is Dr. Patrick Miller of Cornell Aeronautical Laboratories, Inc., who will report on the status of research being conducted by CAL on our behalf which is pertinent to the legislation before you.

We appear today to give our support to S-976 in its basic objectives and provisions. Subject only to certain limited qualifications and affirmative suggests which I shall note in the course of this statement, we endorse these major features of the bill:

Clarification and broadening of DOT's authority to include promulgation of property loss reduction standards, including bumper standards.

Establishment of tests and procedures to produce comparative damageability data on production models of new cars, and furnishing of that data to DOT for dissemination to the public and the insurance business.

Determination by DOT of feasibility of similar procedure relative to vehicle safety testing and data reporting.

Broadening of DOT standards for state vehicle registration laws to include title provisions.

Establishment of further incentives for states to adopt and implement periodic vehicle inspection laws.

In regard to the provisions of S-976 which call for expansion of the state vehicle inspection systems to cover certain post-crash situations, we support the underlying safety objectives, but urge further research and experimentation before determining whether these should become part of the mandatory standards.

Our general endorsement of S-976 arises out of our profound concern over the rapid upsurge in auto material damage losses, which must be borne by the consumer in the form of higher insurance premiums. S-976, in calling for vehicle design and bumper improvements to minimize damage, should help make possible the ultimate stabilization or reduction of auto material damage insurance rates. As will be pointed out, NAII as an advisory organization is working diligently to develop means of evaluating the impact better bumpers and other design improvements will have on losses, so as to aid our companies in giving appropriate rate recognition to those improvements.

THE PROPERTY DAMAGE SPIRAL AND FACTORS UNDERLYING IT

As a backdrop to my comments on the specific provisions of S-976, it might be helpful to refer briefly to the worsening underwriting picture on automobile material damage coverages, and some of the factors behind it.

---

[1] 354 members and 179 statistical subscribers.

During the decade 1959–1969, the average property damage[1] loss incurred by all our companies on private passenger autos increased about 100%. In other words, the severity of property damage loss involved in the typical, everyday automobile crash, as measured by the size of the average PD claim, about *doubled*.

What is even more disturbing is the fact that the annual *rate* of increase in average loss severity has been rapidly accelerating: Of that aggregate 100% increase between 1959–1969, only 29% occurred in the first half of the decade (1959–1964) while 71% of it occurred in the latter half (1964–1969). Thus, the rate of increase more than doubled in the past 5 years. We believe these alarming trends in our companies' average losses are a fairly reliable indicator of trends for the whole industry.

Although premium levels have been raised from time to time, the loss spiral has outstripped them. This is evidenced by the fact that loss ratios—the ratios that losses incurred bear to premiums earned—have risen substantially during the same 10-year period.

Between 1959 and 1969, the average loss ratio on PD for all stock companies, reported in Best's Aggregates and Averages rose from 65.6 to 81.8—up almost 25%. Their average loss ratio on collision went from 60.2 to 75.9—up almost 26%. Notwithstanding more than a 10% reduction in the expense ratio for those lines during the same 10-year period, their combined losses and expenses in 1969 produced an 11.0% underwriting loss on PD and a 4.7% loss on collision coverage.

Meanwhile, all mutuals reported in Best's saw their average PD loss ratio go from 70.6 to 90.2—up almost 28%—and their collision loss ratio go from 57.8 to 87.6—up almost 52%. In spite of substantial reductions in their expense ratios (7% reduction for PD, and 8% for collision) during the same 10-year period, they suffered a 13.6% underwriting loss on PD and a 10.9% underwriting loss on collision in 1969.

Translating into dollars these percentage underwriting loss figures for 1969, we find that stock and mutual companies combined lost over $450,000,000 on auto property damage and collision coverages in that year. Adding the results from automobile, fire, theft and comprehensive insurance produced over *half a billion dollars* in aggregate losses on the auto material damage coverages. This compares with about a $150,000,000 loss on auto bodily injury liability coverage.

It is obvious which side of the auto insurance package now represents the major Achilles heel of our business, costwise. While total earned premium volume for material damage in 1969 was only about 20% greater than the premium volume for bodily injury, those material damage premiums produced well over *three times* the amount of losses!

What cost ingredients account for these staggering losses?

A year and a half ago, in testifying at the Senate Antitrust and Monopoly Subcommittee's hearings on the auto repair problem, we identified four major factors underlying the auto material damage spiral:

Speed, horsepower and "high performance" cars;

Increases in repair garage charges;

The spiral in automobile prices and prices of crash repair parts;

The extreme vulnerability of today's automobiles to costly damage even in low-speed accidents.

There has been some improvement in the first area since 1969. Largely because of the leadership shown by one of our member companies late in that year in instituting substantial but statistically-justified surcharges on "muscle" cars—followed by other companies—the harrowing horsepower race of two years ago was aborted, permanently, we hope. A valuable lesson learned from this experience was its demonstration of how effective the insurance rating mechanism can be in providing a disincentive for the design, promotion and use of vehicles proven to constitute an extraordinary hazard to the public.

REPAIRSHOP LABOR RATES

Repair garage charges for labor have continued to rise, as evidenced by Enclosure 1. In the decade 1960 to 1970 the average hourly rates in the 13 large cities covered by this exhibit increased about 90%. Of the greatest significance

[1] Property damage rather than collision coverage losses are used because the PD figures are in no way influenced by presence or absence of deductibles or by changes in the percentage of policies containing deductibles. However, average collision losses also increased greatly during the same decade, and the rate of increase accelerated in the last 5 years of that decade.

is the fact that *65%* of that overall increase occurred in the latter half of the decade and only *25%* in the first half.

PRICES FOR NEW CARS AND REPLACEMENTS PARTS

In our October 1969 testimony we showed that between 1965 and mid-1969, the new car list price on a Plymouth Fury increased 11% and that of a Chevrolet Impala and a Ford Galaxie rose 10%. Meanwhile, the list prices on the eight major components most commonly replaced in collision repairs rose 20%, 22½% and 36½%, respectively—two to 3½ times as fast as the new car prices. This disparity had special significance to our business because about 85% of our property damage/collision claim dollars go for *repairing* vehicles and only 15% in payment of "total losses".

Enclosure 2 brings those price trends forward from mid-1969 to April 1971. You will observe that during the past year and a half, the increases in list prices for these new cars and for their major crash replacement components bear a much closer relationship to each other than before. This tends toward a more consistent pricing pattern, but we now find that the prices both for new cars and for crash parts—each a major cost ingredient of our material damage insurance losses—are increasing at an accelerating rate.

Not only have the manufacturers' list prices for parts been climbing rapidly but the *effective* prices for those parts at the repairshop level have been going up even faster, due to the decline of real parts price competition at that level. The widespreal disappearance of repairship discounts on crash parts in recent years was disclosed by NAII in our Senate testimony in 1969, supplemented further by testimony of one of our members.

These revelations, we believe, played an important part in bringing about the pending Federal Trade Commission investigation into the whole crash-parts distribution and pricing system in America. We and our companies have been cooperating in that investigation, and earnestly hope that it will lead to remedial steps opening up the parts distribution system to effective competition and improved cost efficiency. Here, we believe, lies a fertile area for great potential savings to the consuming public.

In the meantime, the staff of our Association is maintaining a continued watchfulness over auto crash parts price trends. We feel we owe a duty to the policyholding public to do so. Our watchdogging in this area recently proved beneficial when we noted and brought about the correction of errors in several published parts manuals substantially overstating the prices of bumper face bars. Considering the vast number of replacement bumpers purchased by our business on behalf of our insureds, the savings to the consumer on this one item should be substantial.

Another avenue we are pursuing is a study of the feasibility of a crash repair research center for advancing the technology and improving the efficiency of the crash repair process in America. Recently, we sent a 4-man team to England and Sweden to examine the crash research facilities there. The favorable report they brought back has encouraged us to pursue this avenue further, and we hope soon to complete a more detailed study into the practicability of such a center in this country. I personally am of the belief that if properly conceived and operated, this sort of facility could prove highly beneficial not only to our business but to the auto manufacturers, the crash repairshops and the consumer as well.

IMPROVEMENT OF AUTO DESIGN

The most critical area, costwise, and the one on which we have focused primary attention, is auto design as it affects damageability. This is of course one of the prime subjects dealt with by S-976.

Our 1969 testimony before the Senate investigation of the auto repair problem was accompanied by a listing and analysis of many common design features which made modern-day cars unnecessarily vulnerable to damage and costly repair. We especially decried the utter lack of functional bumpers, and urged that if the manufacturers would equip cars with bumpers that could withstand everyday, low-speed traffic mishaps, the motoring public would reap immense savings. Subsequently, one of our large companies has announced and widely advertised its offer to give a substantial collision insurance premium discount on cars equipped with bumpers capable of withstanding a specified barrier crash front and rear, without damage. Other companies have followed suit.

Beginning during the same Senate hearings, our industry's safety arm, the Insurance Institute for Highway Safety, presented filmed reports of its low

speed crash tests, which dramatized the gravity and costliness of vehicle damage occurring in mere 5 and 10 MPH barrier crashes.

Those 1969 Senate auto repair hearings and the chain of ensuing events—including the issuance last month of DOT's first bumper standards—have signaled a major turning-point in the crusade for safer, saner cars. Damageability considerations generally, and bumper technology in particular, have now been thrust up to the forefront of attention by the auto manufacturers in their design planning. Indications are that the manufacturers are now devoting extensive research efforts to bumper technology and damage minimization, and we are encouraged by these efforts. Equally important, this issue has also been thrust up to the forefront of *public* attention, which should give encouragement to the manufacturers and to the government that the public is *ready* for safer, more practical car design features.

DOT PROPERTY LOSS REDUCTION AND BUMPER STANDARDS UNDER S-976

The initial bumper performance levels set by DOT—and specifically the 2½ MPH rear bumper requirements—have fallen short of what had been anticipated and hoped for. This standard is, as a first step, an improvement over the status quo, but progress certainly should not stop there.

One of the reasons cited by DOT for requiring only a 2½ MPH (barrier) rear bumper capability on 1973 model year automobiles is its conclusion that a 5 MPH capability "would involve extensive structural redesign without a commensurate increase in safety." These initial bumper standards are of course expressly keyed to *safety* considerations, since the Motor Vehicle Safety Act of 1966 does not expressly empower DOT to give weight to vehicle damageability factors. S-976 will close that gap in DOT's jurisdiction. We support such a move.

DOT having been charged with the duty of setting vehicle safety standards, the authority to give weight to damageability factors as well should follow as a natural corollary. An automobile is an integral piece of machinery. While safety considerations must always be paramount, as S-976 properly provides, major design changes should be viewed in the context of damage minimization as well. Both objectives are highly important from a public interest standpoint, and as Dr. Miller will point out, they are not basically incompatible. It is only logical that the same agency that regulates one essential aspect of auto design should regulate the other, as contemplated by S-976.

A subsidiary question presented by S-976 is whether it is desirable to spell out specific minimum bumper performance requirements in the statute itself, as the bill now does in paragraph 125(c) on page 5, or whether to leave such technical specifications for DOT to prescribe. We believe the wiser approach is to avoid statutory specifications and give DOT the responsibility for such determinations. The choice of the *best* bumper or other design standards, under all the circumstances, involves the interplay and balancing of a great number of factors including engineering, statistical and economic considerations. This determination we believe should be the function of an administrative agency like DOT. We would therefore suggest that paragraph 125(c) on page 5 of the bill be deleted and that paragraph 125(b) be broadened to make it clear that property loss reduction standards shall include bumper standards. We also suggest that it be spelled out that the Secretary shall not only "promulgate" but shall periodically revise and update all such standards, to make it clear that the overall objective is timely, progressive improvement of design—as expeditiously as is feasible in the light of the minimum lead times reasonably needed for the manufacturers to effectuate the changes.

VEHICLE-TESTING AND INFORMATION-REPORTING UNDER S-976

Section 5 of S-976 provides that by July 1, 1972 DOT shall promulgate procedures under which all manufacturers must test production models of new passegner motor vehicles for comparative susceptibility to damage in collisions at "normal" speeds. The feasibility of similar tests for determining the compartive risks of injuries and death is also to be determined by DOT.

Results of such tests must be reported to DOT. DOT is to make them available to the public and to auto insurance companies, and is ultimately to advise the Congress on the extent to which our industry is utilizing such information in the determination of premium rates.

We support these provisions of Section 127.

There is one provision of the same section, however, whose deletion we respectfully urge. It is paragraph (b)(3) on pages 8 and 9 of the bill, requiring

automobile dealers to provide compartive insurance cost information to prospec tive car buyers.

This requirement would in our opinion thrust an extremely difficult if no impossible burden and responsibility on auto dealers, most of whom are neithe equipped nor qualified to provide such detailed insurance information to th public. It would appear to require them to amass, interpret and keep currentl posted on an immense amount of complex, constantly changing rate data. Doin so without being licensed as an agent would also probably be in conflict with th insurance laws of each state.

No such provision as this is really necessary, in our judgment. We can safel assume that those manufacturers and dealers whose cars have a favorabl insurance standing will broadcast general information to that effect to the public without being forced by statute to do so. For details on the comparative rates o the various insurance companies and groups on the many different makes o cars, the car-buyer can and should turn to his agent or insurance company.

Subject to that one suggestion, we endorse section 127 of the bill. More tha that, I want to emphasize that NAII as a qualified rate advisory organization i preparing to be of aid in every way possible in enabling its companies to giv appropriate premium rate recognition to cars with improved bumpers and othe damage-reducing design changes—just as soon as they have credible data o which to base such action.

For some time now we have been studying ways and means of developing th kind of data the companies will need in order to classify and rate cars accordin to damageability. We recognized at the outset that, if possible, a method shoul be found to rate the new, improved car models *at the time* they initially ente the marketplace. That, of course, is the time when premium rate variations wil have their greatest significance to the buying public.

To this end, after preliminary consultation and exploration with Dr. Thoma Manos, Professor of Engineering at Detroit University, in mid-1970 we com missioned Cornell Aeronautical Laboratories, Inc., to conduct research on ou behalf into a subject of inquiry never previously probed: Can the analytica engineering process, or a combination of that process and a minimum amoun of crash testing, be a useful and valuable tool for predicting the damageabilit characteristics of different vehicles and design features?

The encouraging results of that research to date will be described by D Miller of CAL. As we indicated in our original announcement of that project it is our intention to make its work product available to the auto manufacturer to DOT, this Committee and other interested legislative and governmental bodie DOT has already made informal inquiries into the progress of this project. W would hope that when completed, the CAL research will prove of interest an value to DOT in conjunction with the new responsibilities it will be assigne under section 127 of S-976, relative to developing damageability testing pro cedures for production models of new cars.

It should be noted that use of these tools for advance projections of vehicl damageability characteristics will not obviate the desirability of also collectin appropriate experience data on the various vehicle makes and models once the are out on the highways. The latter will among other things provide a means o verifying and if necessary adjusting the advance projections as experience indi cates. This avenue is currently being explored by the major segments of ou industry.

STATE VEHICLE REGISTRATION, TITLING, AND INSPECTION REQUIREMENTS

Our final comments pertain to those provisions of S-976 dealing with th Federal standards for state vehicle registration and title laws, and for stat vehicle inspection programs.

We urge that paragraph (b) of section 501, on pages 15–16, be amended so as t provide that the Secretary of Transportation, in promulgating standards for stat registration and uniform certificate of tile programs, may consider the Unifor Vehicle Code and Model Traffic Ordinance provisions, but is not bound by them, a the bill now seems to require. We consider the Uniform Code and Model Ordinanc to be valuable tools in the field of traffic legislation. Nevertheless, we do n believe as a matter of policy that the work product of any private or semi-privat organization should by Federal statute be automatically mandated upon all th states as required legislation. The National Committee on Uniform Traffic Law any Ordinances is composed of individuals drawn both from governmental age cies and business and professional organizations, including our own Associatio While its work product certainly deserves consideration by DOT in connectio

with its standards for state vehicle and traffic legislation, it should have only advisory weight and not binding effect.

The remainder of Title V of S–976 would call for the broadening of existing standards for state vehicle inspection programs, and for the adoption of additional incentives to the states for adopting and further implementing such programs.

Let me first reiterate our long-standing support for any and all measures which can effectively operate to increase the level of safety of vehicles on our highways. For many years our Association and its companies have devoted a great deal of time and millions of dollars annually in the traffic and vehicle safety effort, both directly and through affiliated organizations such as the Insurance Institute For Highway Safety which derive major support from us.

As a corollary to this general position, I also want to make it clear that we fully share the desire of this Committee and the sponsors of S–976 to do everything reasonably possible to assure that vehicles sustaining collision damage involving safety-related parts do not go back on the highways in unsafe condition. Indeed, we would be very foolish to take any other position, because every unsafe vehicle on the highway presents not only a personal hazard but a potential insurance hazard.

We therefore wholeheartedly agree with the safety objective involved. The question is: How can that objective best be achieved? By a requirement that all vehicles involved in crashes where safety-related parts may be damaged undergo state-supervised inspection following repairs—proposed in S–976? Or by a requirement instead that the garage or body shop making the repairs certify as to the safety of those repairs? Or by some other means?

We do not know that answer to this question, nor have we found a clear-cut answer in any research study that has come to our attention.

The one study we have seen—the June 1969 Report by Southwest Research Institute—does demonstrate how latent damage to safety related parts can sometimes occur in collisions. It suggests that it would be desirable to have reinspection of vehicles following collision repairs. But it also indicates that to do so would require a more stringent procedure than is now used for periodic vehicle inspection. And, it proposes a certification procedure by repair shops in lieu of inspection where no periodic inspection requirements are in force.

Periodic motor vehicle inspection, although an important and laudable concept, has also proved one of the most complex and difficult in actual implementation. In some of the states that adopted such programs immediately after the Safety Acts of 1966 became operative, complaints and opposition over practical problems encountered have lead to introduction of legislation to repeal the inspection laws. Such repealers have generally been forestalled, but several programs were amended to limit the number of items required to be inspected.

In the light of these practical considerations, we would respectfully suggest that the bill authorize and direct DOT, before taking any action extending the vehicle inspection standard to cover the post-crash problem, to make an immediate and comprehensive study of that whole problem and the best means for alleviating or minimizing any safety-related hazards. This research should include evaluation of results in states that have tried the post-crash inspection procedure, and might also include DOT sponsorship of experimental pilot programs in one or a few states.

In essence, what we are suggesting is that this subject be treated in somewhat the same manner as paragraph (d) of section 125 of the bill treats the subject of testing procedures for manufacturers in determining the injury potential of various passenger vehicle models. The objective of each concept is sound, but in each case more hard facts are perhaps needed about the practical feasibility of various methods of accomplishing the objective, before a standard is decided upon.

CONCLUSION

In conclusion, we wish to commend this Committee and the sponsors of S–976 for having identified and highlighted what is by far today's most serious source of spiraling losses and rising auto insurance premiums and for having proposed legislation aimed at that problem. We believe enactment of S–976, with the modifications we have suggested, would serve the interests of the American consuming public. If your Committee should desire any further particulars as to any of the points we have raised, we will be glad to furnish them, and to cooperate in every other way possible.

Dr. Mill is with me, and with the Committee's permission we would now like to present his testimony.

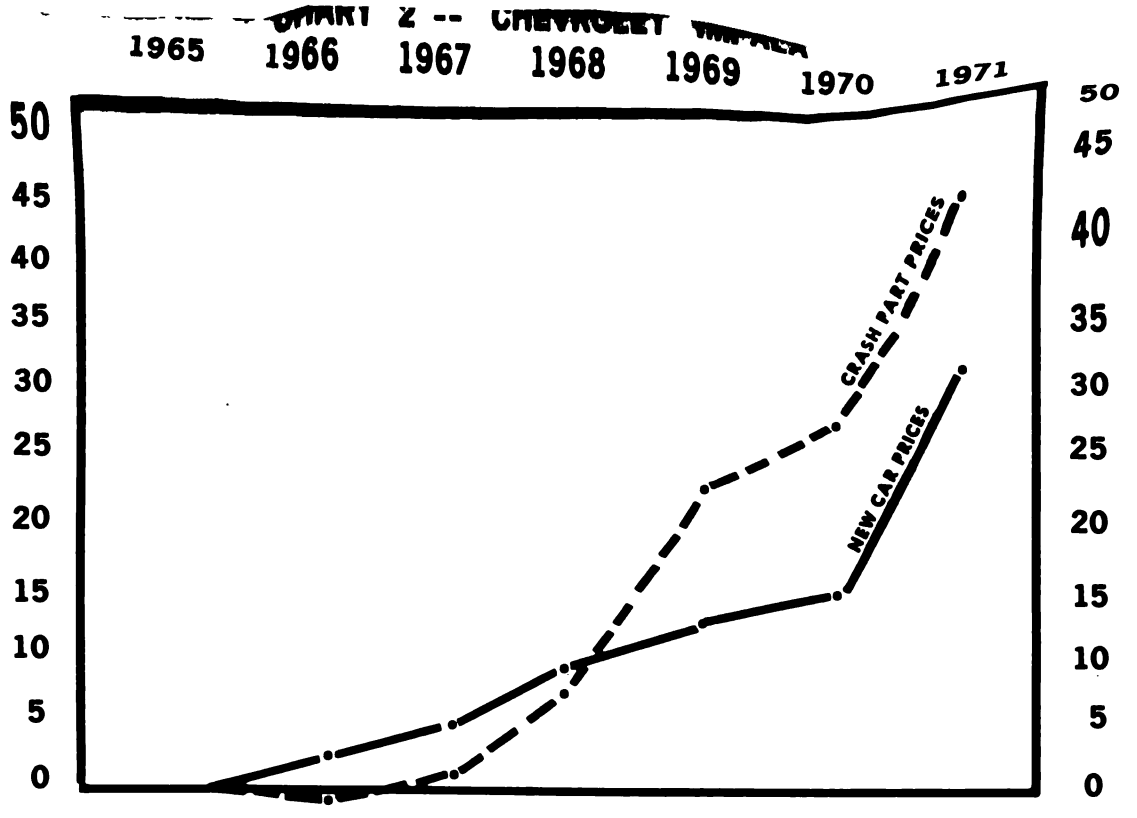
ENCLOSURE 1

Ranges of Prevailing Hourly Rates for Repairshop Labor

	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970
A	$3.25-4.20	$3.50-4.35	$3.50-4.45	$3.75-4.50	$4.00-4.55	$4.00-5.00	$4.00-6.00	$5.00-6.00	$6.00-8.00	$7.00-9.00	$8.50-10.00
B	4.00-4.50	4.00-4.50	4.50-5.00	4.50-5.00	5.00-5.50	5.00-6.00	5.50-6.00	6.00-6.50	6.00-8.50	7.00-8.50	7.50-9.00
C	4.50-5.00	4.50-5.00	4.50-5.50	5.00-5.50	5.00-6.00	5.00-6.00	5.50-6.50	6.00-6.50	6.50-7.00	6.50-8.00	7.00-8.00
D	3.50-5.00	3.50-5.00	4.00-5.00	4.00-5.00	4.50-5.00	5.00-6.00	5.50-6.00	5.50-6.00	6.00-7.00	6.50-8.00	8.00-9.00
E	3.75-4.00	3.75-4.00	4.00-4.50	4.50-5.00	4.50-5.50	5.00-6.00	5.50-6.00	6.00-6.50	6.00-7.00	6.00-7.00	6.00-7.00
F	4.50-5.00	4.50-5.00	4.50-5.00	5.00-5.50	5.00-5.50	5.50-6.00	6.00-6.50	6.00-6.50	6.50-7.00	6.50-7.00	6.50-7.50
G	4.50-5.00	4.50-5.00	4.75-5.00	5.00-5.50	5.00-5.50	5.50-6.00	6.00-6.50	6.50-7.00	6.50-7.50	8.00-11.50	8.50-11.50
H	4.50-5.00	4.50-5.00	5.00-5.50	5.00-6.00	5.00-6.00	5.00-6.50	6.50-7.00	7.50-8.00	8.00-9.00	8.00-12.50	8.50-12.50
I	4.50-5.00	4.50-5.00	5.00-5.50	5.00-5.50	5.00-5.50	5.00-6.00	5.75-6.00	6.00-6.50	6.00-7.00	6.50-7.50	7.00-8.50
J	4.50-5.00	4.50-5.00	5.00-5.50	5.00-6.00	5.00-7.00	5.50-7.00	5.50-8.00	5.50-8.00	5.50-9.00	7.50-9.00	7.50-10.00
K	4.50-5.00	4.50-5.00	4.50-5.00	4.75-5.00	4.75-5.00	5.50-6.00	5.50-6.00	6.00-6.25	6.50-7.00	6.50-7.00	7.00-7.50
L	7.00-8.50	7.00-9.00	7.50-9.50	8.00-10.00	8.00-10.50	8.50-11.00	9.00-11.50	10.00-12.00	10.75-13.00	11.50-13.00	13.00-14.00
M	5.00-6.00	5.00-6.00	6.00-6.50	6.00-6.50	6.00-7.50	6.00-8.00	7.00-8.50	8.00-9.00	9.50-10.00	10.00-12.00	12.00-14.00

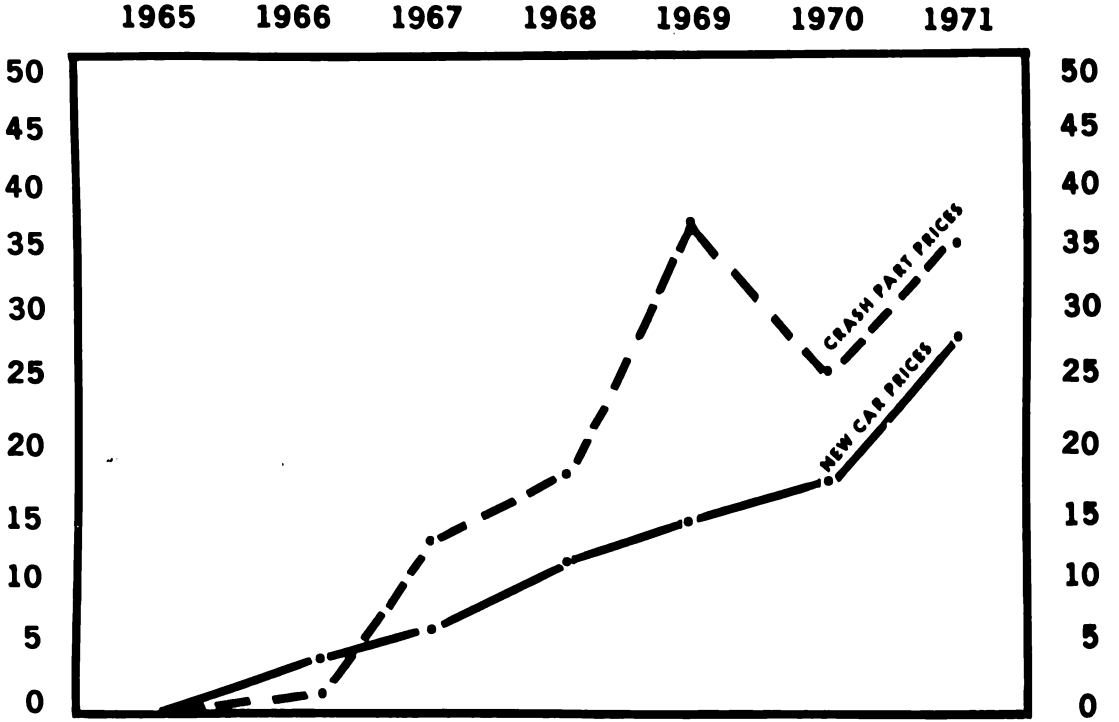
Letter Code:

A -- New York, New York
B -- Washington, D.C.
C -- Atlanta, Georgia
D -- Miami, Florida
H -- Detroit, Michigan
I -- Denver, Colorado
J -- Los Angeles, California
K -- Dallas, Texas



Percentage Increase in Prices

CHART 1 -- FORD GALAXIE 500



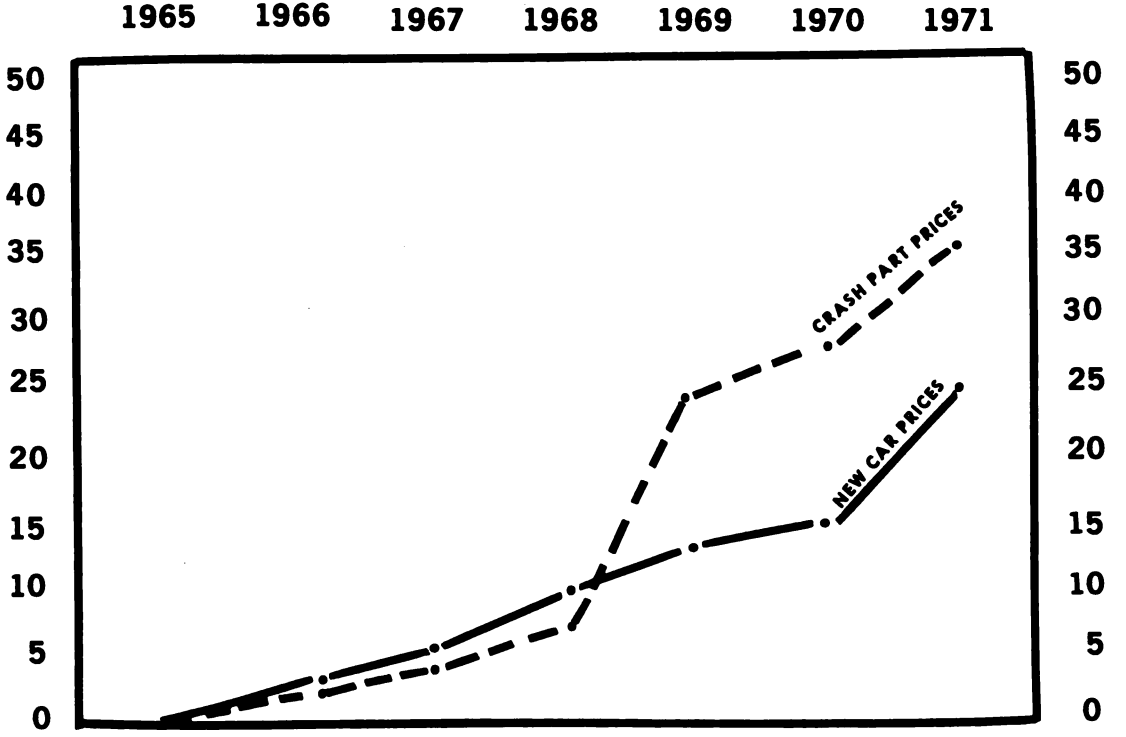
ENCLOSURE 2

Percentage Increases In New Car Prices And Prices of Eight Major Crash Repair Parts, 1965-1971

The Eight Crash Parts Are:

Fender	Deck Lid
Hood	Grille Body
Door	Bumper Face Bar
Quarter Panel	Windshield, Clear

CHART 3 -- PLYMOUTH FURY III



STATEMENT OF PATRICK M. MILLER, PH. D., HEAD, STRUCTURAL DYNAMICS SECTION, TRANSPORTATION RESEARCH DEPARTMENT, CORNELL AERONAUTICAL LABORATORY, INC., BUFFALO, N.Y.

I am here today to present information on the vehicle damage study at Cornell Aeronautical Labortory that is being sponsored by the National Association of Independent Insurers. In addition, I would like to make some comments concerning the relationship between designing structures for vehicle damage reduction and for passenger safety or protection.

Before proceeding with a discussion on the vehicle damage study, perhaps some background information would be helpful to the Committee. Cornell Aeronautical Laboratory is an independent, non-profit, scientific organization wholly owned by Cornell University. The Laboratory, as an independent research organization, has participated in various scientific investigations. One of the most notable activities has been in the area of automobile research where substantial contributions have been made during the past 20 years. With recent increased emphasis on automobile safety, research in this area has expanded dramatically during the past few years. Indeed, research directed toward providing occupant protection during automobile crashes constitutes the most significant and important efforts within the present automobile research projects. The U.S. Department of Transportation is the major sponsor for these projects which include, for example, studies related to automobile structural crashworthiness, underride guards for heavy vehicles, development and testing of inflatable occupant restraint systems, development of computer models for simulating both the automobile and its occupants during various crash situations, development of an accident reconstruction model, and the investigation and analysis of accidents in the Western New York area.

It was principally the automobile safety research efforts that provided the impetus for our becoming interested in the problem of automobile damage during low speed collisions. From a structural point of view, there is a close relationship between the structural requirements during low speed collisions and the structural performance needed to provide for occupant protection during the higher speed impacts. Indeed, if consideration is given simultaneously to both problems, structural requirements designed to reduce vehicle damage could result in corresponding improvements related to occupant protection.

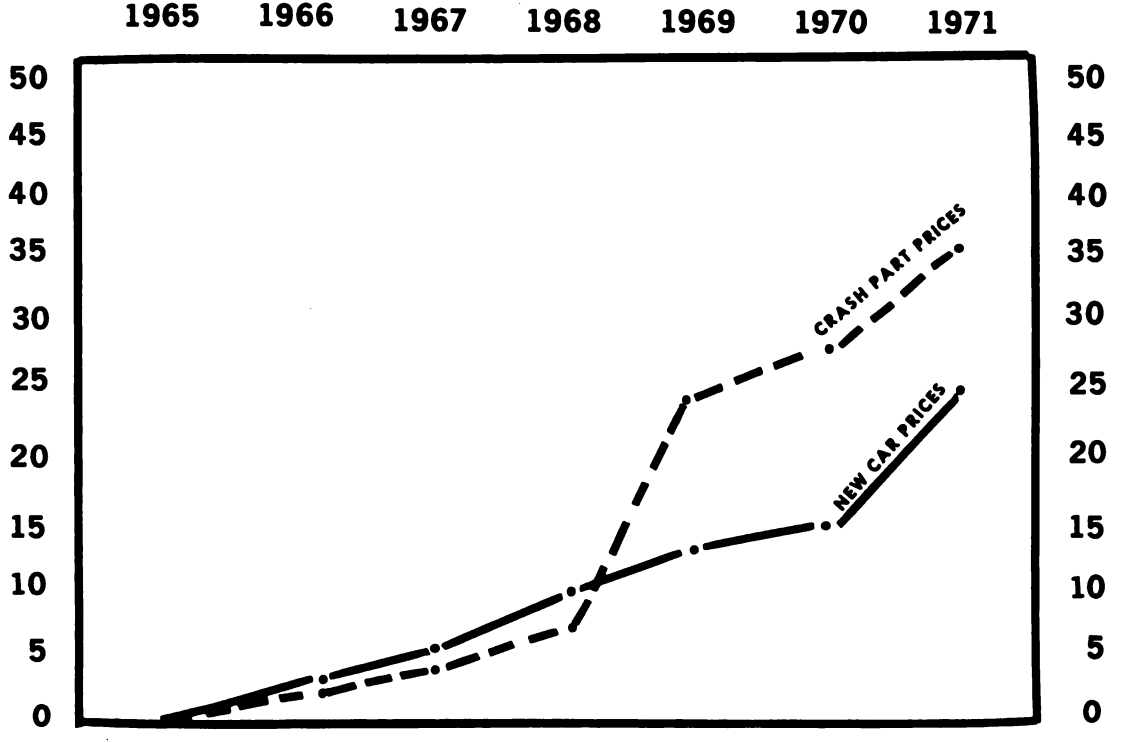
Dr. William Haddon, President ofthe Insurance Institute for Highway Safety, recently appeared before this Committee and referred to a statement of mine which essentially indicated that there is no apparent incompatibility between designing vehicle structures for occupant protection, while at the same time, providing for vehicle damage reduction during the low speed collisions. I would like to take this opportunity to reinforce this point but to present the arguments in a slightly different manner.

It is true that approximately 10 percent of the total number of accidents result in injury to automobile occupants. However, the greatest percentage of accidents occur under low speed impact conditions. It is my feeling that the low percentage of injury producing accidents results primarily from the low severity associated with a large number of accidents rather than from any optimum design on the part of the automobile structure. In fact, it is quite likely that the occupant response during low speed collisions is completely independent of the vehicle structural response.

Shown in the slide are the deceleration-displacement curves recorded in the passenger compartments of two 1970 Chevrolets while impacting a rigid pole barrier at speeds of 5 and 10 MPH, respectively. Flms for these crash tests will be shown later in the discussion. At Cornell, crash test vehicles may be impacted into either flat or pole barriers. We feel that the pole barrier, which produces a concentrated loading on the structure, is probably more representative of real world accident conditions. As shown in the slide, the average decelerations recorded during both tests, that is, at 5 and 10 MPH, were nominally near 2 g's. To put this in perspective, it should be recalled that we normally function in a 1 g deceleration environment.

The American 4000 lb. experimental safety vehicle, under development by the Department of Transportation, permits a 6 g deceleration response during collisions up to speeds of 10 MPH. Although the specifications have not yet been finalized, because of dimensional considerations, deceleration values up to 10 g's will most likely be permitted for low speed impact conditions with the proposed 2000 lb. experimental safety vehicle. I know of no individuals who have advanced technical arguments that take exception to either of these two limits that have been specified for these experimental safety vehicles.

CHART 3 -- PLYMOUTH FURY III



STATEMENT OF PATRICK M. MILLER, PH. D., HEAD, STRUCTURAL DYNAMICS SECTION, TRANSPORTATION RESEARCH DEPARTMENT, CORNELL AERONAUTICAL LABORATORY, INC., BUFFALO, N.Y.

I am here today to present information on the vehicle damage study at Cornell Aeronautical Labortory that is being sponsored by the National Association of Independent Insurers. In addition, I would like to make some comments concerning the relationship between designing structures for vehicle damage reduction and for passenger safety or protection.

Before proceeding with a discussion on the vehicle damage study, perhaps some background information would be helpful to the Committee. Cornell Aeronautical Laboratory is an independent, non-profit, scientific organization wholly owned by Cornell University. The Laboratory, as an independent research organization, has participated in various scientific investigations. One of the most notable activities has been in the area of automobile research where substantial contributions have been made during the past 20 years. With recent increased emphasis on automobile safety, research in this area has expanded dramatically during the past few years. Indeed, research directed toward providing occupant protection during automobile crashes constitutes the most significant and important efforts within the present automobile research projects. The U.S. Department of Transportation is the major sponsor for these projects which include, for example, studies related to automobile structural crashworthiness, underride guards for heavy vehicles, development and testing of inflatable occupant restraint systems, development of computer models for simulating both the automobile and its occupants during various crash situations, development of an accident reconstruction model, and the investigation and analysis of accidents in the Western New York area.

It was principally the automobile safety research efforts that provided the impetus for our becoming interested in the problem of automobile damage during low speed collisions. From a structural point of view, there is a close relationship between the structural requirements during low speed collisions and the structural performance needed to provide for occupant protection during the higher speed impacts. Indeed, if consideration is given simultaneously to both problems, structural requirements designed to reduce vehicle damage could result in corresponding improvements related to occupant protection.

Dr. William Haddon, President ofthe Insurance Institute for Highway Safety, recently appeared before this Committee and referred to a statement of mine which essentially indicated that there is no apparent incompatibility between designing vehicle structures for occupant protection, while at the same time, providing for vehicle damage reduction during the low speed collisions. I would like to take this opportunity to reinforce this point but to present the arguments in a slightly different manner.

It is true that approximately 10 percent of the total number of accidents result in injury to automobile occupants. However, the greatest percentage of accidents occur under low speed impact conditions. It is my feeling that the low percentage of injury producing accidents results primarily from the low severity associated with a large number of accidents rather than from any optimum design on the part of the automobile structure. In fact, it is quite likely that the occupant response during low speed collisions is completely independent of the vehicle structural response.

Shown in the slide are the deceleration-displacement curves recorded in the passenger compartments of two 1970 Chevrolets while impacting a rigid pole barrier at speeds of 5 and 10 MPH, respectively. Flms for these crash tests will be shown later in the discussion. At Cornell, crash test vehicles may be impacted into either flat or pole barriers. We feel that the pole barrier, which produces a concentrated loading on the structure, is probably more representative of real world accident conditions. As shown in the slide, the average decelerations recorded during both tests, that is, at 5 and 10 MPH, were nominally near 2 g's. To put this in perspective, it should be recalled that we normally function in a 1 g deceleration environment.

The American 4000 lb. experimental safety vehicle, under development by the Department of Transportation, permits a 6 g deceleration response during collisions up to speeds of 10 MPH. Although the specifications have not yet been finalized, because of dimensional considerations, deceleration values up to 10 g's will most likely be permitted for low speed impact conditions with the proposed 2000 lb. experimental safety vehicle. I know of no individuals who have advanced technical arguments that take exception to either of these two limits that have been specified for these experimental safety vehicles.

Incidentally, present vehicles when impacting flat barriers exhibit decelera tion responses nominally near 6 g's during 5 MPH collisions. The higher decelera tion loads result for the flat barrier test condition because all of the fronta sheet metal is contacted and crushed during collision.

Shown in the slide is the relationship that different values of a uniform deceleration will have on the collapse distance required for energy absorption As shown, a uniform 2 g deceleration results in 5 inches of total collapse a 5 MPH and 20 inches of collapse at 10 MPH. On the other hand, the 6 g limit shown for the experimental safety vehicle would result in 1⅔ inches of collaps at 5 MPH and 6⅔ inches of collapse at 10 MPH. The advantages of the highe deceleration limits are readily apparent in terms of reducing vehicle damag because the bumper could be placed a reasonable distance away from the bod sheet metal.

The relationship between vehicle crush or collapse and occupant respons has been considered by many investigators. It has been well documented that un restrained occupants can benefit from crush properties of the structure only i they are located sufficiently close to the vehicle interior that they will contac the interior before the vehicle motion has stopped. This phenomenon where th occupant contacts the interior during the structural collapse is called ride down If ride down does not occur, unrestrained occupants will contact the vehicl interior with a velocity essentially equal to the impact velocity of the vehicle D. E. Martin and C. K. Kroell of the General Motors Research Laboratories in 1967 SAE paper (No. 670034) considered this problem and concluded that th occupant spacing from the interior must not be greater than one-half of the tota vehicle crush before any benefits from ride down can occur. Thus, for the 197 Chevrolet tests illustrated earlier, ride down could benefit the occupants only i they were spaced not more than 2½ inches behind the instrument panel durin the 5 MPH collision and not more than 9 inches during the 10 MPH collision Since these limits are not realistic in terms of vehicle interior design, it is ex tremely doubtful that the vehicle crush characteristics have any effect on th injury potential of unrestrained occupants during the low speed impacts.

The low speed collision situation is probably not much different with restraine occupants. All restraint systems have some slack, or lost motion, and a certai minimum velocity change will be required before the slack is taken out of th system and loading is produced on the occupant. Occupant velocity change relative to the inside of the passenger compartment of approximately 5 MP are required to remove the slack from such systems. Thus, it is even doubtfu that restrained occupants can realize any benefits from the structural propertie during these low speed collisions.

The advantages of the higher deceleration limits as they affect the potentia for occupant protection at higher impact velocities are somewhat more subtle The structural problem related to providing occupant protection is concerne with absorbing the vehicular kinetic energy associated with impact speeds usuall much higher than 10 MPH. The kinetic energy of a vehicle increases as a squar of its velocity. For example, the kinetic energy of a vehicle in a 40 MPH colli sion is 16 times greater than that of a 10 MPH collision. Now, if we give u 20 inches of vehicular collapse distance to absorb 1/16 of the energy, that is, th kinetic energy equivalent to a 10 MPH collision, then 15/16 of the kinetic energ must be absorbed in the remaining distance between the occupant and the im pacted obstacle. This means that in the velocity range where injuries normall occur, either higher severely decelerations must be imposed on the passenge compartment or serious intrusion into the passenger compartment will tak place. Consequently, a 6 g rather than a 2 g deceleration response means tha the difference between 20 inches and 7 inches, or slightly over one foot is mad available for energy absorption during higher speed, injury producing accident It is within this latter context that I see the two problems directly related an strongly feel that an increase in the strength requirements to alleviate the vehicl damage problem would also result in a corresponding improvement for restraine occupants during higher speed impacts. Therefore, what is needed for reduction in both property damage and occupant injuries are automobiles that have in creased strength in the forward part of the structure.

Now I would like to present some information on the National Association o Independent Insurance (NAII) vehicle damage analysis project. The objectiv for this study is to determine the feasibility of using mathematical analysis a a tool in determining the damage susceptibility of automobiles. The fact that thi is a feasibility study should be emphasized.

Last spring, NAII contacted Cornell Aeronautical Laboratory concerning the possibility of implementing a vehicle damage study. Their purpose was to determine what approaches might be employed if one was to evaluate the damage susceptibility of a wide range of vehicles under a number of different impact conditions. One approach, quite obviously, would be to purchase a large number of vehicles and then subject each vehicle model to the various test conditions. When all possible test conditions are considered, it soon becomes apparent that this approach—if continued year after year with all classes of vehicles—would be an extremely time consuming and expensive proposition.

A possible alternative approach would be to develop an analytical model that could be used in conjunction with limited experimental testing to eventually accomplish the same general objective. It should be noted that the intent in developing such an analytical model was not to replace the need for conducting controlled tests, but rather to greatly limit the number of vehicle tests that would be required.

Another benefit of such a model would be that it could identify the contributions that various vehicle components might make in terms of reducing vehicle damage. For example, the effect of changing the structural properties of the bumper could be quickly evaluated by a computer run without resorting to the fabrication of a vehicle and subsequent testing. Likewise, the effects of structural changes for other components could be quickly and economically investigated through such computer runs.

For this feasibility study, specific impact conditions were chosen, that is, 5 and 10 MPH impacts into a rigid pole. The investigation was limited to the front and rear structures of a 1970 full size Chevrolet. The pole impact condition rather than impact into a flat barrier was selected for two reasons:

(1) The pole produces a concentrated load and, consequently, a more severe loading condition on the structure and;

(2) This test condition is believed to be somewhat more representative of real world conditions. It is indeed unlikely that cars will impact flat surfaces where the loads are uniformly distributed over the front or rear of the vehicle.

Of course, if this initial investigation was successful, the same techniques could be generalized to include other vehicles and different impact conditions at some later date.

For this study, a rather simplified mathematical theory was used to analyze the vehicle structure. It was felt that if this approach was not satisfactory, a more sophisticated or comprehensive theory could be employed at a later time.

A computer model was developed for the front structure. This computer program considers the basic vehicle components that are shown schematically in the slide. Illustrated are the hood, fenders, radiator and hood latch bracket and the front bumper. In the computer program, a distinction is made between the hood latch bracket and the fenders-radiator structure. In addition, with the Chevrolet, the bumper is divided into upper and lower sections and this feature is considered in the computer program. Also shown schematically on this slide are arrows indicating the direction and position of the forces that would be imposed by the pole onto these structural components.

Precise measurements were made on the vehicle structure. These data provide the input for the computer program. The program essentially solves mathematical equations for each of these idealized structural components. The solution to the mathematical equation is the force-deflection characteristics for the various components. These characteristics are shown in the slide. Also shown is the sum of these forces which represents the expected overall structural characteristic of the vehicle. The area under this total force curve represents the energy that the structure will absorb for a given collapse distance.

We know that for 5 MPH, the vehicle structure must absorb about 3000 ft.-lbs. of kinetic energy while at 10 MPH the structure must absorb about 12,000 ft.-lbs. Areas which represent the equivalent of these respective energies are mapped out on the slide. At the bottom of the slides, collapse distances of 5 inches and 14 inches are indicated for the 5 and 10 MPH collisions, respectively.

A similar computer program was developed for the rear structure of the vehicle. Both programs were exercised to determine the degree to which the vehicle would deform for 5 and 10 MPH impacts with a rigid pole. The output of the program is the force deflection properties of the structure and the degree of external vehicle collapse.

Controlled tests to validate these computer simulations were conducted. Now we will show some of the film taken from these test results. It should be noted that the only purpose of these tests was to validate the mathematical model.

The first scene is a real time view of the vehicle impacting the pole barrier at 5 MPH. Incidentally, a 5 MPH speed is equivalent to a normal jogging speed. The vehicle was operating under its own power during all of the tests. This scene is followed by a high speed photographic view taken from an angle of 45 degrees in front of the vehicle. For this test condition, the pole penetrated 5 inches into the vehicle structure. This value is the same as that predicted by the computer program. This view shows the structural collapse from underneath the vehicle and here we see the damaged vehicle after the 5 MPH collision.

The same vehicle was impacted at 5 MPH backwards into the pole barrier. This collision resulted in 5 inches of structural collapse which is the same as that predicted by the computer model. Shown in this scene is the vehicle after the 5 MPH rear collision.

An identical vehicle was then subjected to 10 MPH front and rear tests. Although I am showing the frontal impact test first, actually the rear collision was performed prior to the frontal collision. The reason for this is apparent when we see that the radiator was severely damaged in this test. This is a frontal view taken at a 45 degree angle, which shows the severe collapse of the structure. The underneath view dramatically shows the collapse of the radiator support structure. About 17 inches of exterior deformation was measured after the test. This compares with a value of 14 inches that was predicted by the computer model.

This sequence shows the 10 MPH rear impact. The underneath view shows that substantial deformation of the fuel tank took place. The tank was loaded with a fluid that demonstrates some of the characteristics of gasoline. It should be noted that even though the tank was severely deformed, no leakage of fluid occurred.

We have summarized on a slide the comparisons between the predicted values for exterior deformations and the exact values determined as a result of the four tests. It is worth noting that the analytical predictions were reasonably correct for the 5 MPH impacts. However, for the 10 MPH cases, they tended to predict values for the deformation that were somewhat lower than that recorded in the tests. These results for the 10 MPH collision were further investigated after the tests. As a result of this investigation, the modeling of the hood and radiator support structure has been refined. Similar refinements were also made for the trunk region of the rear structure.

We are now in the process of checking the validity of the refined program. For this purpose, a 1969 Ford has been purchased. A Ford was selected for these tests because it represents a structure that is quite different from that of the Chevrolet. Measurements have been made and the input data are being prepared for the computer. It is expected that the computer analysis will be completed before the end of the month. At that time, we will conduct 10 MPH front and rear tests on the 1969 Ford. These results will be compared to those predicted by the computer.

At the present stage of the study, our tentative conclusions are:

(1) Within the scope of this program, the feasibility of predicting vehicle damage has been established. That is, the present model is highly accurate at 5 MPH and is expected to be refined to be accurate for the 10 MPH collisions. When this latter phase is completed, a valid model will be available for this type of impact condition.

(2) An attempt should be made to generalize these limited results to other situations, that is, to consider different impact conditions and different types of vehicle designs. The result of this generalization would be a computer program that would allow various potential users the flexibility to quickly and economically analyze various vehicle damage situations.

At this point, I would like to briefly summarize how such a generalized analytical model could be used as a tool in evaluating the low speed structural performance of automobiles. An important application for this model would be in reducing the number of full scale tests required. For example, a vehicle might be impact tested at 10 MPH and mathematical analysis used to determine how the vehicle would perform at other impact velocities. Furthermore, usually only minor structural differences are evident between many of the automobiles produced by the same manufacturer. The mathematical model could be used to determine the effects that these small differences would have on performance without requiring full scale tests of all vehicles produced by a single manufacturer.

We plan to issue a final report covering the project early this summer. Copies will be available from either the National Association of Independent Insurers or Cornell Aeronautical Laboratory. Upon request, copies will be furnished to Congress, automobile manufacturers, governmental agencies and other interested parties.

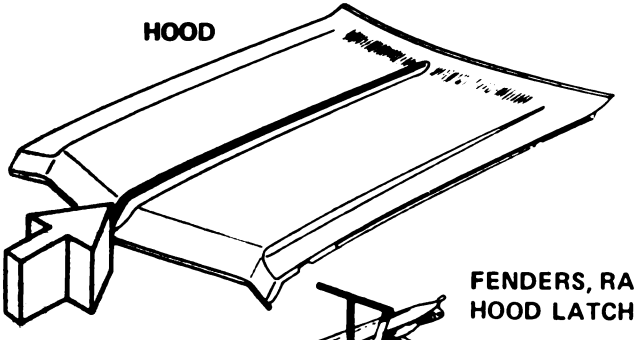
COLLAPSE DISTANCE (IN INCHES) REQUIRED FOR DIFFERENT UNIFORM DECELERATION LEVELS

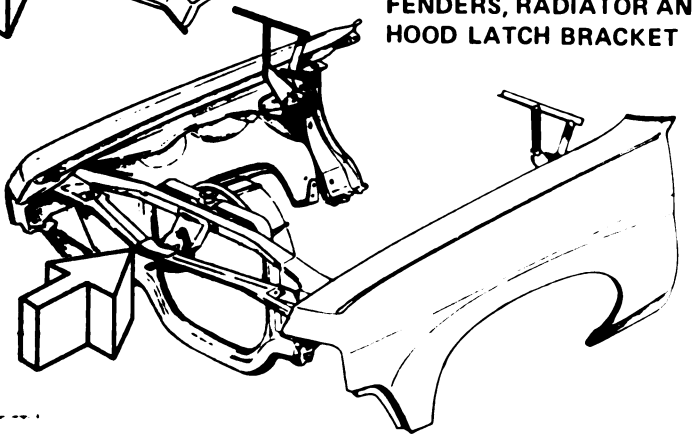
IMPACT SPEED	DECELERATION LEVEL		
	2 g	6 g*	10 g**
5 MPH	5 in.	1 2/3 in.	1 in.
10 MPH	20 in.	6 2/3 in.	4 in.

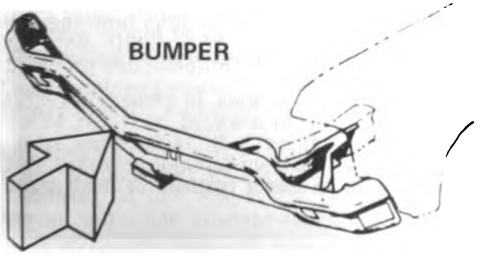
*LIMIT FOR 4000 lb. ESV

**LIMIT PROPOSED FOR 2000 lb. ESV

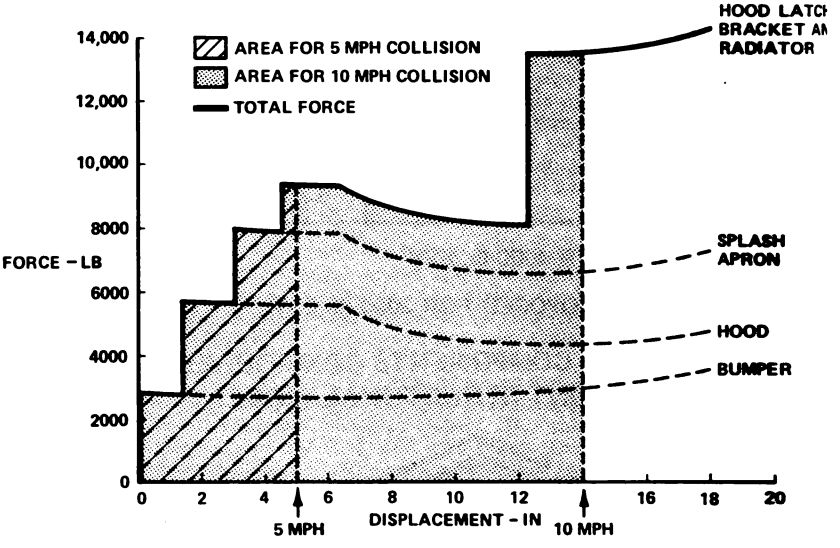
VEHICLE COMPONENTS CONSIDERED IN FRONT STRUCTURAL MODEL







FORCE-DEFLECTION CHARACTERISTICS FOR FRONTAL COLLISIONS



COMPARISON BETWEEN PREDICTED AND MEASURED DEFORMATION

COLLISION	PREDICTED DEFORMATION (IN)	MEASURED DEFORMATION (IN)
5 MPH FRONT	5.8	5.0
5 MPH REAR	4.5	4.2
10 MPH FRONT	14.0	17.5
10 MPH REAR	10.5	16.0

(The questions and answers referred to on p. 1163 follow:)

NATIONAL ASSOCIATION OF INDEPENDENT INSURERS,
Chicago, Ill., July 23, 1971.

Hon. PHILIP A. HART,
U.S. Senate,
Committee on Commerce,
Washington, D.C.

Dear SENATOR HART: Attached is our response to your questions based on the testimony presented to the Senate Commerce Committee.

We hope these answers enable you to clarify the record and better understand NAII's Dual Protection Plan.

Many of the judgments and opinions needed to respond to your inquiry will now be verified or disproved in the real world market place. We are pleased to note that Illinois has adopted a program which is consistent with the major provisions of Dual Protection. Such experimentation is, in our judgment, in the best interest of the insuring public.

Sincerely,

VESTAL LEMMON, *President.*

Enclosure.

RESPONSE TO SENATOR PHILIP A. HART'S INQUIRY ON NAII'S TESTIMONY

1. In describing the Dual Protection Plan, you state that "cost-wise, the basic features of our program are intended to stabilize or reduce the premiums for the average motorist."

(a) Does your plan preserve tort liability?

Answer. NAII's Dual Protection Plan does preserve an individual's vital rights under the existing tort liability system.

(b) In a successful suit by plaintiff are the first party coverages paid by the plaintiff's insurer set off against the judgment against the defendant, and/or is the successful plaintiff's insurer subrogated to the rights of the plaintiff to the extent it has paid first party benefits?

Answer. Under NAII's Dual Protection Plan, the insurance company issuing the basic automatic-pay coverage immediately pays the injured party (named insured, family member, guest passenger or pedestrian) medical and disability benefits as set forth in the contract, regardless of fault. The insurer paying these benefits is entitled to reimbursement from a legally liable third party. Reimbursement will occur, either by (1) mandatory intercompany arbitration in all cases in which the tort defendant is insured by a company licensed in the enacting state, or (2) by the subrogation procedure in other cases.

The Plan does not make any specific provisions either requiring or preventing subrogation under the optional Catastrophe Loss Coverage. This is left to the individual insurance company to decide whether to provide for a right of subrogation, subject to the laws of the particular state.

The Plan thereby retains the means and opportunity to allocate the costs of insurance in relation to the variations in hazards among different risks, individually or by class grouping, and retain equitable distribution of insurance premium costs among risks. This preserves the basic concept that motoring should pay its own way, and that those who represent the greatest hazard should bear the largest share of the total premium burden.

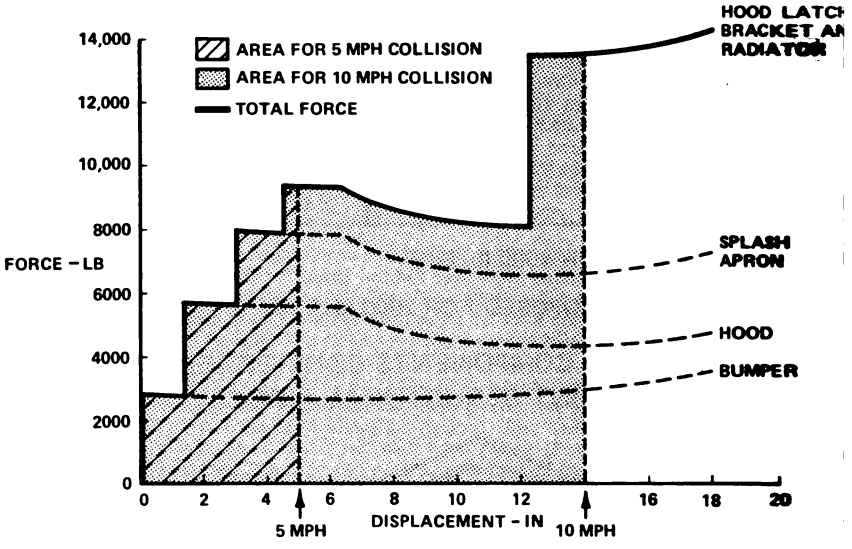
(c) What are the limitations on intangible loss recoveries under your Dual Protection proposal?

Answer. One of the cost savings and stabilizing features of our program is the standard for pain and suffering awards in the less serious cases. The Plan proposes that such standard apply to certain cases where liability claims are lodged or suits filed against motorists who are covered by liability insurance policies containing basic automatic-pay coverage.

Under those standards, awards for pain and suffering, mental anguish and inconvenience would be limited to an amount equal to 50% of the first $500 of reasonable medical and hospital treatment expenses and 100% of such expenses over $500.

While differences of view may occur as to the propriety of distinguishing, in degree of recovery, between medical losses of a nominal amount and those that are more substantial, the recent studies indicate some existing lack of proper balance between nominal medical losses and recoveries for attendant intangibles in comparison to medical losses of more substantial amounts. NAII's Dual Pro-

FORCE-DEFLECTION CHARACTERISTICS FOR FRONTAL COLLISIONS



COMPARISON BETWEEN PREDICTED AND MEASURED DEFORMATION

COLLISION	PREDICTED DEFORMATION (IN)	MEASURED DEFORMATION (IN)
5 MPH FRONT	5.8	5.0
5 MPH REAR	4.5	4.2
10 MPH FRONT	14.0	17.5
10 MPH REAR	10.5	16.0

(The questions and answers referred to on p. 1163 follow:)

NATIONAL ASSOCIATION OF INDEPENDENT INSURERS,
Chicago, Ill., July 23, 1971.

Hon. PHILIP A. HART,
U.S. Senate,
Committee on Commerce,
Washington, D.C.

Dear SENATOR HART: Attached is our response to your questions based on the testimony presented to the Senate Commerce Committee.

We hope these answers enable you to clarify the record and better understand NAII's Dual Protection Plan.

Many of the judgments and opinions needed to respond to your inquiry will now be verified or disproved in the real world market place. We are pleased to note that Illinois has adopted a program which is consistent with the major provisions of Dual Protection. Such experimentation is, in our judgment, in the best interest of the insuring public.

Sincerely,

VESTAL LEMMON, *President.*

Enclosure.

RESPONSE TO SENATOR PHILIP A. HART'S INQUIRY ON NAII'S TESTIMONY

1. In describing the Dual Protection Plan, you state that "cost-wise, the basic features of our program are intended to stabilize or reduce the premiums for the average motorist."

(a) Does your plan preserve tort liability?

Answer. NAII's Dual Protection Plan does preserve an individual's vital rights under the existing tort liability system.

(b) In a successful suit by plaintiff are the first party coverages paid by the plaintiff's insurer set off against the judgment against the defendant, and/or is the successful plaintiff's insurer subrogated to the rights of the plaintiff to the extent it has paid first party benefits?

Answer. Under NAII's Dual Protection Plan, the insurance company issuing the basic automatic-pay coverage immediately pays the injured party (named insured, family member, guest passenger or pedestrian) medical and disability benefits as set forth in the contract, regardless of fault. The insurer paying these benefits is entitled to reimbursement from a legally liable third party. Reimbursement will occur, either by (1) mandatory intercompany arbitration in all cases in which the tort defendant is insured by a company licensed in the enacting state, or (2) by the subrogation procedure in other cases.

The Plan does not make any specific provisions either requiring or preventing subrogation under the optional Catastrophe Loss Coverage. This is left to the individual insurance company to decide whether to provide for a right of subrogation, subject to the laws of the particular state.

The Plan thereby retains the means and opportunity to allocate the costs of insurance in relation to the variations in hazards among different risks, individually or by class grouping, and retain equitable distribution of insurance premium costs among risks. This preserves the basic concept that motoring should pay its own way, and that those who represent the greatest hazard should bear the largest share of the total premium burden.

(c) What are the limitations on intangible loss recoveries under your Dual Protection proposal?

Answer. One of the cost savings and stabilizing features of our program is the standard for pain and suffering awards in the less serious cases. The Plan proposes that such standard apply to certain cases where liability claims are lodged or suits filed against motorists who are covered by liability insurance policies containing basic automatic-pay coverage.

Under those standards, awards for pain and suffering, mental anguish and inconvenience would be limited to an amount equal to 50% of the first $500 of reasonable medical and hospital treatment expenses and 100% of such expenses over $500.

While differences of view may occur as to the propriety of distinguishing, in degree of recovery, between medical losses of a nominal amount and those that are more substantial, the recent studies indicate some existing lack of proper balance between nominal medical losses and recoveries for attendant intangibles in comparison to medical losses of more substantial amounts. NAII's Dual Pro-

tection Plan does make a distinction in the allowances for intangibles betwee nominal medical losses and those of a more substantial amount.

There would be no limitations in cases of death, permanent total or partia disability, disfigurement or loss of limb or other special circumstances shown t involve actual substantial pain and suffering.

We believe the public wants and is willing to pay for reimbursement for thes so-called intangible damages from a guilty driver. This has been demonstrated b several comprehensive public attitude surveys.

(d) Please explain in detail the basic features of your program?

Answer. Attached as Addendum 1 is an explanatory memorandum of NAII' Dual Protection Plan.

2. On Page 8 of your prepared statement, you state "We believe S. 945 can onl increase insurance costs."

(a) You have estimated that your Basic Protection Plan will cover 90 of the total economic loss. It has been estimated that S. 945 would cove 99.6% of the economic losses resulting from automobile accidents. Th Basic Protection Plan puts certain limitations on pain and suffering re covery. S. 945 prevents a person from suing another party unless that pe son has suffered permanent injury or in the language of the bill "catastrophi harm". In other words, there is minimum overlay of liability on the fir party mandatory policy coverages. Please explain in detail why S. 94 would increase insurance costs and compare the projected cost factors o S. 945 with the Basic Protection Plan projected cost factors.

Answer. The quotation from which this question flows is lifted from a portio of a sentence and, as is so often the case in such approach, obscures the con plete thought.

As we have pointed out in our statement, S. 945 would increase insuranc costs for several reasons which are not even related to benefits or compensatio The present tort liability system contains deterrents which aid traffic law en forcement and traffic safety programs. On Pages 6 and 7 of our statement an in a subsequent question we indicate that the deterrents of the fault syste provide a strong incentive to avoid accidents and conduct which may be charge as negligence. S. 945 substantially eliminates these deterrents and consequentl will increase costs.

Furthermore, S. 945 would require an insurance company to accept and insu for life every licensed driver who makes an application to that company unle the company can prove that such writings would cause its insolvency. Th underwriting process is designed to protect the majority of responsible motorist of normal driving habits from the extra hazardous losses of the irresponsibl drivers. This process provides substantial savings to the majority of today drivers and if eliminated as is done in S. 945, would increase costs for insuranc

The Public Law authorizing the "comprehensive study and investigation o the existing compensation system for auto accident losses" does, by implicatio recognize that the information to be developed will involve a degree of estim tion in any conclusions reached. The limitations of using data or estimat derived from diverse sources, as a basis for conclusions, are referred to r peatedly in the report to the Congress and the President made by Transportatio Secretary Volpe.

The two percentages quoted in this question are not comparable nor nece sarily in conflict and yet are, to a substantial degree, compatible. The less percentage figure refers to the number of losses while the greater one refe to dollar amounts. The problem involved in attempting to compare unlike dat is indicated in the illustration given on Page 1 of the final report made b Transportation Secretary Volpe.

The concepts upon which the Dual Protection Plan is erected and those unde lying S. 945, differ. The Dual Protection Plan is a realistic approach to solvin the problem of basic compensable economic loss while S. 945 tends to go beyon this and include the "societal" economic loss. The distinction between the concepts is discussed on Pages 4 through 7 of the final report made by Tran portation Secretary Volpe.

The thrust of the existing insurance reparations system and the Dual Prote tion Plan is to deal effectively with the compensable economic losses. On the oth hand, S. 945 will tend to encourage recoveries on a broader scale. This seems to b recognized as a fact in Sec. 4 of S. 945 which states "In such cases there may b a recovery for economic loss in excess of that received, or entitled to be receive under this act, as well as for other elements of damage."

Since existing insurance systems, as well as the Dual Protection Plan, are designed to evaluate and compensate for automobile economic loss, and not encourage recovery for amounts in excess thereof, whereas S. 945 will permit such recovery it seems clear that the assertion that S. 945 will lead to an increase in insurance costs has a factual foundation.

(*b*) *For every dollar collected under the Dual Protection Plan, how much money would be returned to policyholders in the form of direct benefits, and please indicate just what those benefits are.*

Answer. It is not possible to predict with certainty the exact "benefit-to-premium" ratio that would be produced by our Plan, or *any* proposed new reparations plan including S. 945. However, we can state with confidence that under Dual Protection a far greater portion of the bodily injury insurance premium dollar would be returned to policyholders in direct claim payments than at present.

There are several reasons for this belief. Under Dual Protection, the policyholder (or any one of the other categories of eligible claimants) will be paid up to $2,000 for medical expenses and $6,000 for income loss immediately regardless of fault. Since no lawyer will be needed to collect such benefits, these amounts will be recovered in full by the claimant. As pointed out earlier, well over 90% of the medical/disability losses fall below these limits, so that the aggregate savings in "transfer costs" affected by this feature of Dual Protection will be very substantial.

As to the matter of intangible damages, if the claimant is satisfied that all he is entitled to is the amount determined by the statuory formula, he should have little need or occasion to resort to litigation or incur attendant legal expenses. In cases where his economic losses exceed the basic no-fault coverage, and/or where the seriousness of his injuries indicate he is entitled to greater intangible damages than provided by the formula, the injured party retains the right to bring suit if not satisfied with a settlement offer by the tortfeasor or his insuror. But even when litigation does so occur, the "transfer cost" of the system in delivering benefits will be smaller than at present, because the fee charged by the lawyer can fairly be based only upon the amount he *actually recovers* for the claimant—from which is excluded the no-fault economic loss benefits already collected directly and in full by the claimant himself.

It must be kept in mind that under *any* system of compensating for auto accident losses—first party, third party, "fault," or "no-fault"—it is necessary to incur the costs of determining that an accident has occurred, that injuries were sustained, and to develop the factual data for properly evaluating the alleged losses in dollar amount. Under a third party recovery system it is necessary, of course, to take an additional step and establish the source of fault. However, the bases for establishing fault are contained in the several laws pertaining to this item and are relatively simple to apply.

Controversies, when they do arise, generally involve a difference of opinion as to the dollar value of loss rather than the question of the existence of fault.

A first party recovery system, unless it embodies a fixed dollar benefits—which can compound inequities alleged under a third party recovery system—will not eliminate the controversies as to dollar amount evaluation of losses, nor the costs incurred in arbitrating such matters. As a matter of fact, it is possible that a first party recovery system can accelerate the costs of evaluating losses, depending on the factors for evaluation to be considered.

Because of these several unknowns, it is speculative whether *any* first party recovery system, including both S. 945 and the Dual Protection Plan, will markedly alter the costs of establishing the equitable dollar value of individual losses. In other lines of insurance of a first party type, such as workmen's compensation, accident and sickness, hospital and medical. Medicare and Medicaid where, commonly, scheduled benefits are provided, frequent controversies occur as to the validity of a claim for loss or the dollar evaluation thereof.

While the cost of operating and administering any insurance system is important and cannot be ignored there are other factors equally important.

It is our view that the Dual Protection Plan responds to an indicated public desire and need for a loss recovery system that embodies the *potential* for a saving in cost and an improvement in efficiency. In our judgment, it is more forthright to develop a program that meets a public need and operate it in an efficient manner at minimum cost than to speculate on savings based on inadequate data which subsequent events demonstrate cannot be achieved.

(*c*) *How does the figure in* (*b*) *compare with the projected figure for S. 945?*

Answer. For the reasons cited in (b) above a comparison of specific figure is not attainable on a prospective basis. It is possible, of course, to erect mathe matical models that will appear to demonstrate the superiority of one systen over the other. This can be done quite readily by varying the assumptions in serted in the model. The vice of this approach is that the assumptions may lac validity, or be based on inadequate factual information, or both, with the resul that the conclusion may be misleading and impossible of attainment.

In our view, it is preferable and in the best interest of the public, to provid a recovery system that meets their indicated desires and be perfectly honest i stating the areas of uncertainty as to cost, rather than to make promises as t cost that may not, subsequently, be achieved. Secretary John Volpe made th following observation in his statement before the Subcommittee on Commerc and Finance, House Interstate and Foreign Commerce Committee:

"It is also clear that there exists genuine and warranted concern as to th unknown and *essentially unknowable* price and cost implications of any majo change in the system, which of course would ultimately affect the cost an quality of service to consumers of insurance."

The best way to determine these costs is through experimentation. Such ex perimentation will take place since several states have enacted plans with simila provisions.

3. On the first page of your prepared statement you say that "Independen companies have long been recognized as the most competitive and progressi segment of the fire casualty insurance business." Twelve years ago this mont the Senate Antitrust and Monopoly Subcommittee was told that the NAII, ac cording to its bylaws, "believes in competition in all aspects of the busines including forms, services, and methods of distribution and price." If the NAI still believes in competition in all of these aspects, why does the NAII oppos S. 946 which would expand methods of distribution and permit group merchan dising?

Answer. Article I, Section 2 of NAII's Bylaws states:

"To carry out its purpose, the aims of the corporation are:

A. To preserve reasonable competition and thereby to encourage and safe guard initiative, enterprise, improvement and development in the insuranc industry under such reasonable governmental regulation as is essential fo the protection of the public."

This is one of the main cornerstones of NAII's policy. Another, just as in portant, however, is this Association's support of insurance regulation on th state level.

As stated on Page 17 of NAII's statement, this Association is opposed to S. 94 because we believe the implementation of group automobile insurance plan should be a matter for individual state determination. We see no justifiable nee for Federal intervention in this area since the state regulatory climate alread allows for innovative activity in this area.

Half the states are experimenting and have approved group programs. Senat 946 would prohibit states from determining the best policy for its residents.

We opposed both S. 945 and S. 946 because we believe the states should be lef the responsibility and authority to change or alter the automob.le acciden reparations system and to oversee the implementation of group marketin programs.

4. On Page 16 of your statement you ask Congress to adopt Secretary Volpe' recommendation that no-fault reform proceed on a state-by-state basis. Yet, th NAII apparently fails to include in its Dual Protection Plan one of Secretar Volpe's key recommendations. On Page 136 of the DOT's final report, the no-faul system advocated by Secretary Volpe is described as follows:

"The goal of the system should be that no recovery for any loss of the typ covered by the applicable required coverage would be permitted in any privat action for damages." The report goes on to say that "no person should recover fo intangible losses (pain and suffering) unless he establishes he suffered perma nent injury . . . or that he incurred personal medical expenses . . . in exces of a rather high (emphasis added) dollar threshold." Doesn't the NAII Dua Protection Plan contravene this recommendation of Secretary Volpe?

Answer. A review of our testimony will indicate that NAII has not endorse all of the recommendations made by Secretary Volpe. As our testimony clearl indicates the position of the NAII is that experimentation at the state level i the most appropriate method of testing and evaluating automobile insuranc reform.

The phrasing of your question indicates a belief that Secretary Volpe's proposal for reform has been described in final form. However, as can be readily seen, th Secretary's proposal is tentative and approximate in nature. The following excerpts from the DOT's final report illustrate this point:

Page 133 regarding the proposed system:

"It should be emphasized that this is a goal to be achieved over time, not an action blueprint for tomorrow. Moving in stages toward such a goal would allow us to test its virtues and discover its faults, whereby giving us new knowledge that could serve to modify the goal itself."

Page 133:

"The board outlines of such a system are proposed below."

Page 133:

"It should be emphasized that the policy limits and deductibles used in the following description are *basically illustrative*, . . . "

Because of the approximate nature of the proposed system, there would appear to be no reason to either endorse or reject the entire proposal. It would seem that the public interest is best served by more selective judgments and evaluations.

The two quotations cited in the question refer to very different areas. The first quotation which was taken from the first paragraph on Page 136 refers to the problem of duplicate recovery. The Dual Protection program eliminates duplication within the automobile insurance system because monies recovered under the mandatory no-faut coverage under Dual Protection are deducted from monies recovered under tort remedy. In addition, except as to workmen's compensation cases, Dual Protection has been made the primary source of recovery for auto accident losses.

The second quotation cited in the question deals with the recovery of intangible losses. To the extent that Secretary Volpe's proposal does not completely eliminate recovery for intangible losses his proposal is consistent in principle with Dual Protection. His proposal differs in that it refers to a *threshold* type limitation which denies injured parties any intangible damages (subject to certain exceptions) if their medical expenses do not reach a specified level, but allows *unlimited* damages once medical expenses pass the threshold. Dual Protection on the other hand retains the right of every injured party with subject (with certain exceptions) to formula limitations keyed to medical expenses. We believe our approach to this matter is much more equitable than an arbitrary threshold below which one can recover nothing and above which he can recover without limit. We believe, too, that it is more likely to satisfy the public.

5. In the University of Michigan reparations study cited by you on Page 6, the following paraphrased sentence appears at Page 296 and 297: 33% of the defendants surveyed do not know whether or not the plaintiff (injured victim) had received a settlement from the plaintiff's insurance company. How does this failure of the defendant to know whether or not the plaintiff had recovered affect your argument that the tort system preserves personal accountability and has a deterrent effect upon reckless driving?

Answer. The question, as you have stated it, is difficult to interpret. There would be very little, if any, negligence deterrent on the defendant for benefits paid the plaintiff (injured victim) by the plaintiff's insurance company. These would be first party benefit payments under the medical payments or uninsured motorists coverages. This is the position we have always taken and the point we were trying to make with regard to the deterrent effect of a pure no-fault plan.

After studying the pages cited in your question, we suspect you mean the *defendant's* insurance company. If this is your question, our response would be that we know that the fault liability system governing automobile accident is not a perfect deterrent but it is better than the other existing reparations systems such as workmen's compensation, social security, etc. The authors of the Michigan study recognize this as discussed in Pages 88 through 102. We pointed tthis in our statement and the footnotes on Page 6 and 7 of that statement.

The 33% figure cited really tells us nothing very probative about the deterrent effect of the fault system; all it tells us is that 33% of a group of defendants assumed that if the palintiff was entitled to recover, their insurer had paid him or would pay him—which is of course the very reason for carrying liability insurance—to be able to acquit one's responsibilities if liable for negligent conduct.

The primary concern of a defendant is the determination of his guilt or innocence and not the dollar evaluation thereof. Hence, it is not surprising that the

survey referred to in your question indicates that a substantial quantity of defendants are uninformed as to the quantity of settlement affected. This is one of the reasons we question the results of the DOT's Serious Injury Study cited in Question 9.

6. The Nationwide Insurance Company, a member of your organization, has proposed their own no-fault auto compensation plan. Under the Nationwide plan, is tort liability completely eliminated as between claimants? In what other significant respects does the Nationwide no-fault plan differ from the NAII's Dual Protection Plan?

Answer. The Nationwide plan does eliminate tort liability. If you would like more detailed information on their program, we suggest you contact them directly.

NAII has never made it a condition of membership that a member company is obligated to support any program or position taken by the entire membership, if that company disagrees with that position. Nationwide has stated publicly that if a particular state wanted a plan such as Dual Protection, it would support our position as a step in the right direction. In some states, it has taken such a posture.

7. Attached to this letter you will find a copy of a Farmer's Insurance Claim bulletin to all district managers and agents in the Kansas City, Mo., region date June 6, 1970. That letter describes the way in which State Farm Mutual, Allstate Insurance Company, Safeco Insurance Company, and several other large underwriters have tightened their underwriting rules. The Farmer's bulletin concludes:

"Naturally this change in the market will result in diverting this potentially unprofitable business towards Farmers. To avoid this eventuality and help sustain our progress toward meeting our 1970 goal of improving our underwriting loss experience, we find it necessary to amend our accident and citation rules accordingly."

(a) Does the NAII consider this kind of selective underwriting competition in the best interest of the public?

Answer. The Bulletin cited in the above question was not attached to your letter. You indicated that it would be sent under separate cover but it has not been received.

This question pre-supposes that the quoted allegation is an established fact. In our opinion, a proper and succinct answer based on general facts known to us is an unqualified "no." We feel sure that you would concede that any statement made by a company, in communications to staff personnel, in regard to actions taken by any competitors probably reflects only the view of the writer and may possibly contain a degree of bias to which the competitors may not concur. Hence, it is fallacious to accept a conclusion as fact prior to an examination of the validity of statements made and before those accused are given an opportunity to present facts in rebuttal.

NAII feels that the public is best served when companies with various marketing concepts, underwriting philosophies and rating plans are allowed to compete for a "book of business" which is compatible with its corporate objectives and will not jeopardize its financial solvency. The product of such competition is efficiency of operations with lower costs to the vast majority of automobile insurance consumers.

In our judgment, the natural force of competition, although sometimes imperfect for short periods of time, will serve the public far better than any program that would require companies to insure everyone who submits an application. Our reasons are set forth on Page 13 of the statement.

In response to an inquiry from the Federal Trade Commission a few years ago, we made the following general comments about underwriting operational functions and practices. We feel these comments are also apropos to your inquiry.

"Much of the literature referring to 'underwriting' has over-simplified a complex function and has assumed that there exists 'sandard underwriting practices' and 'standard underwriting procedures'. The truth is that underwriting practices vary by company, by state or territory, and over time. Underwriting is essentially a fitting or selection process; it attempts to select that *group* of consumers whose loss potential fits within the exposure contemplated in the rates filed and approved for that company.

"The parameters of the selection process in any one company at any one time are dictated by a complexity of internal and external factors—for example, the

company type, the character and quality of its administration, the financial condition and aims of the company, the broadness or narrowness of the type of consumer the company has elected or is capable of serving, the adequacy of the feasible rate levels for the markets served or selected, legislative and regulatory restrictions on the selection process, the pricing underwriting and marketing practices of competitors for that market, the willingness and ability of management to subsidize or support social, economic or political needs or aims with respect to its market or the total market or new markets and the willingness and ability of management to continue to employ its resources in the industry."

Risks accepted by the industry on a voluntary basis under this process represent upwards of 97% of the insurance industry's automobile liability insurance marget. The other 3% is also served by the industry through its automobile insurance plans.

(*b*) *By these practices are the companies in your association creating a larger residual market and aggravating the availability problem?*

Answer. NAII's member companies have consistently increased their percentage of both the total voluntary and involuntary automobile insurance market. Our companies write well over 50% of the total private passenger market and in 1970 the automobile insurance premium volume of our members increased from $5,303,142,000 to $6,196,832,000, or almost 17%. We feel our companies have done more than any other group of companies to alleviate the availability problem and provide protection for the voluntary as well as involuntary market. The following demonstrates the basis for this conclusion.

PRIVATE PASSENGER NONFLEET EARNED EXPOSURES WRITTEN BY COMPANIES REPORTING TO NAII

Year	Voluntary	Assigned risk
1967	27,119,136	922,380
1968	29,036,101	952,153
1969	31,779,829	1,013,158

1970 statistics are not available at this time.

Since our companies write the largest portion of the so-called residual market, it would certainly not be to their advantage to create such a market.

(*c*) *Do your member companies consider all moving accidents for the proceeding (sic) year in accepting, rejecting, or rating a new applicant for auto insurance, or do they consider only moving accidents where the driver was at fault? If fault is considered, where does the company receiving the insurance application find out who was at fault?*

Answer. This is a very general question since you ask about certain specific practices or procedures followed by over 350 insurance companies. NAII is an advisory rather than a rating organization. Therefore, we do not maintain underwriting or rating manuals of our companies. Our membership acts independently on such matters and there is no uniformity of practice. Our response must be based on our general knowledge of such procedures.

Generally most "Safe Driver Insurance Plans" used today only charge for accidents but a few may still have a traffic violation factor. The latter are not commonly used, however, and underwriters as well as raters generally consider only the accident record.

Furthermore, at the present time, most Safe Driver Insurance Plans which assign points for accidents try to restrict surcharges to "at fault" accidents. This is done by "exceptions" to the rule which preclude the assignment of points for which the applicant could not have been at fault e.g. lawfully parked vehicle, hit-and-run, etc.

Under a "no-fault" plan there would be no way of applying surcharges solely to accidents in which the insured was at fault or presumably at fault because fault would no longer be determined. At the present time, a majority of drivers are rewarded for their good driving or accident-free records. It is difficult to conceive of an equitable safe driving plan that will reward good drivers under a "no-fault" system. A Safe Driver Insurance Plan based only on traffic violations or accident *involvement*, would be replete with enforcement problems as is evidenced by the present trend to "accident only" Safe Driver Insurance Plans. In our judgment, to surcharge motorists solely because of accident involvement without determination of fault would prove unacceptable to the public from a long-range standpoint.

8. In your prepared statement you argue that a first party reparations syste would foster reckless driving. This Committee has received testimony that th accident rate in Puerto Rico actually went down when their no-fault plan wa implemented. On what basis, then, do you conclude that a first party reparation system aggravates the accident problem?

Answer. In our judgment, the Puerto Rico Plan has been in effect for too shor a period of time to make such a judgment about the effects of such a comple and far-reaching program on driving attitudes and accident involvement. Fur thermore, we feel that one cannot properly draw conclusions about the implica tions of the Puerto Rico Plan on the motoring public of the States because o the different social, economic and poltical conditions which exist in that commor wealth.

Some of our company representatives who have been directly involved wit Puerto Rico have observed that if the decline in accident rate actually develop for this brief period of time, it may well be attributable to several factor unrelated to the new no-fault law.

First, police have investigated claims faster and obtained more informatio than under the old system because the government is involved with the payment made under the program.

Secondly, our informants point to the very important fact that during th period of time following adoption of the no-fault law there occurred purel coincidentally a "down-turn" of the economy in the United States which reduce Puerto Rico tourism considerably and resulted in high unemployment of man connected with the tourist industry. It is a proven fact that when people canno purchase as many automobiles and travel as extensively because of unemploy ment or other factors, the risk environment changes and accident frequency drop

Similar results may be observed under the fault system of this country. Man companies noticed improved underwriting results in the United States in 197 and 1971 when the above-cited economic conditions were operative. Some com panies are preparing to adjust their rates for this improved accident frequency.

There are many economic factors affecting our business over which we hav no control. Historically, it has been observed that in periods when the genera economy is lethargic or in a declining phase, our business tends toward greate profitability. Conversely, in an accelerating economy stimulated by inflationar pressures, profits in the insurance business are depressed or non-existent, th degree depending on the severity and length of the cyclical movement.

9. In your prepared testimony you state that "it would be unfair and un wise to shift the cost away from those who engage in the pursuit and thereb subsidize it." How, then, do you justify preserving the liability system whic the Department of Transportation study reports already shift away cost when delivering compensation to seriously injured accident victims? For ex ample, seriously injured accident victims suffer about $5 billion in compensabl economic loss. The present tort liability system pays for approximately $1. billion of that $5 billion in loss, or 24% of the compensation received. Othe sources pay for 58% of the compensation received. If it is unfair and unwise t shift the costs away from those who engage in the pursuit, thereby subsidizin it, what do you propose to do about the way in which the tort system which yo preserve in your Dual Protection Plan presently shifts those costs away?

Answer. We do not believe it is accurate to state, as the question does, that th liability system "shift(s) away when delivering compensation to seriously in jured accident vitcims." Under the present liability system, the right of recover of an accident victim in tort is a *primary* right, that is, the defendant canno reduce his liability to the plaintiff by the amount of any collateral source bene fits to which plaintiff has access, such as A & H coverage, sick leave, Medicar etc. Thus, *in delivering the compensation it is designed to deliver in the situa tions it is designed to cover*, the liability system provides *primary* benefits.

Dual Protection would greatly expand the scope of basic economic loss pro tection afforded by the present system to cover many accident situations no now compensated by it. In so doing, it preserves and extends the principle o primacy of recovery now embodied in the present liability system. By contrast S. 945 would abandon that principle and make its coverage benefits excess ove most collateral sources of benefits available to the injured party, subject onl to the possibility that one of such collateral sources might choose to make itsel excess.

We also question how accurately the figures cited from the Department o Transportation's *Economic Consequences of Automobile Accident Injury Stud*

represent the actual economic losses of accident victims and the compensation received from various sources including the tort liability system. In our judgment, the aggregate estimated loss figure is grossly overstated and the aggreate recovery amount is understated. These aggregates were stressed in the news release of the study in spite of the fact that the report itself states that the aggregates are not as reliable as averages or ratios. The following statements are taken directly from the study:

On Page 96 (Part II) of the report, it states:

"Due to the speculative nature of the 'future' losses component of the total economic loss, the tabulations have been presented with and without future losses."

On Page 15 (Part I) the following statement is found:

"Consequently this study does not provide reliable estimates of aggregates. Average losses and reparations, or ratios of one variable to another, tend to be less sensitive to the problem of coverage than aggregates and therefore are more reliable as reported in this study."

On Page 17 (Part I) it states:

"The principle focus of this study is on economic losses (*on a per individual or per family basis*) due to serious injury or death from motor vehicle accidents and reparations for such losses from various sources."

On Page 18 (Part I) it states:

"The sample was designed in such a way as to provide more precise estimates of averages and ratios than to aggregates."

One must question a methodology which accepts without question or verification the exact dollar amount of economic loss suffered and the exact dollar amount of compensation received from each source for an accident which occurred some 2½ years previously.

Much of this information could have been verified. We have been told that the pilot study did ask the respondent to identify their own insurance carrier or the insurer of the tortfeasor. This pilot study revealed that in a significant number of cases, the respondent did not remember or know the names of the insurers and consequently this valuable source of information was not checked. It is difficult for us to understand how a respondent can recall detailed dollar amounts of expenses and sources of recovery but not the names of the insurers.

There are many inconsistencies in the area of recovery. The DOT's *Public Attitudes toward Auto Insurance Study* reported that 78% of its respondents were covered by auto medical insurance (NAII's experience shows over 80%) but this Serious Injury Study found only 54% reported having such coverage and only 37.9% recovered from this source. The same disparity exists for collision insurance. The Public Attitudes Study found that 77% of car-owning public carried collision insurance but only 29.8% of the seriously injured collected something from this source. We understand that one of the reasons medical payments recoveries may be understated is that the researchers did not understand that funeral expenses were reimbursable under auto medical payments coverage and did not solicit this information in fatality cases.

Furthermore, since 36% of the cases in the study were single-vehicle accidents, which are generally more likely to result in death or severe injury, the economic loss would be much greater and recovery from tort liability would be unavailable.

These are just a few of the reasons we are reluctant to accept the aggregates listed in your question.

As noted above, NAII's Dual Protection Plan does not shift the costs away from those who drive and subsidize it by other sources of recovery. The Dual Protection Plan would provide the injured accident victim swift payment of his basic economic losses ($2,000 of medical, hospital and funeral expenses and $6,000 of income loss) regardless of fault. For more serious injuries, the plan requires companies to offer a catastrophe coverage insuring at least the insured and members of his family up to $100,000 per person for medical, hospital and funeral expenses, up to $750 per month for net income loss and up to $750 per month for survivor's benefits to dependents subject to a $25,000 limit plus a death benefit of $5,000 payable to a named beneficiary. In addition, in seriously injured cases the person retains the same right of suit he has today for general damages without any statutory limitations.

Cost-Cutting Provisions . . .

To minimize the costs of the compensation system, Dual Protection provides that damage awards for pain and suffering in the less serious cases (not involving death, permanent disability, disfigurement, loss of limb, etc.) be governed by a formula of between 50% and 100% of the claimant's medical/hospital bills. The Plan also calls for special settlement procedures to more quickly and economically handle small claims against negligent drivers, court supervision of the lawyers' contingent fee system, and stiffer penalties for fraudulent claims.

Toward a Total Solution . . .

Dual Protection is a sound and well-balanced approach to solving today's automobile insurance problems. Not only will the Plan's coverage features compensate more injured persons faster and more efficiently, but it sets forth actions and proposals aimed at:

- Curbing the accident toll through research, public education, and stronger traffic laws and enforcement.
- Reducing the severity of injuries by fostering improved automobile safety design.
- Developing economic incentives for the production and purchase of more damage-resistant automobiles.
- Cutting the costs of automobile damage repairs through advanced repair technology.

Thus, Dual Protection treats causes rather than symptoms, and in so doing it promises to make a lasting contribution to the personal and financial well-being of the American motoring public.

For further information, write the Public Relations Director:

National Association of Independent Insurers
30 West Monroe Street, Chicago, Illinois 60603
Tel.: (312) 263-6038

DUAL PROTECTION

What It Is . . .

Dual Protection is a realistic plan to improve the way in which people are compensated for the injuries they suffer in automobile accidents. Its primary aims are to pay more people more medical and disability benefits faster, while stabilizing the overall cost of the system. Developed by the National Association of Independent Insurers, Dual Protection would:

- Automatically begin paying medical expenses and lost income from work — regardless of negligence — to the driver and passengers injured in an insured car, and to pedestrians struck by it.
- Preserve an innocent accident victim's right to recover additional damages from a guilty driver, including damages for pain and suffering.
- Reduce unnecessary litigation over small claims.
- Eliminate fear of catastrophic financial loss.
- Help reduce the costs of automobile accidents.

Preserves Accountability . . .

In keeping with the fundamental principle of public policy that each member of society has a responsibility for due care in the operation of his automobile, *Dual Protection preserves personal accountability for highway misconduct.* The negligent motorist would continue to be held financially obligated to the people he injures.

How the Plan Works . . .

Basic Coverage: Under Dual Protection, the driver and passengers injured in the insured car, as well as pedestrians struck by it, would receive up to:

- $2,000 for medical, hospital and funeral expenses.
- $6,000 ($750 a month) for income lost while unable to work.
- $4,500 ($12 a day) for other disabled persons, such as a housewife.

These benefits would be automatically included in all private passenger automobile liability insurance policies.* They would be paid regardless of who caused the accident.

Catastrophe Protection . . .

To provide protection against the hazard of unusually large losses, Dual Protection would make optional, low-cost catastrophe coverage available to the policyholder and his family. This insurance would supplement the basic coverage and provide the following benefits up to $100,000 per person:

- All medical, hospital and rehabilitation expenses.
- A maximum of $750 a month for lost income from work, or $12 a day for other disabled persons.
- A maximum of $750 a month or a total of $25,000 in survivors' benefits.
- A minimum $5,000 death benefit to the named beneficiary.

*Some legislatures might desire to make the basic coverage optional.

Dual Protection

A program for improvement of the automobile accident compensation system

INTRODUCTION

America today is undergoing a process of critical self-evaluation. Lawmakers regulatory officials, consumer organizations, newsmen and others are re-examining virtually every institution in our society to determine whether it is operating efficiently and in the best interests of the public.

One such institution is our traditional legal system for determining who is entitled to damages for injuries suffered in automobile accidents, and the amount of damages recoverable. Various studies including the recent comprehensive investigation by the U.S. Department of Transportation have been critical of this system, and have urged improvement or reform.

While nearly everyone with an interest or stake in this question agrees that action of some kind is needed, viewpoints differ widely as to what change is indicated.

At one end of the spectrum are those who urge that nothing be done other than minor modifications of court procedures and adoption of measures to permit damage recoveries in certain situations not now recognized. Some of these proposals would, unfortunately, raise costs without bringing any offsetting savings. Thus they would cause additional, unwelcome premium increases.

At the other extreme are those who propose total abolition of the present liability system and elimination of all personal accountability for negligent driving. They would substitute a system compelling everyone to insure himself against all the consequences of injury and damage from another person's negligence. These proposals have usually been accompanied by predictions of substantial insurance rate cuts—predictions which have been challenged by your Association and others as illusory and unrealistic.

Caught in the middle of this controversy—and often bewildered by it all—stands the American public. Beset by insurance rate increases, they are understandably receptive to proposals which promise premium reductions. Nevertheless, in recent national opinion surveys they have voiced strong support for preservation of the basic concept of personal accountability for highway misconduct and for the right of an innocent injured party to recover both tangible and intangible damages from a guilty driver.

We do not believe, therefore, that the public wants a compensation system which rewards the wrongdoer every bit as well as his victim. Nor do we believe they would favor a system which in the name of false economy deprives the seriously injured person of his long-standing right to seek damages from a guilty party for pain, suffering and other intangible losses.

Out of the growing controversy comes this question: Is there a viable middle ground solution to the problem—one which is responsive to major criticisms of the present system, yet does not destroy its many good features?

NAII believes there is such a middle road. In an effort to be of maximum aid to lawmakers, public officials and others considering the problem, we have developed the Dual Protection Plan, a program designed to compensate—

> more injured persons' basic medical expenses and income loss;
> more quickly; and
> more efficiently

while preserving their vital rights under the existing liability system.

The overall purpose and effect of the Dual Protection Plan would be to—

> Provide injured persons automatic payment of their basic economic losses regardless of fault, up to minimum limits of $2000 for medical expenses and $6000 for income loss.
>
> Assure availability to the motoring public of optional catastrophe coverage at modest cost, to raise those basic limits of medical/disability protection to $100,000 per person, payable regardless of fault.
>
> Preserve an innocent injured party's right to recover additional damages from a wrongdoer over and above those compensated by the basic automatic pay coverage.
>
> Adopt guiding standards governing damages for pain and suffering in the less serious liability cases, and defining the measure of damages for wage loss.
>
> Improve and speed up procedures for litigating small claims; retain the contingent fee system, under court supervision.

Stabilize or reduce auto insurance premiums by attacking the causes of inflation in major cost ingredients, including fraudulent claims, the rising accident toll, and soaring auto damage repair costs.

This program is offered as a realistic means of alleviating on a state-by-state basis the major criticisms of the present automobile accident compensation system within the basic structure of that system.

Details of the Plan are discussed in the following pages.

I. AUTOMATIC PAYMENT OF BASIC MEDICAL/DISABILITY LOSSES

The traditional American legal liability system applicable to automobile accidents and most other accidents does not compensate all injured persons in all situations, nor was it ever intended to do so. That system undertakes only to give an accident victim a right of action where another person negligently caused his injury; also, in most states the claimant himself must be relatively free of fault. Once a right of action arises, though, the law recognizes all types of damage, including both *tangible* losses (such as medical expenses and lost earnings) and *intangible* losses (such as pain and suffering).

As applied specifically to the automobile accident picture, the existing legal system and the insurance system related to it have been criticized on the following grounds among others:

An accident victim is not assured a source of compensation of any of his losses where he is injured in a one-car accident (driver falls asleep and car strikes a tree), or in a multiple-car accident where fault is totally absent or impossible to determine.

In those instances where legal liability by a negligent third party may exist, although most claims involving insurance are settled rapidly once the facts are known[1], investigation and negotiation or litigation of claims nevertheless can necessitate a lag between the time medical bills and wage losses arise and a claim is paid.

Too large a portion of the total cost of the system (insurance premium dollars plus the cost of judicial procedures) is expended in attorneys' fees and court costs, in relationship to the aggregate net recoveries by injured parties.

The insurance industry has already gone part way in responding to these problems, through the growing practice of voluntarily advancing money for medical expenses and wage loss to persons with valid third party liability claims prior to final settlement.

Dual protection responds to the need

In further response to these problems, the Dual Protection Plan will require that all private passenger automobile insurance policies include as a minimum the following automatic-pay benefits:[2]

Medical expense coverage paying all medical, hospital, dental, surgical and similar expenses up to $2000 limits.

Disability coverage of $6000 compensating net loss of income up to $750 per month;

Benefits up to $12 per day or a maximum of $4,500 to other disabled persons such as a housewife, to pay for substitute help to perform services the injured person would have performed.

Medical payments will begin immediately, and disability benefits not more than two weeks after the accident. Net income loss is to be computed at 85% of gross income.

These benefits will be payable automatically, without regard to fault,[3] to any or all of the following persons injured in an automobile accident:

---

[1] Approximately 80% of all automobile bodily injury liability claims are disposed of within 6 months after notice of accident, and about 90% within one year.

[2] Resolution of the question of whether the policyholder should or should not be permitted the option of rejecting such basic coverage involves a number of important social policy considerations, such as the individual's need for protection, which must be ultimately resolved by each legislature on a state-by-state basis. Therefore while on balance preferring that this coverage be included in every policy, we recognize that some legislatures may be concerned about those persons who may have no need for this coverage. Accordingly, we will assist each such state legislature in the development of measures designed to accommodate the interests of such persons.

[3] The proposed statute will permit the basic automatic-pay coverage, as well as the catastrophic coverage later described, to contain exclusions of recovery by (1) a person who intentionally causes the accident, (2) a person driving or riding in a car he knows to be stolen, and (3) a person committing a felony or seeking to elude lawful arrest by a police officer. The legislature may also wish to empower the insurance commissioner to approve exclusions covering other specified types of extreme antisocial conduct.

Dual Protection

A program for improvement of the automobile accident compensation system

INTRODUCTION

America today is undergoing a process of critical self-evaluation. Lawmakers, regulatory officials, consumer organizations, newsmen and others are re-examining virtually every institution in our society to determine whether it is operating efficiently and in the best interests of the public.

One such institution is our traditional legal system for determining who is entitled to damages for injuries suffered in automobile accidents, and the amount of damages recoverable. Various studies including the recent comprehensive investigation by the U.S. Department of Transportation have been critical of this system, and have urged improvement or reform.

While nearly everyone with an interest or stake in this question agrees that action of some kind is needed, viewpoints differ widely as to what change is indicated.

At one end of the spectrum are those who urge that nothing be done other than minor modifications of court procedures and adoption of measures to permit damage recoveries in certain situations not now recognized. Some of these proposals would, unfortunately, raise costs without bringing any offsetting savings. Thus they would cause additional, unwelcome premium increases.

At the other extreme are those who propose total abolition of the present liability system and elimination of all personal accountability for negligent driving. They would substitute a system compelling everyone to insure himself against all the consequences of injury and damage from another person's negligence. These proposals have usually been accompanied by predictions of substantial insurance rate cuts—predictions which have been challenged by your Association and others as illusory and unrealistic.

Caught in the middle of this controversy—and often bewildered by it all—stands the American public. Beset by insurance rate increases, they are understandably receptive to proposals which promise premium reductions. Nevertheless, in recent national opinion surveys they have voiced strong support for preservation of the basic concept of personal accountability for highway misconduct, and for the right of an innocent injured party to recover both tangible and intangible damages from a guilty driver.

We do not believe, therefore, that the public wants a compensation system which rewards the wrongdoer every bit as well as his victim. Nor do we believe they would favor a system which in the name of false economy deprives the seriously injured person of his long-standing right to seek damages from a guilty party for pain, suffering and other intangible losses.

Out of the growing controversy comes this question: Is there a viable middle-ground solution to the problem—one which is responsive to major criticisms of the present system, yet does not destroy its many good features?

NAII believes there is such a middle road. In an effort to be of maximum aid to lawmakers, public officials and others considering the problem, we have developed the Dual Protection Plan, a program designed to compensate—

more injured persons' basic medical expenses and income loss;
more quickly; and
more efficiently

while preserving their vital rights under the existing liability system.

The overall purpose and effect of the Dual Protection Plan would be to—

Provide injured persons automatic payment of their basic economic losses, regardless of fault, up to minimum limits of $2000 for medical expenses and $6000 for income loss.

Assure availability to the motoring public of optional catastrophe coverage at modest cost, to raise those basic limits of medical/disability protection to $100,000 per person, payable regardless of fault.

Preserve an innocent injured party's right to recover additional damages from a wrongdoer over and above those compensated by the basic automatic pay coverage.

Adopt guiding standards governing damages for pain and suffering in the less serious liability cases, and defining the measure of damages for wage loss.

Improve and speed up procedures for litigating small claims; retain the contingent fee system, under court supervision.

Stabilize or reduce auto insurance premiums by attacking the causes of inflation in major cost ingredients, including fraudulent claims, the rising accident toll, and soaring auto damage repair costs.

This program is offered as a realistic means of alleviating on a state-by-state basis the major criticisms of the present automobile accident compensation system within the basic structure of that system.

Details of the Plan are discussed in the following pages.

I. AUTOMATIC PAYMENT OF BASIC MEDICAL/DISABILITY LOSSES

The traditional American legal liability system applicable to automobile accidents and most other accidents does not compensate all injured persons in all situations, nor was it ever intended to do so. That system undertakes only to give an accident victim a right of action where another person negligently caused his injury; also, in most states the claimant himself must be relatively free of fault. Once a right of action arises, though, the law recognizes all types of damage, including both *tangible* losses (such as medical expenses and lost earnings) and *intangible* losses (such as pain and suffering).

As applied specifically to the automobile accident picture, the existing legal system and the insurance system related to it have been criticized on the following grounds among others:

An accident victim is not assured a source of compensation of any of his losses where he is injured in a one-car accident (driver falls asleep and car strikes a tree), or in a multiple-car accident where fault is totally absent or impossible to determine.

In those instances where legal liability by a negligent third party may exist, although most claims involving insurance are settled rapidly once the facts are known [1], investigation and negotiation or litigation of claims nevertheless can necessitate a lag between the time medical bills and wage losses arise and a claim is paid.

Too large a portion of the total cost of the system (insurance premium dollars plus the cost of judicial procedures) is expended in attorneys' fees and court costs, in relationship to the aggregate net recoveries by injured parties.

The insurance industry has already gone part way in responding to these problems, through the growing practice of voluntarily advancing money for medical expenses and wage loss to persons with valid third party liability claims prior to final settlement.

Dual protection responds to the need

In further response to these problems, the Dual Protection Plan will require that all private passenger automobile insurance policies include as a minimum the following automatic-pay benefits: [2]

Medical expense coverage paying all medical, hospital, dental, surgical and similar expenses up to $2000 limits.

Disability coverage of $6000 compensating net loss of income up to $750 per month;

Benefits up to $12 per day or a maximum of $4,500 to other disabled persons such as a housewife, to pay for substitute help to perform services the injured person would have performed.

Medical payments will begin immediately, and disability benefits not more than two weeks after the accident. Net income loss is to be computed at 85% of gross income.

These benefits will be payable automatically, without regard to fault,[3] to any or all of the following persons injured in an automobile accident:

---

[1] Approximately 80% of all automobile bodily injury liability claims are disposed of within 6 months after notice of accident, and about 90% within one year.

[2] Resolution of the question of whether the policyholder should or should not be permitted the option of rejecting such basic coverage involves a number of important social policy considerations, such as the individual's need for protection, which must be ultimately resolved by each legislature on a state-by-state basis. Therefore while on balance preferring that this coverage be included in every policy, we recognize that some legislatures may be concerned about those persons who may have no need for this coverage. Accordingly, we will assist each such state legislature in the development of measures designed to accommodate the interests of such persons.

[3] The proposed statute will permit the basic automatic-pay coverage, as well as the catastrophic coverage later described, to contain exclusions of recovery by (1) a person who intentionally causes the accident, (2) a person driving or riding in a car he knows to be stolen, and (3) a person committing a felony or seeking to elude lawful arrest by a police officer. The legislature may also wish to empower the insurance commissioner to approve exclusions covering other specified types of extreme antisocial conduct.

The policyholder.
Members of his family.
Permissive users of the insured car.
Guest passengers in the car.
Pedestrians struck by the car (in accidents within the state).

The policyholder and his family will be protected not only in accidents involving the insured car, but where injured either while occupying or by being struck by a car that is not covered by similar automatic-pay coverage.

Well over 90% of the persons injured in automobile accidents incur medical and related expenses of less than $2000 and income loss of less than $6000. This plan will therefore assure that the vast majority of auto accident victims will receive immediate payment of all their medical bills, regardless of the type or cause of accident, plus income loss payments up to the prescribed minimum limits. Motorists may also elect to purchase the high-limits catastrophe coverage described later.

Dual protection provides primary coverage

Except as to injuries covered by workmen's compensation systems, payment under the basic automatic-pay coverage will be made irrespective of whether the injured party receives benefits from other sources, such as employer wage continuation payments, unemployment compensation payments or accident and health insurance. To help stabilize costs, however, an offsetting allowance will be made for benefits payable under this coverage in any liability suit the injured party may bring against a third party. Such benefits will also be offset against any claim by the injured party under uninsured motorist coverage applicable to the same accident.

Interim availability of automatic-pay medical/disability coverage

A number of NAII member companies have already pioneered on a voluntary basis the offering to each of their policyholders of basic medical/disability coverages similar in concept to what is here proposed.

Pending legislative enactment by the various states of such a program in statutory form, and to make this valuable protection more widely available, NAII has formally recommended that all of its companies voluntarily offer the types of coverage here proposed.

II. MAKE CATASTROPHE LOSS COVERAGE AVAILABLE TO ALL MOTORISTS

One of the problems highlighted by the Department of Transportation study and other recent studies of the existing compensation system governing automobile accidents is the plight of those seriously injured persons who do not have a source of insurance or other funds available to cover all of their out-of-pocket medical bills and wage losses. These would include:

Those who have no legal right of recovery against a third party, such as victims of single car accidents and of multi-car accidents where fault cannot be proven.

Those with a valid right of recovery, but with economic losses so large as to exhaust the liability insurance limits and assets of the party at fault.

The Dual Protection Plan responds to this problem in what we believe to be the simplest and most reasonable method available—a method which does not overturn the present system and deprive the seriously injured of valuable existing rights and remedies.

First, as noted, all private passenger automobile insurance policies will be broadened to contain basic automatic-pay medical/disability coverage affording at least $2000 medical benefits and $6000 income loss benefits. Not only will this largely take care of the economic losses of the vast majority of accident victims who suffer only minor injuries, but it will provide a "benefit floor" for those with very serious injuries, and, very importantly, an immediate source of funds to start paying doctor bills and other out-of-pocket expenses.

Secondly, the plan will require that there be offered with every private passenger automobile insurance policy a new form of supplemental "Catastrophe Loss Coverage" applicable at least to the policyholder and his family. Benefits under this coverage will begin when the benefits under the basic coverage have been exhausted, and will compensate all the following types of expenses and losses up to an aggregate $100,000 limit per person per accident, regardless of the type or cause of the automobile accident:

Medical, hospital, dental, surgical and related expenses.

Net loss of income up to limit of $750 per month for inability to work, or, in the case of a non-income producer, up to $12 per day for expenses incurred for services in lieu of those the injured person would have performed.

In death cases, (1) survivorship benefits to dependents of up to $750 per month subject to a $25,000 limit, plus (2) a death benefit of $5,000 payable to a named beneficiary.

While the cost of this new Catastrophe Loss Coverage will vary somewhat between different areas, classifications and companies, it is estimated that the average premium for an entire motoring family will approximate 6¢ per day—the price of a postage stamp. That average premium may be even smaller if the coverage is made excess over other sources of benefits, as is permitted but not required under the plan.[4]

For motoring families which do not have other comprehensive medical/disability insurance programs, this optional coverage will afford massive protection against the motoring hazard at very nominal cost. Even those families which do already have a fairly broad measure of protection from other sources may well wish to supplement that protection with the purchase of this coverage on an excess basis. For people in both categories the coverage will provide a simple, inexpensive way to close any existing protection gap.

III. PRESERVE PERSONAL ACCOUNTABILITY FOR MISCONDUCT ON THE HIGHWAYS

Some extreme proposals for "reform" of the present system would in fact totally destroy it and substitute a system where the wrongdoer and his victim would be treated exactly alike. Such proposals would abolish the age-old principle of law requiring each citizen to use reasonable care not to injure his fellow citizen, and the counterpart rule holding him personally accountable if he breaches that duty. They would, in other words, completely immunize a wrongdoer from any legal action by his victim for damages—provided the injury is inflicted by automobile.

We see no reason why a person should be immunized from generally prevailing rules of personal accountability the moment he takes his automobile out of the garage. Motoring is one of the prime areas where personal accountability should be retained and enforced. To abolish it would constitute an implied public policy declaration by the legislature that the state no longer really cares how badly one maims his fellow citizen, so long as he does it by car. Such a step would have a seriously damaging impact on driver attitudes and would also tend to destroy motivation for strong traffic law enforcement, with a resultant rise in accidents.

The Dual Protection Plan we propose *preserves the principle of personal accountability*. More than that, our Association is bending every effort to find ways of increasing driver responsibility and strengthening law enforcement, thereby reducing the accident toll.

IV. KEEP THE PRIMARY LOSS BURDEN ON THE WRONGDOER

A basic concept which has emerged from the public's concern with auto insurance and accident costs is that, to the largest extent possible, "motoring should pay its way". Acceptance of this premise also requires that motorists creating the greatest hazard bear a greater share of the insurance premium burden, as is generally the case under the present system.

This principle would be destroyed by extreme types of "reform" plans which abolish the fault concept and thereby thrust on careful drivers the full burden of insuring themselves against all the losses inflicted by the more hazardous drivers. Dual Protection, however, will preserve this important principle.

Under the Dual Protection Plan, the insurance company issuing the basic automatic-pay coverage immediately pays medical/disability benefits to persons injured while occupying or being struck by that car, whether or not the accident is someone else's fault. The insurer paying those benefits is then entitled to reimbursement from a negligent third party. Reimbursement will occur either by mandatory intercompany arbitration proceedings (if the third party is insured with an insurance company licensed in the same state) or by conventional sub-

[4] As with the basic automatic-pay coverage, the Catastrophe Loss Coverage would be made excess over any applicable workmen's compensation benefits, and sums payable under such coverage would be credited against benefits recoverable under Uninsured Motorist Coverage.

rogation procedures.[5] Thus, those vehicle owners and drivers causing a relatively greater share of the losses will continue to bear a relatively larger share of the total insurance premium burden.

V. ESTABLISH GUIDING STANDARDS GOVERNING DAMAGE AWARDS

A. Awards for pain, suffering

Among other frequently voiced criticisms of the present system governing compensation of injuries in automobile accidents are these:

Too much of its total pay-out goes for so-called "intangible" damages and not enough for purely economic losses.

Grievously injured persons with valid claims sometimes fail to recover all their economic losses, while settlements and awards to those with minor injuries average several times their economic losses.

Intangible damages are so nebulous as to be difficult or impossible to measure objectively.

Proponents of total "no-fault" programs use these arguments as a springboard for urging total abolition of all right of recovery for pain, suffering and other intangible elements of damages.

While acknowledging that some remedial action is needed in the area of intangible damages, NAII believes that total or substantial elimination of this basic right of recovery would be unwarranted and contrary to the interests and desires of the American public. It would mean that—

A young mother badly crippled for life by a reckless driver would receive nothing for continued pain and anguish and for the severe difficulties encountered in rearing her children;

A child who loses an arm or leg would receive nothing for the resulting disruption of normal occupational, athletic and recreational opportunities and pursuits.

A girl suffering serious disfigurement would receive nothing for a lifetime of humiliation, ridicule, and social handicap.

Nothing would be recoverable, either, for destruction of one's manhood or womanhood, or for the loss of companionship of a loved one, or, except to the exact extent of any provable pecuniary costs, for loss of sight, hearing, or any of the other vital senses.

We do not believe the public will—or should—stand still for any measures that would take away intangible damages in these and similar situations of serious injury. Our conclusions in this regard are supported by the results of several comprehensive public attitude surveys.

Governing standards of some kind for pain and suffering awards in minor injury cases are needed, however, to help stabilize or reduce the cost of the system as well as respond to the other problems just mentioned. The Dual Protection Plan proposes such standards to apply to certain cases where liability claims are lodged or suits filed against motorists who are covered by liability insurance policies containing basic automatic-pay coverage.[6]

Under those standards, awards for pain, suffering, mental anguish and inconvenience would be limited to an amount equal to 50% of the first $500 of reasonable medical and hospital treatment expenses and 100% of such expense over $500.

No limitations would apply, however, to cases of death, permanent total or partial disability, disfigurement or loss of limb, or other special circumstances shown to involve actual, substantial pain and suffering.

Under this proposal, damage awards for pain and suffering in the case of seriously injured persons such as those in the foregoing examples will continue to be determined exactly as they are at present, without any statutory yardsticks. Awards to persons with less serious injuries involving no permanent

[5] The Plan does not make any specific provision either requiring or preventing subrogation under the optional Catastrophe Loss Coverage; it is left to the individual insurance company to decide whether to provide for a right of subrogation, subject to the laws of the particular state.

[6] It is proposed that the cost-saving benefits of these standards governing awards for intangible damages shall not be extended to those categories of defendants who have not purchased or otherwise been covered by a liability policy containing the prescribed automatic-pay coverage. Thus, the existing legal rules and procedures for determining damages for pain and suffering would continue unchanged for any liability claim or lawsuit against (1) an uninsured motorist, (2) a commercial vehicle (unless basic automatic-pay coverage was voluntarily purchased), or (3) an out-of-state vehicle not carrying a liability policy containing basic automatic-pay coverage.

complications or other special circumstances, though, will be subject to the formula.

B. Income tax factor in liability awards for loss of earnings

At the present time, damage awards for loss of earnings in liability actions are not subject to income taxes. A person who has been awarded such damages actually receives a windfall, because his award is computed on the basis of gross earnings rather than the "take home pay" he would have received had he not been injured. This overpayment can be sizeable where loss of earnings represents a substantial part of the claimant's damages.

To rectify this discrepancy, and again because of the need to achieve every economy reasonably possible in the automobile injury reparations system, we propose that damage awards for loss of earnings in liability cases be subject to an offset of 15% for the income tax that presumably would have been payable if the earnings had actually been realized. The statute would clearly provide, however, that if the claimant can establish that his earnings would actually have been subject to a smaller income tax rate, or to no tax at all, the tax offset would be reduced accordingly or completely eliminated.

VI. IMPROVE PROCEDURES FOR DISPOSING OF CLAIMS AND LAWSUITS

While most claims arising out of automobile accidents are settled within a relatively short period and without necessity of litigation, delay does remain a problem in some instances and areas. It should be noted that delay in many cases is not the fault of the defendant or his insurer. It may, for example, result from lack for adequate or timely information from the claimant as to the nature of his injuries and medical treatment. Or, where a lawsuit is filed, it may be delayed by the backlog of cases that have glutted the court docket or the lawyers' dockets.

For a number of years, NAII and its member companies have been directing their efforts to finding means of streamlining and otherwise improving both the claim settlement process and the judicial process, so as to eliminate or minimize unnecessary delays and other sources of friction occurring at any points in the system, for any cause.

Advance payment procedure

Thus, NAII members have been in the forefront of those companies employing the advance payment procedure in cases of probable liability on the part of their policyholders. Money is immediately and voluntarily advanced to the injured third party to cover medical bills, wage loss and other expenses; no release is required—only a gentlemen's understanding that if suit is ultimately brought the sums advanced will be credited against the amount demanded.

Through the increasing use of this technique in recent years hundreds of millions of dollars have been put into the hands of accident victims *at the time needed*. Just a few of the many examples of its use are listed in the attached excerpt from the 1968 treatise "Advance Payments in Liability Claims" by Buchheit, Young and Kurtoch.

The legal implications of advancing monies voluntarily without taking a release may constitute some deterrent to even fuller use of the advance payment process in some areas and situations. Therefore, the Dual Protection Plan includes a proposed statutory provision for those states which do not already have one, to make it clear, among other things, that voluntary advance payments shall not be construed as an admission of liability by the insurer or its policyholder, and to assure that sums so advanced will be credited against any recovery in a lawsuit.

Voluntary claim guiding principles

Several years ago, in furtherance of its member companies' policy of providing the best possible service to the insuring public and to automobile accident victims, the NAII adopted and implemented the attached Guiding Principles Relating to Automobile Insurance Claims. These Principles, which constitute a summary and restatement of long-standing good practices by claimsmen, were developed and approved by this Association's Claims Committee and Board of Governors and distributed to our entire membership in January 1969. They now constitute an important part of the basic policy of this Association and its membership.

rogation procedures.[5] Thus, those vehicle owners and drivers causing a relatively greater share of the losses will continue to bear a relatively larger share of the total insurance premium burden.

V. ESTABLISH GUIDING STANDARDS GOVERNING DAMAGE AWARDS

A. Awards for pain, suffering

Among other frequently voiced criticisms of the present system governing compensation of injuries in automobile accidents are these:

> Too much of its total pay-out goes for so-called "intangible" damages and not enough for purely economic losses.
>
> Grievously injured persons with valid claims sometimes fail to recover all their economic losses, while settlements and awards to those with minor injuries average several times their economic losses.
>
> Intangible damages are so nebulous as to be difficult or impossible to measure objectively.

Proponents of total "no-fault" programs use these arguments as a springboard for urging total abolition of all right of recovery for pain, suffering and other intangible elements of damages.

While acknowledging that some remedial action is needed in the area of intangible damages, NAII believes that total or substantial elimination of this basic right of recovery would be unwarranted and contrary to the interests and desires of the American public. It would mean that—

> A young mother badly crippled for life by a reckless driver would receive nothing for continued pain and anguish and for the severe difficulties encountered in rearing her children;
>
> A child who loses an arm or leg would receive nothing for the resulting disruption of normal occupational, athletic and recreational opportunities and pursuits.
>
> A girl suffering serious disfigurement would receive nothing for a lifetime of humiliation, ridicule, and social handicap.
>
> Nothing would be recoverable, either, for destruction of one's manhood or womanhood, or for the loss of companionship of a loved one, or, except to the exact extent of any provable pecuniary costs, for loss of sight, hearing, or any of the other vital senses.

We do not believe the public will—or should—stand still for any measures that would take away intangible damages in these and similar situations of serious injury. Our conclusions in this regard are supported by the results of several comprehensive public attitude surveys.

Governing standards of some kind for pain and suffering awards in minor injury cases are needed, however, to help stabilize or reduce the cost of the system as well as respond to the other problems just mentioned. The Dual Protection Plan proposes such standards to apply to certain cases where liability claims are lodged or suits filed against motorists who are covered by liability insurance policies containing basic automatic-pay coverage.[6]

Under those standards, awards for pain, suffering, mental anguish and inconvenience would be limited to an amount equal to 50% of the first $500 of reasonable medical and hospital treatment expenses and 100% of such expense over $500.

No limitations would apply, however, to cases of death, permanent total or partial disability, disfigurement or loss of limb, or other special circumstances shown to involve actual, substantial pain and suffering.

Under this proposal, damage awards for pain and suffering in the case of seriously injured persons such as those in the foregoing examples will continue to be determined exactly as they are at present, without any statutory yardsticks. Awards to persons with less serious injuries involving no permanent

---

[5] The Plan does not make any specific provision either requiring or preventing subrogation under the optional Catastrophe Loss Coverage; it is left to the individual insurance company to decide whether to provide for a right of subrogation, subject to the laws of the particular state.

[6] It is proposed that the cost-saving benefits of these standards governing awards for intangible damages shall not be extended to those categories of defendants who have not purchased or otherwise been covered by a liability policy containing the prescribed automatic-pay coverage. Thus, the existing legal rules and procedures for determining damages for pain and suffering would continue unchanged for any liability claim or lawsuit against (1) an uninsured motorist, (2) a commercial vehicle (unless basic automatic-pay coverage was voluntarily purchased), or (3) an out-of-state vehicle not carrying a liability policy containing basic automatic-pay coverage.

complications or other special circumstances, though, will be subject to the formula.

B. Income tax factor in liability awards for loss of earnings

At the present time, damage awards for loss of earnings in liability actions are not subject to income taxes. A person who has been awarded such damages actually receives a windfall, because his award is computed on the basis of gross earnings rather than the "take home pay" he would have received had he not been injured. This overpayment can be sizeable where loss of earnings represents a substantial part of the claimant's damages.

To rectify this discrepancy, and again because of the need to achieve every economy reasonably possible in the automobile injury reparations system, we propose that damage awards for loss of earnings in liability cases be subject to an offset of 15% for the income tax that presumably would have been payable if the earnings had actually been realized. The statute would clearly provide, however, that if the claimant can establish that his earnings would actually have been subject to a smaller income tax rate, or to no tax at all, the tax offset would be reduced accordingly or completely eliminated.

VI. IMPROVE PROCEDURES FOR DISPOSING OF CLAIMS AND LAWSUITS

While most claims arising out of automobile accidents are settled within a relatively short period and without necessity of litigation, delay does remain a problem in some instances and areas. It should be noted that delay in many cases is not the fault of the defendant or his insurer. It may, for example, result from lack for adequate or timely information from the claimant as to the nature of his injuries and medical treatment. Or, where a lawsuit is filed, it may be delayed by the backlog of cases that have glutted the court docket or the lawyers' dockets.

For a number of years, NAII and its member companies have been directing their efforts to finding means of streamlining and otherwise improving both the claim settlement process and the judicial process, so as to eliminate or minimize unnecessary delays and other sources of friction occurring at any points in the system, for any cause.

Advance payment procedure

Thus, NAII members have been in the forefront of those companies employing the advance payment procedure in cases of probable liability on the part of their policyholders. Money is immediately and voluntarily advanced to the injured third party to cover medical bills, wage loss and other expenses; no release is required—only a gentlemen's understanding that if suit is ultimately brought the sums advanced will be credited against the amount demanded.

Through the increasing use of this technique in recent years hundreds of millions of dollars have been put into the hands of accident victims *at the time needed*. Just a few of the many examples of its use are listed in the attached excerpt from the 1968 treatise "Advance Payments in Liability Claims" by Buchheit, Young and Kurtoch.

The legal implications of advancing monies voluntarily without taking a release may constitute some deterrent to even fuller use of the advance payment process in some areas and situations. Therefore, the Dual Protection Plan includes a proposed statutory provision for those states which do not already have one, to make it clear, among other things, that voluntary advance payments shall not be construed as an admission of liability by the insurer or its policyholder, and to assure that sums so advanced will be credited against any recovery in a lawsuit.

Voluntary claim guiding principles

Several years ago, in furtherance of its member companies' policy of providing the best possible service to the insuring public and to automobile accident victims, the NAII adopted and implemented the attached Guiding Principles Relating to Automobile Insurance Claims. These Principles, which constitute a summary and restatement of long-standing good practices by claimsmen, were developed and approved by this Association's Claims Committee and Board of Governors and distributed to our entire membership in January 1969. They now constitute an important part of the basic policy of this Association and its membership.

Expedite small claims

NAII recognizes that notwithstanding voluntary efforts such as these by insur ers to improve and expedite the claim settlement process, problems remain whicl call for further steps. The sheer number of auto accidents and the necessity fo determining their cause and evaluating the resulting injuries and damage occa sions some delays, especially where disagreement arises as to either of thos issues.

Critics of the present system have emphasized the fact that viewed both fro the *time* standpoint and the *cost* standpoint, the system is least efficient where i involves litigation of the *smaller* cases—those entailing minor injuries, or n injuries but just property damage. We believe that the time and expense expende in the trial of a lawsuit under our traditional judicial process can, for example, b justified in a controverted case involving a claim of tens or hundreds of thousand of dollars for alleged permanent disability. But it is wasteful to have to invoke th same costly and time-consuming procedures for the resolution of every dispute claim for a few hundred or thousand dollars.

Again, the solution does not necessitate scrapping the whole system as som would advocate. It can be achieved by remedial steps within the basic structure o the system.

As noted earlier, for the vast majority of automobile accident victims (includin many now barred from recovery) the Dual Protection Plan by providing aut matic payment of basic medical/disability benefits will eliminate any problem delay in obtaining funds for payment or reimbursement of economic losses fo injuries. Such benefit payments will be made promptly upon receipt of medica bills and wage loss information, without awaiting any determination as to faul or cause of accident.

Property damage to vehicles will continue as at present to be compensated fro two sources; (1) by claim against the vehicle owner's own collision coverage; o (2) by claim against the party at fault, if any, and in turn the latter's propert damage liability insurance coverage. Like the proposed automatic-pay medical disability coverage, collision coverage pays off immediately, regardless of faul The insurer then has a right of reimbursement from an at-fault third party, i any, and his liability insurer.

Thus, both as to vehicle damage losses and basic medical/disability losses, th great majority of automobile accident victims will be compensated promptly an without regard to cause of accident. The issue of which insurance compan should ultimately bear those losses in multiple-car accidents will subsequentl be resolved either by intercompany arbitration (a very economical process a ready widely used by the insurance industry) or where necessary by subrogatio action. Most important, the basic benefits are paid to the claimant first and the the companies decide between themselves which one should bear the loss.

There will of course remain to be disposed of through the customary settl ment procedures, or through litigation where necessary, (1) claims for intang ble losses and for economic losses in excess of the basic automatic-pay benefit (2) claims for property damage not compensated by collision coverage, and (3 injury and death claims arising in motor vehicle accidents not covered by priva passenger automobile liability policies issued in the enacting state.

Small claims arbitration

To aid in the prompt, economical disposition of the smaller claims in the residual categories which cannot be resolved by the settlement process, and esp cially for use in states with a court congestion problem, the Dual Protectio Plan includes a proposed statutory provision authorizing creation of a sma claims arbitration system to handle all cases up to $3,000 in amount.[7] This mea ure is patterned after the highly successful Pennsylvania law under which ma thousands of small claims (both third party liability cases and other types civil cases) have been removed from overburdened court dockets and process quickly and reasonably.

As an alternative to this approach, our Association would give support to t creation of special small claims courts designed to accomplish the same gener objective as the Pennsylvania arbitration plan.

Disclosure of medical evidence

Prompt settlement of claims is sometimes delayed because the defendant a his insurer are denied access to all the information they reasonably need evaluate the claimant's injuries and validate medical treatment expenses.

[7] Or such other "threshold" level a state legislature may see fit to establish.

some instances such information is withheld until a lawsuit has been filed and trial commenced.

To alleviate this problem, the Dual Protection Plan provides that persons claiming damages or policy benefits for injuries sustained in an automobile accident shall if requested consent to physical examination by a doctor supplied by the defendant or the insurer. It also requires such claimants if requested to provide any information reasonably needed concerning the injuries claimed and the treatment undergone.

Other remedial steps

In addition to the steps just described, NAII and its members are prepared to support any specific action or measures needed locally to eliminate special problems that may cause or contribute to unreasonable court delay. Our staff, committees, and company officials have given a great deal of study to the court congestion problem and have initiated or participated in projects in various areas designed to alleviate it. We will continue to work in every way to help make the judicial system operate fairly and efficiently.

VII. COURT SUPERVISION OF CONTINGENT FEES

One of the most controversial features of this country's existing legal system is the long established practice by plaintiff lawyers of handling most personal injury cases on a contingent fee basis. Under this arrangement no fee is paid or payable unless a settlement or judgment is obtained. In the event of recovery the lawyer receives a percentage of the total award recovered; that percentage often amounts to 33⅓% and sometimes more.

Proposals have from time to time been advanced either to prohibit contingent fee arrangements completely, or to restrict their use to cases involving indigent claimants.

There have unquestionably been some abuses within the contingency fee system. However, contingency fee arrangements do serve the worthwhile purpose of assuring an injured person the availability of legal counsel without the necessity of advancing or committing himself to a substantial fixed fee or retainer.

The Dual Protection Plan calls for retention of the contingent fee system, but with somewhat closer court supervision: It provides for adoption by the courts of rules prescribing maximum contingent fee schedules applicable to all motor vehicle accident cases under their jurisdiction. A lawyer could file for a higher fee allowance from the court in any case where he believes those prescribed are not adequate. Unlike some other programs, our plan does not itself specify any maximum percentage figure; that is left to the courts to prescribe.

Precedent for such regulation of fees can be found in the court rules in several states, as well as in the Federal Tort Claims Act. The probate courts in many states also regulate and require disclosure of fees in probate cases.

We believe that reasonable regulation of contingent fees as here proposed in states lacking such specific procedures will prove beneficial both to the public and to the legal profession. It is our further belief that this type of regulation will elicit support from within the bar itself.

VIII. CURB INFLATION IN MAJOR PREMIUM COST INGREDIENTS

While Dual Protection is intended, among other things, to stabilize or reduce the cost of automobile insurance, the NAII is aware that truly dramatic premium savings can only come as and when progress is made in curbing the major underlying cost ingredients of the insurance premium dollar. Chief among these ingredients are the highway accident spiral and the upsurge in costs of treating human injury and repairing damaged automobiles.

With this in mind, the NAII and the safety organizations it supports have been engaged for many years in intensive effort to reduce accidents and decrease injury severity through research, public education and the fostering of strong traffic laws and enforcement. In addition to individual company efforts in the traffic safety area, NAII companies collectively have provided the major share of the operational budget of the Insurance Institute for Highway Safety, an independent, non-profit organization dedicated to the reduction of highway accident loss.

Attack the larger half of the loss picture

Though the primary emphasis of our efforts must continue to be focused o curbing deaths and injuries, the greatest opportunity for effecting significan premium savings lies on the material damage side of the loss dollar. Toda almost two-thirds of the auto insurance premium dollar for a typical packag of insurance including a late model vehicle is spent for car damage coverage More than 10 times as many people incur damage to their cars as incur pe sonal injuries!

For these reasons, the NAII has been in the forefront of efforts to stabili the cost of vehicle damage insurance through programs directed at the in provement of automobile design and the reduction of auto damage repair cost

Our Association in recent years has been continually spotlighting—in Co gressional hearings and elsewhere—the four basic causes behind the upsurg in material damage losses: speed, horsepower and high-performance cars; th spiral in automobile prices and the prices of crash repair parts; the increases i repair garage charges, and the extreme vulnerability of today's automobiles t costly damage even in low-speed crashes.

This constant public airing of a critical problem has helped to touch off a encouraging chain of events. Auto dealers have reported a decline in the sale o "hot" cars; auto manufacturers announced they were shelving certain plan they had for further souping up the horsepower of some of their new models, an several of the major car-makers have said they will install functional bumpe on their cars for 1973 and beyond.

NAII has also been engaged in pioneering research programs designed ult mately to cut the costs of repairing damaged automobiles. One of these projec is being conducted under NAII sponsorship by the Cornell Aeronautical Labor tory. It purpose is to determine if the damage to a car in a given crash situatio can be analytically projected before the crash takes place, and even before th car is put on the market. If this concept proves feasible, as preliminary indic tions suggest, then cars can be indexed according to their relative vulnerabilit to damage and their cost to repair. Premium rates, in turn, could be based upo such an index.

In addition, the NAII has been devoting intense study to the need for estal lishing an industry-sponsored research center whose purpose would be to pione new cost-saving techniques in the field of automobile crash repair. A team o NAII staff and member company representatives recently traveled abroad o two occasions to study the operations of the Motor Vehicle Crash Researc Centre in Britain, and a similar facility in Sweden. Though they have been i existence for only a short time, these unique facilities have already produced number of advances in repair technology. The NAII is continuing to explore th concept to evaluate its feasibility and practicability in the United States.

Our Association is optimistic that through projects and studies of the kin just described, we will be able to make a substantial contribution to the goal o reversing the rising trend of automobile insurance costs.

Crack-down on claim fraud

As mounting loss payments exert increasing upward pressure on automobil insurance rates, the insurance business must devote extraordinary efforts t eliminate every element of unnnecessary cost. One serious and regrettable co tinuing source of waste is claim fraud, a scourge which adds tremendously t the insurance cost burden borne by the American public.

Programs to expose and combat claim fraud have long been carried on by i dividual insurance companies and organizations. In order to increase the effe tiveness of such actions NAII and the other leading casualty insurance trade a sociations have recently participated in the creation and staffing of a separat new instrumentality, the Casualty Insurance Fraud Association (CIFA). t deal solely and specifically with the problem. CIFA will aid and complement th work of overburdened law enforcement agencies nationally by investigating sus pected fraudulent activity in automobile and general liability insurance situa tions. It will give priority to exposing and bringing about the prosecution of o ganized auto accident fraud rings, which ruthlessly pick the pockets of the in surance-buying public by countless millions of dollars annually.

To provide a more adequate statutory framework for prosecution in state now lacking strong and explicit laws on the subject, the Dual Protection Pla proposes legislation imposing stringent penalties for conviction of any type o claim fraud arising out of automobile accidents. It calls for a fine of up to $50

or imprisonment up to one year, or both, upon conviction of a first offense involving a claim up to $100 in amount, and a fine of at least $500 or imprisonment up to 10 years, or both, for convictions of a fraudulent claim of over $100 or for a second or successive conviction regardless of amount of claim.

CONCLUSION

By way of summary, the Dual Protection Plan will:

Compensate the basic economic losses of the vast majority of automobile accident victims, including many now receiving nothing from the accident reparations system.

Afford optional protection against the hazard of catastrophic economic loss, at nominal cost.

Pay such benefits immediately when needed, without regard to questions of fault.

Preserve the innocent injured party's right to recover additional damages against a wrongdoer.

Adopt reasonable standards for ascertaining damages for pain and suffering in the less serious cases.

Retain personal accountability for negligent driving, and keeping the major share of the premium cost burden on those who present the greatest hazard on the highways.

Increase the speed and efficiency of the present system, particularly as to smaller claims and losses.

Help relieve court congestion.

Stabilize or reduce automobile insurance premiums and cut the overall cost of the accident reparations system.

State-by-State implementation

NAII believes that determination of the rights, responsibilities and compensation of individuals involved in automobile accidents should remain a matter of state law, as at present. The Dual Protection Plan is designed for that purpose, and is readily adaptable to the specific problems and statutory settings of different states. It is submitted as a program of evolutionary reform which will bring the public an increased measure of protection against economic loss without sacrificing their vital rights and valuable benefits under the present system.

Additional information about the Plan is available upon request.

EXCERPT FROM "ADVANCE PAYMENTS IN LIABILITY CLAIMS"

(By Buchheit, Young, and Kurtock—October 9, 1968)

The following examples submitted by contributing companies will assist the reader in understanding the scope of advance payments in present practice.

1. A Canadian insured, operating his vehicle on a gravel, wet road, failed to negotiate a curve and struck a tree stump. His passenger, a 33 year old waitress, sustained a fractured femur, with open reduction and subsequent infection. Her total period of hospitalization was 153 days. Her husband had been unemployed, and the bank was threatening foreclosure proceedings on their home mortgage. The adjuster paid off the mortgage as well as the hospital and medical bills, in an advance payment of $5,800. The mortgage officer of the bank was an enthusiastic promoter of the company and its advance payments program, and the action taken was a topic of discussion in the community for many weeks thereafter.

2. Claimant, a minister, sustained an injury to his larynx, and while recuperating, was unable to talk above a whisper. A replacement minister was unavailable. The adjuster purchased an amplifier system for the church which was received by the minister and congregation with gratitude. The claim was concluded for actual expenses incurred, and the amplifier system was donated to the church.

3. One claim involved a serious chartered bus accident on a snow drifted mountain road, resulting in three deaths, three serious injuries, and thirty-five minor personal injury claims. All of the claimants were soldiers on their way home for Christmas. The company claims representative met with the commanding officer of the army base and arranged for a charter flight, with advance payments to each soldier to cover his personal expenses, plus air line tickets for his

return home, and return to base. The General Staff of the army at the Pentago in Washington, D.C. were most complimentary of the manner in which this cas was handled.

4. In a remote section of the Northwest, a young man sustained severe an disfiguring facial injuries as a result of an accident arising out of the insure operator's gross negligence. His parents were of modest financial means and th carrier arranged to transport him periodically to a large city where he was a tended by one of the city's top plastic surgeons. Total funds advanced exceede $10,000. The ultimate results were excellent, and the young man subsequentl invited the adjuster to his wedding.

5. A college senior was killed. In attempting to effect an adjustment with th parents of this boy, the adjuster realized that the parents were not interested i financial compensation as such. After some consideration, the adjuster propose establishing in perpetuity a scholarship at the university in the name of th deceased. He also purchased a permanent trophy to be maintained at the d ceased's high school from which he graduated as valedictorian of his class. Th names of scholarship awardees will be inscribed on the trophy.

6. A sixteen year old body was seriously injured by an automobile while ridin a motorcycle. He sustained comminuted fractures of the right femur and of bot bones of his left forearm. Faulty healing required a long period of disability an it was feared that the boy might never return to high school. In addition to a vacing the money to pay the medical and hospital bills, the company arrange to have a two-way speaker system installed between the hospital room an the classroom. The boy not only hears what goes on in the classroom but he r cites and takes part in classroom discussion.

7. Over $72,000 was advanced by one company to a quadruplegic. A rehabil tation program caused restoration of some function and the injured party now table to take care of herself without round-the clock nursing service. Tl case was finally settled by the purchase of an annuity.

8. A fifty-two year old man sustained serious back injuries. After advan payments had begun, the claimant retained an attorney through whom paymen were continued. The attorney and the adjuster worked with the State Rehabilit tion Board and succeeded in putting the injured party through an education program which resulted in full rehabilitation.

9. A twenty year old girl sustained serious fractures of both femurs. Repeat surgical procedures were required. Payments were advanced in excess of $770 including over $1,000 for the services of a Christian Science practioner and ov $800 for telephone communication with this practitioner who was located in a other state. Included in the total advanced was a special tuition allowance permit the claimant to keep up with her education while disabled. In this pa ticular case, a final settlement offer was made at which time the claimant co sulted a prominent attorney. His recommendation was that the settlement off be accepted.

10. A fifty-seven year old executive sustained an extremely severe injury the knee in 1966, and has been unable to work since. A total of $17,736 has be advanced to date, and the company is now considering a choice of annuity a rangements together with a policy which will take care of further medical surgical expenses resulting from the injury.

11. A fifteen year old girl sustained a skull fracture, comminuted fracture the left femur and other injuries. She was in a coma for three days and her li was in danger. The company, notwithstanding a low policy limit, began payi medical bills, paid the private duty nurses weekly, and paid the mother $1 a week so that she could quit her job—relocate near the hospital and help h daughter recover.

12. A twenty year old married truck driver sustained an injury which requir the amputation of a leg. The company advanced hospital and doctor bills a net take home wages. A lawyer was engaged by the family shortly thereaft and the advance program was continued through him. The case was ultimate settled in what the company believes was a very favorable climate produc by their willingness to give immediate assistance.

13. A fifteen year old girl sustained severed ligaments to her hand and ner damage. Hysteria was tightening the hand into a mere claw. The local physici recommended the attention of specialists. The girl was immediately sent to Hand Rehabilitation Clinic at a nearby university, undergoing surgery twic and emerging with only a 15% residual disability. The family was one moderate means and could not have afforded this care without the assistan of the insurance company.

14. An automobile occupied by two young people was hit head-on by the insured. Both claimants were hospitalized. The parents arrived from out of town and the adjuster assisted them in registering at a motel, arranged airplane tickets, purchased new clothing for the injured claimants, took care of the hospital bill, had the automobile repaired and paid for it, and finally took the family to the airport for their return home.

15. The claimant, a laboring man traveling on motorcycle, sustained a badly crushed leg which the local physician felt would necessitate amputation. An offer by the adjuster to move the claimant to a large medical center some distance away was gratefully accepted. The best orthopedic talent was put on the case and the leg was saved. During the period of convalescence, the adjuster made arrangements to have the wife near the center and took care of her transportation and room and board. A total of $17,000 was advanced and final settlement was made directly with the family for a substantial additional sum of money. Total treatment, including extensive therapy and rehabilitation, took approximately two years.

16. A twenty year old married claimant was struck head-on by the insured's tractor-trailer. He sustained numerous serious and disabling injuries. Advance payments were begun, and continued after claimant obtained legal representation. In less than eight months, a total of almost $11,000 was advanced for medical, wages, and incidental expenses, plus $1200 for damage to the automobile. The case was settled without litigation.

17. A fifty-seven year old married female suffered fractured legs, fractured arms, and a fractured nose, jaw and ribs. Before the accident she operated a gift shop. The husband had to leave his job and run the shop during her convalescence. Advances of approximately $5,000 were made for hospital expenses not otherwise covered, lost wages and incidental expenses. The case was settled directly with the claimant for a sum very close to the substantial policy limit.

18. An elderly woman sustained a fractured hip in a fall and was hospitalized and later placed in a rest home for convalescence. Her principal concern was the possible loss of her small apartment because of her inability to pay for rent and utility. The adjuster saw that these expenses were taken care of monthly, and presumably at this date the claim has been disposed of amicably.

19. A college football player, seriously injured in a crosswalk, lost his football scholarship. The company advanced his tuition and other expenses to permit him to continue college, prior to settlement. The young man has now graduated from college and the case brought to a satisfactory conclusion.

20. A claimant, injured in a fall, required physiotherapy and was reluctant to make continued visits to a doctor's office. The claim representative advanced him $100 to take out a membership in a local health club which provided the needed facility. The claimant later returned $30 of the advance to the claim representative, advising that the membership was only $70.

Guiding Principles Relating to Automobile Insurance Claims

INTRODUCTION

The National Association of Independent Insurers and its member companies believe that the administration of automobile insurance claims is the ultimate service and product of automobile insurance. The claims funciton must be performed with integrity within the framework of the American legal and judicial system, governmental regulation, and the contractual provisions of automobile insurance policies. We continue to conceive our objective in the disposition of automobile claims to be the administration of justice in the day-to-day affairs of men by the application of these factors to each individual occurrence.

Because of our contractual relationship, we owe a loyalty and duty to those whom we insure. We represent them, and we act in their interests. It is our duty to act efficiently and economically. In addition to our contractual duty to our insureds, we recognize our obligation to process claims in such manner as to serve the social and economic welfare of the American public. In keeping with this obligation, many of our companies are employing various new techniques in payment and settlement such as payments in advance of final settlement, rehabilitation and open-end releases.

Now, therefore, we reaffirm and publish these Guiding Principles relating to Automobile Insurance Claims. They are of necessity general in scope and as in

the case of any other general principles must be read in the context of the law and practice in the state or area in which business is conducted. We declare it to be our earnest intent and purpose to:

1. Conduct claim investigations in a diligent search for the facts as promptly as possible.
2. Contact claimants promptly as to an accident initially reported by an insured in which there is reason to believe the insured may be legally liable.
3. Contact the insured promptly as to an accident initially reported by a claimant, and continue processing the claim.
4. Determine the amount of automobile and other property losses promptly and fairly.
5. Respond promptly, when a response is indicated, to all communications from insureds, claimants, attorneys and other interested persons.
6. Give a prompt, courteous and forthright explanation to each claimant as to the company's position with respect to his claim.
7. Conclude each claim, large or small, on the basis of its own merits, in the light of the facts, the law, and the coverage afforded.
8. Pay meritorious property damage claims promptly without requiring simultaneous settlement of bodily injury liability claims.
9. Investigate coverage questions expeditiously; inform the insured and claimant of the companies' position as promptly as possible; litigate only meritorious policy defenses.
10. Assist in the physical rehabilitation of injured persons where such procedure is indicated by the injury, the liability and the policy provisions.
11. Facilitate, in the case of claims involving more than one company, the prompt and fair disposition of the claim, later seeking to resolve any controversy between insurance companies without recourse to the courts.
12. Co-operate in every proper way, when a claimant files suit, to secure prompt disposition of the litigation.
13. Review at the management level all complaints received concerning claim handling.
14. Adhere to the ethical standards set forth in the Statement of Principles adopted by the National Conference of Lawyers, Insurance Companies and Adjusters.
15. Seek and support new methods designed to provide improved claim services for the public.

(Whereupon, at 5:45 p.m., the hearing was adjourned to reconvene at 10:00 a.m., May 10, 1971.

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

MONDAY, MAY 10, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m. in room 5110, New Senate Office Building, Hon. Philip A. Hart presiding.

Present: Senators Pastore, Hart, Moss, Cotton, Pearson, Griffin, Baker, and Stevens.

Senator HART. The committee will be in order.

Our first witness this morning, and I welcome him, is a distinguished citizen of Michigan, the vice president of Ford Motor Co., Mr. John J. Nevin.

Mr. Nevin, you were good enough to furnish us in advance with your statement. I apologize, but over the weekend I have not had a chance to read it. We will order it printed in full in the record, and if there is any extension you care to make—footnoting or summation—feel free to do it.

STATEMENT OF JOHN J. NEVIN, FORD MOTOR CO. VICE PRESIDENT, CONSUMER SERVICE DIVISION, THE AMERICAN ROAD, DEARBORN, MICH.

Mr. NEVIN. Mr. Chairman, my name is John J. Nevin; I am a vice president of Ford Motor Co. Ford welcomes this opportunity to express its views on S. 976.

The Senate Commerce Committee has sought, on several occasions in recent years, to enhance the knowledge and the freedom of choice of the consuming public through legislation. The sponsors of S. 976, without doubt, have a similar purpose.

Ford is unable, however, to support many of the provisions of S. 976. S. 976 is concerned largely with the repairability and damageability characteristics of automobiles. It is similar to safety and air pollution control legislation in that it would permit or require administrative actions that might add significantly to the selling prices of automobiles. It differs, in our opinion, from safety and air pollution control legislation in that it deals with vehicle characteristics that are more the concern of the individual buyer than the concern of the public in general.

S. 976 goes far beyond the goal of enhancing the knowledge and the freedom of choice of the consumer and proposes a vast new system of regulation for an industry already thoroughly subjected to regulation. Standards promulgated under the authority of the Safety Act of 1966 and the Clean Air Amendments of 1970 will require a virtually

64-345—71—pt. 3——21

complete reengineering of motor vehicles during the next few years. Our engineering resources are even today overtaxed by effort to comply with air pollution and safety standards that have been assigned the highest level of priority. To conserve these resources we have taken action to severely limit our efforts on other engineering and design programs.

Ford accepts the desirability and, in fact, the necessity of adding costs to automobiles in order to accomplish public air pollution and safety objectives. We believe, however, that new legislation requiring or authorizing actions that might affect the prices of new cars should be adopted only after giving full consideration to the possible cumulative impact on car prices of the proposed legislation and of legislation that has been previously enacted.

Ford also accepts the desirability and necessity of limiting the consumer's choice by establishing compulsory vehicle standards that affect the safety or pollution characteristics of a vehicle. We believe, however, that compulsory standards may not be desirable when those standards affect only the repairability or damageability characteristics of a car. The establishment of such standards could, in our view, unduly restrict the choices available to the consumer.

In summary, Ford believes that S. 976 would require that engineering and research resources in the automobile industry be directed from high priority air pollution and safety programs, would permit the promulgation of regulations that might add significantly to new vehicle prices, and would unnecessarily restrict customer choice in the automobile market. For reasons that will be reviewed in the material to follow, Ford concludes that S. 976 offers no substantial promise of offsetting reductions in insurance and repair costs for the American consumer.

If I may move to the discussion of the individual sections of the bill and deal first with compilation and distribution of data on comparative damage susceptibility.

Proposed section 125(a) directs the Secretary of Transportation to:

> * * * develop and prescribe by regulations issued not later than July 1, 1972, a system of tests and testing procedures designed to allow a determination and comparison of the susceptibility to damage of passenger motor vehicles involved in traffic accidents which reasonably may be anticipated to occur at normal speeds and under normal operating conditions, including, but not limited to, collisions at speeds of 5, 10, and 15 miles per hour.

Proposed section 126 provides that:

> * * * no manufacturer shall sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States—any passenger motor vehicle manufactured on or after January 1, 1973, unless production models of the make and model of such motor vehicle have been tested in accordance with the regulations promulgated by the Secretary under section 125(a) of this Act.

The bill would require the testing of production models rather than preproduction prototypes. Normally, we may have as few as 45 days between the start of production and the public introduction of the new model. The Secretary would probably want, and in regulations issued under the provisions of the 1966 act he has required, submission of performance data at least 30 days prior to introduction day so that he would have time to review the data before it is provided to customers at the time the new models go on sale. We would, therefore, have as little as 15 days from the start of production to the time at which

we would be required to complete testing and report results. The alternative would be to stockpile large quantities of new models for some indefinite period of time.

The major consumer interest in the damageability characteristics of an automobile is associated with the probable cost of vehicle ownership. For the majority of consumers contemplating the purchase of a new car, the most meaningful index of damageability is one that advises him that a specified reduction in insurance premiums can or cannot be obtained by choosing a particular model. From this information he can infer parallel savings on repairs he may have to pay for himself.

In dealing with insurance premiums, however, the bill requires only that:

> The Secretary shall—make such information available to insurance companies and business organizations engaged in the business of selling or underwriting vehicle insurance in interstate commerce * * *

and

> * * * report to the President and the Congress on February 1, 1973, on the extent to which the motor vehicle insurance industry is utilizing such information in the determination of insurance rates.

No further action is required of the Secretary or the insurance industry. In fact, the Secretary is not even required, in establishing tests, to determine that insurance premiums will be adjusted to reflect differences in damageability.

The insurance industry uses a variety of rating criteria in establishing premiums for an individual policyholder. The great majority are related to the age, sex, traffic record, and driving characteristics of the person to be insured. While the rating of the policyholder has reached a high level of refinement, little effort has been made to rate the safety or damageability characteristics of the vehicle.

It is to be noted that in the 5 years since the passage of the National Traffic and Motor Vehicle Safety Act of 1966, no adjustments in insurance rates have been made to recognize the effect of the many compulsory standards that have been promulgated to improve the safety characteristics of recent model American cars. Ford believes that the absence of such ratings results from the fact that any premium reductions justified by differences in the car to be insured would be dwarfed in their impact on the policyholder by ratings related to the characteristics of the person to be insured.

Only one major automobile insurance company in the United States has stated that it would reduce premiums on cars equipped with a design feature as substantial as 5-mile-per-hour bumpers front and rear. The reduction that has been offered would be limited to collision coverage. It would produce savings of less than $15 per year for the average American policyholder and less than $25 per year in a high insurance cost area like Washington, D.C. It should be noted that the effect of rating characteristics as subtle as whether or not an 18-year-old male driver in the family was a good student, or whether or not the insured drives more than 19 miles to work, would have an impact on premiums five to six times the size of the reduction offered for 5-mile-per-hour bumpers.

If I may interrupt for just a moment and explain the table in my testimony: In Washington, D.C., (the basic insurance premium

for $100 deductible is $122 for a 1971 Ford Galaxie. The premiu would drop to $92 in the second and third years and $79 in t fourth and fifth years. Assuming a 20-percent reduction in collisi premiums only, the policyholder would save $24 in the first year a high-cost area like Washington, D.C., something like $18 the second or third year, and something closer to $16 in the four and fifth years.

You will note from the table that the reduction offered if an 1 year-old qualifies for a good student rating or if the driver drives mo than 10 miles to work, the reduction and the increases are in exce of $100.

Returning to my testimony, Ford believes that the imposition vast new testing requirements on the automobile industry, at a tin when the industry is faced with the extraordinary testing demands higher priority air pollution and safety standards, is unnecessar Ford recommends that no new testing requirements be imposed on t automobile industry until the Secretary of Transportation has deve oped a method of comparison that the insurance industry is prepar to accept and until the legislation provides assurance that meaningf reductions in insurance premiums will result from the data gather in these comparisons.

At the point in time at which these criteria are met, Ford wou have no objection to the publication of data advising the consum that he could obtain specific reductions in his insurance cost by pu chasing a specified make or model.

We believe, however, that the requirement that production versio of each make and model be tested at various different speeds unnecesary. We suggest that the industry be permitted to use the sa reporting procedures, with respect to damageability, that it is n permitted to use in reporting the safety characteristics of the car.

Personal injury risk comparisons: Proposed section 125(d) wou require the Secretary to—

> Undertake a study of the feasibility of developing tests and testing procedu designed to allow a determination and comparison of the risk of personal inj or death to occupants of passenger motor vehicles from traffic accidents wh reasonably may be anticipated to occur at normal speeds and under nor operating conditions.

The proposal requires the Secretary to report his findings and reco mendations to the President and the Congress by July 1, 1972, but he finds such tests are feasible, he is required to prescribe a system tests and test procedures without further scrutiny by the Presid or the Congress.

Ford would fully support a study designed to improve the infor tion available to consumers. We believe also that information ga from such a study might assist the Department of Transportati establishing needed priorities to guide the Department in promu ing future standards affecting the safety characteristics of mobiles.

We think it is important to note that in the 5 years since pas of the 1966 act, it has not been possible to develop tests that w permit comparisons of the relative risk to occupants of cars built b and after the effective dates of many of the compulsory safety st ards that have been promulgated. We doubt, therefore, that th

quirement that the proposed new study be completed by July 1, 1972, is reasonable. Ford suggests that the reporting date by extended.

We believe, however, that the Secretary should not be authorized to take further action on the basis of this study alone. Because inaccurate comparisons could mislead consumers and do serious harm to manufacturers, we think the President and the Congress should be provided the opportunity to review and act on the results of the study before the Secretary is authorized to proceed further.

Property loss reduction standards: Proposed section 125(b) requires the Secretary to—

> As soon as possible, after July 1, 1972, promulgate property loss reduction standards which will minimize the economic losses associated with motor vehicle accidents.

Proposed section 125(c) requires the Secretary to—

> Promulgate a property loss reduction standard which requires that all motor vehicles manufactured after January 1, 1975, and offered for sale in the United States, are so designed and constructed with energy-absorbing bumpers capable of withstanding impacts, front and rear, of 5 miles per hour into a solid fixed barrier.

Ford does not believe that the establishment of compulsory standards governing the damageability of automobiles is desirable. If the issue is solely damageability, we believe that Government efforts should be directed at providing the consumer with the information on comparative insurance costs that could be made available if the damage susceptibility testing provisions of S. 976 were modified as previously suggested.

The establishment of compulsory standards would restrict the consumer's choice by requiring him to accept an advantage in damageability at the price of compromises in other elements of the purchase that may be of greater importance to him.

If an automobile buyer elects to accept a damageability risk in exchange for an appearance gain or some other benefit that is of importance to him, that would seem to us to be his decision to make and not a matter of public policy.

If I may, Mr. Chairman, interrupt the prepared statement, I described a possible $24 reduction on a Galaxie in the first year in Washington, D.C., in that table.

If you move to Cedar Rapids, Iowa, which is a far lower cost insurance area and you assume that the insured has purchased a Pinto instead of a Galaxie, the collision premiums on a Pinto are $48 in the first year and they drop to $36 in the second and third year.

That means the consumers' savings, if all insurance companies gave the 20-percent reduction that a single insurance company has offered, would be about $10 in the first year on a Pinto, about $7 in the second or third year, and all of $6 or $5 in the fourth, fifth and sixth years.

This matter of consumer choice is one that we think is important. We think it is very possible that a buyer of a car like the Galaxie in a high insurance cost area like Washington, D.C. would want to purchase a high-impact bumper. We think it is far less probable that a buyer of a far less expensive car in a much lower insurance cost area would want to have exactly the same requirement imposed on him.

Senator PASTORE. Is there a relationship between this damage and the question of personal injury? We seem to be overlooking that.

For instance, if a car can be damaged, it means that the suscepti bility of injury to the individual is the greater, isn't it? You kee talking about prmium cost. How about the human element here?

Mr. NEVIN. Senator, when the Department of Transportation re cently promulgated I believe a 5-mile-an-hour front bumper standar and 4-mile-an-hour rear bumper standard, the basis of that promulga tion was the possible damage to safety-related components.

I think that the Department made no suggestions, sir, that there wa any impact on passenger injury. As a matter of fact, one of the techni cal problems that the industry is faced with in dealing with thi problem of damageability is to find designs in bumpers that wil absorb energy and not require that the passenger or the occupan absorb it.

The problem, sir, is technically the reverse. To the extent that tha sheet metal is crumbling in the automobile, it is absorbing energy. As i absorbs energy, that is energy that the occupants are not going t absorb as they crash into instrument panels or something else.

Senator PASTORE. Do I understand you correctly? You are tellin me that if you have a bumper that can be easily damaged or mor easily damaged, the susceptibility to personal injury becomes less, i that what you are saying now?

Mr. NEVIN. No, I did not mean to say that.

Senator PASTORE. That is the way I understood you.

Mr. NEVIN. What I said—

Senator PASTORE. You are talking about absorption of energy. Wh is to absorb it, the bumper or the individual?

Mr. NEVIN. Let me see if I can restate it, because I apparently wa not clear.

First, in answer to your question is passenger injury wrapped up i a bumper standard. I would answer your question negatively, si The Department of Transportation in promulgating the standar made no representation whatsoever that passenger injury was involve The basis for the standard related to the Safety Act was that safet related components might be damaged in the collision.

S. 976 provides for inspection of cars after an accident which woul accomplish the same objective. But there was no representation by th Department——

Senator PASTORE. Let's forget the Department's representation. Yo are representing the Ford Co., you are speaking here as an individua Let me ask you: Is all this related in any way to the personal injur of the individual driving that automobile, regardless of what it mea on premium rates?

Mr. NEVIN. No, sir. Ford has no information to suggest that th damageability characteristics of an automobile relate to passenger i jury, and we know of no evidence that has been presented by th Department of Transportation or anybody else to suggest there is a such relationship.

Senator PASTORE. Have you made any studies along this line?

Mr. NEVIN. Yes, sir, I started to describe those studies.

The studies we have made indicate that one of the technical pro lems, not a problem that I am going to represent to you is nonresol able, but one of the technical problems we will have as we try to i prove the damageability characteristics of automobiles is to acco

plish designs that permit that improvement without reducing their passenger injury characteristics.

But the two objectives are contra one another in terms of design and those problems must be resolved, sir.

Senator HART. On that point, I am grateful the Senator from Rhode Island raised it. On Friday last there was testimony from the Cornell Aeronautical Lab far too technical for me to inhale on Friday afternoon, but hopefully all of us can better understand it as we read the record, that suggested that there was a compatibility between the safety to occupant and the damage avoidance design and construction of the vehicle.

The one thing that he emphasized that I do recall was, we must seek to avoid a bounce-back effect involving the occupant.

Mr. NEVIN. I do not think it is appropriate for me to comment further. As you know, I am not an engineer, and I probably should avoid trying to take a technical position here. I am sure it varies depending on what speed you are talking about and how much damage you are trying to prevent at what speeds.

If an automobile buyer elects to accept a damageability risk in exchange for an appearance gain or some other benefit that is of importance to him, that would seem to us to be his decision to make and not a matter of public policy.

Ford doubts that the requirement that vehicles be equipped with 5-mile-per-hour bumpers will result in commensurate savings to the consumer. The single automobile insurance company that has committed to a reduction in premiums for cars equipped with these bumpers has stated that that reduction will be limited to 20 percent of collision premiums.

In 1969, collision premiums collected by the companies included in Best's Aggregates & Averages totaled $2.7 billion. In 7 or 8 years, when almost all insured vehicles are equipped with such bumpers and if all insurance companies provide the 20-percent reduction on collision premiums, consumers might save $540 million annually.

During the next several years, when only recent models will be equipped with such bumpers, insurance savings will be far lower. If Ford's belief that a price increase of about $100 per car to provide 5-mile-per-hour bumpers is accurate, the consumer is unlikely to recover, through insurance savings, the added costs he incurs at the time of purchasing a new car.

A 20-percent reduction in all collision premiums would have the effect of ultimately, when all cars have the new bumpers, reducing total automobile insurance premiums by only 4.7 percent. In recent years, automobile insurance premium costs have risen by close to twice that amount each year. If the consumer is to benefit from the new bumpers, very major gains would have to accrue to uninsured motorists or to persons incurring costs as a result of collision coverage deductibles.

The data published in Best's Aggregates & Averages suggest that if the objective of the bill is to accomplish a reduction in insurance costs and, thus, in the costs of automobile ownership, the establishment of damageability standards for new cars should not constitute the initial course of congressional action.

The insurance companies whose results are reported by Best spent some $12.3 billion in 1969. Of that total, $4.5 billion was spent in ma-

terial damage payments to policyholders; $3.3 billion was spent in bodily injury payments to policyholders and $4.5 billion was spent to cover the administrative and selling costs incurred by the insurance companies themselves.

The data included in Best's Aggregates & Averages indicate that 36 cents of every insurance expenditure dollar was used to cover overhead costs and not to reimburse the policyholder. Even that estimate of the cost of delivering benefits may be understated. An extensive and detailed Department of Transportation study indicates that, of the $3.3 billion paid out in bodily injury claims to policyholders, close to $1 billion was used to cover legal expenses.

The costs incurred to deliver benefits to an automobile insurance claimant are considerable. If the calculation of benefits paid considers legal costs to be a benefit rather than an expense, the automobile insurance industry incurred a cost of $4.5 billion in 1969 to deliver $7.8 billions in benefits. Expressed differently, the insurance industry incurred a cost of $58 for each $100 of benefits it delivered to policyholders.

If the almost $1 billion in legal fees are considered to be an expense of the system rather than a benefit, the industry required $5.5 billion of expense in 1969 to deliver $6.8 billion in benefits. On this basis, $81 of overhead cost was required to deliver each $100 of benefits to policyholders.

Ford understands that it costs about $20 to deliver $100 of benefits under private health and accident plans, about $8 to deliver $100 of benefits under Blue Cross plans, and about $3 to deliver $100 of benefits in the social security system.

Moving now to standards to facilitate inspection and repair. Section 128 of S. 976 requires the Secretary to "as soon as practicable promulgate Federal motor vehicle safety and property loss reduction standards which require that all motor vehicles manufactured after Jan. 1, 1975, and offered for sale in the United States, are so designed and constructed as to facilitate motor vehicle inspection and to facilitate the repairs necessary to meet the requirements of such inspection."

When the 1966 act was passed, Congress determined that vehicle safety standards should be performance standards and that the Government should not become involved in determining how cars are designed and constructed. Proposed section 128 of this bill appears to contradict that determination with respect to the repairability and inspection characteristics of an automobile.

Differences in the time required to inspect or repair vehicles are very frequently directly related to differences in vehicle features and equipment. A Mark III is substantially more complex than other vehicles offered for sale by Ford and often more difficult to diagnose and repair. We believe that the buyer of a Mark III understands that he has accepted those compromises and believes those compromises to be reasonable relative to other advantages he finds in the vehicle.

We don't believe that the public interest would be served by either directly involving Government in the design and construction of vehicles or by limiting the consumer's right to make choices in these areas. We are, in fact, aware of no special difficulties in inspecting motor vehicles for safety performance that would be eased through economically justified changes in car design. Ford does not, therefore support this portion of S. 976.

Section 501(a)(1) of S. 976 requires the Secretary of Transportation to "not later than January 1, 1973, amend Highway Safety Program Standard No. 1, relating to periodic motor vehicle inspection" * * * to * * * "require inspection of a motor vehicle whenever the title to the motor vehicle is transferred for purposes other than resale and whenever the motor vehicle sustains damage if any safety related mechanism, subsystem or functional nonoperational part as defined by the Secretary is damaged."

Section 501(a)(3)(b) requires the Secretary to "not later than January 1, 1973, amend Highway Safety Program Standard No. 2 * * * to include requirements for a State motor vehicle registration and uniform certificate of title program * * *."

Ford has actively supported mandatory vehicle safety inspection and uniform certificates of title for many years. We support these provisions of S. 976. We believe, however, that there is merit in requiring periodic inspection, rather than requiring inspection only before resale and after an accident.

As a matter of fact, if we were to make a recommendation to you it would be both periodic inspection and inspection after the accident and eliminate the requirement at the time of resale, so that the car that stayed with one owner for 6 or 8 years would be subject to inspection.

We do not believe that the requirement that garages, service stations and dealerships be precluded from serving as inspection stations is in the public interest. The diagnostic equipment and the manpower skills required to provide effective inspection and repair of motor vehicles are interchangeable, expensive, and, in many parts of the country, in short supply. Business outlets repairing automobiles will require the same equipment that is used to inspect vehicles in order to make certain that repairs have been accomplished in a manner that will meet inspection demands.

The requirement that inspection stations be businesses not engaged in vehicle repair would add consequentially to the costs of the inspection program and probably add significantly to the inconvenience a consumer must accept in order to meet inspection requirements.

Again if I may interrupt and depart from the testimony, I understand that the committee is considering an amendment to this inspection requirement that would incorporate a requirement to inspect vehicles to determine their air pollution characteristics, to deterimne that air pollution standards were being met.

The Environmental Protection Agency I believe is now deeply involved in a study to develop the kind of equipment and diagnostic techniques that might accomplish that objective in the field. I suspect that that will be a difficult technical job. I suspect it will require very skilled people; I suspect that it will require some rather sophisticated equipment.

Under these circumstances, we think, Ford believes that it would be unfortunate to say that those people must be employed separately in diagnostic stations and in places that do not do repair work. The same technology, the same personnel skills, the same equipment is certainly going to be needed in the places of business that attempt to

accomplish whatever repairs are needed to bring the car up to the standard.

We assume that the requirement that inspection stations be separated from garages is designed to prevent frauds associated with inspection reports that require the consumer to pay for unnecessary repairs. We believe that the objective of avoiding such frauds could be more economically attained through programs designed to monitor the performance of the outlets licensed to perform inspection services.

Much of our concern with the provisions of S. 976 results from conclusions we have reached with respect to the probable cumulative impact on new car prices of actions that would be required or authorized by S. 976 and actions that are now required to achieve air pollution control and safety objectives.

It can be demonstrated that changes in the design of automobiles have produced considerable improvements in their average emission characteristics. Carbon monoxide and hydrocarbons were the first automotive pollutants to be identified and controlled. Vehicles produced prior to controls emitted about 77 grams of carbon monoxide per mile; todays vehicles emit less than 25 grams per mile, a reduction of 70 percent. Cars produced prior to controls emitted about 16 grams of hydrocarbons per mile; today's vehicles emit less than 3 grams, a reduction of 83 percent. Cars produced beginning in 1973 will emit oxides of nitrogen at rates about 44 percent below those of cars produced prior to controls.

There is less compelling, but very encouraging, evidence to suggest that gains are also being accomplished in reducing traffic fatalities. In 1970 the absolute number of traffic fatalities in America declined despite an increase in automobile usage.

While significant gains have been made to date in controlling automotive pollutants and in reducing highway fatalities, the industry is now involved in efforts to meet even more stringent Federal standards that will be effective in 1973, 1974, and 1975.

The 1970 amendments to the Clean Air Act require that automotive pollutants be reduced to levels about 95 percent below the levels that existed prior to controls.

In addition to other safety-related actions, we are attempting to improve occupant protection features of our products to accommodate, as fully as possible, the objectives of a new standard that requires fully passive protection of unbelted occupants in crashes at speeds up to 30 miles per hour.

Needless to say these are substantial technical tasks.

S. 976 would establish a third set of goals. It should, in our opinion, be evaluated in terms of its possible cumulative effect on car prices during a period in which the consumer will be confronted with substantial price increases as a result of higher priority air pollution control and safety-related actions.

During the 1966–67 period, the prices of new cars were increased as a result of requirements that windshield washers, backup lights, outside rear view mirrors and other equipment, that had previously been optional, be installed on every car in America. The actions that have been taken in more recent years to improve automobile safety and reduce automobile pollution have also had an impact on car prices.

In 1968 the Bureau of Labor Statistics recognized a $70 increase in the retail price of the average American car as being the result of added safety and emission control devices. The cumulative impact of safety and emission-related retail price increases, recognized by the Bureau of Labor Statistics, totals $162 for the 1968–71 period.

The Environmental Protection Agency estimated, in a recent report to the Congress, that emission control devices to be added between 1972 and 1975 will add about $223 more to the price of American cars. The estimate is probably too low, but it is adequate for the purposes of this testimony. Ford estimates that the addition of passive restraint systems and other safety devices, exclusive of high impact bumpers in the 1972–75 period, will add an additional $100 to $250 to the price of the average car sold in the United States.

By 1975 Ford would estimate that the price of the average American car will have been increased by from $450 to $600 to accomplish national air pollution control and safety objectives. That increase is in current dollars; it does not provide for the effects of inflation. If it is assumed that new car sales volumes will average 10 million units per year during the next decade, the American public will pay from $4.5 to $6 billion annually to finance these programs. All but approximately $1.5 billion of that annual expenditure will be added during the next 3 years.

To summarize Ford's views:

Ford's inability to support many of the provisions of S. 976 results from a desire to protect the consumer's right of choice, and a desire to avoid the risk of unnecessary further increase in the prices of new cars. It would seem appropriate to summarize our views with respect to these two issues.

Ford is aware of the fact that large numbers of American consumers place a very high priority on repairability and damageability in evaluating the relative merits of the automobile offerings that compete for their attention.

We have placed considerable emphasis on repairability in the design of the Maverick, Pinto, Comet, and Capri car lines that we have recently introduced in the United States. That emphasis has been directly rewarded through increased sales and profits. We do not believe that compulsory repair standards are necessary to assure the consumer of the opportunity to choose a new car that offers advantages in this area. We are concerned that such standards would prevent the consumer who places higher priority on other vehicle attributes from exercising his choice in the market.

We are also aware that very large numbers of American consumers will place great emphasis on damageability characteristics when they purchase a new car. We doubt that any seller of automobiles in the United States could hope to compete succesfully in future car markets unless a significant portion of his product line offered advantages in the damageability area. We do not believe that compulsory standards are necessary to provide the consumer, who seeks these attributes, with the opportunity to find a suitable product when he enters the market. We fear that the effect of compulsory standards will be to unnecessarily restrict the choice available to consumers with other interests.

We have noted that we see no reason why the buyer of an American made car should not be permitted to accept a compromise in damageability in exchange for vehicle features that are more important to him. Similarly, we see no reason why an American consumer should be unable to purchase a Jaguar or a Mercedes if low volume overseas producers found it uneconomic to meet American damageability standards but offered offsetting values to attract the American consumer.

If, in the future, a car manufacturer decided there was a market for a car that was significantly less damage resistant than competitive models, but offered other appeals, we assume that the insurance industry could impose a surcharge when establishing premiums for that car in much the way it now imposes a surcharge for cars equipped with high performance engines. If the consumer found the other appeals of the new model overriding and accepted the surcharge, we see no reason for legislation that would prevent the exercise of that choice.

Again if I may depart from the testimony Senator I think that there is a parallel to the approach that Ford suggests in fire insurance coverage for a home and in such things as a homeowner's policy.

I am going to use cities that may not be familiar to anyone except Senator Hart, but in the Detroit area if a man buys fire insurance on a $15,000 home for 1 year in Detroit he pays about $29.60 per year. If he moves out to Hazel Park or to one of those suburbs, he goes up to about $31. In Southfield and Bloomfield, he goes up to about $37. If he moves out to Franklin Village he is at $48. So, he is now paying a premium of $48 where he could pay $30 in Detroit. If he moves to a completely rural area, he pays $57 for the same coverage.

In a homeowner's policy, if a man buys an all masonry home and insures it for $15,000 in Detroit, he pays $45. If he insures a frame home in a rural area, he will pay $68 for the same coverage. What we are really urging is that the effort of the Congress to make sure that the consumer has information with respect to the insurance premium he has to pay and with respect to the costs he is incurring to exercise any other option at the time of car purchase rather than establishing a standard that would make cars identical.

With respect to price increases, Ford believes that actions taken to accomplish national objectives in the safety and air pollution areas will have an impact that is so sizable as to require that every effort be made to avoid additional actions that might lead to further increases. Even though it can be assumed that there is wide public support for the safety and air pollution control programs that will lead to these increases, there is a point at which the consumer's ability to pay becomes a critical consideration.

In our opinion, there is a considerable risk that the price increases required to meet safety and pollution objectives and those that will be required to offset the effects of continuing inflation during the next several years may be so sizable as to exceed the ability of many consumers to pay. If that were to happen and the effect were to be a decline in new car sales volumes, our country would suffer in several ways. First, the achievement of national objectives in the air pollution control and safety areas would be seriously delayed. The cars being produced by the industry today are both safey and more pollutant-fr

than the older cars that they will replace on the American highway. A decline in new car sales volumes would have the effect of deferring the replacement of the older vehicles that are the most serious contributors to safety and pollution problems.

And, second, a serious decline in new car sales would also have adverse economic effects that would extend well beyond the automobile industry. An automobile slowdown would affect thousands of supplier plants in dozens of supplier industries throughout the country.

Such an economic reversal would produce unnecessary income losses for the employees affected and result in reduced tax revenues at the municipal, State, and Federal levels of Government with attendant adverse effects on the ability of the governments to fund a wide variety of needed programs.

That concludes our testimony. We are grateful for the opportunity to appear today.

Senator HART. Mr. Nevin, thank you.

Most of all thank you for being explicit in the position that Ford takes on the several proposals and legislative enactments. As I get it, the thrust of your opposition with respect to the authority vested in the Department of Transportation to set safety property loss standards hinges on the fact that the engineering resources available that could be put to the job of property loss reduction are tied up in attempts to meet the safety and air pollution standards, that there is a limit to the resources; and, second, that you anticipate that the cumulative price impact of safety requirements, emission requirements, and property loss reduction and vehicle inspection requirements would be a disservice to the consumer or put it another way it would dampen car sales; and, third,—well, you question the desirability of requiring everybody to buy cars with minimum property loss reduction standards that are federally required, suggested that those requirements restrict really consumer choices; and, finally, that the proposed bill S. 976 really offers no substantial promise of offsetting reductions in insurance and repair costs.

Have I fairly summarized your statement?

Mr. NEVIN. That is a very fair summary of the points I have attempted to make, sir.

Senator HART. So we can evaluate it—and I wouldn't anticipate that you can give me the answer to the question that I am going to ask you, but we would ask you to provide it for the record—would you tell us how many engineers Ford Motor Co. now employs, and of the total how many are working on safety programs, emission control, and design features, the three categories?

Mr. NEVIN. Yes, sir. I will attempt to get you a specific answer. I think I can give you a general answer. The air pollution standards the the Congress has set for the 1975 period, of course, involve the carburetion system of the automobiles, all the engine systems; the great bulk of the power and exhaust systems are wrapped up in that.

Regardless of what work an engineer is doing on a car that is going to be produced in that period, he must be concerned with the impact of that work on our ability to meet that standard. So, in terms of the power train components I think the statement could be made—and I wouldn't want to literally prove it—that there is no engineer concerned with carburetion or the power kind of components of the car who

doesn't have to be concerned with the air pollution objective, because that's where the problem is—in exhausts.

When you get to the safety standards that have been promulgated, when you talk about passive restraint systems, and you understand what I am talking about here, a system that will protect the occupant without belts, you must consider major redesigns of the instrument panel of the car and the interior of the automobile, and by the time you move from there to the bumper regulation that has already been imposed, you have begun to define design parameters of the front-end sheet metal.

I am not trying to give you an offhand answer and I will try to answer it for the record, but I am only trying to describe for you, by the time you take these two major Federal objectives, safety and air pollution, I think the representation we have made that meeting Government standards in these areas will require a completely, virtually complete, redesign of automobiles, is a fair representation for the committee's consideration.

I will do what I can to get you a more specific answer, sir.[1]

Senator HART. I am impressed and am reminded by your testimony of the intensity of the manufacturer's efforts to design a vehicle that does enhance the safety of the occupant and in more recent days your concern about design for repairability.

Where I disagree with Detroit is that this concentration of effort is principally the result of what Detroit thinks is an unfair intrusion by the Congress in its business. I salute and I anticipate the kind of figures we will get on those engineers, but certainly in the period of time I have been here, until we really looked serious about doing what so many in Detroit felt was outrageous, there wasn't this kind of concentrated drive.

Are you game to react to that?

Mr. NEVIN. Yes; but carefully. Let me avoid your direct question, Senator Hart, as to whether Detroit in previous testimony responded in the way it might wish it today had to these public objectives.

Whatever answer I gave to that question, I think you and the other members of this committee would agree that you have now taken sufficient action to get our attention. I think there is no question but that the standards that have been established for the middle seventies in air pollution and in occupant safety are not subject to quarrel between us and the Department of Transportation or the EPA in terms of whether they are terribly demanding standards.

There may be some fringe quarrels as to whether this can be done or whether that can be done or what the number would be, but I think there would be no responsible administrator in either of these programs who would come to this Congress and say anything other than that these are terribly demanding standards that do encompass substantial reengineering of major vehicle systems and in some cases virtually complete reengineering of cars.

I have to agree, I ducked your basic question and tried to answer one close to it.

Senator HART. Thank you for that.

Back to the subject matter more directly here, you indicated that the total cost to the consumer of these several standards that we are

[1] See p. 1391.

talking about would be that the cost benefit wouldn't be there. If the Federal Government required every car to have bumpers able to take a 5-mile-an-hour barrier crash without damage, what price at retail would that bumper protection carry?

How would you price it?

Mr. NEVIN. Ford's estimate at this point in time, Senator, for 5-mile-an-hour front and rear, our estimate is that will have an impact on car prices of approximately $100 at retail.

That is an estimate. I think it is the most accurate answer I could give you to your question, and it is that kind of an estimate with respect to cost that, particularly in the case of a car like a Pinto, leads us to believe that if the policyholder is going to get a $10 insurance premium reduction the first year, $8 the second and third year, and $6 in the fourth and fifth, that there is merit in the Congress pursuing the proposal of this legislation which is to ask the Secretary to study damageability characteristics.

I must be candid with you, I don't hold out much hope for that study, sir. I think when property insurance companies have been rating the fire risk in houses depending on whether it is brick or frame and depending whether it was close to water or not and what kind of fire department it has had for years, when the insurance industry has had a chance to rate the safety characteristics of the car through 5 years of very intensive Government action to improve the safety characteristics of the car and has found no reason to reduce premiums, I must say I think when they get done with the study those rating characteristics that they assign to the characteristic of the driver, whether he has got a bad accident record, his sex, his age, the kinds of things they now use, will remain so dominant—and I hope you understand I am not trying to be critical of the industry, I honestly don't believe they will find from one car to another differences that are so substantial as to base ratings, to use them, and I guess the one piece of evidence I would bring to your attention besides their past performance is even where they have brought to the Congress data as to what it costs to repair Ford, Chevrolets, Plymouths in 5-mile-an-hour accidents, 10-mile-an-hour accidents and 15-mile-an-hour accidents, I think you would agree, sir, there is a remarkable similarity in the cost which suggests that this is what at the current level of design it takes to correct that kind of damage and there is no evidence to my knowledge of dramatic differences of one car to the other.

Senator HART. They are all too high is the reaction of the audience. Not to hold you to any more precise figure than about $100 retail, what would that 5-mile-an-hour bumper add to the price at wholesale?

Mr. NEVIN. I would judge that if the $100 number is at retail, the wholesale number would be in the order of magnitude of $80. Some of our cars have a 25 percent discount; some of them have a 17 percent discount. Depending on the car line, $100 at retail would perhaps range from $75 to $83 at wholesale.

I may be getting more accurate than I should be.

Senator HART. The record may be corrected.

Mr. NEVIN. So long as you accept it as a ballpark kind of answer, I am happy to give it to you.

Senator HART. I will ask a ballpark question. The Bureau of Labor Statistics would indicate that the wholesale price on at least safety

related changes has been double; that is, if it was $100 at retail for that bumper it would run about $50 at wholesale.

That is not your impression?

Mr. NEVIN. That is not my impression, sir. I would be happy to correct that for the record.

As a matter of fact, I believe that the basis on which the Bureau of Labor Statistics makes this judgment is to evaluate the retail increase first and then fall out the wholesale impact on the basis of the relationship between our selling prices to dealers and the suggested retail prices.

But I will be happy to give you a more definitive answer.

(The following information was subsequently received for the record:)

The estimated wholesale and retail price relationships for the five-mile-per-hour bumper are consistent with the wholesale and retail prices for safety items submitted to the Bureau of Labor Statistics and on which ultimately retail price announcements were made by the Bureau of Labor Statistics.

Ford Motor Company's wholesale prices range from 70% to 78% of suggested retail prices, depending on the car line. The difference between the price levels represents dealer margin and excise taxes only. Ford's communication to the Bureau of Labor Statistics, including safety and emission items, is on both a wholesale and retail price basis.

Senator HART. The Senator from Rhode Island.

Senator PASTORE. In your statement, you say "By 1975 Ford would estimate that the price of the average American car will have been increased by from $450 to $600 to accomplish national air polution control and safety objectives."

Have you any figures that would indicate by 1975 what the cost would be to the consumer because of styling?

Mr. NEVIN. Yes, sir. I believe that the amortization and special tools—now, I am going to use special tool amortization, Senator, because that is the best measure I can give of what it costs to style a car—the amortization of special tools in our 1970 financial statement totalled $400 million and that is against $14,900,000 of sales. So tool amortization the writing off of tools that have been disposed of because of styling changes, amounts to about 3 percent of total Ford Motor Co. sales.

We have announced publicly, sir, that we will reduce the rate of styling change in the future both to conserve engineering resources and to minimize the kinds of costs that we have to pass on to the public. The opportunity for reduction here in my judgment has been overstated. First, it is only 3 percent of sales and, second, there are very major tooling expenditures in the automobile industry associated with the accomplishment of these standards.

The accomplishment of the standards is not limited to a variable cost penalty, something you buy from another manufacturer and simply hang on to the car. When you put a 5-mile-an-hour bumper on the car, it is frequently necessary to restyle the front end of the car so that the fenders are protected by the bumper.

I am not exaggerating when I tell you, sir, that there are now in our styling studios cars with apperance changes that we had not planned. We had not planned to change the appearance of the car, but, because of the requirement that we have a 5-mile-per-hour bumper on the car we either got, without wanting it, a changed appearance in the re

design required to accommodate that bumper or we were able to get an appearance change at no dditional cost because every piece of metal had to be changed anyhow.

I think the best direct answer I can give you is every effort is being made to save here in terms of styling for styling sake, that it is only 3 percent of sales to start with, so it cannot have an enormous impact and some of the effort to save will not show up in terms of cost saving because the tooling expenditure must be made for another purpose, the far more legitimate purpose of meeting a public objective.

Senator PASTORE. I would like to have an answer that is related to the cost, if you can. If you cannot do it, that is another thing, too. You are very explicit here in giving the layman the idea of what these national air pollution and safety objectives will cost the consumer by the year 1975 and you relate that to an individual car, and you stated it is between $450 and $600. Now, this dissertion that you just gave me, could you reduce that in terms of what it would cost for the individual car by 1975 so that the man who buys a car can understand that?

Mr. NEVIN. I will attempt to do that.

Senator PASTORE. If you cannot do it now, would you put it in the record for us?

Mr. NEVIN. I think I can attempt to do it now. I start from the 1970 number of $400 million of tool amortization against $15 billion of sales. Approximately 3 percent of our cost is in tool amortization. If you assumed we had no tools, which of course would not be true, we would still have to stamp out the car, but just assume none, we could have reduced car prices by 3 percent, $90 on a $3,000 car.

Now, I think the answer to the question, the answer I was trying to give you was that we hold little hope that there will be consequential offsets in tooling costs by the middle 1970's that could be passed on to the consumer, and the reason is not that we continue to restyle the car but, rather, that the tools are being bought except the purpose of purchasing those tools differs now. Instead, to have the front end round instead of square or something like that, the tools are being bought to redesign the car to achieve some structural objective related to damageability.

Senator PASTORE. Why is the styling changed so often? Is it to meet competition, is it to create jobs, or what is the reason for it?

Mr. NEVIN. I think that the automobile industry has thought—and I am using the past tense here—has thought that it was dominantly a style industry through many years. I think there is—I won't say think—I am certain there is enormous evidence to suggest today that there are large numbers of American consumers who no longer regard their automobile as a style item, who seek pure function. As we design cars like the Maverick and the Pinto, for example, we simply made the statement that the rate of styling change is going to be far less than it was in the past. You have probably noted, and if you have not yet you will in the future, but even the rate of styling change on the higher-priced American cars has been reduced. I think the reason for that change in approach in the market derives from several factors. First, large bodies, of consumers are simply not interested in. I guess it was in 1955 that you could say that the American public paid close to $20 million to get wraparound windshields. I don't think that

would happen today. I do not think there is a styling feature you could put on a car that would cause consequential numbers of Americans to say I have to have that. The emphasis is far more on the cost of ownership and on reliability.

The attempt to conserve engineering resources to avoid cost in a time when we are critically concerned with costs contribute further. I hope you don't misunderstand the dollar data on price increase I presented to you, Senator.

Senator PASTORE. I don't think I did. You said it cost about $90. You multiply that by four or five to get a total figure in 1975?

Mr. NEVIN. It is about $90 per year.

Senator PASTORE. And if you multiply it by four, it comes out about the same, doesn't it?

Mr. NEVIN. No, sir. It is $90—the $400 million is a single year.

Senator PASTORE. That is what I am talking about. So to get 1975, you multiply that single year by four?

Mr. NEVIN. No, sir. It's not cumulative.

Senator PASTORE. You mean to tell me that the styling will cost the consumer only $90 by year 1975, the change in styling?

Mr. NEVIN. To be more exact, sir, the translation to a $3,000 car may be modestly inaccurate, but to be more exact the cost of special tooling to the Ford Motor Co. in 1970 represented about 3 percent of sales; and I would say that special tooling on a $2,000 car accounted for $60 of its cost; on a $3,000 car, $90 of its cost; on a $5,000 car, $150 of its cost.

I was trying to use that number, because that is where we are today.

Senator PASTORE. I know it, but that is 1970.

Now, how about 1971? How about 1972, how about 1973?

Mr. NEVIN. I can honestly hold out to you no hope for any consequential reduction, because I think the level of tooling we are going to have to amortize each year will at least stay constant except the reason for the amortization will not be that we decided we wanted a different shape fender but rather that we were meeting some new standard for the next year which required that the car be retooled in order to accomplish the objectives of that standard.

Senator PASTORE. Are you saying to me that while it will cost between $450 to $600 to accomplish the goals that have been set for aid pollution and safety, insofar as styling is concerned, there will be no additional cost?

Mr. NEVIN. Yes, sir. I think I have to agree with that, there will be no offset as a result of reduced tool expenditures even though the rate of styling change will be dramatically reduced.

Senator PASTORE. I will be here in 1975 with the grace of God and I will ask you the question again.

Mr. NEVIN. Yes, sir.

Senator PASTORE. And I don't mean any impertinence by that, but it is hard for me to digest that statement, that insofar as styling is concerned, by year 1975 the consumer will not pay a nickel more than if you had remained the same. I just cannot digest that statement.

Now, I come back to the same question again. Why is the styling change at all? Is it because it is better to create jobs and keep more people working, because it improves the esthetics of the industry, or is it done to meet competition, both domestic and foreign?

Mr. NEVIN. I think that the basic——

Senator PASTORE. You see there are some people who feel we change our styles too often and this is carried on the back of the consumer. Then there are other people who say if you don't change the style, it means you don't have to manufacture more tools, and a lot of tool industries will be hurt.

I was wondering whether a study had been made of this to bring it in more or less proper perspective?

Mr. NEVIN. I think there are two results of a styling change. First, let me answer your question, I would have to say that the major reason for styling change in the past has been the belief that a fresh, new look would attract the consumer.

That has been the overwhelming reason.

Senator PASTORE. Yes, sir. There has been both an adverse and what I would hold out to you a beneficial effect of that on the American consumer, on the consumer, not on the automobile companies. The effect of this, and I will use subjective terms, adverse, the man buying a new car has tended to pay a premium for it; he has paid more money because it was restyled, but that styling change re-created in America something that is a phenomenon not available in the automobile market in the rest of the world to any such extent is the used car market.

The process that led one group of Americans to say I will pay a premium to buy this car which is new, and you may not or I may not agree that we will use our money to do that, but these Americans said they would also lead that group of Americans to dispose, at the end of a year, or 2 years, of a car that had an enormous remaining life in it, perhaps as much as 80,000 miles or 75,000 miles and permitted another group of consumers with different sets of values who said I don't care about styling change, I would rather have a 2-year-old Ford and save $600 or $800—I don't know what the exact number is—to buy that car. That phenomenon does not exist in European automobile markets to anything like the same extent.

The rate of styling change doesn't lead to the same rate of car replacement. As a result, a consumer in order to buy a car must be prepared in most instances to pay the new-car price.

I would hold out in a society like ours in which an automobile is so often a necessity as opposed to simply an optional decision on the part of a consumer that there has been an economic benefit to that. The man who didn't want style could buy a very much cheaper car in the market.

Some of our critics in this area of style sort of draw a picture for the Congress of all the 2-year-old cars in America being driven off a cliff somewhere into the ocean.

That, of course, is not true. Those cars do stay on the American road 10 years, they do move through the hands of perhaps three or four owners, and each of those owners with a different set of values or perhaps a different set of economic capabilities makes a judgment, I would rather have a 2-year-old car and give up the prestige or whatever other attribute he sees in it of a new car because that is a better value to me.

The historical reason for the styling change I have to say was a marketing reason. It was believed that it would attract more new people to our showrooms and sell more new cars.

Senator PASTORE. Has the industry changed that as a result of a lesson we have learned from foreign-made cars?

Mr. NEVIN. I think in part, and I think it is also a function of the number of cars that are offered. It was not more than a decade ago, Senator, that Ford offered a Ford car for sale and Chevrolet offered a Chevrolet car and Plymouth offered a Plymouth car and there was one car you associated with a dealership.

Now, you go into a dealership and you find as many as four or five different kinds of cars. We have got the Thunderbird, the Galaxy, and so forth. Ford has six different kinds of cars.

Six years ago you could run a picture in Life magazine on introduction day and say here is the new Ford and most of America 2 weeks later would know what the new Ford looked like. I do not think it is true anymore. With each maker having six or seven different kinds of cars, most consumers have doubts about what the difference is between perhaps one or two of the cars we made last year, much less what the styling differences are between this years model and last years model.

So, the advantage of styling change as a marketing tool is changing because of the variety of cars offered in my opinion now—I am answering subjectively—the demand for it is changing because so many more Americans are looking for more functional values, and our capability to provide it is changing because of our desire to hold down prices and to meet these other more pressing demands.

I think all those things are working in the same direction, which is to reduce the rate of styling change. My response to your prior question, sir, was only to indicate that I did not think that was going to have a dramatic effect on price in the near future.

Senator PASTORE. Relating this to number of jobs, would the number of jobs be affected considerably if we didn't change our styling so often?

Mr. NEVIN. No, sir.

Senator PASTORE. It wouldn't?

Mr. NEVIN. No, sir.

Senator PASTORE. It is not related at all? I mean appreciably?

Mr. NEVIN. I am going to reach for a number, but I think that probably we are going into an area where substantially more than 75 or 80 percent of new car sales will represent replacements of cars. You know, it isn't new families deciding we want to own cars. We have an economic society where most families do own a car.

I think the combination of the growth in the number of families in America, replacement of cars that are already on the road would suggest that automobile sales would not be appreciably affected over the longer term by reduced styling.

I do not expect that to have an adverse impact. To the extent we give a consumer other values he seeks, it could have a favorable impact on jobs. That is a terribly subjective answer to your question, but I wasn't prepared factually to answer it.

Senator PASTORE. Thank you.

Senator HART. The Senator from Kansas.

Senator PEARSON. Thank you, Mr. Chairman.

I first want to associate myself with the Chairman's complimentary remarks concerning your testimony. I recall that when this committee

a year or so ago addressed itself to legislation concerning standards of quality for automobiles and warranties Mr. Nevin was the only industry spokesman who came up to help us make a record on that subject.

These hearings deal with the question of safety, with the inevitable damages to property, injuries, loss of life. We have sought, as lawyers say, to make the parties whole. And for a long time our instrument to do this has been insurance.

But this system now is breaking down high premiums and limited coverage. So I take it, from your testimony this morning Mr. Nevin, that it is the position of your segment of the automobile industry that the burdens upon you to meet the new safety standards, and the burdens upon you to fulfill the requirements of the elimination of auto pollution are so great that that is about all the industry can do now without the added responsibility of solving the insurance problem.

Mr. NEVIN. Yes, sir, but further than that——

Senator PEARSON. But there is an indirect aid in the safety improvements that you are making pursuant to the Federal requirements?

Mr. NEVIN. I would hope my testimony would not be understood by the committee to represent an automobile industry versus the insurance industry position. The insurance industry——

Senator PEARSON. I understand that. I stated it poorly.

Mr. NEVIN. No, I just wanted to make sure it was understood. The insurance industry, as I understood it, best aggregates again, suffered an underwriting loss of 700 million last year. In other words, what they paid out exceeded what they took in in premiums. No business enterprise is going to continue on that basis, and it is going to result in more uninsured motorists and more price increases. I simply doubt here that there is evidence available based on the bumper standard and the indicated savings to policyholders, based on the cost structure of the industry, that the savings you seek in insurance costs can accrue to the American public through changes in car design in the near term.

The first disadvantage we have is there is no way we can change that car population that the industry is insuring for 7 or 8 years. Even when we take a dramatic kind of step, dramatic relative to past steps, the impact on insurance premiums, 4½ percent, the number I quoted in the testimony, is so small relative to the rate at which insurance costs are increasing each year. If the insurance industry was making a fortune and increasing rates at that kind of rate, I would have a different kind of testimony. But there is no evidence they are doing that. They are not making the kind of profits that would attract capital. I doubt that the emphasis that has been placed on damageability will deal with their problem.

Senator PEARSON. You place great emphasis on the continued consumer freedom of choice. Isn't that precisely the road we have been going?

Mr. NEVIN. I will give you one example. I think that the role of consumer freedom of choice is one of the reasons why imported cars grew so rapidly in the United States in acceptance; the American consumer had the freedom to accept values in cars that had not been previously offered. It is certainly one of the reasons for Detroit's response to that kind of a market. Two years ago perhaps 5 percent of

our sales were in a car like the Maverick. Today we have got a Maverick, a Pinto, a Comet, and a Capri out there on the market, and roughly 25 percent of our sales in this model year have come from that kind of a car.

This area of consumer choice, I think there is a great difference in what damageability characteristics a consumer might want to pay for, depending on whether he lived in Detroit or Boston or Providence or Washington—high-insurance-cost areas—or lived in Cedar Rapids or an area where insurance costs were much lower. I think preserving that choice is important. I think if a consumer decides that he puts a higher value on fuel economy, on overall length of the car, even on aesthetics, so long as the Congress, so long as the committee takes action to make sure that the consumer has the information——

Senator PEARSON. Now, how do we do that?

Mr. NEVIN. Our recommendation here, sir, is that you proceed with just what is in S. 976, that you have the Secretary of Transportation do the study of relative damageability of cars. Now, we would hold out that we should not be asked to test our cars against those standards before we can sell them until you develop the relationship between the results of those tests and insurance premiums. But if the Secretary were to undertake the study that is incorporated in this legislation, S. 976, if he were to determine that there was a difference between the damage susceptibility of the right front fender——

Senator PEARSON. But how do I make that understandable to John and Mary Brown in Topeka, Kans.?

Mr. NEVIN. I think we may on occasion underestimate the American consumer. In fire insurance I would doubt there are very many consumers who are unaware of the fact that they pay less for fire insurance if they own a house in the city of Detroit where you have got a very sophisticated fire department and a lot of water than they pay if they are in the suburbs.

The consumer reaction to the cars we have introduced recently, the low-priced car, suggests that the consumer who wants fuel economy, who wants repairability seems to have some very informal but highly sophisticated ways of finding out who is doing what for him.

Senator PEARSON. I do not disagree with your point and I do not disagree that the Government has some responsibility. We are educating so many people on so many things today, that I wonder what the saturation point is or how effectively we are doing it.

I thank you, sir; and I thank you, Mr. Chairman.

May I say I had a note from our colleague, Senator Griffin, that he would be here—and the record shows, he is a member of this committee—but the minority leader is gone and he has to hold the floor.

Senator HART. I was momentarily distracted by the concept it is cheaper to get fire insurance if you live in the city of Detroit. That depends on where you live.

Mr. NEVIN. Yes, sir.

Senator HART. Admittedly it is a sobering figure that you show on a chart here. As I say, my impression from the Bureau of Labor Statistics' statement was that there was about a markup of about 100 percent wholesale to retail——

Mr. NEVIN. Let me accept that and use $100 instead of $162. I think we can correct the record later.

Senator HART. Then the increase to you—take the 1970 and 1971 table there, that shows a $29 retail increase——

Mr. NEVIN. Twenty-nine dollars retail increase for safety and emission equipment; it is greater than that in total.

Senator HART. For purposes of the discussion without holding either of us to this BLS impression that we have, that would be $14.50 wholesale.

Now, we move to the column where you get this estimated 1975 increase which is a cumulative thing that so disturbs you; that would be the estimated retail increase associated with the standards, safety and air, and if we are correct on the wholesale figure, we would reduce that by about half, and it is still very substantial.

Mr. NEVIN. No, sir; the $223 figure is from the report of the Administrator of the EPA to the Congress, and that is described in that report as the addition to the purchase price—that is not including profit, et cetera—that is the addition to the purchase price. I think that $223, my view is the consumer probably buys what is shown as $162 which is closer to $135 or $140. The $223 is constructed in a different manner. We comment the EPA for being so candid, because accomplishing these goals is one that will cost money. That is an EPA number; it is not our number, sir.

As a representative of Ford I commend the EPA for the candor with which it has been willing to discuss the fact that the accomplishment of these very urgent public objectives will involve effects on prices. I think that candor is desirable and I think the American public is going to be willing to pay, but far more willing to pay when it has been warned in advance and it buys in advance than it will be if somebody suggested that they are going to get all this for free.

Senator HART. Mr. Sutcliffe.

Mr. SUTCLIFFE. Mr. Nevin, so that I can understand your argument that we do not mandate bumper standards, let me ask you again what your estimate, retail, for bumpers will be to meet the 5-mile per hour front and rear barrier crashes without sustaining damage?

Mr. NEVIN. Ford would estimate that 5 miles per hour front and rear will involve a price increase of about $100.

Mr. SUTCLIFFE. Have you received any figures estimating component costs for that bumper capability?

Mr. NEVIN. No, I have not. But no design decisions are made without some pretty careful approximations of probable cost. The designers know what kinds of configurations they are going to use to accomplish the objective, and they have what you would have to describe at this point in time as estimates of what kinds of costs they will ultimately incur from suppliers in order to purchase the components that will be added to the car.

Mr. SUTCLIFFE. You think the $75 range is appropriate for the manufacturers' cost for the bumper protection?

Mr. NEVIN. Well, I don't want to overqualify these figures. If it is a hundred dollars at retail, it would turn out to be about $75 at wholesale, $75 to $85.

Mr. SUTCLIFFE. In your statement you say that the bill, S. 976, promises no offsetting reductions in insurance and repair costs for the American consumer.

our sales were in a car like the Maverick. Today we have got a Maverick, a Pinto, a Comet, and a Capri out there on the market, and roughly 25 percent of our sales in this model year have come from that kind of a car.

This area of consumer choice, I think there is a great difference in what damageability characteristics a consumer might want to pay for, depending on whether he lived in Detroit or Boston or Providence or Washington—high-insurance-cost areas—or lived in Cedar Rapids or an area where insurance costs were much lower. I think preserving that choice is important. I think if a consumer decides that he puts a higher value on fuel economy, on overall length of the car, even on aesthetics, so long as the Congress, so long as the committee takes action to make sure that the consumer has the information——

Senator PEARSON. Now, how do we do that?

Mr. NEVIN. Our recommendation here, sir, is that you proceed with just what is in S. 976, that you have the Secretary of Transportation do the study of relative damageability of cars. Now, we would hold out that we should not be asked to test our cars against those standards before we can sell them until you develop the relationship between the results of those tests and insurance premiums. But if the Secretary were to undertake the study that is incorporated in this legislation, S. 976, if he were to determine that there was a difference between the damage susceptibility of the right front fender——

Senator PEARSON. But how do I make that understandable to John and Mary Brown in Topeka, Kans.?

Mr. NEVIN. I think we may on occasion underestimate the American consumer. In fire insurance I would doubt there are very many consumers who are unaware of the fact that they pay less for fire insurance if they own a house in the city of Detroit where you have got a very sophisticated fire department and a lot of water than they pay if they are in the suburbs.

The consumer reaction to the cars we have introduced recently, the low-priced car, suggests that the consumer who wants fuel economy, who wants repairability seems to have some very informal but highly sophisticated ways of finding out who is doing what for him.

Senator PEARSON. I do not disagree with your point and I do not disagree that the Government has some responsibility. We are educating so many people on so many things today, that I wonder what the saturation point is or how effectively we are doing it.

I thank you, sir; and I thank you, Mr. Chairman.

May I say I had a note from our colleague, Senator Griffin, that he would be here—and the record shows, he is a member of this committee—but the minority leader is gone and he has to hold the floor.

Senator HART. I was momentarily distracted by the concept it is cheaper to get fire insurance if you live in the city of Detroit. That depends on where you live.

Mr. NEVIN. Yes, sir.

Senator HART. Admittedly it is a sobering figure that you show on a chart here. As I say, my impression from the Bureau of Labor Statistics' statement was that there was about a markup of about 100 percent wholesale to retail——

Mr. NEVIN. Let me accept that and use $100 instead of $162. I think we can correct the record later.

Senator HART. Then the increase to you—take the 1970 and 1971 table there, that shows a $29 retail increase——

Mr. NEVIN. Twenty-nine dollars retail increase for safety and emission equipment; it is greater than that in total.

Senator HART. For purposes of the discussion without holding either of us to this BLS impression that we have, that would be $14.50 wholesale.

Now, we move to the column where you get this estimated 1975 increase which is a cumulative thing that so disturbs you; that would be the estimated retail increase associated with the standards, safety and air, and if we are correct on the wholesale figure, we would reduce that by about half, and it is still very substantial.

Mr. NEVIN. No, sir; the $223 figure is from the report of the Administrator of the EPA to the Congress, and that is described in that report as the addition to the purchase price—that is not including profit, et cetera—that is the addition to the purchase price. I think that $223, my view is the consumer probably buys what is shown as $162 which is closer to $135 or $140. The $223 is constructed in a different manner. We comment the EPA for being so candid, because accomplishing these goals is one that will cost money. That is an EPA number; it is not our number, sir.

As a representative of Ford I commend the EPA for the candor with which it has been willing to discuss the fact that the accomplishment of these very urgent public objectives will involve effects on prices. I think that candor is desirable and I think the American public is going to be willing to pay, but far more willing to pay when it has been warned in advance and it buys in advance than it will be if somebody suggested that they are going to get all this for free.

Senator HART. Mr. Sutcliffe.

Mr. SUTCLIFFE. Mr. Nevin, so that I can understand your argument that we do not mandate bumper standards, let me ask you again what your estimate, retail, for bumpers will be to meet the 5-mile per hour front and rear barrier crashes without sustaining damage?

Mr. NEVIN. Ford would estimate that 5 miles per hour front and rear will involve a price increase of about $100.

Mr. SUTCLIFFE. Have you received any figures estimating component costs for that bumper capability?

Mr. NEVIN. No, I have not. But no design decisions are made without some pretty careful approximations of probable cost. The designers know what kinds of configurations they are going to use to accomplish the objective, and they have what you would have to describe at this point in time as estimates of what kinds of costs they will ultimately incur from suppliers in order to purchase the components that will be added to the car.

Mr. SUTCLIFFE. You think the $75 range is appropriate for the manufacturers' cost for the bumper protection?

Mr. NEVIN. Well, I don't want to overqualify these figures. If it is a hundred dollars at retail, it would turn out to be about $75 at wholesale, $75 to $85.

Mr. SUTCLIFFE. In your statement you say that the bill, S. 976, promises no offsetting reductions in insurance and repair costs for the American consumer.

From the diagnostic inspection provisions of the bill, the Department of Transportation has estimated a 0.7-cent-per-mile maintenance and operating cost reduction. That translated into the trillion miles driven by car owners in this country amounts to an annual savings of $7 billion.

It has been estimated that the prevention of unnecessary or improperly done repairs would add another $6 billion of annual savings. Savings resulting from detections of defects in used cars prior to their sale has not been ascertained, but would reflect an additional amount of savings.

In the insurance are the titling and motor vehicle registration provisions that have been estimated to save $1 billion of the annual loss of $1.5 billion. And conservative estimates for property damage premium reduction for bumpers, 20 percent, for example, of the $8 billion annual premium would after a certain population figure amount to, conservatively, $1 billion of savings.

Senator HART. I do not know what it is made of and I would hope that we can get for the record the elements that go into it. I continue to question it, because if you take, as one example of the relationship between the total price I pay when I buy a car to that element which is attributable to safety and emission removal, your Galaxie in 1970 sold for $3,026 and the 1971 Galaxie sold for $3,246. That is an increase of $220. If this tabulation is correct only about $30 of that $220 increase was standard related.

What I would like to find out is, if it was only $30 to $220 between 1970 and 1971, what will it be in 1975 as between the $450 to $600?

Mr. NEVIN. Perhaps I can read off some numbers for you, Senator, because I have tried to represent these prices as being solely those associated with safety and pollution. The total price increase in cars in 1968 was $139. Now, I show $70 as being associated with safety and emission by the Bureau of Labor Statistics. There was another $69 associated with other considerations. There was another $58 increase in car prices in 1969. We show $31, the difference between $70 and $101 in the tab. So there was $27 more associated with other factors.

In 1970, the increase was $107 in total, $32 of which, the difference between $101 and $133 associated with emission and safety, and the big increase was in 1971. The total increase, the average American car went up about $220, and that was $29 for safety and emission, and $199 in reaction to the inflation.

That price increase I believe in a Bureau of Labor Statistics press release was represented to be a 5.9-percent increase in the price of new cars. That is adjusted with the safety and pollution costs of the increase adjusted out. That is in a year in which the cost of living in other areas of the country went up by over 7 percent and it is in a year in which the automobile industry for the first time in 5 years took any consequential price action at all.

I think you are familiar with the history of the industry in terms of profits. In 1966 when we began this process, the Big Four automobile manufacturers in the United States were earning profits that represented 6.6 percent of sales. By 1970 profits as percent of sale were down to 2.6 percent. Automobile profits are very substantially below those of Dow Jones industrial companies, et cetera, and I think the record indicates that we have not succeeded or attempted, however you

wish to phrase it, in passing on our costs; if we had our profits would not have declined as they have. We are not earning profits as a percent of sales as good as those of the other companies in the Dow Jones, for example, and I personally see no great hope—I certify, and this is really in response to Senator Pastore's question, too, that faced with these financial problems, every effort is being made to cut costs in other areas, but I can see no great hope for absorbing these costs.

Mr. NEVIN. No, sir. The only collision premiums that are paid by the American society add up to $2.7 billion. That is Best's Aggregates number on collision premiums and the only offer of reduction has been associated with collision premiums, not the total insurance costs.

Mr. SUTCLIFFE. I think this is an appropriate time to analyze the cost figures, because you are giving the figures on the basis of collision coverage.

My figure of $1 billion was presented upon a reduction savings based upon premium cost for the property damage area as a whole, including liability insurance.

So, let me turn to your point about insurance cost savings and price differentials.

How are insurance rates set in this country?

Mr. NEVIN. I am simply not qualified to respond to that. They are certainly not set in response to changes in automobile design based upon the record.

Mr. SUTCLIFFE. Based upon the record.

Theoretically, does a company have a right to set its own price, or does it have to go to a State insurance regulatory authority?

Mr. NEVIN. It goes to State regulatory authorities, but those regulatory authorities vary widely in the amount of flexibility they will permit in the establishment of premiums.

Senator PASTORE. On that point, just so we can clear it up, it does depend on what the insurance company has to pay out in damages. I mean the more a car is damaged and the more they have to pay out, the higher the premium rate. The less the damage for any reason and the less they pay out, the premium comes down. That is fundamental isn't it, regardless of who sets it? I mean that is how you justify a rate before any utility board.

Mr. NEVIN. No, sir, I don't mean to quarrel with you, I am only expressing a point of view here, but in an industry where you have got 36 cents of every dollar being used to cover administrative costs, in an industry in which when they are appraising something like a 5-mile per hour bumper, they say 20 percent of the collision premium which would be less than 5 percent of the total premiums and premiums have been going up at a 10-percent per year rate, I really doubt whether what you are seeking to accomplish, which is a reduction of insurance rates, is going to be accomplished by changing automobile design.

Senator PASTORE. I am not justifying the administrative cost on the part of an insurance company, maybe that is subject to investigation too—as a matter of fact, I think we have tremendous concern in that area—but all I am saying is this, that the more that the insurance companies have to pay out for damages to automobiles that are insured by them, the higher the rate goes.

That is the argument they make when they go before a utility ad ministrator. It might be well be that the chances are their administr tive costs are too high in comparison with what their disbursement may be, but that is another problem.

But fundamentally, if we can get these cars in a position where th damage is less, won't we be in a better position from the public in terest in arguing before any rate increase board that they are askin too much for the premium?

I am sorry for the interruption.

Mr. NEVIN. I would certainly not dispute the point. I would que tion the priorities, sir. If those rates are going up at a rate of close t 10 percent a year, if car redesign can't change the car population fo 7 or 8 years, I do think I would put a higher priority on dealing wit the problems within the industry.

I know the industry witnessses, the automobile insurance indust witnesses, have placed great emphasis on car design. I can't accept th idea that the American consumer is going to get his maximum benefi if you impose vast new damageability standards on the automobi industry at a time when you are asking the industry to meet safety an air pollution standards which I am sure you would judge to be high priority and at a time when all the evidence available says that the will be no significant changes in automobile insurance premiums as result of those changes in design. That seems to me to be establishe by the 5-year record under the Safety Act, where under all the promu gated standards we haven't had the first example of someone sayin this is worth a reduction of the insurance premiums.

Senator PASTORE. That is an indictment of the insurance industr but if we can promote a bumper which at the rate of 5 miles per hou doesn't cause the damage of $450, and those are figures given to m by the staff—we have had instances in the record where an automobi going 5 miles an hour and it hits a solid barrier and the damage is $45 I don't think you can get many cars to go 5 miles an hour today: the are geared up so high.

Now, if you can cause $450 worth of damages going five miles a hour, just imagine what the damage would be to an automobile if yo hit an object going 20 miles per hour. You are telling me if you ca eliminate that damage that it won't affect the premiums? There something wrong somewhere.

Mr. NEVIN. No, sir. I am telling you that the people who are e tablishing the premiums are saying if you eliminate that 5-mile a hour damage, they will reduce premiums by 4.7 percent. I wasn't re resenting what should happen, and I don't presume technical comp tence there. I was simply stating that one insurance company in a America has said it would reduce premiums as a result of that 5-mi an hour bumper. The others have overwhelmed America by their s lence except when they talk about automobile design.

Senator PASTORE. We will get them here to talk to.

Mr. SUTCLIFFE. Mr. Nevin, you would agree, then, that an insuran company cannot unilaterally determine its rate reduction, that this based upon a filing with the State insurance commissions?

Mr. NEVIN.

Mr. SUTCLIFFE. So the 20 percent was not necessarily a fixed figu for what premium reduction rates would be?

Mr. NEVIN. I would have no reason to challenge any statement you make on this subject, but I don't think it is appropriate for me to attempt to testify as to how the insurance industry sets its rates.

Mr. SUTCLIFFE. But it relates to the premises and assumptions you make in your testimony. Let me suggest that you look at your chart entitled "Indicated Effect of 5-Mile-Per-Hour Bumper on Automobile Insurance Costs."

Now the savings presented there seem to be predicated on two assumptions: One, that only a 20-percent rate reduction will be required by State insurance authorities, and that the present liability system for compensating auto accidents will be retained.

Are those two fair assumptions for the information on that chart?

Mr. NEVIN. Yes; but if I may, I would like to get out of the tone of "only." Twenty percent was offered by one company in this country, and no one else has followed them, and that company has said that for 5 miles per hour and 4 miles per hour it will give 10 instead of 20. That is the record to date.

The statement the insurance commissions won't force larger reductions, you are right, I can't assure you they won't. But I will ask you to look at the record of 5 years of standards under the Safety Act in which to my knowledge no insurance commissioner in any State has said why is it that now you have got a collapsible steering column the American public shouldn't get a lower liability premium charge or now that you have better door locks so people don't pop out of cars—and there is a great number of thought-out standards that have gone into automobiles—and I know, sir, of no evidence that that's been recognized in insurance premiums and all I'm urging is that the Congress establish that relationship before it imposes, on this industry, another set of testing and standards at a time when we're struggling to try and achieve what I judge to be enormously higher priorities in the areas of safety and air pollution relationship that that has had any effect on insurance premiums. And until you are certain you are going to get the kinds of savings you are promising the consumer, we would urge you not to impose that kind of new workload on us, that kind of new possible price increase. And I said "possible increase" on the American public, because the burden of what they are going to carry is going to be high enough. I hate to try to defend absolutes here. I am trying to defend a position with respect to priorities.

Mr. SUTCLIFFE. I am just trying to understand the picture you depict on this chart.

Where on this chart have you depicted the potential savings to the consumer who would not have to pay his $100 deductible because his car wasn't damaged in a 5-mile-per-hour crash? Those savings are not reflected on this chart; is that correct?

Mr. NEVIN. No, in the last sentence of the testimony associated with that chart, I say:

> If the consumer is to benefit from the new bumpers, very major gains would have to accrue to uninsured motorists or to persons incurring costs as a result of collision coverage deductibles.

I attempted to cover that point in the testimony.

Mr. SUTCLIFFE. Have you calculated what the premium reduction might be if property damage losses were paid on a first-party no-fault basis only?

Mr. NEVIN. No sir; I have not. I think that the major impact of that, and I suspect you do too, would be on the administrative cost as opposed to the damage payout to policyholders. I have not attempted to calculate it, and I wouldn't have the basis to calculate it. In order to have that information before the committee, which was the basis for that chart.

Mr. SUTCLIFFE. Let me present information which was given to the House Interstate and Foreign Commerce Committee by Prof. Samuel Loescher, of Indiana University, who estimated that premium reductions would be increased by a multiplier of three if a first-party compensation system were adopted.

He said:

The magnitude of specific differentials by model on a no-fault collision option would triple over current levels.

Now, applying that formula to your chart, this would mean that even a 20-percent reduction in collision premiums on a first-party basis would increase savings from $540 million to $1.6 billion.

Mr. NEVIN. But the other billion dollars you can get without the bumper.

Mr. SUTCLIFFE. This was a savings reflected on the basis of combining and rating a car owned by the individual. You know what car you are insuring, and, therefore, your premium reduction capability factors out at three times what it would be when you have to break out between your liability insurance and your collision premiums. In other words, he is combining the collision premium payout and the property damage payout to get a factor of three to indicate what the potential savings are under a first-party system as opposed to the present system, and that does not take into account the reduction in administrative cost because that is not factored into the premium benefit payout. That would come through other premium reductions reflected in the total $8 billion assessment, premium assessment for property damage.

Mr. NEVIN. You have just lost me.

Mr. SUTCLIFFE. Let's assume that a change to a first-party system, as Professor Loescher has testified, produces a multiplier——

Mr. NEVIN. I am not qualified to comment on the professor's testimony. I haven't read it, and I am not familiar with the data he used. I have no reason to quarrel with you, but I would like to avoid questions on testimony that I have not had the opportunity to review, to read or to understand.

Senator HART. Maybe I could help counsel and the committee and you.

Mr. NEVIN. Thank you.

Senator HART. Maybe we could do an arithmetic problem here making some assumptions, without accepting the assumptions. Let counsel state the savings that the professor testified would result and then apply them to the figures that you have presented here.

Mr. SUTCLIFFE. I simply wanted to point out that the chart in your statement may have a different result if you put the insurance on a first party basis according to the testimony of Professor Loescher.

In other words, if we are considering S. 945 and S. 976 simultaneously, we have to try to understand what impact changes in the compensation system might have upon the total savings resulting from property loss reduction standards.

Using that factor of 3, the savings from the total premium dollar collected comes up to 13 percent rather than the 4.5 percent.

Mr. NEVIN. No, sir; I just understood your conclusion. I do not disagree.

The reason why many people in this country have supported and many of the members of this committee have supported so-called no-fault insurance is the belief that that will substantially reduce the total premiums that the American public has to pay to get the same kind of coverage from automobile insurance, substantially reduce the total premium.

Now, if you presuppose—and let me pull a number out of the hat, because I don't claim competence here, I do support what you are trying to do in the no-fault area, in trying to find better solutions, but if you presuppose the American public is paying $100 today for a given form of coverage and presuppose that that coverage could be made available to the public for $80 under a no-fault system—I don't want to represent that is true, I am just using it as an example—then at that point any moneys that you put into the car to reduce damageability will have a lesser payout than they would have under today's system, not a greater payout, because the consumer would be paying less money in the future under that system to get the damage paid for than he is today, and, therefore, the payout, the possible payout to him in terms of reduced premiums associated purely with car design would be lower.

I would have to go back to that—I am not familiar with the testimony—but to the extent you reduce the basic cost, then clearly the percentage further reduction that can accrue as a result of car design is going to be reduced and the payout for any costs that go into the car to accomplish an improvement will be longer and economically less feasible.

Senator PASTORE. You predicated this on a savings of $20 on no-fault. What if the savings is $80 out of $100.

Mr. NEVIN. Then it is that much harder, I think, Senator.

Senator PASTORE. For whom?

Mr. NEVIN. It is that much harder to justify any addition to the car's cost. Let's assume for the moment, you assume a design feature, let's take a 5-mile-an-hour bumper at $100. If the consumer is paying $122 for collision coverage today, a 20-percent savings may have an attractiveness to him, $25 a year the first year, perhaps it declines to $17 in the second or third year.

If the consumer is only paying $60 for the same collision coverage, the hundred dollars payout isn't going to be nearly as attractive. Collision is really no-fault coverage as it is written today, because you get your car covered regardless of whether it was your fault or somebody else's, so the principal applies more to the property damage number than it does to collision insurance, because in effect collision coverage is no-fault today.

That is the portion of the policy that pays the damage to my car when I bang into someone else's and it is my fault.

Senator PASTORE. You see you have lost me now.

Mr. NEVIN. We are now together, sir.

Senator PASTORE. Let's go over this again.

You pay $100 more for an automobile because you have this bumper that gives you protection against an accident, right?

Mr. NEVIN. Yes, sir.

Senator PASTORE. If today you are buying insurance, you are saying you are paying $122 per year for premiums. Let's assume you cut that premium down in half, and you keep your car for 5 years, are you telling me that you are not saving money?

Mr. NEVIN. No, sir.

Senator PASTORE. That is the argument you are making?

Mr. NEVIN. No, sir.

May I ask you to turn to this chart in my statement.

Senator PASTORE. That is your chart. I don't care about the chart.

You see, you are predicating your presentation here today—I am not quarreling with you. I think after all you have a perfect right to state your case and you make a good case for the Ford Motor Co.

Our job here is for the consumer and our job here is for the general public. All we are saying is this, today under the construction of the front of the car and the makeup of the car, with the kind of a bumper that you are putting on it or without the bumper that you are not putting on it, the result is that at 5 miles an hour sometimes you create a damage of $450.

We are either trying to cut that down or eliminate it by the construction of the bumper. You come here today and have said, "Gee, if you do that it is going to cost the consumer a hundred dollars." I cannot question that. You have priced the car and it is going to cost the consumer a hundred dollars.

All we are saying here is if we get this insurance industry in a proper context and we get ourselves under no-fault insurance where we can avoid all these astronomical administrative costs that you have pointed out here today, that we can make an appreciable discount in the premium that an individual has to pay, that over the years while he is running that automobile the savings on these premiums will more than pay him for the extra cost of $100 when he bought your automobile.

That is all I am saying.

Do you dispute that?

Mr. NEVIN. I would dispute it with respect to some consumers. Senator. Without hypothesizing, let me give you two examples. The consumer in Washington, D.C., who owns a Galaxie and pays $112 in collision insurance gets 20 percent and he starts off with $25 a year, he gets $18 in the second and third year, and $16 in the fourth and fifth, I suspect would find the $100 premium on the car attractive. I suspect he would be happy to pay it, would be glad to have it.

A man who is buying a Pinto, a lower-priced car, who lives in Cedar Rapids, Iowa, and who has a basic premium cost for collision coverage of $48 as opposed to the $122 for a larger Galaxie in Washington, D.C., who would only get a $10 saving in the first year, $7 in the second and third and $6 in the fourth and fifth would be far less attracted to buying it, and I don't mean to confuse you, I am simply concerned that that kind of action——

Senator PASTORE. Yes; but if you have one fellow in Grand Rapids that you talk about and you have thousands in Washington, D.C., I mean where would you put your emphasis?

That is what we are dealing with here. We are dealing with the whole Nation.

Now, you can pick out exceptional cases. I know that. There is always an exception to the rule. There may be some localities where you may be right, but we are talking here about overall, in the long run. Wouldn't we be better off if it cost a little bit more to the consumer? After all, look, anything that Ford puts on an automobile, anything, whether it is a Federal regulation or the decision you have made, the consumer ultimately will have to pay for it.

The only thing we are trying to do here is to gage our priorities in such a way that the consumer once in his lifetime will come out the winner, and up to now he has always been the loser.

Mr. NEVIN. Senator, I am not—I guess one of the points I have not succeeded in making clearly, is I am not certain that the choice is between no 5-mile-an-hour bumpers and everyone must have them on every car in America. I am not sure that we wouldn't be better off if you had a system of rating in insurance—let's say that the 20 percent is valid, let's say that is what the consumer should get—then, I see no reason why an American consumer who says: "If I live in Cedar Rapids I don't live in New York, I don't have this risk, and therefore I don't want a 5-mile-an-hour bumper. I will buy a car that is a hundred dollars cheaper that doesn't have it," should be excluded from making that choice. We do not impose that decision on him with respect to men's wear. I can buy all kinds of shirts that have varying washability characteristics. The Federal Trade Commission or the Congress would certainly want to make sure that a maker did not suggest one shirt could be washed in the washing machine and the other has to be dryclean, if that wasn't true.

But to the extent that it is true it doesn't seem to me there is any great public interest served in saying to the man who is willing to pay to have his shirt drycleaned, or fire insurance on a house is a better example, than a man who wants to live in the country, even though premium rates are higher, that he cannot do that.

The insurance industry is doing that today. They put substantial surcharges on high performance engines for example that go into a car. I really do not see why you can't have consumer choice and the benefits you are seeking, sir.

Senator PASTORE. We did that with television sets not too long ago in order to promote UHF in the public interest. We required that as a matter of law all sets be all purpose. We might have to do this in automobiles, because the number of people who will benefit will greatly outweigh those people who might be in the exceptional cases.

And the Congress of the United States in meeting this problem will have to make that decision. I get the point that you are making, but the point still remains there is some substance to the arguments that we are making.

Mr. NEVIN. Yes, sir, and I hope you understand——

Senator PASTORE. If you were sitting up here rather than down there, you might be asking the same questions I am asking and you may be a little amazed at the answers that you are giving me.

Mr. NEVIN. I don't mean to——

Senator PASTORE. I don't mean to be impertinent at all, but you see your function is just a little different than ours. We are listening to

you, and you make some sense in some areas, and then in other areas your responsibility varies from ours. We have a different responsibility.

We are not trying to encroach upon the automobile industry. In fact, we think it is one of the greatest things that ever happened to this country. I think it is one of the finest things that has happened in the world. I am not here to deprecate the Ford Motor Co. It has given a lot of people a lot of jobs, it has fed a lot of families, but we are beset with the situation that today when you get a little bit of accident in your car you have to go to the repair shop and take your house mortgage with you.

Mr. SUTCLIFFE. Mr. Nevin, you argue that the Federal Government not mandate bumper requirements because you think that the consumer choice in the marketplace will cause manufacturers to build bumpers with higher damageability protection characteristics.

At the same time you tell us that you are very suspicious about the way in which insurance premiums and the cost savings reflected in those insurance premiums will cause consumers to make choices in favor of cars with damageability protection.

Mr. NEVIN. I did not mean to use the word suspicious, if I did use it.

Mr. SUTCLIFFE. I am putting words in your mouth, then.

Your chart that you have shown us shows, according to you, that only $24 price differential would be reflected under the present reparations system. Does it makes sense to you, again going back to Professor Loescher's statement, that that $24 figure would be multiplied by a factor of three under a first party reparations system, so now the consumer buying the car, the average consumer, would have an effective savings of $72 a year rather than $24?

Mr. NEVIN. If that was the proposition available to me, I would have been out of here by 10:15. If the proposition was $100 of cost being added to the car and the consumer would get back $60 or $70 in the first year, I would want to sell that. I can't imgine anything that I would find easier to sell to the American public than that kind of a savings.

So, I don't quarrel with what view I would take if we could put a hundred dollars of cost into a car and save the consumer $70 per year. There is no question as to what view the Ford Motor Co. would take on that kind of a proposition. We are not aware yet of a system that is going to produce that result.

Mr. SUTCLIFFE. But if there were a system that could produce that result——

Mr. NEVIN. If there were that kind of a system, I would endorse without qualification actions that added a hundred dollars of cost to a car and gave the consumer $70 back the first year, without any qualification.

Mr. SUTCLIFFE. So, your argument of freedom of the marketplace is dependent upon the consumer having signals for cost differentials and those signals——

Mr. NEVIN. That is the first argument.

The second argument would be a little different. I really do not believe that there is any consequential public gain by saying to the consumer who puts a very high priority—let me take the most con

troversial of all arguments, esthetics. He likes pretty cars with damageable bumpers. You create a system that says to this man the price of a pretty car with a damageable bumper is $75 more a year forever in an insurance premium, and he says it is my $8,000. I am using it to buy a Continental, I would love to pay $75 a year more in insurance premiums and have that damageable car. I would not take this position in safety or air pollution. You must restrict consumer choice in those areas to accomplish worthy public objectives that are high priority.

I doubt that you must do that in the areas of damageability. Let me use a more specific example. Overseas producers who have volume in the United States but whose volume in the United States is not consequential as a percentage of their total volume, and I will exclude Volkswagen for the moment, because their volume in the United States is very consequential as a part of their total volume, but producers, and I don't have any information that causes me to use these names, but Jaguar, Mercedes, the makers of a variety of overseas automobiles, it's perfectly possible that one of those producers could say the tooling engineering cost of a 5-mile-an-hour bumper for the 10 percent of our cars that go into America just isn't worth it.

Now, I don't believe that the public interest is served by saying to the American public you cannot buy Jaguars any more or Mercedes any more because in our wisdom you ought to have a 5-mile-an-hour bumper. If they offer some benefit to the American public, that the American public finds to be greater than that insurance savings, then I honestly see no reason for the Congress to decide that it must take action to prevent the American public from making that choice.

Senator PASTORE. What a big difference that would make to the balance of payments.

Mr. SUTCLIFFE. Let me ask you then hypothetically what your feelings would be if through inattentiveness you happened to run into the back end of that particular car you were describing, the $8,000 car, perhaps a fiber glass body no bumper protection, you'd purchase 5-mile-an-hour bumper protection for your car, you hit him at 7½ miles, your car is not damaged, his car has $800 to $1,000 worth of damage on it. As a result your company that you are insured with has to pay the liability premiums and your policy is canceled.

What would your position be in that situation?

Mr. NEVIN. Let me ask you to define which of the two insurance systems I am answering the question under. I was just answering the last question as if you had already passed no-fault. Have you passed no-fault when I'm asking this question or is it still a matter of serious public issue?

Mr. SUTCLIFFE. Let's answer the question both ways. Under the present liability system, what would your feeling be?

Mr. NEVIN. If you are going to keep a liability system that says that if I have no-fault I am entitled to collect from somebody else, then I would say that you have got to make sure that that system assures me that the guy who bangs into me is insured. That is one of the great failures of the system we have right now.

I may do what I think is prudent and insure myself against damage I do to somebody else, but if somebody bangs into me and hurts my wife and my children I may find out too late he was not insured. So,

I don't consider an insurance system to be acceptable, whether it i no-fault or tort liability, that says some significant number of peopl may take risks on the highway of hurting me and I may through th luck of the draw end up uncompensated by that loss.

So, if you presuppose now that I bought my Jaguar and it is m fault, you can have a deductible, the insurance companies could im pose that we will pay no more than the first $100 or the first $200 o a Jaguar, but I don't think that that problem is large enough to sa that you want to exclude large numbers of cars.

Mr. SUTCLIFFE. Let's go to the second situation where you are unde a first party no-fault benefit. If you, through your inattentiveness, ha hit that damaged prone Jaguar——

Mr. NEVIN. Under no-fault it's no problem, I have to agree with you If it is no-fault and I have got to pay for any damage done to my ca then my insurance company says Mr. Nevin you bought a Jaguar, th Jaguar has miserable bumper systems and you are going to pay $5 more for your premiums a year and we're going to insure you. Then have no trouble. Anybody can bang into me, and I am responsibl I agree it's more complex if you don't go to no-fault. But not so com plex that I'd say that nobody can buy a car that doesn't meet the stand ards or that I would say that was desirable if the Congress could fin an alternative. I don't mean to be so positive.

Mr. SUTCLIFFE. But under a no-fault situation, then, you would onl be responsible for your own car, and if you chose to buy damage pro tection for your vehicle, you would have that damage protection re flected in lower premiums. If someone else chose not to, they woul have higher premiums for that particular car.

Mr. NEVIN. The ideal system would be one where I carried the ful financial burden of my choice which was to buy a Jaguar.

Senator PASTORE. If I understand you correctly, you would no oppose this legislation if it could be shown to you that where a perso has to pay $100 more to buy a car because of the safety features h would be saving commensurately and even more on his insuranc policy, and you put the case if they could show you that you coul save $60 or $75 the first year, you would have no opposition to it a all; is that correct?

Mr. NEVIN. No; I said I would want the opportunity to sell tha because I would try and sell it. I don't think, Senator, I would tak the next step which is to say that I would want to make sure tha anyone who didn't find that $70 saving attractive couldn't take th course of action in the market he wished to.

There are many parallels. We don't require the American publi to use plastic dinnerware because Dresden china is highly breakabl If the public is informed, if the public knows what it is doing—an I fully support and have supported in this testimony efforts to provid information—then, unless the Congress concludes there is no othe course of action available, I see really no reason to impose a limit o choices on the consumers of automobiles. You don't do it on housing You can buy a house that is frame in the country and pay a big pr mium to cover it with fire insurance.

Senator PASTORE. How does the auto buyer know that? Do you mea the auto buyer would go to the dealer where he has that option an the dealer would say if you pay $100 more to get these bumpers yo

are going to save a bill of $450 damage because this bumper will cause $450 and this one wouldn't cause any at all?

Don't you think there is a responsibility on the Congress to protect the consumer without the consumer being always placed in the position of caveat emptor?

Mr. NEVIN. I think it is a matter of degree, Senator, and I would give you one example.

The insurance industry has in the last several years put substantial premiums on cars that were equipped with high performance engines, cars that had big engines relative to their weight. They actually set a standard in terms of power-to-weight ratio where an engine had a certain amount of power relative to the weight of the car and therefore a speed capability that the insurance industry thought was excessive.

You have never seen anything dry up faster in America than sales of that kind of car. That suggests to me that the American car buyer did understand if I buy this kind of engine in this kind of car I am going to take an insurance premium increase of some consequence, and I am not willing to do that and therefore I am not going to buy.

It also suggests to me that the guy who bought a car with that kind of an engine must have had the same knowledge and said for my use I want to do it.

Senator PASTORE. If it would work out that way, Mr. Nevin, you may be right, but we have had too many experiences where freedom of choice has actually added up to caveat emptor.

Mr. NEVIN. I hope you don't think I am urging that on you, sir. I am not.

Senator HART. Senator Griffin?

Senator GRIFFIN. No questions.

Senator HART. Would you for the record submit whatever comments you might want to make on the amendments that involve controlling the odometer and the vehicle to in-use pollution inspection features?

Mr. NEVIN. Yes; I would.[1]

Senator HART. I appreciate the directness with which you have commented on the other proposals. I only regret the conclusions that you have reached with respect to them.

We certainly appreciate the testimony that you have given. Thank you very much.

Mr. NEVIN. Thank you, sir.

Senator PASTORE. Thank you, Mr. Nevin.

Senator HART. Our next witness and one of the too few examples that people cite of individuals that can affect the enforcement of the system is Ralph Nader, whose influence on the automobile industry has been not as great as he would like but it has been significant nonetheless.

STATEMENT OF RALPH NADER, WASHINGTON, D.C.

Mr. NADER. Thank you. Mr. Chairman, distinguished members of the Senate Committee on Commerce, I am grateful for your invitation to comment on S. 976, the Motor Vehicle Information and Cost Savings Act, which is designed to put more product integrity into the automobile and stimulate competitive forces which even the collusive auto

[1] See p. 1391.

industry cannot completely ignore in its continuing quest for great fraud at higher prices for more millions of Americans.

The burden of this proposed legislation dwarfs the feeble provisio which are to be its tools. That burden is trying to stop the yearly to of billions of dollars and unnecessary hazards imposed on motoris due to the calculated design, construction, servicing, and repair co of the automotive industries—all calculated to create a series of repe cussive consumer demands for goods and services which arise out the deficiencies of the original motor vehicle's design and constructi in the first place. The automobile industry, coldly and with sli rule precision, has developed a product which, from bumper to ta light to engine, supports a parasitic aftermarket, a many-billion-dolla a-year market, marked by enormous and monopolistic company mar ups on replacement parts. The most visible exploitation, bumpers th are fragile and ornamental, illustrate the millions upon millions dollars which the auto companies make by requiring motorists to bu portions of their cars twice or thrice.

I would like to at this point illustrate what I mean here. This i of course, one of many possible illustrations. This is the photo of Mercury Montego with the hood very vulnerable to damage as well posing injury to anybody who might be struck by the front of the ca The cost of the hood according to current prices is $94.25. The cost t repair that front after a 5-mile barrier crash is $402.11. These I subm for the record.

Senator HART. They will be received.

(The illustrations follow:)

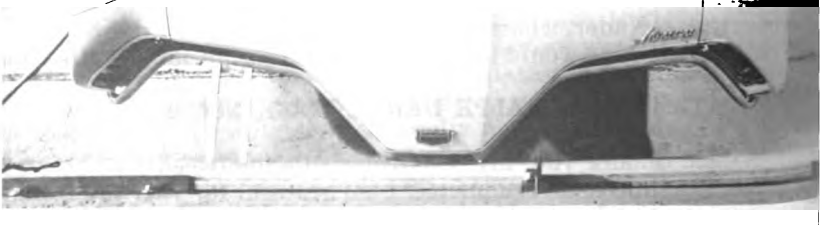


FIGURE 1.—Wedge-shaped design of 1971 Mercury Montego front end, believed capable of directing impacted pedestrians downward and under the car.

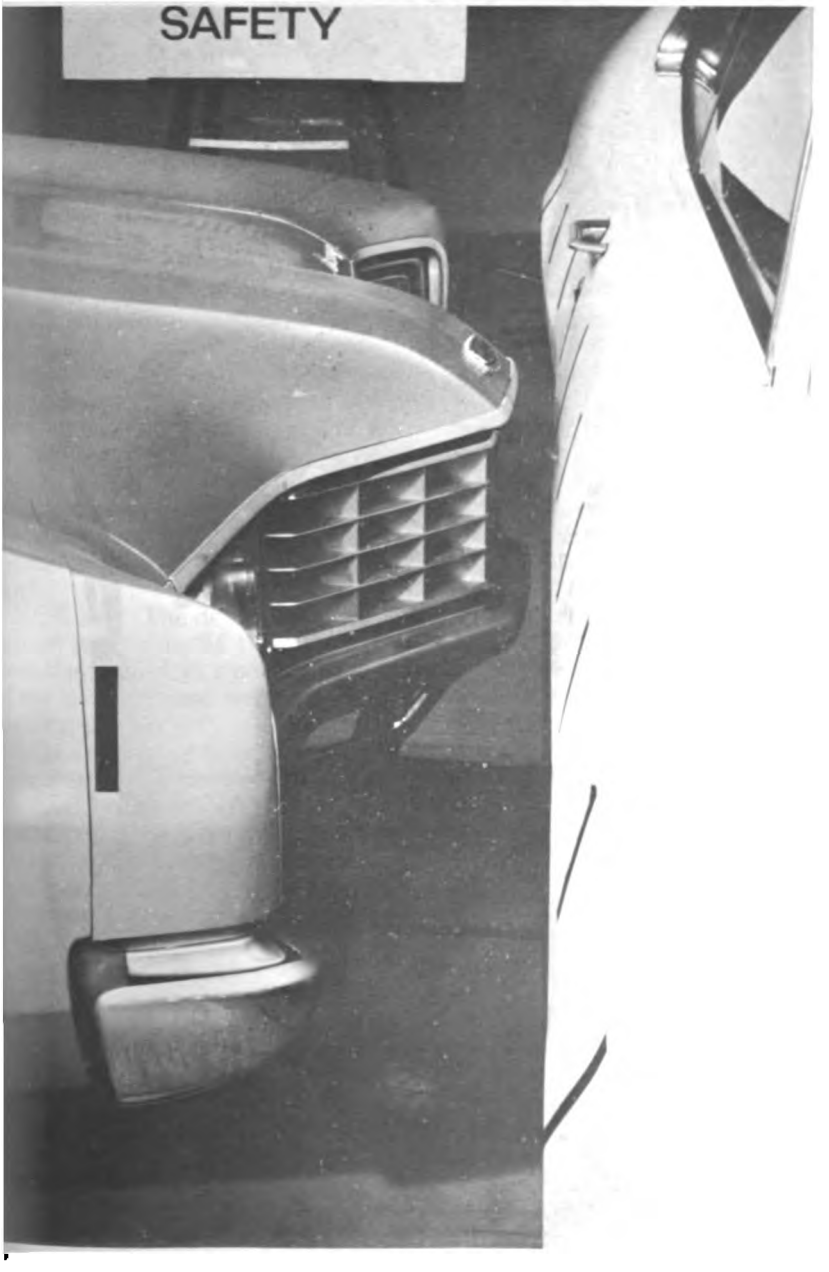


FIGURE 2.—"Battering ram" and pointed front end contour of 1971 Mercury Montego.

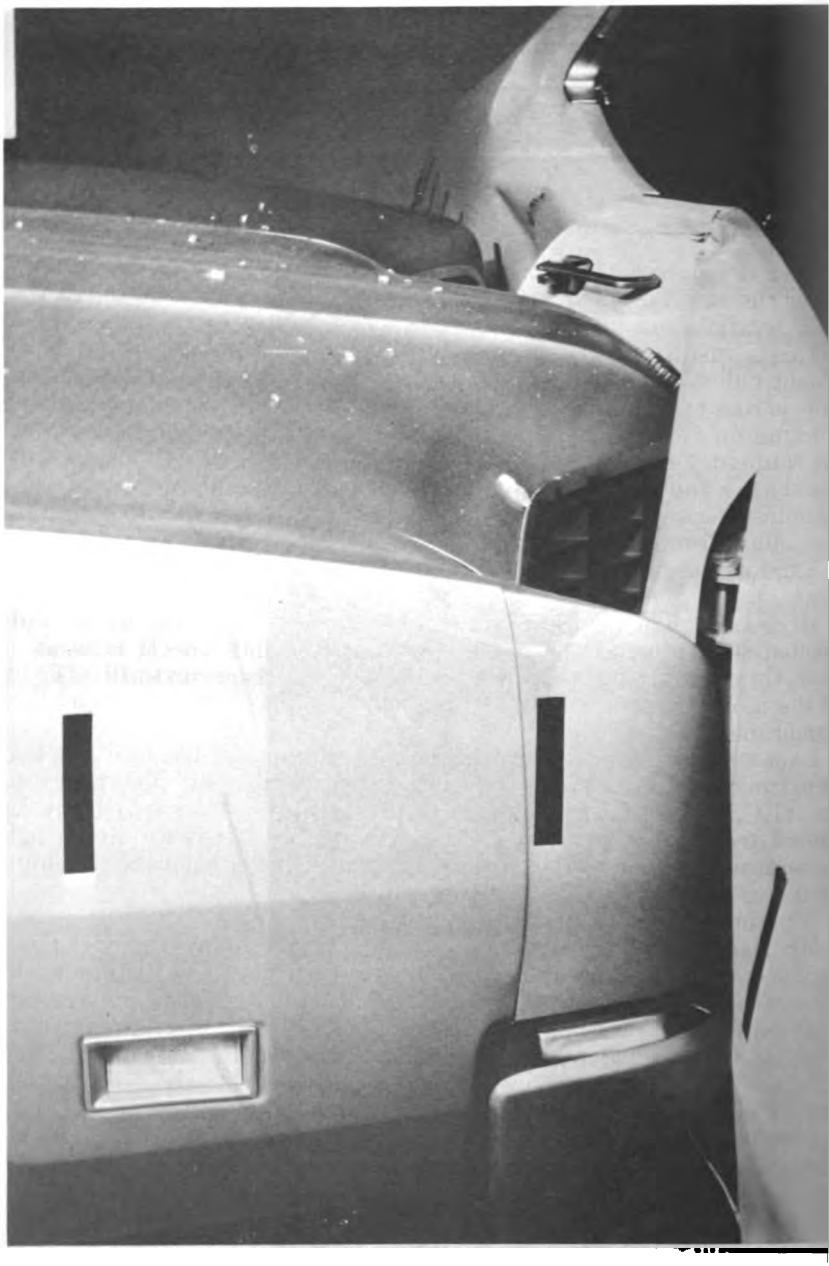


FIGURE 3.—Closeup of 1971 Mercury Montego front-to-side impact at 10 miles pe hour with another 1971 Mercury Montego. Note fender extension "chopper design cutting into side of impacted car.

Mr. NADER. In addition, these fragile bumpers support a subindustry [illegible] sells us millions of dollars of bumper guards.

[illegible] I would like to interpose here the necessity for the committee [illegible] tain alternative bumper design systems outside the auto indus- [illegible] there are many, and one I would like to just submit also later [illegible] record comes from the Lawrence Radiation Laboratory where [illegible] rgency energy absorbing device was developed as a byproduct [illegible] ission that the large radiation laboratory had to perform, covered [illegible] S. Patent No. 3,181,653 issued on May 4, 1965.[1] The device was [illegible] er developed in 1960, and the inventor has assigned as he does [illegible] er the law the patent rights to the U.S. Government through the [illegible] EC, available on a royalty-free basis, presumably.

This is just by way of illustrating that a patent search of our U.S. Patent Office by the Department of Transportation more systematically across the board might be able to find some of those individuals working on Government contracts who have come up with ideas that are eminently sensible and at least define the area of concern and at most have a fairly well-developed answer to the question, although only an industry can apply the capital necessary to bring the invention to the point of refined production.

Senator PASTORE. Can you describe that patent, Mr. Nader? What is it?

Mr. NADER. The device is an assembly of sheet steel membranes and pointed steel pins. If the pins are struck by a part that was broken loose, they would, in turn, puncture the membranes. The kinetic energy of the moving mass would be dissipated by the deformation of the membranes.

I am submitting this, Senator, as an example of the need for the Department of Transportation to begin searching their files, to go to the AEC, to go to NASA, to go to all these areas to see if there is spinoff technology for civilian use. Obviously, Lawrence Radiation Laboratory has one of the preeminent places in the scientific development area.

Senator PASTORE. I am familiar with it.

Mr. NADER. The importance of focusing on the bumper as it is now designed is that if the auto companies can so brazenly display such disregard for the consumer's pocketbook with bumpers which are for all to see and still try to justify them and still try to in effect circumvent what is obviously commonsense dealing with fraud, one can imagine what they will try to do once inside the vehicle where the visibility is much less and the components are more complexly interrelated.

I would also like at this point to illustrate the mentality of Ford Motor Co. I must say that in the last 5 years the industry has shown some progress. Five years ago they showed depravity. Now they show coherent depravity, judging by their statements, and the more they seem to change, the less there is actually any change.

Here is an advertisement in the April 30 *Washington Post* of this year where Ford displays their expenditure of millions of dollars over a national scope to try to convince an increasingly skeptical consumer that there is one auto company that even tries to listen. The section here deals with a statement "What you don't like about us."

The Ford ad quotes the following: "It isn't all roses, though"—that is rather gratuitous—"one third of our mail falls into the complaint

[1] See p. 1906.

category. People are mad about a lot of things, justifiable in many cases." Then they quote a letter from Mr. J. Highs, of Painesville, Ohio, as the following: "Why in the name of reason can't you people make practical, functional bumpers that will protect the car instead of adding to the damage that a collision of the most minor force causes?"

Ford concludes: "Ford Motor Co. isn't about to solve every gripe overnight."

This isn't a gripe that suddenly came to Ford Motor Co.'s attention, it is not a gripe that they have just been put on notice to solve overnight. It is a gripe that goes back at least years when bumpers lost all pretense of protection. It is a gripe that goes back to Mr. Henry Ford II's grandfather who certainly had better ideas as to how to build a functional bumper than his illustrious grandson. Yet this is the type of tripe that is fed to the American public where they can brazingly quote this type of complaint, forget about the past, forget about the billions of dollars lost and the profits unjustifiably made and then say we are trying harder, we are listening for the future.

Senator Hart expressed one major impact on the consumer well on February 25, 1971:

> American consumers spent $25 billion to $30 billion a year on auto repairs. Various studies on the quality of the work were presented to us. They rated the poor, unneeded, or not done work at amounts ranging from 36 to 99 percent. Even taking the low figure, that means consumers are wasting $8 billion to $10 billion that they lay out for auto repair work yearly.

The thrust of this bill is that a strategy of prevention concentrating on the disclosure of comparative susceptibility of automobile models to property damage and their crashworthiness, coupled with timely automated diagnosis through inspections, will save the consumer much money and improve safety. A sturdier, safer automobile reduces the likelihood of fraud and shoddy service in the repair, replacement and insurance markets. An ounce of prevention is worth a pound of cure.

Fragile bumpers which release between $300 and $400 worth of economic demand for 1971 models crashed at 5 miles per hour offer sizable opportunities for rapacious sellers. On the contrary, bumpers which protect cars at such speed levels or higher, would foreclose such opportunities.

Yet, without a recognition of the preconditions which permitted this pyramiding of costs—to the consumer—and sales profits to the industry, the proposed bill cannot be seen in its exceptionally modest context. These preconditions are:

1. An anticompetitive, collusive pattern of industry behavior, dominated by General Motors.

I will refer you to 11 recommendations by top staff of the Antitrust Division, economists and lawyers in the last 5 years, including former Assistant Attorney General Donald Turner recommending that there exists quite capable antitrust doctrine and economic reasons to break up General Motors and Ford to restructure a more competitive industry for better price, better quality, better innovation to the consumer—real consumer choice.

2. Criminal fraud or criminal negligence in the design of motor vehicles.

We don't think we can attribute any kind of motivations other than calculated criminal fraud to the auto companies who year after year

design these bumpers knowing full well the immense property damage and cost to the consumer and knowing full well that they have the available technology at virtually no cost to prevent such damage. It certainly can't be attributed to anything but knowing calculated criminal fraud.

3. Vast secrecy over facts and profits which the consumer has a right to know and obtain easily about vehicles, marketing practices and available, alternative ways of reducing costs and injuries.

4. The lack of any rule of law and enforcement dealing with this overworld crime backed by adequate inspection and enforcement resources.

I think if we judge the criterion for criminal intent, that is the knowing development of a condition which harms people, the knowing awareness of alternatives, and the profiting from the consequences of the harm, and the repetition of such behavior year after year after year, that fulfills the classic definitions of criminal fraud.

S. 976 clearly falls far short of treating these preconditions, although its pretensions are quite ambitious. The bill reflects the endemic weaknesses of political timidity to do much about the brazenness of corporate crime continually documented by studies and materials brought before this committee and the Senate Subcommittee on Antitrust and Monopoly. If after being exposed to details about the auto industry's massive thievery, its massive contempt for both the consumer and the Congress, for the past 5 years—totaling many volumes of hearing record—if this is the best legislation your political antennae permit you to come up with, then it is respectfully suggested that some of you who are most concerned take some time out and begin to ponder, like Lucretius, on the nature of things * * * relating to the corporate state of our times.

Even adopting the frame of reference of the bill's proponents—that a little is better than nothing—is this bill workable? Can a bill which tries to replace entrenched greed with more decent corporate behavior work without criminal sanctions for knowing and willful violations, without other civil sanctions initiated by government and aggrieved citizens, without explicit authorization levels to fund the programs described by the legislation? How many examples of deceptive packaging must this committee send to the Senate floor before it ceases grovelling before the Senate Committee on Appropriations with such boilerplate language as in section 503 of the bill——

Senator GRIFFIN. I wonder if I might interrupt the witness for a moment, Mr. Chairman?

Senator HART. Senator Griffin?

Senator GRIFFIN. I have listened with attention here as you have used a lot of very colorful language. I am sure it probably makes good press, Mr. Nader, and such terms as "calculated criminal fraud," "brazen corporate crime," and so on and so forth, but when you get down to the point where you are accusing this committee of "groveling before the Senate Committee on Appropriations," I rather resent that contemptuous language, and I just want to make sure that the record reflects it. This committee does not grovel. This committee in my humble opinion has done a very outstanding job regardless of what your opinions are, and while the automobile industry is by no means perfect and we have a lot of work to do, we could regulate it to death, and we are very close to doing that, in my opinion.

I think frankly that you don't need to use such language to get attention for your views. Your statements are going to be widely covered if you will stick to the facts. But that is only my advice, and if you want to use those kinds of adjectives and accuse people of such things, including the Members of Congress, I guess you can do so, but I hope and I would think it would make your testimony less effective.

Thank you, Mr. Chairman.

Mr. NADER. Senator Griffin, I am quite aware——

Senator HART. Let me just interject here.

I have steamed about what we ought to do about the Appropriations Committee, and I suppose if I were on it I would feel differently. I always think the authorization committees do probably know better what is required for a program, but when you stick the figure on, then you are told that the Appropriations Committee knows better what the total pot is.

Mr. NADER. That is my exact point.

Grovelling is defined in the dictionary as "an abject subservience." I do not believe we need——

Senator PASTORE. Would you leave the word "abject" out?

Mr. NADER. It is quite clear, Senator, if you need any more facts beyond what is permitted in the short testimony and time available, I would really refer you to Mr. Crandall and to the volumes of testimony that he and others can bring to your attention, with documented, calculated examples of gross criminal negligence at least, if not calculated fraud.

If you will let me finish the statement, I will give additional examples. But as far as the Appropriations Committee is concerned, I am asking this committee to stand up for its rights. What committee knows better after having all these hearings how much money is needed and at least to suggest with a documented case to the Appropriations Committee how much money is needed?

There is case after case after case that can be cited, and I refer to some in a moment, where the Appropriations Committee in fact takes the Senate Commerce Committee's legislative concern which passed the Congress and emasculates it totally, and one of the reasons is that it receives no clear-cut mandate or no clear-cut communication with adequate, detailed studies from the legislative committee.

I would submit that this has happened so frequently that it betrays the feeling by nonappropriation committees that this awesome Appropriations Committee cannot be advised, cannot be given in detail the facts to help it make up its mind more explicitly.

Look at the bill, "There are authorized to be appropriated to the Department of Transportation such sums as may be necessary to carry out the provisions of this act."

It gives absolutely no guidance to the appropriations committee who do not hear the facts, who do not get the feeling such as being expressed here this morning, who aren't exposed to the testimony, and who even if they had good intentions are going to give this a much lower priority than would the legislative committee.

Senator PASTORE. Mr. Nader, you are saying something that it is a little bit beyond your competence. I think you have done a marvelous job in alerting this country and this Congress to consumer rights, and many times you have been rather enthusiastic and we applaud you for

that. I think had you not come on the scene, maybe the picture would not be as healthy as it is today, as much as it might still be sick. But the fact still remains that a member of that Appropriations Committee is the chairman of this committee, Mr. Magnuson. I am also a member of that committee.

We have a tremendous amount of interest and compassion for the legislation of which you now speak. But now after all, the coffers of this country receive x number of dollars. This year we will have an actual budget that will run about $30 billion short of the amount of money that we receive. If we appropriated all the money that is required by the Committee on Health, Education, and Welfare alone, we would have to double the taxes in this country.

Now, we have to consider everything.

The FCC comes before our committee, and they have many deficiencies there and they need more staff. The SEC comes before our committee and they have a tremendous responsibility. The Federal Power Commission—all these come before the Appropriations Committee.

Now, it is like the father of a family—I don't know if you are married and have a family—it is like the father of a family who brings a paycheck home. There are a lot of things he would like to do, a lot of things he needs to do, but he has to confine his activity within his pocketbook.

There is no deliberate intent to deny relief in this respect, but it is a question of allocating the priorities. It isn't a question of cases being presented. The case is presented, it is understood. Any Member of the Senate has the perfect right to introduce an amendment if he is dissatisfied with the amount that is recommended by the Appropriations Committee, and, then, of course, it is up for debate.

But these problems are not as simple as a question of carrying out every thought and every mandate of every legislative committee.

I don't mean to lecture here. All I am trying to tell you is you have got just as much heart on this side as there is heart on your side. You have just as much interest here. I am just as much interested in the consumer as you may be.

Mr. NADER. That is my point, Senator. My point is the Appropriations Committee needs detailed guidance from the legislative committee.

Senator PASTORE. No, we need more money, and there is only one way of getting it.

Mr. NADER. Suppose they ask how do we know how much to spend for this bill, shouldn't they have from your committee, this committee——

Senator PASTORE. It is being done, sir. They don't get everything they ask for because when you begin to cut up the pie, you have to take care of health, you have to take care of education, you have to take care of poverty, you have to take care of every other facet within our society that is crying out for help. It isn't only for the automobilist. It is everybody.

Yes, we do fall short in appropriations as against the authorizations, but it is a natural phenomenon, and there is only one way to cure it. Every mayor wants more money because he wants to get rid of the ghettos. What is more important, getting rid of the ghettos or

putting a bumper on an automobile? We have to decide that. Is i more important keeping a child in school, giving him a little educ tion before he goes to school on the Headstart program or is it mo important to put a bumper on a car?

All these things naturally have to be considered. So when you i there and you give a general indictment that the Appropriations Com mittee is not listening, then I think myself you are doing a disservi to yourself, too, because that isn't the question at all.

You are privileged to come before our committee at any time yo want, and if you feel that any legislative committee is derelict in pre senting its case, you have a perfect right to come there. But I repea again it is a question of allocating priorities, and we have got a bi headache.

Mr. NADER. I couldn't agree more, Senator. All I am pleading fo because there has to be a contention between the dollar budgets. be tween the various programs, all I am pleading is that the Senate legis lative committee on a bill be more specific in providing a justificatio for whatever level it thinks it warrants. The Appropriations Commit tee will undoubtedly slash it, but at least the Appropriations Com mittee will have something to go on.

Suppose I ask to testify before the Senate Appropriations Commit tee on one of your laws and urge them to appropriate a certain amour and they say to me, "We haven't heard from the Senate Commerc Committee about how much money should be appropriated in thi bill." Where does that leave any citizen?

Senator PASTORE. They haven't said that.

Mr. NADER. The point is they haven't.

Senator PASTORE. No; we have witnesses coming before the Appro priations Committee. The legislative committees are being heard. an they are being heard on the floor of the Senate if we do not d the right job. I repeat again it is a question of money, and that is th eternal dilemma, more money.

Mr. NADER. Look at the utter failure of the Oil and Gas Pipelin Safety Acts and the Radiation Control Act and observe their miniscu appropriations—a caricature of recognition of your deliberations b your fellow Appropriations Committee. When is this committee g ing to fight for adequate funding support for its consumer prote tion bills by taking the first step of stating at least an explic authorization level with backup detail?

When is this committee going to stand up to Lloyd Cutler and h industry cohorts and say that if there are criminal penalties for th poor and deprived, if there are criminal penalties for other indust and labor practices, then there must be criminal penalties for the aut mobile industry when its executives knowingly violate standards d signed to protect citizens from injuries and systematic fraud?

For example, I think the Gas Pipeline Safety Act had an initi year's budget of something like $250,000. This is for about 500.0 miles of gas pipeline, to set the standards and make sure they a enforced.

Let me go on to several other weaknesses in the bill which call f a complete redrafting in my opinion.

(1) Section 125(d) as written appears to ignore recent history having the Secretary of Transportation undertake a feasibility stu

relating to a crashworthiness index, and if by July 1, 1972, he finds it feasible, he is to develop and prescribe by regulations "issued as soon as may be practicable such a system of tests and testing procedures." In the first place, if the committee doesn't stipulate a date, "as soon as may be practicable" could trespass on eternity. Even when the committee stipulated a date, as for the used car standards—due by September 1968 and still not issued—in the 1966 National Traffic and Motor Vehicle Safety Act, the Department will violate its own statute. But the Congress has no control whatsoever over "agency discretion," as that term is charitably used unless there is a specific date for such regulations. Even more to the point, the Department has already recognized the feasibility of such a crash-injury rating system. Crash-injury specialists have long known such a system to be feasible.

In testimony by the Department of Transportation itself before this committee on April 14 and 15, 1969, the National Highway Safety Bureau's "Comparative Crash Survivability" program was described in some detail. (See pp. 93–100 of the hearings.)[1] A memorandum from the Department of Transportation stated:

> Informing the consumer of the comparative crash survivability of all vehicles on the market is an indisputably important aspect of assisting him to make an informed choice in the marketplace, a provision clearly mandated in the legislative history and embodied in the substance of the law.

The Bureau accordingly has launched a program aimed at assessing the comparative crash survivability of all vehicles.

At the hearings the Department of Transportation, per Frank Turner and Robert Brenner, said the plan would be delayed by 2 months during which the Safety Bureau would obtain its own anthropometric dummies and develop a more sophisticated procedure for testing.

On June 26, 1969, Senator Hartke wrote to Frank Turner, Administrator of the Federal Highway Administration—at that time the overlord of the highway safety and motor vehicle safety programs—to request a status report on the comparative crash survivability program and particularly the projected date for completion of the crash survivability index. Some 5 months later, on November 18, 1969, Mr. Turner responded to Senator Hartke.

I would like to submit that letter for the record.

Senator HART. It will be received.

(The letters follow:)

U.S. DEPARTMENT OF TRANSPORTATION,
FEDERAL HIGHWAY ADMINISTRATION,
Washington, D.C., November 18, 1969.

Hon. VANCE HARTKE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HARTKE: I am writing in response to your inquiry about the assumption of vehicle to vehicle crash testing and the current status of the Department's Comparative Crash Survivability (CCS) Program.

In answer to the specific questions you raised, we have completed the initial program planning work for the projected six-year program and the following is in progress:

1. Within 30 months we should be able to publish quantitative ratings of the survivability characteristics of vehicles by weight class based on analysis of accident data with limited crash testing.

[1] See Senate Commerce Committee hearings record, Serial No. 91–17.

2. At the end of FY 1975, we will be able to augment the first vehicle rating schedules by rank ordering the automobile population by make and model according to quantitative measures of their overall crash survivability characteristics. This will be based on not only statistical but also on significant crash testing experience.

3. We have arranged to resume vehicle to vehicle crash testing in December 1969. In addition, make and model measurements will be obtained from crash tests conducted for other Safety Bureau purposes.

4. We have procured anthropometric test dummies suitable for dynamic testing. Delivery of the last of the three test dummies on order in April was taken July 18, 1969.

As I have mentioned previously, carefully selected and controlled crash tests will provide useful inputs to the development of a meaningful comparative crash survivability index. However, to obtain a meaningful comparative crash survivability index it is essential that we do much more than just crash test automobiles. Such data alone cannot provide all of the information which will be needed. For this reason we will be combining and integrating the crash test information with the following:

1. Analysis of mass accident data.
2. Mathematical modeling and computer simulation techniques.
3. Utilization of multidisciplinary in-depth accident investigation team reports.

In order to get the maximum benefit from the various vehicle crash tests conducted by the Safety Bureau, each test will be programmed to obtain as much data as possible. At the present time it is our intention to conduct crash tests in fiscal year 1970 to obtain performance data on passive occupant restraint systems, integrated seats, and energy absorbing bumpers, and we will, as in the past, conduct compliance crash tests for those motor vehicle safety standards which require them. On each of these various tests we will be piggybacking requirements for the other program areas for maximum utilization of this activity.

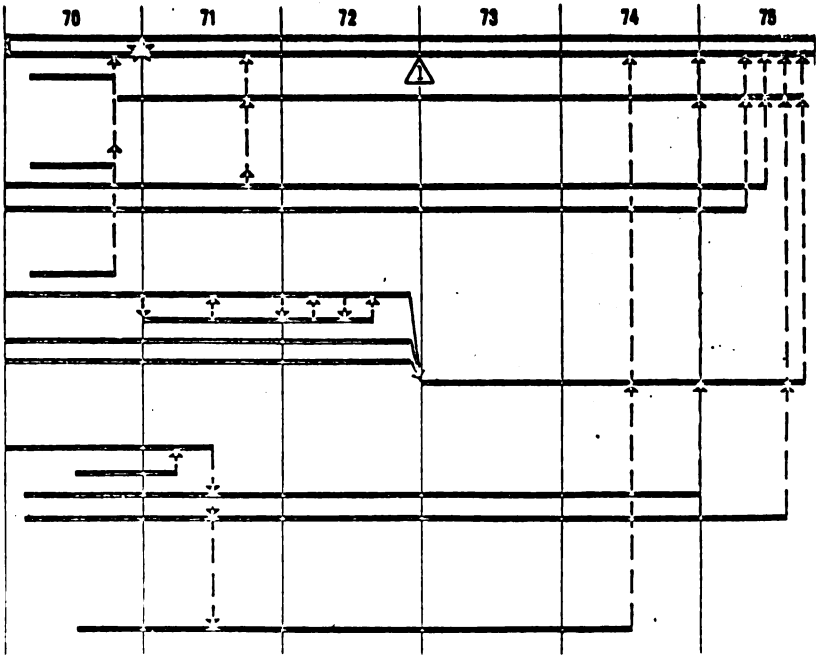
However, I would like to stress that we are broaching the state-of-the-art in the CCS Program; heretofore, no one has ever attempted to obtain a quantitative measure of a whole vehicle's crash survivability characteristics. Thus, the program plan represents our best estimate of how and when we may develop a meaningful comparative crash survivability index. While we are very optimistic over what can be done, our rate of progress will depend on the resources made available for this job.

I trust that this information is responsive to your request. If you would like additional information I will be happy to supply it.

Sincerely,

FRANK C. TURNER

PROGRAM SCHEDULE



*With Medical/Engineering Team Evaluations and Recommendations

*Program Direction Decision

1 Comparative Crash Survivability Ratings by Vehicle Weight Cla

2 Comparative Crash Survivability Ratings by Make & Model.

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C., June 26, 1969.

FRANCIS C. TURNER,
Administrator, Federal Highway Administration, Department of Transportation, Washington, D.C.

DEAR MR. TURNER: As you may recall, at our recent hearings to review the implementation of the National Traffic and Motor Vehicle Safety Act, we discussed in some detail the Highway Safety Bureau's program to crash test various motor vehicles in order to develop a comparative crash survivability index, by make and model, of all automobiles sold in the United States. At that time you indicated to me that the Bureau's crash testing would be delayed for approximately two months while the Bureau obtained its own anthropometric dummies and developed a more sophisticated procedure for the testing of these cars. You indicated that the dummies would be available in approximately 60 to 90 days and that testing would then resume almost immediately.

Since two months have now passed since you described these plans to the Committee, I appreciate receiving some information on the current status of the crash survivability program. Has the Department yet obtained the necessary test dummies? If so, when were these dummies received, and if not, when do you expect them to arrive? Has the Department completed the formulation of its new test procedure which you indicated would speed up the testing of various motor vehicles and accelerate the accumulation of meaningful data which could be made available to consumers? If so, would you please send me an outline of the proposed test program, and if not, could you explain when such a program will be available? Finally, can you indicate the projected date when the Department initially expects to have available a complete crash survivability index?

I believe that it is extremely important for information about the comparative safety of various types of motor vehicles to be made available to all consumers who are considering purchasing a new car. The Department's crash survivability program will be essential in developing this information in a form which will be intelligible to prospective car buyers, so I hope that your commitment to this project is as great as you indicated when you testified before the Committee on April 14th.

Sincerely,

VANCE HARTKE, *U.S. Senator.*

NATIONAL HIGHWAY SAFETY BUREAU, FEDERAL HIGHWAY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION

COMPARATIVE CRASH SURVIVABILITY OF MOTOR VEHICLES

ABSTRACT

This report describes a program of the National Highway Safety Bureau to assess the comparative crash survivability of motor vehicles and to inform the public accordingly.

Part I.—Describes the concept of comparative crash survivability, the method and scope of the Bureau's program in this area.

Part II.—Describes the proposed general program.

Part III.—Describes in brief the preliminary phase of the program dealing with tests on the SUBARU, KING MIDGET and VW vehicles.

Part IV.—Presents the overall program schedule and funding requirements.

PART I.—INTRODUCTION

1. *Background*

The overriding purpose of a motor vehicle and highway safety program is to reduce the number of traffic deaths and injuries. This can be accomplished by either: (a) reducing the likelihood that crashes take place, (b) increasing the survivability of crashes that do occur, (c) increasing the chances of ultimate full recovery of victims from injuries they suffer in crashes.

This report deals solely with the crash survivability aspects of this comprehensive approach, more specifically, with a program for determining the crash survivability inherent in the design and construction of the vehicle itself. It is

important to bear in mind that the concept of rating vehicles according to some measure of their overall crash survivability is new. The development of a meaningful crash survivability rating system will be a difficult, complex undertaking, requiring a considerable investment in manpower, funds and time.

The historical antecedent of this program is in research started in the late 1930's due to DeHaven,[1] which established that many motor vehicle crashes would be survivable—even at high impact speeds. This has now been amply demonstrated in opertaing experience and in widespread reports on the effectiveness in crashes of seat and shoulder belts, of the energy-absorbing steering assembly, and of the HPR (high penetration resistant) windshield. All of these items are now Federal requirements. (See Figures 1, 2, and 3.) A number of other crash survivability aspects of the vehicle are covered in Federal standards now in effect or in rulemaking actions which are now in progress. Thus, vehicle design for crash survivability has become a very important dimension of automotive engineering practice.

2. *Comparative crash survivability*

The Federal motor vehicle safety standards for crash injury reduction and post-crash protection have been established for vehicle performance under standardized test conditions that produce comparable impact forces to those produced in actual crashes on the relevant vehicle components, such as the loads produced on the driver's chest by striking the steering wheel, or the front passenger's head striking the windshield or instrument panel. The consumer can thus be assured of the survivability of the degree that crash survivability is embodied in the standards in effect for the vehicle in which he is riding.

However, he also must know something about the crash survivability of the complete vehicle. Although he knows that all new vehicles (aside from the exempted classes) must meet minimum safety performance standards he does not know how much additional safety he is buying in larger and presumably higher priced vehicles, or, conversely, how much additional hazard, if any, he is incurring in purchasing smaller vehicles. Informing the consumer of the comparative crash survivability of all vehicles on the market is an indisputably important aspect of assisting him to make an informed choice in the marketplace, a provision clearly mandated in the legislative history and embodied in the substance of the law.

The Bureau accordingly has launched a program aimed at assessing the comparative crash survivability of all vehicles. The program has been started with the small cars which are exempt from the existing Federal crash survivability standards and hence which do not provide even this degree of assurance to the consumer. The fact that this program of vital interest to consumers has been started with small cars can readily lead to the erroneous conclusion that the intent of the Bureau is somehow to rule small cars off the road. *This is not a Bureau goal*, although elementary physics amply demonstrates that the smaller car can never have the equivalent crash survivability of the larger car, all other factors being the same. *Instead the goal is to inform the consumer on comparative or incremental crash survivability with size and price among all vehicle types*, starting with those as yet exempt from Federal safety standards and posing the greatest risk, and continuing with those that already are under Federal safety regulations.

3. *Methods*

The methods being followed in the Comparative Crash Survivability Program are largely those developed and perfected by Mathewson and Severy, et al.[2] Instrumented vehicles are caused to crash into each other. Engineers assess the resulting frame and body damage to the vehicle; physicians deduce crash survivability from impact force measurements and visual examination of damage to anthropometric dummies in the crashing vehicles.

A major effort will be made to develop mathematical models that will enable one to simulate crashes. However, the present state of the art in mathematical modeling of crash dynamics demands that a study be initiated to determine the practical feasibility of this approach. Once the analytical methods have been developed and verified, computer "crashes" will be substituted for actual crashes to the maximum extent possible.

---

[1] Dellahaven, Hugh, "Mechanical Analysis of Survival in Falls from Heights of 50 to 150 Feet," War Medicine, 2: 586 July 1942.

[2] Mathewson, J. H. and Severy, D. M., "Automobile Barrier Impacts," Highway Research Board, National Academy of Sciences, Washington, D.C., Bulletin 91, Jan. 1954.

54-345 O - 71 - pt. 3 -- 24

4. *Scope*

The program ultimately is to cover all sizes and types of vehicles, angles of impact, rollovers and other crash conditions.

Because of resource limitations it will not be possible to crash test all make-model combinations, thus the order of tests will be set largely by the comparative frequency of death and injury totals associated with different classes of vehicles. The vehicles with the greatest involvement of crash death and injury totals will come first.

5. *Correlated Programs*

Results of the comparative crash survivability program will be examined for possible correlations with data now being collected by the Bureau of nationwide crash death and injury totals by vehicle make and model, with the medical-engineering research investigations of accidents now being conducted under NHSB sponsorship by seven different universities, and ultimately in relation to a new program shortly to be started on vehicle frame deformation under crash impacts.

PART II.—THE GENERAL PROGRAM

The purpose of the Comparative Crash Survivability program is to develop the scientifically reproducible methodology that will enable the NHSB to rank order motor vehicles in terms of their comparative crash survivability characteristics. The methodology consists of utilizing the results of statistical studies of vehicle accident experience by make-model and integrating it with data from controlled collision research, vehicle frame deformation analysis and in-depth accident investigations by medical/engineering teams, to arrive at a vehicle crash survivability rating.

1. *Vehicle Crash Survivability Rating*

The Federal standards provide quantitative criteria for important separate properties of a vehicle that bear on its crash survivability. For example, Standard Nos. 203 and 204 identify the required performance values for the energy-absorbing steering shaft; Standard Nos. 208 and 209 cover the performance of safety belts, etc. However, there is no standard that covers crash survivability of the vehicle. Furthermore, even if a standard were to be issued for such an all-inclusive property as "crash survivability," it would be a minimum standard that, while giving the consumer at least this degree of assurance, would not aid him in selection among alternative competing models—all of which would have to meet the minimum standard.

The purpose of the projected vehicle crash survivability rating is to establish a means for evaluating the crash survivability of a vehicle and, in some manner, rank ordering its performance in this respect with that of other vehicles. By referring to the rating scheme the consumer could become informed of how much additional "crash survivability" (if any) he would receive by purchasing one vehicle instead of another, for example, a large vehicle instead of a "mini-car."

At the present time, there is no generally accepted analytical or other scheme for rating the crash survivability of a vehicle, although at least two groups of investigators have developed their own schemes.[3] Two methods are now under study for development by the Bureau. In the first method, crash survivability ratings would be derived from detailed statistical analysis of State accident data on a vehicle make-model basis. The second method involves more extensive research and centers on utilizing the techniques of medical-engineering investigations of crashes, vehicle frame deformation analysis, and controlled research collisions to arrive at comparative ratings.

The statistical and medical-engineering methods of arriving at comparative vehicle ratings should, in principle at least, converge on the same results. However, it appears that the statistical approach can produce results sooner than the medical-engineering method. On the other hand, the medical-engineering work should ultimately produce more reliable ratings along with substantially broader and deeper understanding of the problem. Accordingly, both methods should be pursued in parallel, with the results produced by each being reconciled with the other as they progress.

[3] Dr. Nahum, UCLA and Cornell Aeronautical Laboratories.

An illustration, a straightforward system of A, B, C, and D ratings might be developed, with the criteria being as simple as follows:

Vehicle crash survivability rating	*Criteria*
A	Greater than 90 percent chance of surviving a crash
B	75 percent to 90 percent chance of surviving a crash.
C	50 percent to 75 percent chance of surviving a crash.
D	Less than 50 percent chance of surviving a crash.

Since crash survivability is dependent upon impact speed (and, of course, whether the occupant was wearing a proper saftety belt at the instant of impact) the survivability rating undoubtedly would change over the range of impact speeds. For example, a vehicle with excellent survivability in a low speed crash would be expected to have decreasing survivability in crashes at higher speeds up to speeds at which no impact is survivable.

In this type of a crash survivability rating scheme, the data derived from extensive computer analysis, laboratory tests, field tests, and correlation with medical-engineering investigations of accidents could be organized in easy to understand tables such as Table 1. In this example, vehicle #1 has comparatively excellent crash survivability at impact speeds below 40 mph, good survivability in 40–50 mph ranges, and adequate rating between 50–60 mph, and a poor rating at greater than 60 mph impacts. In contrast, vehicle #4 has an adequate rating only for impacts under 20 mph. At greater speeds, its survivability is poor.

2. *Statistical Rating of Vehicle Crash Experience*

About 14 million injury-producing vehicle accidents occur each year in the United States. These accidents can be classified according to the involvement of vehicles of different make-model-year combinations. When the accident data are thus classified and related to the numbers of registered vehicles in the comparable classifications, it becomes possible to derive a comparison of vehicle accident rates. This approach has a number of broad-gauged benefits, and is being implemented by the Bureau by helping states to upgrade their data systems under the provisions of the Highway Safety Act.

However, the approach has several inherent limitations which preclude other than very broad interpretations. For example, if the data indicate that one particular type of vehicle is involved in a disproportionately high number of fatal crashes, it usually cannot be determined except with more detailed statistical analysis whether this is related to the vehicle, the class of drivers that use that class of vehicles, or some combination.

An even greater degree of complexity in interpretation relates to the nature of the driving exposure of the high-accident vehicles in comparision to that of the others. Clearly, if vehicles are used under inherently dangerous conditions, more accidents would be expected.

3. *Medical-Engineering analysis of vehicle crash survivability*

The medical-engineering method of assessing the comparative crash survivability of vehicles is comprised of several major subprograms each of which has its own unique purposes in addition to sharing the common purpose related to crash survivability: (a) Vehicle Frame Deformation Analysis, (b) Medical-Engineering Accident Investigations, and (c) Controlled Research Collisions.

TABLE 1.—POSSIBLE SCHEME FOR RATING VEHICLE COMPARATIVE CRASH SURVIVABILITY

[Crash survivability rates: A—90 percent chance of survivability; B—75 to 90 percent; C—50 to 75 percent; D—less than 50 percent chance of survivability.]

	Speed at impact—					
	Under 20 miles per hour	20 to 30 miles per hour	30 to 40 miles per hour	40 to 50 miles per hour	50 to 60 miles per hour	Above 60 miles per hour
Vehicle Number 1	A	A	A	B	C	D
Vehicle Number 2	A	A	B	C	C	D
Vehicle Number 3	B	B	C	C	D	D
Vehicle Number 4	C	D	D	D	D	D

One of the basic requirements for the success of the comparative crash survivability rating system is to be able to correlate the personal injury aftermath of the actual highway crash (in which the actual crash forces and impact speeds are not known with any degree of reliability) to the highly precise information obtained in the controlled research collision.

For the medical-engineering analysis of vehicle crash survivability, the Bureau would rely substantially on the judgment of its medical-engineering teams from universities throughout the country, similarly qualified experts from industry, and its own in-house staff. These and other participating scientists would be invited to witness controlled collisions to evaluate the vehicle wreckage and accelerometer readings on impact loadings to dummies riding in the crashes, and then to correlate these impressions with their field experience in studying actual accidents or performing autopsies and clinical follow-ups on human victims of the crashes. They would already be familiar with the human tolerance to impact forces, and, in essence, would be relating this knowledge to their impression of the wreckage.

By comparing the independent judgments of several scientists, it is anticipated that a valid assessment of a vehicle's crash survivability under controlled test conditions can be made. Medical-engineering assessments alone will not yield a meaningful comparative rating because resources will not permit destructive testing of all make-model combinations.

A valid comparative crash survivability rating system will ultimately depend upon development of mathematical techniques that will allow computer "crash" simulations. The development of the necessary mathematical modeling techniques will be discussed in the next section on vehicle frame deformation analysis.

a. *Vehicle Frame Deformation Analysis*

A vehicle in a crash is subjected to the impact forces which produce the deaths and disabling injuries to occupants. It is highly important to know the impact vectors (defined as the direction and magnitude of these impact forces) to identify how the vehicle frame and body structure, as well as such interior features as safety belts, could have improved its crash survivability properties. This impact information is vital to learning how best to improve the crash survivability of the vehicle.

In addition to causing disabling and fatal injuries to occupants, the impact forces can produce substantial deformation of the frame and body structures of the vehicle. These deformations remain after impact, and if later measured, can in principle at least, provide important clues as to the impact forces that produced them. At least one major manufacturer of automobile frames has indicated that by measuring frame deformations, it may be possible to reliably estimate the crash forces that produced the deformations. The Bureau proposes to encourage and perhaps sponsor, systematic evaluation of these methods.

An even more fundamental aspect of this approach is to develop mathematical equations that describe the manner in which crash impacts produce vehicle frame deformations. If such equations can be developed, it should be comparatively straightforward to program modern high-speed computers to simulate a crash and determine the probable crash survivability properties of given vehicle frame design. This methodology is analogous to that which has been highly successful in aerospace applications, but which as yet have not been utilized to any substantive degree in the motor vehicle area.

The computer simulation of vehicle frame deformation produced by crash impact forces would permit much of the analysis of crash survivability properties of a vehicle frame to be accomplished without resorting to expensive and time consuming destructive tests of full-scale vehicles. Furthermore, it would allow for scale model testing, obviously at much lower cost than by testing of full-size prototypes. It should be noted here that by the time a full-size prototype is available, the design investment is so great that any substantial change would be effected only at very high costs. This is another important benefit that will result from the development of the output of properly validated analytical methods. Finally, these methods will make it possible to eliminate much of the expensive and timeconsuming destructive test methods now required to ascertain compliance with applicable Federal standards.

The essence of the vehicle frame deformation program is directed toward developing the capability of mathematically deducing impact forces from precise measurement of deformations that produced them. The program is comprised of a complete cycle of activities, the major steps in the cycle being:

Step 1: Develop mathematical equation of frame deformation under impact.

Step 2: Apply the equations to scale models of vehicles.

Step 3: Subject the scale models to impact forces, and analyze the resulting data with computers.

Step 4: Apply the equations to controlled impacts with full-size prototype models, and analyze the resulting data on computers.

Step 5: Modify the equations if the analytical do not coincide with the force and deformation measurements, and repeat the process.

b. *Medical-Engineering Accident Investigations*

The output of the vehicle frame deformation program will be the capability to correlate vehicle frame deformation and impact forces. In a parallel program of the Bureau comprised of medical-engineering investigations of accidents, correlations of occupant injuries to vehicle deformations are being sought. By combining these correlations it will be possible to relate occupant injuries to impact forces.

In the accident investigation program, research teams consisting of engineers and doctors are conducting in-depth investigations of crashes throughout the country. The teams conduct detailed investigations at the scene of a crash. In the detailed follow-up physicians conduct either autopsies of the fatally injured or extensive clinical studies of the hospitalized; the engineers perform engineering analyses of the damaged vehicle. The independently generated sets of injury and vehicle damage data are jointly analyzed to establish correlations between vehicle design features and injury patterns.

Medical-engineering teams from seven universities throughout the country are now participating in the program (Appendix 1). Additional universities have indicated interest in joining the program and plans have been completed to expand the program to a total of 17 teams in FY 1970.

The importance of the Bureau's research effort in crash trauma has been widely recognized. Thus, the American Medical Association has recently announced an independent $50,000 grant to the Bureau's primary contractor, the UCLA Trauma Research Group, to train 50 two-man teams (one from each state) in crash trauma techniques. Each team will be comprised of a physician and a high-ranking police officer responsible for accident investigation. In excess of 400 physicians have expressed interest in joining the program, which is to start in late Spring of this year.

The experience and the expertise of the medical-engineering accident investigation teams will be utilized to interpret the results observed in the controlled collision tests in terms of the probable injury patterns human occupants would experience in similar crash conditions. In brief, a medical-engineering team would observe each controlled collision test, conduct a post crash examination of the vehicle and the anthropometric dummy, view the high speed photography of the motion of the dummy, analyze the force data and evaluate the results in terms of possible human trauma.

A more detailed description of the role of the medical-engineering team in the comparative crash survivability program is given in the next section, (c) Controlled Research Collisions.

c. *Controlled Research Collisions*

The medical-engineering teams are able to assess crash aftermaths such as the damage to vital organs of the occupants. They also can judge with some precision the part of the vehicle interior that caused the injuries. However, they can only speculate on the crash impact forces that produced the damage. The ultimate full understanding of the mode in which alternative vehicle structural and design configurations affect its crash survivability depends directly on the capability to measure these impact forces and relate them to the concomitant damage they produce to the vital organs of the occupants.

Controlled collisions under carefully defined conditions of impact are the principal means of accomplishing the cross-linking of the impact forces to vehicle damage to the trauma production in occupants. Live human subjects cannot, of course, be used in these tests. Instead, anthropometric dummies ride in the vehicles. Accelerometer and other force-measuring instruments are installed in various locations in the dummy comparable to where vital organs would be located in humans. The instruments record the forces sustained by the dummy, while high speed color photography records the movements of the anthropometric dummies. The records are interpreted by pathologists and other medical scientists as to the likelihood that similar forces would produce comparable damage to humans.

The use of anthropometric dummies and other devices to simulate human response to forces is comparatively new and far from an exact science as yet. However, even in its present state of development, it is providing the major foundation of all of the Federal standards relating to the crash survivability of vehicles. For example, Federal Standard 201 on occupant protection in interior impact, calls out a performance standard that a sphered form (as an analogue of the human head) shall not under specified impact conditions sustain a deceleration in excess of 80g continuously for more than 3 milliseconds when it strikes the vehicle's instrument panel.

The controlled collision is the only method whereby a vehicle can be crashed under pre-determined conditions that are capable of being measured and correlated with the resulting damage to the vehicle and to the force impacted at the vital organ location points within the anthropometric dummies. By systematically varying the pre-set impact conditions, the comparative crash survivability effectiveness of alternative vehicle frame and body configurating can be assessed. It is mandatory that this assessment not be limited to the frame deformation analysis, but instead include correlations with the forces produced in the vital organ locations in the dummies.

Stated otherwise, within the present state of the art, there is no proven way other than controlled collision methods, of correlating the design characteristics of the vehicle frame and body (as a total packaging system of humans) with the forces sustained by the occupants in a crash.

By the same token, forces produced upon anthropometric dummies in the controlled collisions are only indicators of the degree of damage to human tissue that such forces would produce. Apart from controlled impact studies with primates, there is no way of determining the nature and extent of damage that these impact forces will cause in living human tissue and bones. There is no way, that is, except by on the spot analysis of accident victims followed by autopsies of the fatally injuried or, if the victim survives, by extented clinical surveillance. This is, of course, a primary purpose of the Bureau's medical-engineering investigation of accidents.

The medical-engineering investigations, however, do not know precisely the impact forces that produced the human tissue damage that they observe in the crash aftermath. The vehicle frame and body deformation measurements can provide the most important evidence in this respect, particularly if the observed damage to the vehicle can be rated or otherwise compared with the vehicle damage observed in the controlled collisions for which the precise conditions of impact are known.

Imperative to the evaluation of each controlled collision test is the integration of results into the overall crash survivability program. The visible crash result of one car, when compared with another subjected to an identical test, provides only a very gross indication of relative survivability. Indeed, any conclusions drawn from merely viewing the crash event may be completely erroneous. Complete evaluation of the recorded data together with detailed film analysis and careful measurement of structural deformation must be performed. Medical, engineering field personnel will be key participants in this evaluation. They will be called upon to assess the probable injury level to occupants by evaluating the acceleration, time exposure of the dummy, the relative motion of the dummy and any dummy contact with structure, physical damage to the dummy, and passenger compartment integrity. Injury level predictions will be referenced to the field experience of investgations of actual highway accident crashes. Frame deformation and structural damage will be carefully analyzed, used as a comparative element with on-the-road crashes, and provided as an input to frame deformation math models for verification of the analytical work.

Through the medium of frame and structural deformation and medical/engineering team experience, injury severity predictions will be progressively refined. Injury indices will then be provided to the analytical model, leading to the capability of predicting (based on non-destructive "computer crashes") the probable injury severity of occupants in any car, given the knowledge of its basic frame and structural design and the crash mode.

Thus, the three elements of vehicle frame deformation and analysis, medical engineering investigation of accidents, and the controlled research collision comprise an extremely powerful group of programs that together can lead to vehicle crash survivability ratings that are reliable and reflect actual loss inherent in highway crashes.

Appendix II contains a detailed controlled collision plan.

PART III.—SUBARU AND KING MIDGET TESTS

During the preliminary phase of the comparative crash survivability program intervehicular collision procedures were developed and tested and the first controlled vehicle to vehicle collision tests were completed. Selected for the first tests were two "mini-car" class vehicles—the Subaru 360, a Japanese import and a King Midget, manufactured in Athens, Ohio. Cars from the mini-class of vehicles were selected for the first tests because of the inherently high degree of risk of serious injury or death occupants would be subjected to in the event of a crash, by virtue of their extremely small size.

1. *"Mini-car" Definition*

For purposes of this report a "mini-car" is defined as 3- or 4-wheeled vehicles designed as a passenger vehicle for use on public highways and weighing less than 1,000 pounds.

2. *Exemptions from Federal Standards*

With two major types of exceptions, all vehicles manufactured on or after the date of effectiveness of the Federal safety performance standards must comply with the standards. The first class of exempted vehicles is the so-called "mini-cars," that is, passenger cars under 1,000 pounds in weight as defined above. The exemption was granted because at the time the standards were issued, there was no apparent way to write a standard calling for a reasonable level of safety performance which would not immediately rule all mini-cars off of public thoroughfares. Inasmuch as comparatively few mini-cars were in use then, it was decided that they could be exempted as a class from the standards pending more thorough analysis of alternatives.

3. *Mini-Car Crash Survivability Tests*

As long as comparatively small numbers of mini-cars or antique (or other) small volume vehicles were in use on the country's public thoroughfares, low priority was assigned to the engineering work that had to precede lifting exemptions and bringing these classes of vehicles under appropriate Federal safety regulations. With increasing reports in the trade journals of an impending influx of mimi-cars into the United States market (since confirmed by a major new advertising campaign on Subaru in California), the Bureau iniated an immediate analysis of mini-car safety.

The first phase of this program called for an engineering examination of the Subaru and a domestically produced mini-car of approximately the same weight, the King Midget. The principal purpose was to determine if either of these two vehicles could meet Federal standards if the exemption were to be removed. The results, tabulated in Appendix 1, were negative, that is, neither could meet all of the Federal standards without what would appear to be major changes.

Another purpose of the tests was to obtain a qualitative indication of the comparative crash survivability of each of these vehicles. In this regard, both demonstrated poor crash survivability in 30 mph head-on impacts with standard size cars.

4. *Council Recommendation*

Results of the Subaru and King Midget tests, including high speed films of the crash impact, were presented to the National Motor Vehicle Safety Advisory Council on February 14, 1969. The Council then adopted the following resolution:

"That 3- or 4-wheeled vehicles designed as passenger vehicles for use on public highways be required to comply with Federal standards regulating safety of such vehicles, even if their weight does not exceed 1,000 pounds."

5. *National Policy*

The high hazard inherent in the mini-cars tested is unmistakably clear from the test results, as reflected in the Council resolution. The severe hazard, however, cannot be the sole consideration in arriving at national policy; a number of other factors must also be examined.

There is considerable doubt that this class of vehicle could be made to conform with present or projected Federal standards. But even if this proves to be possible from an engineering standpoint, it likely wou'd be accomplished only by adding additional weight and cost which would largely compromise the basic purpose of this type of vehicle—namely cheap transportation.

Another question that comes up is the safety of the mini-car compared to that of a motorcycle. A similar question relates to the comparative hazard in a "standard" passenger car striking a heavy truck.

Still another issue relates to the types of roadways on which admittedly dangerous mini-cars could be operated in comparative safety.

Since many states already prohibit 2-wheeled vehicles (i.e., motorcycles and scooters) from high speed expressways and freeways, this, in turn, suggests the alternative of limiting the mini-car operation to comparatively low hazard low speed local neighborhood streets.

These and other issues must be considered in arriving at national policy on mini-cars. Clearly there will have to be some trade-off between safety and cost. The test results to date suggest that the two vehicles tested present more than a tolerable level of hazard, and although the degree of safety that can be incorporated in a mini-car while keeping the weight and cost down is as yet unknown, it does seem possible to achieve a higher level of mini-car crash survivability than that demonstrated in the tests thus far.

VOLKSWAGEN TEST

The results of the Subaru and King Midget tests demonstrated the need for intervehicular crash testing and vividly pointed out the potentially serious safety problems small cars present by virtue of their size alone. This led to the decision to move up into the next weight class (1,000–2,000 lbs.), which is representative of a much larger segment of the automobile population, and the selection of a 1969 VW "Beetle" for the next test.

The VW was selected because there are more VW's in that weight class than any other single vehicle and because there is statistical data which suggests that occupants of VW suffer a disproportionately higher rate of serious injury and fatalities.

A 1969 VW–1500 was crashed head-on with a 1957 Ford. Each vehicle was travelling at 29.3 mph at the moment of impact. Accelerometers were mounted on the frames of both vehicles and each contained an anthropometric dummy restrained by an upper torso and lap belt.

The dummies were similarly instrumented, with each containing triaxial chest accelerometers and longitudinal accelerometer in the head cavity. In addition, high speed (1000 frames/sec.) color photography was obtained.

Both seat back locks failed in the 1969 VW. The restraint belt on the dummy in the 1969 VW failed where the belt goes through a center anchorage point. As a result of these failures, the chest of the dummy in the '69 VW smashed into the dashboard and the head went through the windshield opening and banged on the hood of the VW. Analysis of the high speed photography and the accelerometer data indicate it is doubtful that a human could have survived that particular crash.

In summary, the few tests that have been completed to date have produced a great deal of extremely useful information. The mini-car tests dramatically demonstrated the need for all cars licensed to be on the highways to meet the Federal safety standards. They also clearly pointed out the inherently greater safety problems associated with their exceptionaly small size. The VW test, although far from being conclusive, did show up the failure of the front seat back locks and a seat belt that may indicate possible safety defects and has caused us to reexamine the adequacy of our safety standards in this area. However, the major conclusion to be drawn from the tests to date is that this type of testing has potentially very high payoff and must be continued.

IMPLEMENTATION

Inasmuch as the foregoing concepts deal with new and complex problems, detailed plans for implementation are now in the process of being developed.

Mr. NADER. He said that the Bureau had completed initial program planning work for the projected 6-year program; that within 30 months—that would be May 1972—the Bureau should be able to publish quantitative ratings of the survivability characteristics of vehicles by weight class based on analysis of accident data with limited crash testing; that at the end of fiscal year 1975, the Bureau will be able to augment the first vehicle rating schedules by rank ordering the auto-

mobile population by make and model according to quantitative measures of their overall crash survivability characteristics, based on not only statistical but also on significant crash testing experience; and that vehicle to vehicle crash testing would resume in December 1969 and make and model measurements will be obtained from crash tests conducted for other Safety Bureau purposes. This program has never been carried out, having been pigeonholed by the Office of Management and Budget with the full sympathy of Mr. Frank Turner and Mr. John Edwards who has been acting chief of the Safety Administration research program since January 1970, in his capacity of grounding the program.

Against this background, S. 976 reads as if what the Department of Transportation needs is another round of discretionary authority—to find feasibility or not—and another round of "as soon as may be practicable." The Department admitted 2 years ago that such an undertaking was clearly mandated in the 1966 act. Stronger imprints of the committee on the Department's consciousness are needed. You can start by asking the Department when it testifies here on Thursday about the current status of these promises to Senator Hartke and watch another outpouring of bureaucratese. Ask them for the results of the testing since 1969 when they testify before this proceeding.

2. Section 125(a) of the bill mandates regulations on tests and procedures for comparison of susceptibility to damage of passenger vehicles involved in crashes by July 1, 1972. The bill should require that these tests emphasize energy absorbing qualities in vehicles crashed at low speeds—so that the vehicles don't trade off safety for property protection. Both qualities can be achieved by liberated engineering talent.

3. The bill's bumper standard provision is now virtually obsolete, because of the Department of Transportation's regulations. Two States have already passed more stringent legislation than DOT's regulations—Maryland and Florida—and other States have legislation pending at comparable levels of stringency. S. 976 should require a no-damage standard for 10 miles per hour for 1975 vehicles and eliminate the loophole contained in the phrase "a minimum prescribed amount of damage as may be determined by the Secretary." Here is an area where, if any minimum level is to be given, it should be contained in the legislation.

The committee should make it clear that such components as the following be covered by any regulation: Steering, frame, power train, suspension systems; braking systems; electrical systems, battery and battery mounts, tires, wheels, windshields, windshield wipers, side and rear windows, hood, trunk and door latches, fuel systems, cooling systems and sealing devices, exhaust systems and turning radius.

4. More important to safety than property loss reduction is protection of pedestrians by proper exterior design of vehicles. On December 28, 1967, the Department of Transportation published a proposed standard (covering only ornamental protrusions) for pedestrian protection which has never been issued as a final standard.

In response to the proposal, after complaining that it was premature and not written in objective terminology, the collusive Automobile Manufacturers Association urged that the Highway Safety Administrator, then Dr. William Haddon, issue advisory letters to

vehicle manufacturers because "such advisories would have a beneficial effect upon safety performance and help to advance the development of meaningful standards. Use of such an advisory standard would help in giving manufacturers advance notice of the Administrator's goals and reasonable leadtime where these and technical considerations preclude making a standard effective in as little time as 1 year. By judicious use of advisory letters in a case like this one—where no test procedures, performance criteria, or injury tolerances are available—the Bureau and the automobile manufacturers could pursue their common goal of greater motor vehicle safety free from the difficult legal obstacles that arise where statutory penalties may be involved."

So said the Automobile Manufacturers Association. Tell the AMA's belief that no injury tolerances or test procedures are available to the thousands of pedestrians, many of them children, who have been impaled on a hood ornament or a leering, sharp fin structure, or other sharp edges on the car.

Tell the little girl's parents, in a Washington suburb, who saw their child impaled on a Cadillac tail fin and die about 8 years ago, that there are no available injury tolerances or the little black child in Chicago similarly impaled on a vehicle ornament or the tens of thousands of pedestrians whose injuries are cruelly aggravated by an industry still waiting for "proper test procedures." They could have listened to the Greek physician, Hippocrates, who over 2000 years ago stated the verity that the human body is more able to tolerate safely colliding against a flat surface than a sharp, cutting edge. Some 500,000 pedestrians are injured every year in contact with motor vehicles; about 10,000 are fatally injured; most survive, but their injuries are worsened by this stylistic pornography of the auto companies—witness the bristling front ends of many contemporary or new models.

Almost simultaneous with the submission of these comments, Dr William Haddon wrote a letter alerting manufacturers to the dangers of exterior vehicle protection, dated December 21, 1967 (p. 368 of the April 25, 1968, hearings before the Senate Commerce Committee). So there was the advisory solicited by the AMA. General Motors in its comments to this docket stated:

> It is estimated that a minimum time of one year will be required to complete the necessary studies and to correlate these data with actual accident information. In the meantime, we are using our best judgment in elimination of projections such as hood and fender ornaments and winged projections on wheel covers and similar items until meaningful standards can be developed.

And they did improve some of these things in subsequent years.

Typically, GM displayed its intent on its cars, not its words. Here for the records are recent advertisements by GM actually touting the return of hood ornaments for some of their 1971 models—ornaments which for their bendability still pose a rigid hazard on downward impact as pedestrian-car impact studies show occur. This was the company who in 1966 urged the committee to permit voluntary standards rather than impose mandatory standards.

Congress should mandate a pedestrian protection standard by a specific date by amending this bill, S. 976.

---

[2] See Senate Commerce Committee hearings record, serial No. 90–89.

(5) Section 127(a) requires the Secretary to publicize the information supplied to the Secretary by vehicle manufacturers under the Department of Transportation tests for damage susceptibility and crash survivability. But this provision is not specific enough and thus repeats the deficiency of the 1966 act.

It is recommended that the committee develop a detailed program for consumer access to this information cheaply, expeditiously and at the most convenient places. The use of television should not be excluded to inform consumers of the existence of this information and where it can be obtained.

Evidence of past failure is abundant. For example, the Department of Transportation consumer information booklet is almost an unknown to the public; the Department does not publicize it well and dealers do not make it easily accessible to customers. This reduces severely the competitive forces that could be put to work.

In the recent compilation of consumer information braking performance of 1971 passenger cars supplied by the automobile manufacturers to the National Highway Traffic Safety Administration under the 1966 safety law, Ford vehicles dominated the lowest ranking automobile brake stopping capability. In the bottom eight out of 74 rankings, 11 of the 13 model vehicles were Ford-manufactured. Ford is obviously reluctant to supply customers with this nortorious record which the law requires them to make easily available at the showrooms and to supply with every new vehicle. This is the second year in a row that such Ford braking performance dominated the lowest rankings. Without congressional stipulation, such a pattern would give Ford and other companies too many years to get a better idea.

Section 127(b) requires that any information about identification of parts, components, systems and subsystems damaged or displaced in vehicles be given to insurance companies by the Department of Transportation. This section should be amplified to assure that it is also available to the public. This section also requires the Secretary to report to the President and the Congress on the extent to which the auto insurance industry is utilizing damage susceptibility and crash survivability information in determining insurance premium rates. Why does it fail to require the insurance companies to actually rate cars on the basis of this information? Such a requirement will also spur the insurance companies to begin data systems which they now lack on the causes of accidents. This has been one of the most significant obstacles to developing market pressure on the auto industry by what should be countervailing powers such as the insurance industry. Also the Department of Transportation should be given authority under section 112 of the act to require information from insurance companies to comply with this bill's provisions.

To be more specific, how many taillights has Chevrolet sold to replace Chevrolet lights on existing cars which have been damaged at low-speed impact when rear ended? That would be the kind of documentation that would show the vested economic interest in a fragile, ornamental bumper.

The committee might also consider whether any improvements can be made in this vast area with the Government having its own research testing and proving ground facilities which indeed are stipulated in the 1966 law and still not implemented, as well as a mission-oriented

prototype program to actually build the prototype vehicles, systems, components that are suitable for mass production as a permanent yardstick for industrial prevarications, suppresion and collusion in violation of the antitrust laws. The single most important program is this prototype, testing program, for in the actual performance priorities are reordered and the facts speak for themselves.

I would like to also include a request for the following.

There is a lot of talk about what these changes will cost. I think the structure of the industry's testimony is based on a number of foundation stones; namely, that there are certain priorities such as safety and pollution and they should take first priority before this and this is a tradeoff between property damage prevention and safety and the consumer will ultimately have to pay for it, and the consumer has a right to choose and the costs are so high that there has to be a slowdown in the kind of changes requested under the various laws and the proposed bills. All of these are propositions to be examined, not articles of faith to be accepted.

For example, if there are priorities between, for example, expenditures on safety and pollution and expenditures in the property damage area or the repairability area, then let's bring in other priorities. Why build such big overpowered engines which cost more? Why not eliminate it and all styling and excessive product proliferation change which would save the industry almost $2 billion a year or more per year and the consumer an immense markup beyond that?

For example, I think the previous witness gave the figure of under a hundred dollars for the cost of styling in terms of tooling. But the real costs are the costs to the consumer and the stepup-markings as it goes through the wholesale-retail consumer marketplace hierarchy.

(6) Section 127(b)(3) authorizes the Secretary to establish procedures requiring auto dealers to provide insurance cost data to prospective purchasers. This section should apply as well to information developed under section 112(d) of the existing law (consumer information program) and to the information required to be reported under Department of Transportation regulations by motor vehicle manufacturers under proposed section 125 and 126 to be added by the bill—that is damage susceptibility and crash survivability. A study last year by the Insurance Institute for Highway Safety and another study by the Department of Transportation showed that dealers most of the time fail to inform prospective purchasers of the consumer information materials. In the absence of sanctions directly to dealers which should be added to section 10 of S. 976, the charade will go on and any government effort and expense to that point will be wasted.

(7) Section 128 of the bill requires the promulgation of Federal motor vehicle safety standards and property loss reduction standards effective January 1, 1975, under which vehicles must be designed and constructed to facilitate motor vehicle inspection (presumably meaning diagnosis of faults as well as ease of locating faults) and repair. Since the Department of Transportation has already testified—in March 1970—before Senator Hart's Antitrust and Monopoly Subcommittee—that a number of motor vehicle safety standards have already been issued by the Department and others are under development which incorporate provisions for reliability of critical vehicle com

ponents, ease of diagnosing vehicle malfunctions, ease and accuracy of repairing safety critical parts, and reduction of vehicles' structural fragility, the bill should more specifically indicate the type of results expected by 1975, at least the performance standard by which the Department's activities can be measured.

The Department's outright violation of the statutory deadline for the issuance of used car standards—due on September 9, 1968—and still not issued—should be instructive to the committee.

Finally, the bill should provide the Department with explicit information procurement powers vis-a-vis the automotive industries. In the meantime, the committee should design a questionnaire which it should send to the industry, company by company, to accelerate the production of much needed information. Information about engineering dissent within the companies over designs that bilk the consumer, information about alternative component and systems design which could avoid the economic crimes and casualties due to contemporary vehicular design, overregistration of odometers and turning back odometers at the retail level, which is a flagrant violation. Also why GM's Motors Insurance Co. dislikes its parent company's Corvette. That immense secret data in MIC's files could be so useful for Congress' understanding and public enlightenment. Information about the extent of the "crash parts" industry is also needed. That is not my phrase, it is a phrase used by dealers and people in the industry who discuss the crash parts industry which is basically the sale of parts to replace those that are smashed up at low-speed impacts, often at under 5 miles per hour. It would be important to know the extent of this crash parts' industry to see how many sales in dollar terms the automobile industry will lose if it put bumpers on cars at 5- or 10-mile-per-hour protective levels. This would give us more understanding as to the kinds of statements that are being made resisting more adequate bumper protection and in a totally unsubstantiated way stating that a functional bumper to the 5-mile-an-hour level will cost the consumer $100 or more per year.

A study over 10 years ago by a group of Harvard and MIT economists which I think has been cited to you before, showed that in the late fifties it was the judgment of these economists that the annual style change had a retail cost to the consumer of about $700-plus, and that was way before these costs have gone up. That, of course, is a very significant proportion of the consumer's dollar and it allows a great deal of leeway to supplant this expenditure with the property damage prevention systems and the other improved qualities certainly which have priority over the styling.

Needless to say the priorities also should bring in the question of costs, production costs. The committee really cannot make a decision here unless the companies are willing to display their production costs. If they are going to say it costs the consumer too much, we can't improve this or do that, dealing with safety or pollution or property damage prevention, then, they should actually disclose these costs.

Needless to say that one of the most impressive things about the auto industry is the enormous efficiency, the enormous productivity factor efficiency which permits mass production of components to be produced at prices that would boggle the mind of the average consumer.

This efficiency is, of course, an area of great secrecy because if the consumer realized how little it cost to change things at the hardware

prototype program to actually build the prototype vehicles, systems components that are suitable for mass production as a permanent yardstick for industrial prevarications, suppresion and collusion in violation of the antitrust laws. The single most important program is this prototype, testing program, for in the actual performance priorities are reordered and the facts speak for themselves.

I would like to also include a request for the following.

There is a lot of talk about what these changes will cost. I think the structure of the industry's testimony is based on a number of foundation stones; namely, that there are certain priorities such as safety and pollution and they should take first priority before this and this is a tradeoff between property damage prevention and safety and the consumer will ultimately have to pay for it, and the consumer has a right to choose and the costs are so high that there have to be a slowdown in the kind of changes requested under the various laws and the proposed bills. All of these are propositions to be examined, not articles of faith to be accepted.

For example, if there are priorities between, for example, expenditures on safety and pollution and expenditures in the property damage area or the repairability area, then let's bring in other priorities. Why build such big overpowered engines which cost more? Why not eliminate it and all styling and excessive product proliferation change which would save the industry almost $2 billion a year or more per year and the consumer an immense markup beyond that?

For example, I think the previous witness gave the figure of under a hundred dollars for the cost of styling in terms of tooling. But the real costs are the costs to the consumer and the stepup-markings as it goes through the wholesale-retail consumer marketplace hierarchy.

(6) Section 127(b)(3) authorizes the Secretary to establish procedures requiring auto dealers to provide insurance cost data to prospective purchasers. This section should apply as well to information developed under section 112(d) of the existing law (consumer information program) and to the information required to be reported under Department of Transportation regulations by motor vehicle manufacturers under proposed section 125 and 126 to be added by the bill—that is damage susceptibility and crash survivability. A study last year by the Insurance Institute for Highway Safety and another study by the Department of Transportation showed that dealers most of the time fail to inform prospective purchasers of the consumer information materials. In the absence of sanctions directly to dealers which should be added to section 10 of S. 976, the charade will go on and any government effort and expense to that point will be wasted.

(7) Section 128 of the bill requires the promulgation of Federal motor vehicle safety standards and property loss reduction standards effective January 1, 1975, under which vehicles must be designed and constructed to facilitate motor vehicle inspection (presumably meaning diagnosis of faults as well as ease of locating faults) and repair. Since the Department of Transportation has already testified—in March 1970—before Senator Hart's Antitrust and Monopoly Subcommittee—that a number of motor vehicle safety standards have already been issued by the Department and others are under development which incorporate provisions for reliability of critical vehicle com

ponents, ease of diagnosing vehicle malfunctions, ease and accuracy of repairing safety critical parts, and reduction of vehicles' structural fragility, the bill should more specifically indicate the type of results expected by 1975, at least the performance standard by which the Department's activities can be measured.

The Department's outright violation of the statutory deadline for the issuance of used car standards—due on September 9, 1968—and still not issued—should be instructive to the committee.

Finally, the bill should provide the Department with explicit information procurement powers vis-a-vis the automotive industries. In the meantime, the committee should design a questionnaire which it should send to the industry, company by company, to accelerate the production of much needed information. Information about engineering dissent within the companies over designs that bilk the consumer, information about alternative component and systems design which could avoid the economic crimes and casualties due to contemporary vehicular design, overregistration of odometers and turning back odometers at the retail level, which is a flagrant violation. Also why GM's Motors Insurance Co. dislikes its parent company's Corvette. That immense secret data in MIC's files could be so useful for Congress' understanding and public enlightenment. Information about the extent of the "crash parts" industry is also needed. That is not my phrase, it is a phrase used by dealers and people in the industry who discuss the crash parts industry which is basically the sale of parts to replace those that are smashed up at low-speed impacts, often at under 5 miles per hour. It would be important to know the extent of this crash parts' industry to see how many sales in dollar terms the automobile industry will lose if it put bumpers on cars at 5- or 10-mile-per-hour protective levels. This would give us more understanding as to the kinds of statements that are being made resisting more adequate bumper protection and in a totally unsubstantiated way stating that a functional bumper to the 5-mile-an-hour level will cost the consumer $100 or more per year.

A study over 10 years ago by a group of Harvard and MIT economists which I think has been cited to you before, showed that in the late fifties it was the judgment of these economists that the annual style change had a retail cost to the consumer of about $700-plus, and that was way before these costs have gone up. That, of course, is a very significant proportion of the consumer's dollar and it allows a great deal of leeway to supplant this expenditure with the property damage prevention systems and the other improved qualities certainly which have priority over the styling.

Needless to say the priorities also should bring in the question of costs, production costs. The committee really cannot make a decision here unless the companies are willing to display their production costs. If they are going to say it costs the consumer too much, we can't improve this or do that, dealing with safety or pollution or property damage prevention, then, they should actually disclose these costs.

Needless to say that one of the most impressive things about the auto industry is the enormous efficiency, the enormous productivity factor efficiency which permits mass production of components to be produced at prices that would boggle the mind of the average consumer.

This efficiency is, of course, an area of great secrecy because if the consumer realized how little it cost to change things at the hardware

stage, he might become more insistent on the change being made. That holds true for government officials as well. The white-collar cost, the transportation, distribution markups—those are all constant costs as far as vehicle design is concerned, but where the industry is most efficient is in the area of actual manufacturing, and it is remarkable what they can do in terms of their mass production economies prior to markup, and that is a figure that really is relevant for disclosure.

There is also an important point to be made about whether the consumer will ultimately have to pay for it. This is the antithesis of the market system philosophy. A company which comes up here and stands up in public and says the consumer is going to have to pay for this excessive markup or if it is going to cost $400 more the consumer will have to pay, how do they know? If they were really competing with one another they would not be able to say that they are going to automatically transfer the cost on to the consumer of a particular safety feature or a product improvement, because they would not know whether their competitor was going to say I am going to cut out styling in order to put in more safety so I do not have to transfer the cost on to the consumer.

This kind of attitude which is true of many other industries which are oligopolistic, simply saying as a categorical fact the consumer will have to pay for it, illustrates the enormous market imbalance between the few select producers and the large number of consumers. They can actually administer the transfer of these prices.

Once again the question of what the consumer will have to pay for raises a question: If indeed the consumer has been shortchanged over these years and he is going to be less shortchanged why don't these expenditures come out of profits? I recall reading that General Motors made $600- some million worth of profits in the last quarter, perhaps more than they usually make because of the strike, but that company is twice as profitable in its return on investment as American industry in general.

There are economists who have made the claim that these are oligopoly profits, excess profits which would not occur if there was adequate competition over significant facets of the industry, horizontally and vertically. Why shouldn't this come out of profits? Why should the fact that the companies once they are caught by a Senate investigation that they are not doing well by the consumer, that they are in effect accelerating an aftermarket which is not necessary if proper design was implemented in the first place, why shouldn't this come out of profits? I think that is a good question to ask.

The other approach which is particularly ingenious by industry spokesmen is how they give an inflated cost figure, for example, to improve bumpers so they protect cars up to 5 miles per hour, and then they in effect assume that the auto insurance industry is not going to reduce their premiums, and they have a full cycle theory as to why they should not be subject to the dictates of this legislation. It is going to cost the consumer so much, no substantiation, and the auto insurance industry is not going to reduce the premium, and they have not shown they are going to reduce it because they want to keep their profits much higher.

Therefore, it does not pay for the consumer to have this kind of protective bumper. I mean, this is the kind of cycle argument which

rests on assumptions that are not disclosed and which rests on the assumption that nothing can make the auto insurance industry pay attention to declining loss claims in the readjustment down of its premiums. Needless to say, posting the course of action on these self-serving declarations requires an examination more thoroughly than has been the case.

Note the other argument, consumer choice, which is often paraded before Senate committees. What kind of consumer choice does the consumer now have? Did he ever have the consumer choice when buying Pontiacs or Cadillacs to delete the fins and take a $200 price reduction? Did he ever have any consumer choice in the kinds of mandated styling changes? I would assume if it is to be extra cost optional it should be as to style rather than is the case where safety is often introduced as extra cost optional rather than the enormously costly styling changes.

Note again the argument that if a consumer wants to buy a Jaguar and pay $8,000—actually a more relevant example in terms of numbers would be the Corvette, which I assume Mr. Nevin can be forgiven for not mentioning—but if he wanted to buy a Jaguar or a Corvette and the bumpers are so trivial that a 5-mile-an-hour collision would jack up damage cost to $400 or $500, then he should be able to do this, says Mr. Nevin and other spokesmen.

In the first place, I thought the point made by Mr. Sutcliffe in terms of the present existing liability system and people losing their policies because they ram into a car that generates that kind of avoidable damage was well taken, but there are other examples, too. There is a shortage of mechanics in this country, a very severe shortage of mechanics, and the more work the mechanics and other personnel in these areas have to do repairing cars that never had to be repaired in the first place, the less work and the less expertise they are going to develop in the more critical areas.

Our courts are overburdened enormously by accident litigation. That also generates a public interest factor into the kinds of standards that the committee is considering in the present bill.

There is also the problem of disabling cars on the highways. The worse a car is damaged the longer it is going to be on the highway, the longer it is going to raise the risk of something that is quite frequent, the secondary accident, the cars coming up and smashing into the cars that are on the highway. We see these things I think in a way where the highway accident injury transport automobile system is so interwoven in relations between people and the public interest that to make that kind of statement about consumer choice when so much real consumer choice is prevented or deprived I think is not particularly responsible.

The final point I would like to make deals with the styling issue, and I would like to submit later for the record the Yale Law Journal [1] note on styling as an anticompetitive factor and as a high cost factor, furthering concentration in the automobile industry, a remarkably original job, which I think will do some of the work for the Antitrust Division which the Antitrust Division has not done in pursuance of its own enforcement missions.

I think the committee should know by now that no more than 10 percent of what any consumer law the legislature tells the executive

[1] See p. 1315.

branch to do ever gets done. In some cases the percentage is much less Measured against the weakness and the gaps in the present bill, wha would 10 percent of that give the consumer in justice or the corporat institutions in law and order?

I think one of the reasons perhaps why Senator Griffin becam somewhat disappointed by my comments about the committee is per haps the fact that he has not been around on this committee to liste to the utter unchangeableness of the position of the Department o Transportation since 1966. We are dealing here with a committee' will which has been flouted significantly, substantially, a committe that has held oversight hearings, has gotten assurances which have no backed up, which indeed have not even been recognized subsequent t the committee's hearings; we are dealing with an entrenched ob stinance on the part of a department in the executive branch from eve meeting statutory deadlines that are in the law.

I think, of course, the Department deserves a critical scrutiny fro the chairman when it comes up before the hearing, but the last reso of the citizen is this committee. What else is there left? What com mittee has the authority to get the information? What committee ha the authority to recommend the kinds of changes and sanctions tha will get something done?

I will just leave you with one question. Here we have a situatio where American consumers are bilked out of billions of dollars a yea through unnecessary auto repair costs, through fragile bumper that generate hundreds of millions of dollars of avoidable damag through a retail and insurance scheme that piles on the costs even mor and against this tragic situation of waste of consumer income, whic can be used to purchase other, more functional goods and services tha are so badly needed, including housing, medical care, health, and th like, against this background, is there anybody in the auto industr today or in the Department of Transportation who will even be de moted or lose his job as a result of this volume after volume of fac showing gross irresponsibility, gross flouting of statutory mandat and gross contempt toward the consumer? The answer is "No."

As long as institutions are run in Government and in business b individuals who have absolutely no exposure to legal sanctions, minc or major, these institutions will continue to in effect flout the law an to flout common standards of decency in the marketplace and to sup press the creativity and initiative within these Government and co porate institutions which often do not get to first base because th rule in a bureaucracy is that you get along by going along.

Until we face the problem of sanction in Government and in corpor tions and in any large organizations, all this that we are doing is i effect going to be so much charade, and I think after 5 years an after looking over the records of the hearings it can be said that th legislation in 1966 has been a tragic failure in the automotive and ti safety areas, and although it has been a tragic failure, it has been mo successful than any other consumer bill in the last 5 years passed b this committee.

Thank you.

Senator HART. Thank you, Mr. Nader.

No matter how I respond, it will be interpreted as either agreeing disagreeing with all of your gospel.

I would like to focus on that very concluding comment, not to twist it either. As you recite deadlines that have gone unmet, continuing design patterns which contribute to both personal injury and property damage, I agree with you that the legislation and the agencies—that is, the Congress and the agencies and the industry have not performed as one would have thought, and yet with respect to the legislation, though it may be small comfort to the consumer advocates, it has probably produced more progress than anything that has come through the pipeline here.

I know what a critic of the system would say, that proves the system produces damn little, but those of us who are trying to get anything through the pipeline always relate the product to the energy we put in to get that little through.

So we tend to overestimate the significance of what we do. To the extent progress can be said to have been made in this particular area, while your views of Detroit continue to be very poor, I continue to subscribe to the belief that you more than anyone else in this country has contributed to that improvement. You are very harsh with respect to the legislative proposal that you analyze here, which happens to be mine, but some of that criticism I think is constructive. Some of your suggestions with respect to the improvement that we could make I think are good.

My views initially in Detroit are not quite as bad as yours, but nevertheless I am not their favorite Senator.

You commented at length on S. 976. You were invited to comment on the no-fault insurance bill S. 945 and the group insurance one, S. 946. Would you be prepared to make comment on those for the record?

Mr. NADER. I haven't studied the bills, Senator. I can say this much, however. One preliminary note, there is no criminal penalty in the auto safety legislation, but in this bill dealing with no-fault, you have got three instances of criminal penalties.

One applies to an individual motorist who doesn't comply with the provisions of the bill, and I find that an example of the double standard that I don't think should be the case when it comes to the automotive industry, particularly since the violations under the insurance bill are far less serious on an individual basis than could be the violations coming from the auto industry under the Automobile Safety and Tire Act.

I would like to just make the following comments. I haven't studied the bills in detail. I restricted my comments to S. 976 because of its preventative thrust, the system of insurance claims resolution in this country is obviously an abominable one and tremendously wasteful and has been indicted again and again by scholars and practitioners alike—government practitioners, and you could hardly conceive of a more cruel system in terms of the numbers of people who don't receive any compensation for their injuries as well as the injustices that often occur within the framework of compensation.

As far as changes are concerned, the first recognition is who has a vested interest in the present system, and the insurance industry has substantial vested interest, certainly a portion of it. The plantiff's bar has a substantial vested interest. The defense bar has a substantial vested interest.

In deciding what other proposals should be made, I think first we have to ask ourselves to what extent will all of these vested interests distort and ruin any proposal that now is made. In anticipating that kind of countering strategy, the bill might have provisions that would consider that kind of rear guard or ruining impact.

I bring before your attention, if it hasn't been brought before, the Puerto Rican system which came into effect about a year and a half ago which is a Government-run system where the premium is collected. I believe it is $35 a year at the time of registering the vehicle. The experience under that system, which is now available, is almost too good to be true, and while it is clear that the Puerto Rican situation is not quite analogous with the mainland situation, particularly with regard to the expectation levels of recovery and the number of motorists who are insured in this country, it bears close watching.

In short, the suggestion is that the committee give particular attention to setting up a yardstick in this area, a Government-run yardstick much like the Tennessee Valley Authority in order to permit an undiluted attempt at experimentation for a more rational system.

It doesn't have to be a very large system, but the fact that it does stand as a yardstick by which to measure private industry's performance I think would be very salutary.

Senator HART. We did have testimony one day last week from the administrator of the Puerto Rican system and his strong recommendation in support is in the record.

We will have some trouble I assume getting a majority of votes for a no-fault concept. So, if there is something you would like to add to the record in support of this concept, we would welcome it.

Senator HART. The Senator from Alaska?

Senator STEVENS. Mr. Chairman, I don't have any questions. I would like to make a statement.

I think that you could accomplish a great deal more than what you wanted to, if you would give credit where credit is due. I am of the impression that the American public believes that there has been a great deal of progress in the field of safety; that we are committing a great deal more of the attention of the manufacturing process to design safety problems.

On the other hand, I find it staggering to realize that one out of six people in this country buying new cars are buying foreign cars. Yet no part of your statement pertains to the foreign cars that represent the loss of dollars, the loss of jobs for the United States, and the total inability of the Congress to deal with product safety as far as the foreign manufacturer of automobiles is concerned.

I think it should get a great deal more attention from organizations such as yours. The concept of holding up the American manufacturer to the type of adverse criticism that you have given them and at the same time leaving their competitors completely free of any criticism and completely free to come into our markets with what I consider to be absolutely inferior products, seems to me to be a definite defect in your approach.

I must say also that I take great umbrage in your comment about my colleague. He has been quite attentive to his legislative duties. He has been around here for 6 years, and I think that comment was practically inexcusable in view of the fact that he was just here and left.

We are at a period of 1:15 waiting for lunch. It is breakfast for me, since I just flew in from Alaska. As a practical matter, my colleague has duties on the floor, and I thought the comments you made concerning him just after he left were inexcusable.

Senator HART. Would you yield on that?

If I had thought the record indicated that Mr. Nader was criticizing Senator Griffin's absence, I would have interjected, too. I disagree with Senator Stevens.

Senator STEVENS. He has been on this committee since 1966, and I don't understand your comment.

Mr. NADER. It was a comment directed to all the hearings held. He wasn't here for a lot of the hearings.

Senator STEVENS. I am not here for all the hearings either. I have three other committees and 16 other subcommittees. The trouble is that it gives the impression to his constituents that he is neglecting his duties, which you know is not true.

Mr. NADER. It just states a fact, Senator. There was no attempt to say that he could be in six places at one time.

Senator STEVENS. That again reflects the total caliber of your statement, Mr. Nader. You look for the worst in people and not for what is good in this country.

Mr. NADER. Let me say first you are wrong on the law. All imports have to be geared to the same standards that domestic products have to be geared for. My stand on foreign imports is so repetitive and clear there is no point in going through it here when they only represent about 10 percent of vehicles sold and the rest of the imports are American produced vehicles imported.

My statements on the Volkswagen have been laid before this committee again and again, as being the most dangerous car in significant numbers on the American highways. If I were to say the reason you made that statement is because at the time I was testifying you weren't here, that is a statement of fact.

Senator STEVENS. It is true.

Mr. NADER. It is not a statement that you were neglecting your duties. I was just trying to say that if Senator Griffin had the opportunity to absorb the full thrust of the testimony as some Senators had—they are chairmen of the subcommittee, so they have to be here—then it would be different.

I think you can compare Senator Griffin and Senator Hartke on that basis. Senator Hartke sat through many hours of hearings.

Senator STEVENS. The great freedom that you apparently seem to have is to occupy your total time with one subject when the rest of the world seems to be dealing with the total problems of living. The Senators on this committee happen to be dealing with three or four other committees. I accept your comment about the Volkswagen. I am happy to hear it. But an important fact still remains which you neglected to mention in your statement. The fact is that you are not giving credit to the American industry where it is due for the progress that has been made.

Mr. NADER. Do you give credit to a burglar because he doesn't burglarize 90 percent of the time? What kind of nonsense is that? We are talking about pathology here. We are not talking about the fact that a car can go from New York to Los Angeles without losing its transmission. We are talking about documented fraud, about the kinds

of things that Senator Hart has been documenting year after year, billions of dollars.

Senator STEVENS. There are 51 jurisdictions in this country, 50 States and the Federal Government. If you have proof of documented fraud, you should take it to the grand juries throughout this country and the Federal grand juries in every State and get indictments. By coming in here and indicating the industry before a committee without facts and without proof, you are committing what you say they are.

Mr. NADER. That is not true. Do you want me to read the 18 volumes before this committee and the Senate Antitrust Committee? What do you call them? Do you want me to reproduce them in full? The facts are overwhelming. The bumpers on an Impala rear ended at 5 miles per hour results in $440 damage. What kind of utter nonsense and outrage is that?

Senator STEVENS. You are a lawyer and I am a lawyer. You equate that with criminal fraud. Take it to a grand jury if you can, but don't take it to a congressional committee.

Mr. NADER. You find me a district attorney with the guts to do that. I am looking for legislators with the guts to do that.

Senator STEVENS. What do you want us to do?

Mr. NADER. I want you to make this a criminal penalty in here. If you can penalize some John Doe in this no-fault insurance bill.

Senator STEVENS. There are criminal fraud penalties today in the Federal laws and in the State laws. If you can prove criminal fraud on any commodity, you can take it to a grand jury.

Mr. NADER. There is absolutely no criminal penalty under the Motor Vehicle Safety Act for the corporations in the auto industry who willfully and knowingly violate the safety standards. That was taken out and clear legislative history showed that.

Senator STEVENS. That is a lot different than what you indicated in your statement where you speak of the criminal fraud or criminal negligence in the design of motor vehicles. If you can prove that somebody has committed a criminal fraud in the design of motor vehicles, you can take it into court the same as you can a toaster. You and I know it.

Mr. NADER. Tell me how.

Senator STEVENS. I happen to agree with you on many of the things you say but you destroy the concept of being able to achieve progress by refusing to recognize it.

Mr. NADER. It is time, Senator, to recognize that the major safety features put in automobiles went in in 1967 and 1968, and there has hardly been a whit of progress since then, when there should have been even more progress. It has almost come to an entire standstill. An bumper design has produced more property damage than even before.

Senator STEVENS. Some time you and I ought to sit down and talk about it.

Mr. NADER. I wish your late law partner was here to give some of the evidence that he adduced in his own litigation.

Senator STEVENS. Thank you for mentioning him and I am happy to see you recognize him. He was a brilliant man and he died prematurely. I thought a great deal of him.

As a practical matter, he would agree with me about the concept of being positive as opposed to being negative in order to achieve progress.

Mr. NADER. The companies are positive enough with $500 million worth of ads. We are giving a critique here. We are dealing with the evidence necessary to pass the bill. If you want me to say that a car today will go from coast to coast at a higher frequency without losing its transmission than 35 years ago, I will say it. It is true.

But the point is we are dealing with the frauds, the defects, the safety hazards. That is what we are dealing with before this committee.

Senator STEVENS. Thank you, Mr. Chairman.

Senator HART. Until 15 minutes ago, I regretted we hadn't concluded earlier. But the last 15 minutes have awakened us all.

Senator STEVENS. It is because I haven't had breakfast, Mr. Chairman.

Senator HART. Let me make a statement. I don't know what my attitude will be with respect to certain of the matters you raised if I was from Idaho or Wyoming. I know that about myself. But I have attempted to do what I feel should be done, and I will match my track record with the rest of them.

Mr. NADER. You certainly can, Senator.

Senator HART. Mr. Sutcliffe.

Mr. SUTCLIFFE. Mr. Nader, in your prepared statement you asked that the legislation S. 976 set Federal rates to mandate reduction for any savings that are accomplished by mandatory property loss reduction standards. Would you comment upon that in light of the present rate regulation structure at the State level?

Are you asking us to overturn the McCarran-Ferguson Act to some extent and regulate insurance rates at the Federal level?

Mr. NADER. Yes; particularly when they deal with vehicle design, because the same reason that supported the Federal Government having one national design for motor vehicle safety follows through here quite logically.

Mr. SUTCLIFFE. Do you see a beneficial impact upon vehicle design, both in property loss reduction characteristics and auto safety characteristics if the premium costs are assessed on an individual basis on a first-party no-fault program as opposed to a liability no-fault combination?

Mr. NADER. I really would like to see that actually occur before being able to comment on it for the following reason, that the insurance companies can make the same kinds of calculations under the third-party system as they do under the first. Unless you get an insurance company that only insures one line of vehicles, that would only insure 1970 Pontiacs——

Mr. SUTCLIFFE. Let me bring it down to a more specific level. Apparently consumer choice to some extent governs the purchase of the different models of vehicles. You have pointed out the limitations of consumer choice in the present automobile population. Supposing an automobile population that had consumer choice differentials as to property loss reduction standards and bodily injury characteristics, would the indicators to the consuming public by way of the premium dollar be larger and more pronounced under a first-party system of insurance rather than under a combination liability first-party coverage?

In other words, do you or do you not agree with Professor Loescher's testimony in the House concerning the impact of no-fault upon automobile design characteristics?

Mr. NADER. I really don't see any evidence to indicate that it would be less under first-party.

Mr. SUTCLIFFE. Would the indicator be more? Would the premium reduction be more?

Mr. NADER. No; I am talking about the premium, no. There is no indication that it would be cheaper in fact on that basis, unless there is an additional stimulus, because you see the insurance companies can do the same thing now that they would be able to do under the first party. They have got roughly the same universe of vehicles, the same actuarial calculations can be made. So there has to be an additional impulse somehow to make his prediction more supportable.

I don't see it going in the natural order of things.

Mr. SUTCLIFFE. But do you see any differentials between vehicles being greater as to the insurance prices under a first-party system than under a third-party/first-party combination as we presently have?

Mr. NADER. You mean quite apart from the rating of vehicles?

Mr. SUTCLIFFE. You have postulated Federal rate regulation that would mandate a reflection of savings in the insurance premium dollar. Therefore, there would be come rate differential that the consumer could be told about between car "A" and car "B".

Under a first-party liability system, that rate differential would be on the order of three times the magnitude under the present system according to Professor Loescher's testimony. If that were the case, it would seem that the market system would generate more consumer choice toward those vehicles which were safer and which produced less property damage.

I am simply asking you whether or not you agree with that analysis?

Mr. NADER. If you accept his assumption, definitely. In other words, there is a very elastic response to different insurance rates on the part of the consumer. I think the high horse-powered engine situation which Mr. Nevin referred to is an example of that.

Mr. SUTCLIFFE. But other than that——

Mr. NADER. Other than that, I really can't say.

Mr. SUTCLIFFE. You have made no analysis of the impact of reform efforts upon your desires to produce safer cars or cars less susceptible to damage?

Mr. NADER. No impact whether they would really do as predicted that they would as focused on their vehicles under the first-party system, because it is their vehicle rather than a third party.

Mr. SUTCLIFFE. You have no other comments to make about a change in the reparations system relative to the distribution of money to those people that are injured, you make no statement in support of or in opposition to the concept of no-fault automobile insurance.

Mr. NADER. First of all, I am not going to comment on the bill because I haven't studied it carefully. In principle, I am in favor of the Government yardstick; I am in favor of compensation for pain and suffering; I am in favor of alternative option for the injured plaintiff, if he doesn't want to go under the no-fault system. And under those conditions, a no-fault system, although you have to say what kind of no-fault system, then a no-fault system principle would be advisable given all those conditions. There are so many no-fault plans now ranging from Massachusetts to the various group pr

posals throughout the States and the Congress that we would have to have a more full study.

Mr. SUTCLIFFE. Thank you, Mr. Chairman.

Senator HART. Give it a little more study, because I have an instinctive feeling that you will come out in the direction I think will be helpful.

Mr. NADER. I must say that the issue, Senator, raised by Senator Stevens is really quite significant, dealing with criminal fraud. I think anybody who knows about the way State attorney generals operate, you have to virtually give them the entire case before they may move in terms of the evidence. That is why it is so critical for this bill and other bills to give the Government information procurement powers from the industry.

If we knew about the Corvair carbon monoxide situation when we should have back in the early sixties, there wouldn't be over a million people today going into their Corvairs breathing levels up to 200 or 300 part per million, as the test will reveal in about a week or two, and it is a colorless, odorless, and tasteless gas. Complaints by motorists in the hundreds to General Motors received back a form letter saying their engine is not in tune or their oil is too dirty, and this has been going on for years, even though General Motors has settled some of these cases for very substantial sums out of court, and there is evidence that top management knew about the defect in 1961, documented evidence, and all this will come out, but the point is no citizen could possibly get a hold of this material and give it to a State attorney general, even if the State attorney general is the one out a hundred who will move against the auto industry. That is why critical to all of this is the twin program of effective sanctions and effective disclosure of detailed information.

Really, it is amazing to hear Ford Motor Co. say bumpers will cost another $100 without being required to lay it out in detail. I think if the committee's staff look at the Ford Motor Co.'s cost data, the first time auto company cost data has ever been made available in public which was included in the Senate Small Business hearing in 1968, that they will see the enormous productive efficiencies in that industry, and how things cost so much less than the auto companies say it cost.

Senator HART. On that one point of bumper cost, I am advised by staff that on tomorrow the committee will receive information that should be informative and helpful.

Mr. NADER. Just another additional point, Senator. General Motors and other companies have stated all the changes they have to make in a car when they make a stronger bumper. There is a kind of radiating consequence back to the various parts of the car. What they are really saying is over the years they have premised all of these parts and structures on the basis of a fragile, worthless bumper, which generates great sales in the aftermarket for them.

Now that we are being urged to require to put bumpers on the cars, they are going to transfer all the costs of shifting around these features. My point is, if it is really conscious, deliberate avoidance of protective systems and the fraud that it is, then the cost of that should be absorbed by the company. It is bad enough that billions of dollars have been leeched out of consumer, which will never be returned to the con-

sumers—it is bad enough that we can't look to the past for consumer reimbursement, we have to look to the future only, without saying because of this anticipation the companies have to transfer all the costs on to the consumer.

Senator HART. Mr. Nader, thank you very much.

We recess hopefully to resume at 2:30.

(The following information was subsequently received for the record:)

MOTORS INSURANCE CORP.,
767 Fifth Avenue,
New York, N.Y.

Hon. TED STEVENS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STEVENS: In response to your expression of interest, I would like to review the facts concerning MIC's insurance of Corvettes.

Prior to your colloquy with Ralph Nader during the May 10 hearing of the Senate Commerce Committee, he said in part: "GM's Motors Insurance Company dislikes its parent company's Corvette." This was part of a statement that he made urging the Committee to elicit information of this type from car manufacturers. We can only assume that Mr. Nader was not adequately informed on this point or misunderstands what MIC actually does. In short, MIC does insure Corvettes against physical damage, contrary to the implication.

In applying its underwriting policies MIC *makes no distinction by make or model* as to whether a qualified driver may be insured, regardless of what type of GM vehicle he wishes to insure. However, as a matter of normal insurance practice, MIC does take into consideration the same standards that are used generally by the industry when drivers of high performance cars are insured.

It should be understood that MIC and its subsidiary, the CIM Insurance Corporation, write only automobile physical damage insurance, including fire, theft (comprehensive) and collision, primarily with respect to automobiles sold by GM dealers. They do not write liability insurance.

Our underwriting objective is to provide insurance for every qualified applicant who is licensed to operate a motor vehicle, provided he does not have an unreasonably poor record of accidents and violations. To meet this objective, MIC has a broad range of classifications designed to accommodate essentially every risk, except the very worst.

If we can be of further assistance in clarifying other matters concerning MIC physical damage insurance coverage, please let me know. Thank you for this opportunity to correct this mis-statement of MIC's attitude toward providing physical damage insurance on Corvettes.

Sincerely,

FRANK A. MINGLE.

AFTERNOON SESSION

Senator GRIFFIN (presiding). The committee will be in order. The subcommittee would be pleased to hear now from Mr. Mack W. Worden, of General Motors, and if you will come forward, Mr. Worden, and introduce those who are with you.

STATEMENT OF MACK W. WORDEN, VICE PRESIDENT, MARKETING STAFF, GENERAL MOTORS CORP.; ACCOMPANIED BY J. R. DOIDGE, ENGINEERING STAFF; AND C. R. SHARP, LEGAL STAFF

Mr. WORDEN. Mr. Chairman, I realize this has been a long day. I can read the complete statement or I can summarize the statement. It has been submitted to the committee. As the chairman would wish.

Senator GRIFFIN. Well, I will leave the decision to you, Mr. Worden.

We will be glad to accommodate you in any manner you wish. If you would like to summarize, that would be fine.

Mr. WORDEN. Then if it be my decision, I think I should read into the record the entire statement.

Senator GRIFFIN. Will you introduce those whose are with you?

Mr. WORDEN. I will do so in the course of my statement. Mr. Chairman, and members of the staff of the Senate Commerce Committee, this statement is submitted by General Motors Corp. in response to your invitation to present our comments on S. 976, the Motor Vehicle Information and Cost Savings Act.

I am Mack W. Worden, vice president in charge of the General Motors marketing staff. With me, on my left, J. R. Doidge, of the engineering staff, and on my right, Mr. C. R. Sharp of the legal staff.

The principal intent of this legislation, as we understand it, is to provide a means for reducing motor vehicle repair costs to the owner—whether these coats are incurred by him directly in repair costs, or indirectly as they may be reflected in insurance premiums he pays.

An equally important purpose of the bill is to achieve this objective at no sacrifice in safety or occupant protection. As stated in section 125(b), property loss reduction standards must be compatible with safety standards issued to protect motor vehicle occupants.

We should also point out the possibility always exists that repair costs may be influenced by the addition of certain safety-related components. Thus, while the two objectives will be compatible in many instances, there may be circumstances under which they will not be.

We are in agreement with the sponsors of this legislation on the basic premise—the desirability of lowering the cost to car owners of vehicle repairs and collision insurance. We have a great motivation to reduce in any way possible the overall cost of our products to the consumer, because higher costs would tend to erode our business.

Moreover, lest anyone misread the seriousness of our concern, we do not regard auto insurance as merely an incidental expense to car ownership. Indeed, funds spent for insurance or repair are part of a car owner's total budget set aside for automobile transportation, which must compete directly with other major necessities for the consumer dollar. We fully recognize that the more a car owner must spend for insurance and repairs, the less he has to spend for the car itself.

As to the significant issues posed by the bill, we are in complete accord with some of these, and with others we agree in terms of the goal but not in the method of achieving it.

As to one of the major concepts of the bill, repairability rating, we will propose an alternative program that, in our judgment would be more practicable than the procedures in sections 126 and 127.

We propose now to discuss in sequence the major provisions of the legislation.

First, the redefinition of the term "passenger car." At the outset, the bill changes and adds several definitions to the National Traffic and Motor Vehicle Safety Act of 1966, or the Safety Act. Of major significance is the addition to the Safety Act of a new definition of "passenger motor vehicle." In effect, this would negate the National Highway Traffic Safety Administration's (NHTSA) administrative regulation defining "passenger car." The present definition distinguishes differences among passenger cars, multipurpose passenger vehicles and buses. These distinctions would be eliminated by the S. 976 definition.

There are 44 exiting Federal motor vehicle safety standards and regulations, and even more proposals now pending for comment. Additionally, various items of safety equipment and vehicles now in various stages of design, development, and production are affected by the distinctions among types of vehicles established in the regulations.

By retaining the present NHTSA definitions of vehicle classes, confusion as to application of current standards and the administrative burden of resolving this confusion would be avoided. Revising existing standards to conform to the S. 976 definition would be an extremely cumbersome process.

Now as to redefinition of motor vehicle safety. S 976 would change the definition of "motor vehicle safety" in the Safety Act by placing property damage, or "unnecessary damage to motor vehicles," on an equal statutory footing with "risk of death or injury to persons."

The definition of "motor vehicle safety" is basic to the Safety Act. It defines the scope and purpose of the Federal Government's activities in this area. On the other hand, property loss reduction is an entirely different objective, with separate design requirements.

It is important not to dilute the urgency and emphasis now given to safety. As presently drafted, sections 1 through 4 of S. 976 seemingly equate occupant safety with property loss reduction, whereas sections 5 through 15 deal almost entirely with property loss reduction.

We believe this latter approach should be followed throughout the bill.

Now as to rating for damageability and repairability. Designing vehicles with greater resistance to damage is only one consideration that a manufacturer must take into account in meeting the requirements of customers and the public interest.

Others include safety, reliability, durability, emissions, performance, comfort, convenience, appearance and very importantly, the lowest overall cost of car ownership—including both economy of operation and initial cost to the consumer.

Designing simply for low repair costs will not necessarily contribute to the lowest overall cost of car ownership or the highest value product. Designs that would potentially reduce repair costs are not necessarily compatible with efficient manufacturing designs. Manufacturing efficiency has an important bearing on the original price of the car to the consumer.

For example, the welding of certain body components into a single unit—the rear quarter panel, and the adjacent sheet metal and substructure for instance—is less costly to produce, and is structurally stronger.

Moreover, welding this assembly to the body results in a stronger total structure.

These substantial advantages are reflected in the cost of car ownership to the consumer. However, the cost of repairing or replacing this single component could exceed that of a rear quarter body structure consisting of several serviceable sections that may be bolted to the body.

Thus, while we support the rating of vehicles on the basis of damage susceptibility and subsequent repair costs, this could offset the cost savings objective of this bill.

We are concerned, too, that any rating procedure provide some type of credit for safety-related items. Such features would reduce injury to passengers, but some could increase accident repair costs.

Some of these important safety features add to the complexity of vehicles, and, therefore, their potential damage repair costs.

Thus, S. 976 could penalize rather than reward a competitive manufacturer who is a leader in safety innovation, with the result of discouraging voluntary safety improvement.

An finally, we recommend that the proposed testing of predistribution production models not be required. Later in our statement, we will offer for your consideration an alternative rating system.

As to predistribution testing, the testing provisions of section 126 of the bill raise several important questions. For example, (1) When must tests be conducted? (2) How many tests must a manufacturer conduct? (3) What procedures will control the tests?

First, when to test? The key problem in this area is use of "production models," as required by section 126(b)(1). A manufacturer would have to run tests very late in the period just before new model announcement dates—between August 15 and September 15—when dealers all over the country are acquiring new car inventories and are beginning to sell cars. The testing and reporting program envisioned would be practically impossible to accomplish within the probable time period allocated.

Second, how many tests? Presumably, a number of different tests would have to be run at the required 5, 10, and 15 miles per hour to assess the repairability potential of each car in various accident situations. The Secretary might want to test for impacts to the front, rear, side, front corner, and rear corner in order to assure meaningful information for the public.

This could mean 15 tests per model. The numbers could be proportionately larger should the Secretary decide, as the bill allows, to test at higher speeds.

Optional equipment, such as air conditioning, might require additional tests, as different repair factors would be involved.

Third, how to run the test. In addition to the problems discussed above, which bear importantly on the way tests are conducted, there is the difficult problem of standardizing on the scientific criteria for car-to-car impacts. These would be essential to provide data representative of the real world of accident experience.

There is also the difficulty of defining such terms as "normal speeds" and "normal operating conditions," as prescribed in section 125 (a) and (d)(1).

With the number of variables possible in real life accident situations, it is difficult to conceive how a test could be devised which would not be as misrepresentative of accidents that regularly can and do happen as it would be representative of others.

Moreover, the need for subjective judgments of test results introduces a further element of difficulty. Human evaluation will have to say whether the part should be repaired or replaced, how much labor time would be involved and at what labor rate per hour.

Here is an alternate rating proposal.

As suggested earlier, we believe a rating index can be developed which realistically reflects both a vehicle's vulnerability to damage

and its cost to repair. It would at the same time avoid the unmanageable problems of extensive predistribution testing.

We say realistically because it would rely heavily on actual—real world—accident data.

In the course of evolving this system, we examined the structure of other rating systems, including the Folksam system. This system was discussed by representatives of Folksam Insurance Group of Sweden in testimony before the Senate Antitrust and Monopoly Subcommittee in 1969.

Briefly, we propose a rating index number for each make and model. This would be computed by comparing actual accident claims on the vehicle being rated to the average of all claims for vehicles of a similar class, based on previous years' models.

When a new model or design feature is to be introduced, an estimated index number would be developed. This would be based on the new model's parts and replacement labor costs for certain frequently damaged parts. The estimated index for the new model would be modified to a permanent index as actual accident data become available.

It is proposed that essential data on all makes and models would be provided to a rating board for tabulation and publication.

The system could also provide a method for allowing a rating offset for the voluntary installation of safety and antitheft devices which, while providing increased protection, could also increase repair costs.

We believe the concept can be developed into an equitable system for all concerned. General Motors is prepared to work with any and all interested parties in developing the system further, and in aiding in its implmentation.

We would be pleased to have our staff people who have studied this proposed rating system set a date to discuss it with your staff in greater detail if you wish.

Now as to bumper requirements. On April 14, the Department of Transportation issued Federal Motor Vehicle Safety Standard No. 215. This new standard requires that, beginning September 1, 1972, passenger car front bumpers be capable of withstanding a 5-mile-per-hour impact into a fixed barrier and rear bumpers, 2½-mile-per-hour barrier impact, without damage to the car's safety related systems.

May I ad lib that the barrier impact of 5 miles per hour in the front is equal to a 10-mile-per-hour car-to-car impact, and the 2½-mile-per-hour barrier impact in the rear is equal to a 5-mile-per-hour car-to-car impact.

All 1973 model General Motors passengers cars have been designed and will be built to meet this portion of the standard, and the majority of models will go beyond these requirements.

Motor vehicle safety standard No. 215 additionally prescribes new bumper regulations to take effect 1 year later. In addition to the fixed barrier test, after September 1, 1973, front bumpers would be required to withstand 5-mile-per-hour impacts and rear bumpers 4-mile-per-hour impacts from several directions, using a pendulum device.

This change in the standard, along with bumper height requirements, would require another sequence of redesign and retooling of the bumper system—not merely of the bumpers themselves, but, more importantly, of their supporting structures as well.

In the property loss reduction standards proposed in S. 976, yet another modification in bumper standards would become effective just 15 months later.

Thus, the industry faces the possibility of a sequence of extensive changes in rear bumper systems. Any change in the level of bumper protection is a complex matter. This is not just a matter of installing a different strip of steel for the bumper face bar. We have to take into account bumper height and many other things that go into bumper systems.

Meeting these standards may require increasing the length of the car in the rear and providing additional clearance for energy-absorber displacement. This could involve redesigning and retooling of the bumper, new shock absorber units, revised rear quarter panels, rear body panels, deck lids, and trunk floor panels.

Additionally, the gasoline tank filler neck access and some tail lamps would have to be moved in some models. Trunk capacity may be reduced because of the location of absorber units.

Because the standard for rear bumper systems proposed in this legislation involves many complex matters of design, engineering detail, and leadtime, administrative discretion, in our judgment, would be the best means of assuring optimum cost-benefit to the consumer in setting standards.

Therefore, we urge that the Secretary be authorized to prescribe standards, if needed, on an administrative basis.

In keeping with our earlier recommendation, we again urge that any bumper standards be applied to passenger motor vehicles as they are presently defined by the National Highway Traffic Safety Administration. In this connection, we wish to point out that the property loss reduction standard set forth in section 125(c) relating to bumpers in this bill embraces all motor vehicles.

Now as to motor vehicle inspection, and registrations which pertain to title V in the bill. General Motors has consistently supported periodic motor vehicle inspection (PMVI) as an important element in a complete traffic safety program.

In 1954, the Automobile Manufacturers Association, of which GM is a member, adopted a policy favoring periodic motor vehicle safety inspection. That policy has been reaffirmed by AMA many times since 1954, the most recent being less than 3 weeks ago at the National Symposium on Diagnostic Vehicle Inspection. On February 8, 1966, James M. Roche, now chairman of General Motors, endorsed PMVI in a speech to the Automotive Service Industries Association convention in New York City.

A description of the GM position on periodic inspection appears in some detail in part 3 of the record of hearings on the automotive repair industry held by the Senate Subcommittee on Antitrust and Monopoly. We will be pleased to submit a copy of this testimony, if you wish, for the record of this hearing.

S. 976 would require that highway safety program standard No. 1 be amended to provide for additional inspection whenever the title to the vehicle is transferred for purposes other than resale. Inspection would also be required when damage repairs are made on safety-related parts.

We believe the expanded inspection provisions of this bill need to be examined to determine whether in fact a cost benefit would accrue

to the consumer. For example, a single car might have to go through inspection in 3 consecutive months because of the mechanics of this inspection provision. In January, it might go through postdamage repair inspection, in February, periodic motor vehicle inspection, and in March, a transfer inspection. Such a series of inspections would be costly to the consumer. In our judgment, a good PMVI program would suffice.

As to uniform State programs on registrations and titling—General Motors has supported—and continues to support—uniform State registrations and titling requirements of S. 976 that are similar to those published by the National Committee on Uniform Traffic Laws and Ordinances.

As to Federal funds for inspection and titling—finally, the bill provides that funds from the highway trust fund could be used to partially finance the State programs for motor vehicle inspection and titling.

General Motors does not oppose this. The Federal Aid Highway Act of 1970 already provides for this financing.

In summary, two of the very important areas in which we have been working—and will continue to work—are: first, in designing and building cars so they require less repair and service, and second, to make it easier to perform repairs and service when they are required.

As we have pointed out, all our 1973 model cars will meet the 1973 bumper standards, and most of them will go beyond those standards. Our forward design program is directed toward making our cars less vulnerable to crash damage, and easier to repair if damaged.

In order to manufacture cars that require less service, we are designing and building greater durability and reduced maintenance requirements into our products. For example, you no longer hear of cars needing cylinder reboring or complete engine overhaul and we have longer tire life.

Also, intervals between chassis lubrication and engine oil changes have been extended.

To make servicing easier when it is required, a GM service research group is working on development and improvement of diagnostic and repair techniques, as well as the equipment used in making these repairs.

Improved techniques are widely disseminated to those who make repairs. Improvements in existing equipment, or ideas for new equipment, are made readily available to the equipment manufacturers.

In closing, we would like to restate two principal points of our presentation:

1. Repairability rating: We agree that repair costs must be reduced, and that property loss reduction standards and a repairability rating may be helpful in achieving this objective. However, we believe that a rating system closely geared to actual accident experience, as opposed to simulated impacts, is more workable than the predistribution tests proposed in S. 976.

2. Bumper standards: Establishing any level of bumper protection is a complex matter involving a substantial number of component changes and design modifications. The Secretary of Transportation should be empowered to issue bumper regulations providing optimum cost-benefits to the customer—in terms of both new system costs and potential insurance premium savings.

This concludes our prepared statement on S. 976. Thank you for your kind attention.

Senator GRIFFIN. Thank you, Mr. Worden. First of all, I want to indicate for the record that I think that, on the whole, your statement is a positive statement which I know the committee appreciates.

As a spokesman for General Motors, you make it clear that the corporation supports in principle most of the objectives of this legislation, if not the details.

You have not just opposed certain provisions. You have advanced some positive alternatives, and I am sure that those are going to be useful to the committee in its deliberations.

In connection with your proposed rating system which would compare the damageability, of various makes of cars, based on the actual claims statistics rather than the testing system suggested in the legislation, it occurs to me that it might be more likely to reduce insurance premiums since the statistics would be similar to those actually used by insurance companies to determine their rates.

In other words, that the consumer would be better off. Is that your contention?

Mr. WORDEN. Yes, sir.

Senator GRIFFIN. How long do you think it would take to put a system such as you propose into effect?

Mr. WORDEN. Sir, that would be pure guesswork on my part. As I suggested in the statement, all of the details have not been worked out. We believe it would be feasible and if the chairman would like, we will get, this afternoon if possible, or set a date to get with your committee to work out the details of such a system.

And it would be pure guesswork on my part, but this requires the submission of all the information from the various sources, basically insurance companies, of the type of information that is required.

I would not care to guess, but it would seem to me that somewhere in the neighborhood of 12 to 18 months, or 2 years, a system could be operable, such as that proposed.

Senator GRIFFIN. Now I know that the majority counsel, Mr. Sutcliffe, has some questions to ask on behalf of Senator Hart and others, but before I turn to him, I wonder if the distinguished Senator from Alaska has any questions?

Senator STEVENS. Yes; I am sorry to come in late. I am interested in the concept of this predistribution testing, and what relationship it has to availability of jobs.

Have you made any study of that in terms of section 126? How much delay would there be built into production, and how many people would be put out of work for how long if we went into this kind of a testing?

Mr. WORDEN. Sir, I hate to answer a question by asking one, but it would all depend upon how much testing was required by the Secretary.

As it is in the bill, it's at 5, 10, and 15 miles per hour. But if he moved completely around the car, the two front corners, two rear corners, and at various impact stages, and then if you had to go to each make and model within the General Motors line, for instance, or within the industry where there are some 345 different domestic makes, and 200 foreign makes, or some 545 different cars, and then if I had to go in and add the options which require different repairability—you are moving into a multitude of testing that there just would be an inadequate amount of time.

And all the time that you are doing this testing, your production lines are presumably running, you know, during this particular time, and people are at work.

Contrary to that, if you were to fully meet what—and maybe this is not the total intent of the bill—but if you were to meet the requirements as we interpret the intent of the bill, you would have to run your production lines to get enough production models to run tests and have these tests concluded in an adequate time in order to have all of this information into the field and in the dealers' hands before you could announce your new product or allow the dealers to announce the new product—before you can even distribute the new product to the dealers.

Senator STEVENS. Has that been analyzed at all in terms of if you had to do that?

Mr. WORDEN. Not in that great a detail; no, sir. We believe it an unmanageable proposal, and that is the reason we tried to come forward with what we believe to be a positive alternative proposal.

Senator STEVENS. Maybe I am showing my ignorance on this subject, but isn't it possible to develop a modular system of tests for an existing model and then test the additions to each subsequent model without having to test each model each year for each provision, for each speed?

Mr. WORDEN. Sir, I am not a mathematician. I have an engineer right here. But I am confident this could be done, and having read some of the previous testimony, of the representative from the Cornell Aeronautical Institute, they have proposed that a mathematical modeling concept might well be applied where this could be done.

But again, we are speaking of duplicating impact tests, car to car impact tests, on a simulated basis, rather than the real life world situation that actually occurs. We believe the real life world situation and the data that would be accumulated on which ratings would be based, would be more realistic and in the long run be of much greater benefit to the consumer.

Senator STEVENS. Thank you very much. Thank you, Mr. Chairman.

Senator GRIFFIN. It would mean more in terms of insurance rates?

Mr. WORDEN. Yes, sir. Not more costs, sir.

Senator GRIFFIN. That's right, but it would mean more to the insurance companies in terms of determining insurance rates.

Mr. Sutcliffe?

Mr. SUTCLIFFE. Thank you, Senator Griffin. Mr. Worden, you referred to Mr. Miller's experimental work at Cornell Aeronautics Laboratories, where they have had initial success in developing a computer model to depict vehicle defamation at different impact speeds.

If this type of rating were possible, a rating not requiring the crash testing of individual vehicles but one based upon a computer model, would this reduce considerably the problems you have with the testing of production models?

Mr. WORDEN. I would think so; yes, sir.

Mr. SUTCLIFFE. So that the requirement of the bill which asks the Secretary to come up with reasonable test methods might include test methods along the lines of a computer model that wouldn't necessitate the bending up of a lot of sheet metal?

Mr. WORDEN. So long, sir, as the bill says production models. As you know, you have pilot line models and then you have production

models. We are building the cars. These are the cars that are going to be shipped to dealers, which are going to be sold to the public.

This is the delay factor that is involved. Now if there could be a step at some point and if the modeling and the testing mathematically could be computed early enough, like you take the first sample—and I'll put in a commercial—take the first Impala Chevrolet right off the line, and that could be tested and then through mathematics and applied to all Chevrolets. Then it would not interfere, in my judgment, with the proposal in S. 976.

Mr. SUTCLIFFE. Are you suggesting that perhaps the Secretary be given discretion as to whether the tests should apply to the pilot line models or production vehicles?

Mr. WORDEN. Yes, sir.

Mr. SUTCLIFFE. Thank you.

In your testimony, you say, "Thus, while we support the rating of vehicles on the basis of damage susceptibility and subsequent repair costs, this could offset the cost savings objectives of the bill."

Now by this do you mean that it is possible that bumpers would cost more than the resulting savings from insurance premium reductions?

Mr. WORDEN. What we are referring to in dealing with damage susceptibility and subsequent repair costs that could offset the cost savings objectives of the bill, is not just bumpers alone. It is anything that is added as a component to the benefit of the consumer that might be completely hidden.

For example, we might add a side door guard beam, as we did within the General Motors product line. It is completely hidden. You can't see it. It provides additional protection. It adds, certainly, if the car were to be crashed in the side, it protects the occupants on the inside of the car from protrusion, because the beam helps limit the protrusion into the vehicle.

It adds cost to the vehicle, but as far as looking at the overall rating, you know, you might not get any benefit for having that side guard beam in there.

Yet it's definitely to the benefit of the buyer and user of that product to have it there for his protection.

Mr. SUTCLIFFE. That goes to the point of the need to coordinate safety provisions with property damage.

Mr. WORDEN. Yes, sir.

Mr. SUTCLIFFE. The provisions in S. 976 which ask for the development of a rating as to property damage susceptibility and injury index would be able to reflect both the safety factor of the vehicle and the property loss reduction factor of the vehicle as to insurance premiums, would they not?

In other words, isn't the bill already directed toward the coordination of those criteria?

Mr. WORDEN. I think what I am saying when I refer to sections 1 through 4 is purely a strong, strong support of the Saftey Act and the occupant protection. We are not arguing with the property damage additions in 5 through 14. We think that when you put property loss in 1 through 4, you are equating the bending of a piece of metal with some kind of damage to a human body. We do not believe that to be correct.

Mr. SUTCLIFFE. As to the cost benefit of providing property protection, has General Motors done a cost benefit analysis of the impact

speed, the cost of the bumper, and the premium reduction resulting from those various impact speeds on the cost, and premium savings?

Mr. WORDEN. Well, sir; I feel rather confident that General Motors has tested the vehicles in this regard. Now whether or not these have been turned into internal cost factors, you know, I am sure this likewise has been done, as they affect General Motors costs and as they possibly might reflect in the ultimate cost to the consumer.

But General Motors interest has to be, as in the interest of any automotive manufacturer, or any manufacturer, for that matter, the ultimate cost to the consumer.

Mr. SUTCLIFFE. Could you present the findings that have been made as to where the cost benefitt lies in the production bumpers?

Mr. WORDEN. I think that we could, making certain assumptions on impact; if you would allow us to make certain assumptions, we could present to you a chart that would show you the reasonableness of the various speeds of impact.

Mr. SUTCLIFFE. I am simply asking for the record to have available those, with an explanation of the assumptions that are made.

Mr. WORDEN. I will be more than happy to check with Detroit to see if that can be supplied to you, sir.

(The following information was subsequently received for the record:)

The primary function of bumper systems is to provide protection during low-speed collisions for body components, lamps, sheet metal, internal mechanical components and structural components. Secondly, the bumper systems should be integrated into the vehicle so as to not detract from the ride, handling performance or parking ability of the vehicle and to coordinate with appearance in terms of marketing potential.

Accordingly, General Motors has undertaken extensive studies to ascertain where the "cost benefit" lies in providing improved crash damage protection with redesigned bumper systems.

These studies included evaluation of alternative designs, levels of impact speeds, frequency of low-speed collisions, the cost of new bumper systems and possible consumer benefits. Early in our studies it was recognized that increased consumer benefits were of primary importance. Since the safety of the occupants is not involved at the low impact speeds being discussed, it is essential to provide some economic return to the consumer for any increased cost outlay due to new bumper systems.

To assist in evaluating different possible bumper systems, their relative estimated prices to the consumer were charted (Chart 1). This chart is not related specifically to design cost, total cost, dealer price or consumer price; it only shows that the relationships of the three speed levels of bumper protection on the chart to each other remain constant regardless of what value level is studied in relation to consumer benefit.

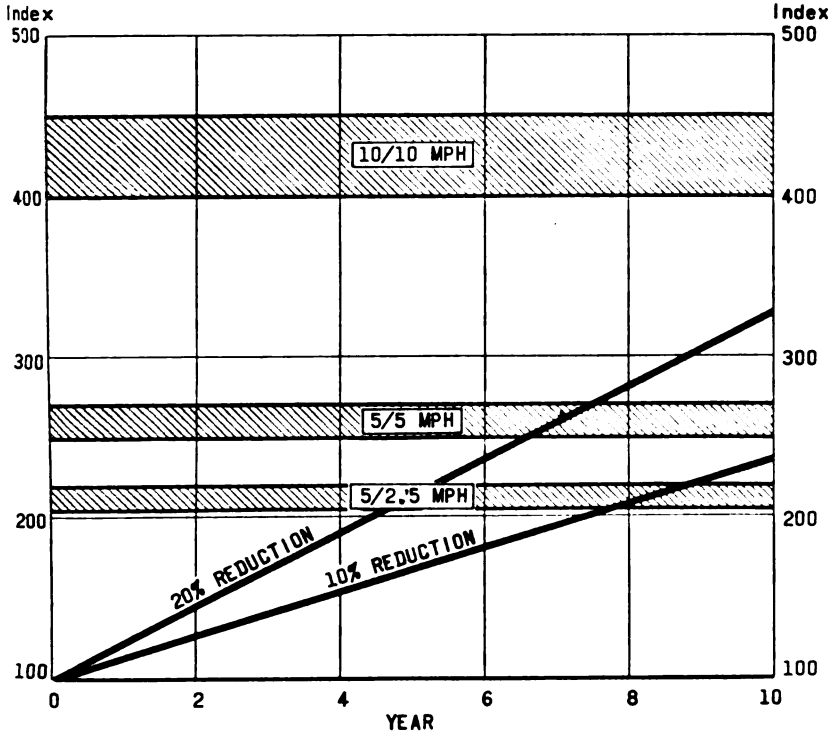
Also, the values indicated for the three levels of bumper protection are independent of the consumer cost of current bumper systems.

The estimated price to the consumer of three different levels of bumper protection is compared to existing bumper protection in terms of index values. The index value comparison is not the same as a percentage comparison, as will be indicated. The index assigned is used only to compare the relative difference between proposed systems.

The 100 index base level represents the estimated consumer price for the existing protection level front and rear. The index value, or implied dollar value, below the 100 index line could represent any value, large or small. It is simply a departure point, with no implied value, to mark the present level of bumper protection, which has no identifiable price to the consumer.

CHART 1

INITIAL PRICE TO CONSUMER VS. CUMULATIVE POTENTIAL SAVINGS



The term "price to the consumer," as it applies to Chart 1, is an estimated statistical value. A statistical "price to the consumer" is needed to evaluate properly the various bumper systems under investigation. A given feature or system such as a bumper system, is not available to the consumer as an item—nor is it priced separately—because it is integrated into the vehicle. Moreover, the price of the total vehicle must meet the test of a competitive market.

The estimated initial "price to the consumer" we have cited are average ranges and there is a variance in prices related to variances in design. Moreover, we find that the price of some smaller car system designs would often tend to be higher than those for some bigger cars because of vehicle structure. Thus, the greatest economic burden may be placed disproportionately on the segment of car purchasers who generally could least afford to pay.

Moving up the chart, the first band reflects the estimated differential for a 5/2.5 mph system over the existing system.

The next band up represents a 5/5 system, with an estimated price to the consumer that is about 50 index points higher than the 5/2.5 mph bumper system.

And, finally, the top band shows that the consumer would pay more than twice as much for 10/10 mph protection as for the basic 5/2.5 mph capability.

It should not be inferred that the estimated initial price to the consumer of the 5/2.5 mph bumper system would be slightly over twice that of the existing bumper protection indicated by the 100 index line. The 100 index is not measurable in any relative dollar value, as existing bumper protection is integrated into the total price of current GM production cars.

EFFECT OF INSURANCE REDUCTIONS

The added cost for the improved bumper protection indicated in Chart 1 would be partly offset by lower repair costs and proposed reductions in insurance premiums. Liberty Mutual has indicated a 10% collision premium reduction would be available for cars which can withstand a 5 mph front and rear barrier test with no damage. Allstate has offered a 20% reduction for a system which provides a similar capability. Allstate has said that it will accept that 5/2.5 bumper system that meets 1973 federal standards as a basis for 10% rather than 20% reductions. However, if the 5/2.5 bumper system were accepted as the basis for 20% reductions, the following results might be achieved:

At a 10% reduction in premiums together with the estimated deductible savings, the 5/2.5 system would show a net cumulative potential savings to the consumer sometime after the end of the eighth year, or close to the end of the life of the average car. With only a 10% reduction in premiums, the consumer could not realize any savings with any system more costly than the 5/2.5 system within the average car life.

With a 20% reduction in premiums, the consumer would realize net cumulative potential savings, relative to the initial price sometime during the fifth year with the 5/2.5 system. This would occur sometime during the seventh year with the 5/5 system.

The cost of the 10/10 system would never be recovered during the life of the car at these percentage reductions in premiums. And it is obvious that a person who purchases a new car every year or two would recover only a small part of his added cost for any of the above systems.

Also, it should be noted that most car owners drop their collision coverage after about six or seven years. Therefore, the savings indicated beyond this point would not actually benefit all consumers.

Additionally, only about 50–60% of all car owners insure their vehicles for collision damage. Also, the insurance industry has only indicated reductions in collision premiums and not for property damage premiums. Therefore, a large number of owners would not benefit from reduced insurance premiums.

STUDY OF REAR PROTECTION LEVEL

We have indicated that there would be a sharply progressive increase in price to the consumer as bumper protection moves up from the existing level of bumper protection to 5/2.5, 5/5 and 10/10 mph front-rear.

Because of this, we endeavored to evaluate in our cost benefit studies the most economical level of bumper protection in the interest of the consumer.

STUDY OF REAR PROTECTION

We examined insurance and engineering test data in an effort to identify the optimum level of cost benefit to the consumer, and, on the basis of these studies, we believe that it is more beneficial to the consumer to emphasize front-end bumper protection and provide for a slightly lower level of rear bumper protection.

This judgment is based on an extensive review of accident frequency factors shown in insurance claim data and evaluating associated cost trade-offs. As part of our study of this matter, we have made a detailed analysis of 17,000 cases in the Motors Insurance Corporation physical damage accident data file at our Safety Research and Development Laboratory.

The MIC data is the best available, to our knowledge, in the evaluation of automobile accident crash damage. The MIC data has been related to barrier impact speed, which is essential for the evaluation of cost benefits. We do not know of any other insurance industry data which has been similarly correlated.

The MIC data is related to impact speed in the following manner. When an MIC claim involves personal injury, the MIC adjuster is required to prepare a lengthy report of the accident details and submit color photographs. The damage described in the accident report is compared with damage experienced in Proving Ground full scale barrier tests. On this basis, an estimate is made of *equivalent* barrier speed. The comparison considers not only the repair cost but the characteristics and extent of metal deformation.

This makes it possible to establish a mathematical relationship between equivalent barrier speed and repair cost. This relationship is then used to assign an equivalent barrier speed to each reported MIC insured loss.

FREQUENCY OF ACCIDENT DISTRIBUTION

Our analysis of the MIC data shows that the front area of the car (from the A-pillars forward) is involved in accidents 58% of the time and the rear only 30% (Chart 2).

We then examined the MIC physical damage data to ascertain what could be gained from a practical, improved bumper system that could be made available at a price to the consumer in proportion to the potential benefits.

CHART 2.—ACCIDENT DAMAGE DISTRIBUTION

	Damaged area—Frequency		
	Front (percent)	Rear (percent)	Total (percent)
Distribution of MIC claims:			
Total sample with existing bumpers	58	30	88
Revised sample with improved bumper protection	35	14	49

This analysis showed that such a bumper system would have reduced the damage in 35% of the claims involving front-end collisions, and in rear-end damage in about 14% of the claims. Most significantly, on the basis of this MIC analysis, bumper-involved front-end crash damage occurs 2½ times more frequently than rear-end damage.

MIC does not insure for property damage liability, which is the coverage for damage to other than the insured's own car. Therefore, this type of claim is not reflected in the actual MIC data used in the analysis to ascertain the distribution of impacts.

Collision coverage includes payment of any legitimate claim that is made with respect to a damaged, insured car regardless of whether it struck another object or was struck by something else.

The MIC policyholder is entitled to make a claim anytime he is involved in an accident, with the expectation that any claim against the party at fault (third party) will be handled by his collision carrier. Last year MIC recovered 14.5% of their paid collision claim dollars by subrogation proceedings against third parties (people who struck MIC-insured cars).

The MIC data, showing 35% front-end involvement and 14% rear-end involvement, clearly suggest that, in terms of *actual* repair and replacement, the front end of the car requires greater protection than the rear end. We are not alone in this contention (Chart 3).

CONFIRMING STUDIES

A 1970 study by Cornell Aeronautical Laboratory for the then National Highway Safety Bureau comes to a similar conclusion. The Cornell report showed that front impacts occur in about 67% of all accidents, while rear impacts occur in about 10% of all accidents. Cornell said that even adding rear quarter panel damage incidents increased total rear impacts in their study only to 20%.

Interestingly, in an address by Douglas Toms, administrator of the NHSB, to the 1970 symposium of the Insurance Institute for Highway Safety, he said: "This is our breakdown where crashes are occurring on the car: 67% in the front, 16% in the rear."

CHART 3.—FRONT VS. REAR IMPACT

	Front (percent)	Rear (percent)
MIC data	35	14
Cornell data	67	10
NHSB data	67	16

A 1967 Denver Police Department study of 28,830 accidents in a four-county area showed a ratio of 2.1 front impacts to 1.0 rear impacts. This independent study included all passenger cars which impacted another car or object and suffered in excess of $100 damage.

The accidents least likely to be reported—single car, off-the-road accidents—were also the most likely to involve front ends. The Denver study is completely

independent of insurance data and would appear to confirm the fact that front-to-rear accident ratio exceeds two to one.

Our own production of replacement units for certain front and rear end so called crash parts also supports the MIC data.

We were asked by the Senate Judiciary Subcommitee on Antitrust and Monopoly in October, 1969, to report on production of six different replacement parts for our 10 best-selling makes and models. The subcommittee asked us to indicate the number of front left and right fenders, hoods, left and right quarter panels and trunk deck lids produced for model year 1969 for sale as replacement parts. We were asked to compare these to the total number of each make and model actually produced.

Our response showed that replacement part production ranged from a high of 5.6% of total production for one front-end part to a low of 1.7% for one rear-end part.

PERCENTAGE OF ACCIDENT INVOLVEMENT

National Safety Council statistics show that about 20% of all passenger cars are involved in accidents each year, and MIC insurance claims demonstrate that the majority of these occur at very low speeds. Also, the 20% reported by the National Safety Council includes all types of impacts—front, rear and side.

As noted previously in Chart 2, the improved bumper systems would affect half of MIC's accident claims. The remaining claims would improve impacts in other areas of the care not affected by improved bumper systems.

Therefore, it could be assumed that the National Safety Council's estimate of approximately 20% of all passenger cars being involved in accidents each year would be reduced by half through improved bumper protection.

On this basis, the owners of only 10% of the total car population would benefit from improved bumper protection. This is because that, of the remaining car population, the National Safety Council indicates that 80% are not involved in accidents in any given year. The final 10%, as the MIC data suggests, would be involved in impacts which would not be affected by the improved bumper systems.

Mr. SUTCLIFFE. In your testimony, you mention that your 1973 cars surpass the Department of Transportation safety related bumper requirements. In what particulars will your 1973 models surpass that requirement?

Mr. WORDEN. May I ask Mr. Doidge to answer that question?

Mr. DOIDGE. Most of them will exceed, as we said, and for example our bumpers are designed to give no sheet metal damage to the car at the 5-mile-an-hour front and 2½-mile-per-hour rear barrier.

The safety law says just safety related items like head lights, fuel systems and all, so we have moved into the damageability part of the thing, unrelated to safety.

In some other areas such as cornering and things like that, we established our corporate position long before there were any safety standards, in response to the things that have gone on.

Does that answer that satisfactorily?

Mr. SUTCLIFFE. In other words, they will relate to the property damage aspects as well as the safety aspects?

Mr. DOIDGE. Yes, which we think both are important, of course. And that is why we decided to do it, much before the legislation or the direction.

Mr. SUTCLIFFE. Thank you very much.

Senator GRIFFIN. Anything further, Mr. Stevens?

Senator STEVENS. No.

Senator GRIFFITH. Mr. Worden, I want to thank you and your associates for presenting the testimony. We appreciate it very much.

Mr. WORDEN. Thank you very much.

(The following information was subsequently received for the record:)

Attachment A

The amendment seeks to outlaw tampering with original equipment odometers by making it unlawful to advertise, sell, use or install any device which can cause the odometer to register any other than the true mileage driven. It also outlaws altering, resetting or disconnection of odometers or conspiring with others with the intent to reduce the number of miles indicated thereon, as well as operation of a vehicle with the odometer disconnected.

The amendment properly recognizes that the "true" mileage driven is that "registered by the odometer within the manufacturer's designed tolerance." This tolerance is necessary, since conditions which normally change from day to day and from owner to owner, such as air pressure, tire size, amount of tread wear, etc., will in small degree vary the accuracy of an odometer reading.

Actually, passenger cars are equipped with odometers which have a design tolerance of ±3.75%. Light and heavy truck odometers are designed, in many cases, to even less tolerance in order to offset for additional variables in commercial operation, such as more tire sizes and rear axle options, which would otherwise vary accuracy beyond the minimal tolerance range.

Consistent with the above and in the interest of technical corrections, we would suggest the following amendments:

Page 1, Line 6. Delete "an accurate reflection of" and "actually."

Page 1, Line 7. Delete "an accurate indication of."

Page 2, Line 16. Delete "actual" and insert "within the manufacturer's design tolerance" after the word "distance".

Attachment B

These comments are offered in response to the amendment to S. 976 which would require emission inspection of light-duty motor vehicles at least once per year.

General Motors supports the intent of this amendment to S. 976. We have continuously supported the need for annual inspection for motor vehicles as an effective and inexpensive means of assuring the optimum level of emission control for vehicles in use. Tests by General Motors in Southern California indicated that average levels of hydrocarbon and carbon monoxide from vehicles in use could be reduced by 10 percent and 16 percent, respectively, as a result of an effective inspection and adjustment program.[1]

However, although we agree with the intent of the amendment, certain provisions appear to add unnecessary complication and create the possibility of owner dissatisfaction with the program.

A. *Section 15(2)(A)* requires an annual inspection of light-duty motors vehicles, as well as an inspection at time of transfer of title for purposes other than resale, and after an accident if the emission control systems were damaged. It would seem that an annual inspection should suffice. As pointed out earlier in our response to S. 976, it would avoid duplicate tests within a period of a few months. The effect on the atmosphere of additional inspections at time of transfer, or after vehicle damage, would not be justified in light of the inconvenience and confusion this would cause.

B. *Section 15(b)* requires that vehicles manufactured prior to model year 1972 be tuned to perform with specifications established in consultation with the Administrator of EPA.

Section 15(c) however, specifies that the emission standards for 1972 and subsequent model year vehicles in use "shall be the same as the standards established under the authority of Section 202 of the Clean Air Act" for new vehicle certification. We believe that the technically complicated job of the determination of field standards for 1972 and subsequent model vehicles should, as provided in the 1970 Clean Air Act, be left to the discretion of the Administrator of the Environmental Protection Agency. Setting such standards by legislative edict is inconsistent with the provisions of the 1970 Clean Air Act just passed by the Congress. A discussion of the setting of these standards is included in a March 12, 1971, document titled, "General Motors Progress and Programs in Automotive Emission Control," pages 75 through 80, previously submitted to the Administrator of the Environmental Protection Agency. This document is included herein by reference.

---

[1] "Tune-Up Inspection, a Continuing Emission Control," SAE paper 690141.

To summarize, cars in use cannot be expected to perform to the same levels of emission control efficiency as cars tested under proving ground conditions.

Certification vehicles, for example, are operated continuously and accumulate 50,000 miles of operation in approximately four months, using high quality, commercially-available fuels and lubricants.

In actual use, very few cars will experience this same kind of rapid mileage accumulation. Many see only occasional use. Stop-and-go operation with frequent cold starts will increase the chances for dirt and gum accumulation, engine rusting, oil dilution, PCV plugging, spark plug fouling, stuck chokes, poor piston ring seating, exhaust valve leakage, etc. Regular maintenance can minimize the effects of these variables, but may not be totally effective in bringing the emission levels back to the new car condition.

It simply is not possible to simulate the aging, eroding and deteriorating effects of time with a rapid mileage accumulation schedule, and it will be many years after our control systems are actually installed in cars before we have enough valid, long-mileage data on which to make accurate projections of what may be expected of future vehicles in actual customer service.

Under controlled conditions of a proving ground certification program, maintenance is provided on a regular basis, using General Motors replacement parts. Proper maintenance is a vital requirement for satisfactory field performance of emission control equipment as well. However, conditions are not well controlled in the field, and lack of maintenance or improper maintenance and adjustment are common. For example, in a field survey of 152 1970 model General Motors vehicles which exceeded certification levels at mileages of over 4000 miles, 92 percent of the failures were due to rich idle, low idle speed, advanced spark timing or rich choke operation—all items included in any maintenance program.

Furthermore, we feel it will be extremely difficult to diagnose the cause for high emissions from the results of a simple emission measurement as suggested by the amendment. This problem can result in considerable inconvenience and expense to the vehicle owner.

RECOMMENDATIONS

As an alternate to the proposed amendment, we recommend the following course of action for field emission inspections:

1. In the absence of accurate methods and procedures for measuring emissions from vehicles in use, an annual inspection should be required for all cars. Inspection would consist of a test and adjustment of the engine operating parameters, and inspection for proper installation of emission control devices, if so equipped.

2. When adequate methods and procedures for measuring emissions for vehicles in use are prescribed, the maximum emission levels for each pollutant should be selected, or the test procedure should be adjusted, to allow for reasonable deterioration in use. A specific recommendation is contained in our March 12 submission to EPA noted earlier.

Senator GRIFFIN. Now the committee will be glad to hear from Sydney L. Terry, vice president of Chrysler Corp. Mr. Terry, we are glad to have you. I would appreciate it if you would introduce your associate and proceed in any way you wish.

STATEMENT OF SYDNEY L. TERRY, VICE PRESIDENT, SAFETY AND EMISSIONS, CHRYSLER CORP.; ACCOMPANIED BY VICTOR TOMLINSON, LEGAL STAFF

Mr. TERRY. I have with me Victor Tomlinson of our legal staff.

My name is Sydney L. Terry. I am vice president, safety and emissions for Chrysler Corp. I welcome this opportunity to present Chrysler's views on amendments to the National Traffic and Motor Vehicle Safety Act as proposed by S. 976.

We have carefully reviewed and analyzed this proposal and are favorably impressed with its stated goals and objectives. We commend the bill's sponsors for seeking to alleviate some of the problems associated with motor vehicle use and ownership today.

I do not think it appropriate to discuss specific language of the bill. However, I wish to make some general and, I believe, more important observations about the bill as they pertain to the consumer, the motor vehicle manufacturer, and Chrysler in particular.

Let me say at the outset that we at Chrysler believe that the free marketplace is the consumer's best friend. We are confident that the forces generated by competition among car manufacturers for the consumer dollar are by far the most effective means of attaining the stated objectives of this bill. We accept the concept of competition as a means of producing cars less vulnerable to damage.

We are willing to take our chances with public disclosure of comparative automobile insurance and repair costs. We agree with the general concept of mandatory inspection following vehicle accident repairs and ownership change.

And, we support in total this bill's efforts to bring the States into conformity with registration and titling provisions of the Uniform Vehicle Code and Model Traffic Ordinance.

One of the problems this bill seeks to solve is the matter of increasing auto insurance and accident repair costs. This problem also deeply concerns us because it adversely affects the buyers and users of our cars. But we are confident that competition among motor vehicle manufacturers to produce cars less vulnerable to damage would result in lower repair costs to the consumer.

This, of course, is the stated objective of the bill. However, we seriously question the matter which the bill sets forth to encourage such competition.

The bill proposes to encourage competition by regulation. We think this approach is ill-advised and contrary to the public interest. Setting new car property loss reduction standards will not promote competition; rather it will more likely stifle and inhibit competition. Further, we question the feasibility of these proposed requirements.

As to the procedures for determining "susceptibility to damage," it is our opinion that there is likely to be little resemblance between the artificial, standardized, and controlled testing methods to be used by the manufacturer at his proving grounds and run by skilled technicians—a resemblance between that and what happens in the real life situation.

We feel that any repair cost estimate resulting from a prescribed proving ground collision would have no practical connection with a "bump" shop estimate for making repairs following an actual "on street" accident.

Nor would manufacturer repair cost estimates reflect the relative susceptibility of cars to damage resulting from collisions between the various makes and models of one manufacturer, between the various makes and models of competing manufacturers, or between the untold accident combinations that inevitably occur within the total vehicle population across the Nation.

Further, we believe it would be completely impractical to conduct tests on every make and model car, obtain cost estimates of repairs, translate this data into meaningful information, and have it available to the consumer at model introduction time.

It is conceivable that these provisions could require hundreds—perhaps thousands—of tests. For example, Chrysler advertised some 139

car models this year, down from 156 last year. The downward trend is likely to continue in future years.

Nevertheless, considering all combinations of trim, engine, color equipment options, we could run any one of our assembly plants for more than a year without ever building exactly the same car twice.

Of course, many of these combinations would have no bearing on repair costs, but at the same time, many would.

In view of the possible quantitative aspects of these requirements alone, there simply would not be enough leadtime between the beginning of production and dealer introduction of new vehicles. At Chrysler, our operations are geared to make necessary model change switchovers at our assembly plants beginning in about the middle of July. This process may take several weeks at any given plant before actual production is begun.

Frankly, we have just about all we can do to produce enough cars to fill the pipeline to our dealerships by new car introduction date in early fall. It is during this same period, presumably, that the various tests proposed would need to be conducted. It is also during this same period that the data derived from such tests would need be collected translated into meaningful information for the consumer and made available to dealers for dissemination to prospective customers at new model introduction time. We feel that this would be a highly impractical task. Moreover, the cost implications for meeting this requirement could be tremendous.

Aside from the matter of leadtime and costs for these tests, there are many situations well known to engineers and designers in which improved serviceability, easier maintenance, or less expensive repairs can be achieved through car design. But most can be achieved only by increasing the cost—the basic cost—of the product.

This means that the effort to reduce consumer repair costs by setting property loss reduction standards would almost inevitably result in increased costs and prices for new cars. But it is well recognized that car design is but one of many factors contributing to rising insurance and repair costs. We at Chrysler do not know just how much of a factor design plays in these rising costs and we regret that we have been unable to obtain such information from any source.

Nevertheless, this matter of increasing vehicle costs is of serious concern to us. We are apprehensive, to say the least, as to how and where will the line be drawn. We fear a continuation of this cost trend may once again make the automobile a luxury most people cannot afford.

You can argue that regulations for safety and emissions are justified—in the case of emissions by the health and environmental benefits to the third parties or the community as a whole; and in the safety area by the savings of lives and reductions in injuries.

But when the reasons for promulgating standards are purely economic—as in the case of auto repair costs—it appears to us no such argument can be made.

No administrator, no matter what insight he may possess, can ever be expected to improve on the forces of the free marketplace in determining the proper balance between higher initial car costs to the buyer versus lower potential repair costs after an accident.

We note that there is language in the bill calling for compliance with specific front and rear barrier tests of bumper systems after January 1, 1975. The bumper situation is a good example of the forces of the marketplace at work. We at Chrysler certainly recognize the potential advantage afforded to the manufacturer whose vehicles are eligible for lower collision insurance rates and which are less costly to repair.

Most importantly, we recognize that there not only is room for improving car bumpers but that the public is demanding that it be done. And, we are doing something about it.

We as well as other manufacturers have publicly stated on numerous occasions in recent months that 1973 model year vehicles will be provided with significantly improved bumper systems.

Further, a ruling of the National Highway Traffic Safety Administration issued on April 14, 1971, requires boh domestic and import vehicles to comply with prescribed bumper safety standards beginning with the 1973 model year, and at Chrysler we fully intend to comply with these standards with bumper systems which will prevent damage to the vehicle.

For the 1974 model year, the ruling prescribed additional requirements including provisions for achieving greater uniformity in bumper heights and bumper configurations which go far beyond the provisions of this bill.

These developments will result in significant and progressively greater resistance of vehicles to damage in these low-speed collisions. And, they are being accomplished without the promulgation of property loss reduction standards.

We note that the recent publication of bumper standards by the National Highway Traffic Safety Administration raises a question which could become a real problem should individual States enact bumper laws which are different from the Federal requirements. In this regard, we strongly feel that Federal preemption is needed for both purposes of uniformity as well as to provide some limitation on State activity in new areas of Federal activity such as this bill would authorize.

Chrysler supports the concept of public disclosure of meaningful information on vehicle susceptibility to damage. We expressed a similar view here in Washington over a year ago during an informal rulemaking hearing on exterior bumper protection before the Federal safety agency.

At that time, we advanced the idea of requiring consumer information that would indicate—on a uniform basis—the degree of exterior protection afforded by bumpers on various makes and models of cars. Most importantly, we believe that this is the best means of spurring competition among car manufacturers to design and produce cars that are even more resistant to damage than those currently contemplated.

Toward this end, we believe that this can best be accomplished by requiring the Secretary to collect and publish information on the actual cost of accident repairs by make, model, and year of manufacture for all kinds of vehicles in use in this country. Moreover, we believe that data of this nature already exists within insurance company claim closure records, although it might not be in the form we would need it to collect it and make it meaningful.

Therefore, it would appear to be appropriate for this bill to prescribe for the development and promulgation of regulations governing the manner and form by which all companies engaged in the business of selling or underwriting car insurance would be required to collect and submit accident loss experience information to the Secretary on a periodic basis.

Within the States, insurance companies already are required to justify insurance rates on the basis of actual loss experience. If there is need for testing of production cars to supplement loss experience for rate justification, it seems to us that the burden of such testing should rest with the insurance industry.

We understand that action along these lines already has begun as evidenced by repair cost studies of the Insurance Institute for Highway Safety and Liberty Mutual, as well as the Nationwide Mutual study of "muscle" cars versus "standard" vehicles. This latter study was used by the Insurance Rating Board to justify a substantial surcharge on insurance rates for high performance cars.

This is not to say that the data that has been presented by the insurance industry on these studies is useful or meaningful for consumer comparative purposes. On the contrary, one company clearly indicated that the purpose of its study was to provide a reasonable basis for rating purposes and that it "was not intended, nor is it suitable, for use either to endorse or censure the product line of any automobile manufacturer."

We believe that much work must be done to find appropriate methods that can be applied fairly and uniformly to yield data that is useful for comparative purposes. Moreover, any disclosure information that compares susceptibility to damage of various makes and models between manufacturers must be based on highly reliable and dependable data. Failure to do so could have severe economic consequences upon individual manufacturers, and we feel undesirably and unjustifiably so.

Using actual claim loss experience would have a decided advantage over the provisions in the bill because it would benefit a much wider range of consumers by providing meaningful information on all types of motor vehicles—older cars as well as current models.

And the need is apparent when one considers that there are about two used car sales in this country for every new car sold. Moreover this approach also would reveal the data being used by the insurance companies to justify and establish insurance rates.

With this kind of information, the buying public would be afforded repair cost comparisons based on real crashes and actual experience. If claims data is collected in a uniform manner, submitted in proper form, categorized so that valid comparisons can be made, and published, the marketplace will have information it now lacks on both the performance of insurance underwriters and on the automobile manufacturers.

Consumers will have freedom of choice to select vehicles suiting their own best interests. Should significant differences in repair costs appear between competing makes in the same price class, manufacturers would leave no stones unturned until they found out the reason why.

Companies producing cars costing less to repair would undoubtedly advertise and promote this advantage. Others would be striving t

correct repairability problems in future car designs. By this approach, then, the purposes of this bill could be and would then be achieved.

We believe that the provision for supplying consumer information in a simplified and easily understandable form cannot be overstated. There is, of course, a large variety of vehicle makes and models in use today. If one considers these along with the combinations of trim and equipment options influencing repair costs, we fear the resulting compendium of information would be so voluminous as to be worthless to the average consumer.

Thus, it may be necessary to use typical or representative comparisons based on valid statistical data and qualified as to its limitations.

Now, I would like to turn to the personal safety aspects of this bill, those dealing with the development of comparative information on vehicles regarding risk of injury or death.

We have no objection to the Secretary undertaking a study of the feasibility of developing tests and testing procedures designed to allow a determination and comparison of the risk of personal injury or death to passenger car occupants.

However, we note that the bill would allow the Secretary to declare tests and test procedures as "feasible." In our judgment, this term is far too vague and represents an extremely poor measure of reasonableness or practicality when applied to tests or test procedures.

Any measures along these lines must be fair and equitable to all manufacturers for the range and types of accidents that the vehicles could likely encounter as well as for all classes of vehicles. We urge the committee to consider revising these provisions to include some fair test of reasonableness, practicality, and cost effectiveness of tests and test procedures before they are promulgated to be applied to every new passenger vehicle sold in this country.

Another provision of this bill would require automobile dealers to provide comparative data to prospective buyers regarding insurance costs on various makes and models of cars having different occupant injury severity or vehicle property damage characteristics.

Again, we accept the idea of public disclosure of comparative data providing it is valid and meaningful. We also concur with its dissemination by auto dealers. We feel that this information should be published and made available to dealers by the Secretary. We also feel that much of the information would be applicable to prospective used car buyers as well as those contemplating buying a new car.

Chrysler is in general agreement with the proposed amendment to highway safety program standard No. 1 regarding additional State motor vehicle inspection programs. However, we have several suggestions to make which we feel would improve these programs.

We suggest that the committee consider changing the condition requiring inspection upon title transfer to one requiring inspection upon registering of the vehicle. We wish to point out that merely a change of title does not necessarily require that a vehicle be in a safe operating condition. For example, some people today like to purchase older vehicles or less expensive cars and repair or restore them themselves.

In another case, a buyer may plan to use his purchase entirely off-the-street for farm or recreational purposes. In these instances, merely the sale or change in title would not appear to justify the need for inspection to determine the safe operating condition of the vehicle.

However, should these vehicles be used on public streets, they should be certified as to safe operating condition and this could more appropriately be done as a condition of vehicle registration.

We believe it to be the intent of this bill to provide a single vehicle inspection standard applicable to new or used vehicles alike. We support this concept. Moreover, we do not object to requiring inspection of new vehicles.

However, we feel this can best be accomplished by adoption of our earlier suggestion which would require inspection as a prerequisite for registration. Therefore, we suggest that the bill make no distinction between new or used vehicles in this particular provision.

We have some concern that the proposed added inspection conditions when combined with current provisions of the standard could conceivably overload inspection facilities as well as have other ramifications such as shortages in skilled manpower to conduct vehicle inspections.

Along these lines, we feel that the committee might wish to strongly encourage greater use of law enforcement agencies in detecting some of the more obvious type deficiencies and citing owners during onstreet use of these deficient vehicles.

We have all seen these clunkers and know there are ordinances which prohibit their being there, and yet they aren't taken off the road.

If this could be achieved, it would reduce the workload of inspection facilities. In the same vein, it might be more appropriate to permit initiation of these proposed added requirements in stages so as not to overtax the resources of the State concerned.

Initially, for example, new vehicles might be excluded or all vehicles under 2 years of age. Variations of these types already exist in some inspection systems both here and abroad.

Chrysler supports the proposed amendment to highway safety program standard No. 2, concerning State motor vehicle registration and uniform certification of title programs.

In our own vehicle security efforts, we have necessarily worked closely with law enforcement and motor vehicle agencies across the Nation. In the course of this work, we have noted that the lack of uniformity and discipline of common language and terminology in registration procedures among the States has served primarily to the advantage of the car thief.

Closely allied with the need for common terms in registration and uniform titling provisions. Chrysler, along with others, helped develop the Uniform Vehicle Code, and its titling provisions. It is designed to help curtail losses by both buyers and dealers if they inadvertently buy stolen cars or autos with defective titles or undisclosed liens. It also serves as a theft deterrent by providing law enforcement agencies with a legal tool to combat organized car theft.

We understand that eight States still have no certificate of title laws. Yet, statistics show that the ratio of car thefts to vehicle registrations is significantly lower in States with title laws. Additionally States with title laws appear to have a higher rate of recovery for vehicles stolen.

Most certainly, we consider these registration and titling provisions of this bill a major step in the right direction.

We suggest deleting the punitive provision that would reduce a State's Federal aid highway apportionment should the State fail to implement the programs proposed. Although we recognize the intent of this provision, we feel that such punitive action would not be in the best public interest.

Highway improvements have clearly proved to be "plus" factors in traffic safety. To reduce moneys available to a State for these improvements as punishment for noncompliance with another safety provision hardly seems logical or in the public interest.

We feel that the incentive being offered the States to comply with these requirements through Federal participation in program costs—up to 50 percent—is the proper approach. If States still fail to comply, then we feel that it would be preferable to increase the incentive rather than resort to punitive action.

Finally, we note that this bill calls for motor vehicle safety and property loss reduction standards which require all vehicles manufactured after a given date to be "so designed and constructed as to facilitate motor vehicle inspection, and to facilitate the repairs necessary to meet the requirements of such inspection."

Let me say once again that standards prescribed in this manner can only inhibit progress. For example, once a "standard" is promulgated, say for inspecting brake lining, an innovation in new brake design—one that might require no inspection or replacement in the life of the car—becomes impracticable and well-nigh impossible for an individual manufacturer to introduce simply because it does not conform to the "standard."

With the present and contemplated constraints already being placed upon motor vehicle design and production by both, market demands and Government regulations, it is our candid opinion that these design requirements for inspection would be ill-advised. This is not to say that these types of factors are not or should not be considered in vehicle design. However, so many other factors must be weighed that are more important because of their direct influence on vehicle safety and operation that any effect the proposed requirements would have on future car design would, at best, be negligible and, at worst, could inhibit progress in the development of safer and better cars.

This completes Chrysler Corp.'s formal testimony, Mr. Chairman. I will be happy to respond to any questions you or the other committee members may have. Thank you for your time and attention.

Senator GRIFFIN. Senator Hart, do you have any questions?

Senator HART. Mr. Terry, I apologize to you and to my colleagues, and I will to Mr. Worden, for being absent. I appreciate Senator Griffin's willingness to pinch hit here.

Obviously, I have no questions, having just this minute arrived. Thank you.

Senator GRIFFIN. Senator Stevens?

Senator STEVENS. I have to leave to go to another meeting. I would like to suggest that you have someone submit suggested amendments to take care of those two provisions, one concerning registration concepts, and the other the on-street law enforcement activity.

If you have any suggestions as to how we can reach that, because I think that is a very worthwhile suggestion. The bill presently covers

those vehicles which are going to be transferred and not those vehicles that the original owner is going to drive to death. And it might be in worse shape than the one that someone has gotten ready to sell and gets a good price for.

I would very much like to see that concept in a proposed amendment. Thank you very much, Mr. Chairman.

(The following information was subsequently received for the record:)

According to the information we have, cost is one of the major deterrents to states adopting vehicle inspection programs that do a thorough job. Each time an additional item is required to be inspected, the cost of the program goes up. It seems to us that perhaps one way to attack this problem is to re-examine the equipment which is now subject to inspection and determine if there is some way the number of items to be inspected can be reduced without compromising safety.

Obvious deficiencies are those that a police officer can observe without having to stop the car and perform a street inspection. These include such items as burned out or broken headlights or taillights, dangerous sheet metal hanging from the car, cracked or broken window glass, badly worn tires, noisy vehicles, smoky exhausts, missing engines, and settled or otherwise failed suspensions. We believe that if cars with such obvious visual deficiencies were ticketed on sight most of the benefits of motor vehicle inspection could be achieved. Moreover, if a vehicle operator could receive a ticket as quickly for driving his car in an unsafe condition as he can for a moving violation, we think few would take the risk.

Ticketing could require that a certificate or receipt indicating correction of the defect be furnished together with the fine, or that a vehicle be inspected at the station after the defect was corrected as a condition to settlement of the violation. Such a law could stand on its own in lieu of motor vehicle inspection. Or, it could be used in conjunction with a periodic motor vehicle inspection system thereby easing the load on inspection facilities.

With regard to overtaxing of inspection facilities, we note that the State of New Jersey recently announced that it will remove all *new* cars from the State's motor vehicle inspection program beginning in July—to decrease waiting time. In lieu of state inspection, new cars will be inspected by dealers who must certify that the vehicles meet safety inspection standards. Dealer certification will be valid for one year and is expected to cover about 400,000 new cars annually.

The transferring of title from one owner to another does not necessarily mean that the new owner is going to use the vehicle on the public streets. A number of cars are bought for other uses such as, restoring historic vehicles, using the vehicle purchased for parts, using the vehicle for a variety of off-road purposes. Also, there are some states that do not have title laws (New York being the most notable example). In those states, inspection could not be required prior to the transfer of title because no such transfer takes place.

Therefore, we feel the requirement for inspection should be at the time the vehicle is registered to a new owner which permits it to be used on the public streets in every state. It should be pointed out that this method may result in over inspection of those vehicles having a number of owners within a one-year period.

ODOMETER AMENDMENT

Although Mr. Terry did not comment on the odometer amendment at the time he testified, Chrysler supports the amendment. We believe that the consumer should be provided with the information he needs to make an intelligent purchase of a car. We have long supported this type of legislation in the states.

PREEMPTION

Should the Congress decide to legislate property protecting bumpers despite our objections, we definitely would favor preemption of state laws or requirements on the same subject. On the other hand, we would much prefer that the property protecting bumper provision of this Bill be deleted even if this should result in our having to provide special property protecting bumpers to meet individual state laws. This is all the more true since we are confident that, by 1975, competitive pressure of the marketplace will have satisfied public demands in this area.

Senator GRIFFIN. Mr. Terry, like the previous witness, I think you have also presented a positive and constructive statement, one that has a number of useful suggestions that will help the committee, as it gives further consideration to this legislation.

I am interested in the alternative you suggest in your testimony to this elaborate testing of production models before you could actually sell cars—that pending legislation should utilize actual repair costs. As I think about that as an alternative, I have been wondering about how the legislation as drafted would apply to imported automobiles.

I know that your company is at least very much aware of the competition and the problem of imported automobiles. How do you understand—if you do understand—the legislation as drafted? How would it apply to automobiles manufactured in a foreign country?

Mr. TERRY. Well, I think it would be very difficult, to say the least, for the foreign manufacturers to comply with the legislation. But I haven't really though too much about the problems of the import car manufacturers because we haven't been able to figure out how to do our own job domestically, frankly.

The thing is unmanageable in our view, completely. We talk about—an earlier witness has suggested this—we talk about the time limit we have to do this in, trying to test production vehicles with a number of different tests, because it would be, as we visualize it, at least, 10 tests for each make and model and when you add options such as air conditioning, with and without, that doubles it. And you get into 400 or a thousand tests very quickly.

And it is not just running the tests but it is also having somebody come in or finding some other way of figuring out the cost to repair each one of these accidents, and then getting the information together and sending it to the Secretary. During this time we are building automobiles, in production already, but we have not yet announced them.

Now, these cars can't actually be sold to the public theoretically until the cars are announced. So you see you have an unmanageable inventory situation as the leadtime extends; what happens to the cars during this period? The whole production machinery and the way we do things just doesn't fit with this proposal at all.

Now, on the other hand, we believe that the proof of the pudding is in the eating; in other words, what really happens out there. Now I am sure you gentlemen known a lot more than I, having conducted these hearings, about all the various complications that you get into when you start to try to reduce insurance costs.

There are a great many factors. We at Chrysler—and I am an engineer, a technical man myself, basically—we at Chrysler have been trying to find out by some way or other what part design engineering plays in insurance costs. And the way we would propose to find out would be to get some information.

The only kind of information that would do us any good would be information on cars of a certain make and model year, in accidents that are at least similar. We could then compare those with other cars of the same make and model year in similar kinds of accidents.

But that information we have just not been able to get from any source.

Now, it could be compiled, obviously, and the data is there, and we think if a provision were made to collect this data in the proper categories and so on, it would be very useful not only to us but to all the

those vehicles which are going to be transferred and not those vehicles that the original owner is going to drive to death. And it might be in worse shape than the one that someone has gotten ready to sell and gets a good price for.

I would very much like to see that concept in a proposed amendment. Thank you very much, Mr. Chairman.

(The following information was subsequently received for the record:)

According to the information we have, cost is one of the major deterrents to states adopting vehicle inspection programs that do a thorough job. Each time an additional item is required to be inspected, the cost of the program goes up. It seems to us that perhaps one way to attack this problem is to re-examine the equipment which is now subject to inspection and determine if there is some way the number of items to be inspected can be reduced without compromising safety.

Obvious deficiencies are those that a police officer can observe without having to stop the car and perform a street inspection. These include such items as burned out or broken headlights or taillights, dangerous sheet metal hanging from the car, cracked or broken window glass, badly worn tires, noisy vehicles, smoky exhausts, missing engines, and settled or otherwise failed suspensions. We believe that if cars with such obvious visual deficiencies were ticketed on sight, most of the benefits of motor vehicle inspection could be achieved. Moreover, if a vehicle operator could receive a ticket as quickly for driving his car in an unsafe condition as he can for a moving violation, we think few would take the risk.

Ticketing could require that a certificate or receipt indicating correction of the defect be furnished together with the fine, or that a vehicle be inspected at the station after the defect was corrected as a condition to settlement of the violation. Such a law could stand on its own in lieu of motor vehicle inspection. Or, it could be used in conjunction with a periodic motor vehicle inspection system thereby easing the load on inspection facilities.

With regard to overtaxing of inspection facilities, we note that the State of New Jersey recently announced that it will remove all *new* cars from the State's motor vehicle inspection program beginning in July—to decrease waiting time. In lieu of state inspection, new cars will be inspected by dealers who must certify that the vehicles meet safety inspection standards. Dealer certification will be valid for one year and is expected to cover about 400,000 new cars annually.

The transferring of title from one owner to another does not necessarily mean that the new owner is going to use the vehicle on the public streets. A number of cars are bought for other uses such as, restoring historic vehicles, using the vehicle purchased for parts, using the vehicle for a variety of off-road purposes. Also, there are some states that do not have title laws (New York being the most notable example). In those states, inspection could not be required prior to the transfer of title because no such transfer takes place.

Therefore, we feel the requirement for inspection should be at the time the vehicle is registered to a new owner which permits it to be used on the public streets in every state. It should be pointed out that this method may result in over inspection of those vehicles having a number of owners within a one-year period.

ODOMETER AMENDMENT

Although Mr. Terry did not comment on the odometer amendment at the time he testified, Chrysler supports the amendment. We believe that the consumer should be provided with the information he needs to make an intelligent purchase of a car. We have long supported this type of legislation in the states.

PREEMPTION

Should the Congress decide to legislate property protecting bumpers despite our objections, we definitely would favor preemption of state laws or requirements on the same subject. On the other hand, we would much prefer that the property protecting bumper provision of this Bill be deleted even if this should result in our having to provide special property protecting bumpers to meet individual state laws. This is all the more true since we are confident that, by 1975, competitive pressure of the marketplace will have satisfied public demands in this area.

Senator GRIFFIN. Mr. Terry, like the previous witness, I think you have also presented a positive and constructive statement, one that has a number of useful suggestions that will help the committee, as it gives further consideration to this legislation.

I am interested in the alternative you suggest in your testimony to this elaborate testing of production models before you could actually sell cars—that pending legislation should utilize actual repair costs. As I think about that as an alternative, I have been wondering about how the legislation as drafted would apply to imported automobiles.

I know that your company is at least very much aware of the competition and the problem of imported automobiles. How do you understand—if you do understand—the legislation as drafted? How would it apply to automobiles manufactured in a foreign country?

Mr. TERRY. Well, I think it would be very difficult, to say the least, for the foreign manufacturers to comply with the legislation. But I haven't really though too much about the problems of the import car manufacturers because we haven't been able to figure out how to do our own job domestically, frankly.

The thing is unmanageable in our view, completely. We talk about—an earlier witness has suggested this—we talk about the time limit we have to do this in, trying to test production vehicles with a number of different tests, because it would be, as we visualize it, at least, 10 tests for each make and model and when you add options such as air conditioning, with and without, that doubles it. And you get into 400 or a thousand tests very quickly.

And it is not just running the tests but it is also having somebody come in or finding some other way of figuring out the cost to repair each one of these accidents, and then getting the information together and sending it to the Secretary. During this time we are building automobiles, in production already, but we have not yet announced them.

Now, these cars can't actually be sold to the public theoretically until the cars are announced. So you see you have an unmanageable inventory situation as the leadtime extends; what happens to the cars during this period? The whole production machinery and the way we do things just doesn't fit with this proposal at all.

Now, on the other hand, we believe that the proof of the pudding is in the eating; in other words, what really happens out there. Now I am sure you gentlemen known a lot more than I, having conducted these hearings, about all the various complications that you get into when you start to try to reduce insurance costs.

There are a great many factors. We at Chrysler—and I am an engineer, a technical man myself, basically—we at Chrysler have been trying to find out by some way or other what part design engineering plays in insurance costs. And the way we would propose to find out would be to get some information.

The only kind of information that would do us any good would be information on cars of a certain make and model year, in accidents that are at least similar. We could then compare those with other cars of the same make and model year in similar kinds of accidents.

But that information we have just not been able to get from any source.

Now, it could be compiled, obviously, and the data is there, and we think if a provision were made to collect this data in the proper categories and so on, it would be very useful not only to us but to all the

rest of the manufacturers and the insurance companies. Until we have information, we certainly cannot possibly figure what to do about it. These proving ground tests that might be promulgated where you would run cars presumably into other cars or into a barrier, would be so difficult to promulgate that we just think any similarity between the results of these artificial tests and what actually happens in the field would at best be coincidental.

We found, for example, that the shape of the bullet car bumper in a 45-degree side impact at the door has more to do with the amount of penetration and hence, I suppose, the repair costs of the car that it strikes than whether or not there is a side guard beam in the car that it strikes.

We ran another series of tests in connection with bumpers where we found that stiffening the corner of a bumper so it could pass a corner impact requirement actually caused an entirely different kind of crash between two approaching cars where they just barely hit each other to the extent that the car with the reinforced bumper did make $800 or $1,000 worth of damage to the car it hit, whereas the car with the weaker bumper, the original it started out with, kind of glanced off and only did one-third or one-quarter of the damage.

So, here you have got a case. I simply cite these actual test results to show that the collision damage situation is a very, very complex matter, and not one that you can really duplicate by running some tests at the proving ground.

Senator GRIFFIN. Mr. Terry, I think the answer to this question is obvious; but the cost of labor and making repairs is a significant item, isn't it?

Mr. TERRY. Yes, sir. Another reservation I would have about the ability of manufacturers to get the same kind of results that you get in the field. We would have standard mechanics who are really familiar with the cars and we would normally have them either fix the cars or estimate the cost of repairs, but we do not do some things that are commonly done in the field like straighten bumpers perhaps; in other words, manage to use the parts rather than replace them with used parts and the decision as to whether to replace or repair is always difficult, and it is different in almost every shop.

Senator GRIFFIN. In the repair shops around the country, is the rate of labor considerably different in one part of the country than another, and in some areas of a State than other areas of a State?

Mr. TERRY. Yes; I understand it is very different. I am not an expert in these matters, Senator Griffin. I just know in my own experience and the experience of members of my family having cars repaired, that by going to different shops you can get vastly different estimates.

Senator GRIFFIN. If the legislation were to utilize some system of publicizing actual cost data on repairing real accident cases, these differentials would become or could become apparent?

Mr. TERRY. Yes, I think it would——

Senator GRIFFIN. And taken into account?

Mr. TERRY. Yes; information would certainly help the situation, information as to actually what is happening. That is what everybody needs to improve the situation, in my opinion—just more information as to what is going on out there.

Senator GRIFFIN. Whereas the tests in your shop without any regard to what actual rates may be somewhere else may not be too significant in terms of insurance rates, depending on how much of it percentagewise would be attributable to labor cost, I would assume?

Mr. TERRY. Well, that is right. The tests that we run, almost any tests I can visualize we would run, would be very unlikely to actually correlate very well. There has been an awful lot of talk about the barrier tests that Dr. Haddon and his insurance institute for highway safety have run. Just to infer that what happens in the 5-mile-an-hour barrier test is an index of what happens when cars actually crash together is a very, very dangerous assumption.

When you hit a barrier, you can be sure that the foremost part of the bumper is going to hit that flat barrier. But if the foremost part of that bumper is low or high and that same car hits almost any other car, the bumpers may not even contact. So the information you got out of the barrier crash is just not going to be applicable if you don't have a good bumper that meets other bumpers.

So it is a very complex situation, and we do not feel that the insurance institute figures represent the degree of susceptibility to damage any more than any other kinds of tests we can think of—any one kind of test.

Senator GRIFFIN. I have no further questions.

Mr. Sutcliffe?

Mr. SUTCLIFFE. Mr. Terry, you make a statement that what we really need is more information in the hands of the consumer so that he can make more considered judgments as to the type of vehicle that he should purchase.

Mr. TERRY. In our hands, too.

Mr. SUTCLIFF. And in the hands of the manufacturers so they will know better what requirements the car environment actually required.

At the present time you are required to submit information to the Department of Transportation as to certain aspects of vehicle performance. Take, for example, the aspect related to the ability to take a vehicle from 60 miles per hour and bring it to a stop. That information is then compiled in a consumer information bulletin and is made available to the consumer through the dealer.

It is very interesting information, because it shows that there is a variety of stopping distances ranging from 135 feet to decelerate from 60 to 0 miles per hour to, at the high end of the spectrum, 263 feet, if my memory serves me correctly, to decelerate from 60 to 0 miles per hour.

It so happens that the car that takes the longest distance to stop is also a light car, and some of the heavier cars stop in distances of 165 feet, for example. According to your rationale, that type of information in the hands of the consumer should have a very positive effect upon manufacturers designing vehicles with shorter stopping distances because the consumer obviously, presented with that information, would want a vehicle that stopped at a shorter distance.

So, when you actually had wheels skid and when you did not is a very difficult thing to describe. You cannot allow the wheels to skid during the stopping operation. So, this means again that you have to be conservative in what you estimate you can do, and you want to be sure not to give a lower figure for every car than you can actually achieve.

Mr. TENY. We have some tire combinations and some loading combinations which may cause a relatively unfavorable weight distribution. The reason that we feel that the consumer is not too concerned about this—you see, there are other stopping distance requirements too, such as a wet pavement, and there you want a different weight distribution for maximum stopping ability than on a dry pavement. So whether a car is well designed or not, you have to ask whether you want a car that will stop quicker on a wet pavement or on a dry pavement. A lot of people would select one on a wet pavement.

Mr. SUTCLIFFE. At the present time do they have the information available to make either selection?

Mr. TERRY. Yes; there is plenty of information available on braking to the consumer in my opinion.

Mr. SUTCLIFFE. And that information has had a very beneficial impact upon the design of cars, cars' braking capabilities are being improved daily because of consumer choice in the marketplace, selecting out more appropriately cars that have better stopping distances?

Mr. TERRY. I do not know that the consumers are actually selecting cars with better numbers and we do not have any very good way of knowing that. Our information from our marketing people and from what we read in the press, surveys of various kinds, indicates that the consumer is not using this information very much.

Mr. SUTCLIFFE. How would they then use the information as to bumper capability that you suggest we rely upon rather than Federal standards?

Mr. TERRY. I said you would use insurance rate information.

Mr. SUTCLIFFE. Let's say we take that rate information in to the Secretary of Transportation who then puts it in a little companion booklet, Consumer Information Booklet No. 2, and hands it out to the dealers and says if a consumer comes in and ask for that information you are to make it available to him and you have to have that information available in the glove box of each car that is in fact sold. That information would have been digested by the Department of Transportation to give you, say, three or four different ratings. This car is A, B, C, or D as to property damage susceptibility and as to injury severity it is A, B, C, or D. The consumer is supposed to look at that and say I have an A here and a C here and different characteristics and I am supposed to use that in my decision to purchase a vehicle. That is conceivably one of the ways in which consumer information could be put out. Otherwise you could translate it right into insurance premium cost for the consumer in some way as S. 976 suggests you do.

We have all been on the highway when suddenly there is a panic stop, and there is a difference between a collision and no collision if you have that stopping capability.

What is your evaluation at the present time of the consumer information bulletin that the Department of Transportation makes available to dealers who are then in turn supposed to make it available for the consuming public?

Mr. TERRY. Well, I do not think the public uses it much. This particular example that you give for stopping distance is interesting. Actually, there is very little difference in the ability of cars to stop as far as the number of feet it takes for them to stop assuming that you have proper weight distribution for the conditions involved.

Now, there are a number of reasons why the data is spread out as much as it is, but——

Mr. SUTCLIFFE. Could you tell the committee what a couple of those reasons are?

Mr. TERRY. Yes; not the least of the reasons is we do not want to—we are permitted, let us say, to put down a stopping distance that we know will be greater than what the vehicle can actually do if we wish to. We are permitted that leeway. We do not run every make and model of car to determine its stopping distance. We divide them into groups, pick out the points where there is a fairly big gap in the group, and then we test the worst one, and we put down the same number for others so we know we can do at least as good or better than that. So we do not put down the best figure we can do for that particular one.

Another reason is we want to be sure and not give a lower figure than the vehicle can do. We want to be sure we can do better. We have tolerances on vehicles which are unavoidable. Brake lining varies from one vehicle to another. The way that these tests must be run is they must be run without allowing the wheels to skid, and this is a kind of subjective thing because we can go out and have skilled drivers run tests and every second or third time the skilled driver will skid the wheels and we have to go back and run the tests again.

I think the question is will that information in the hands of the consumer cause the free market system to select those vehicles that have the lower susceptibility to damage and therefore the competitive pressures improve the environment.

Mr. TERRY. Let me put it this way, Mr. Sutcliffe. We do not know what that information is. We do not know that there is a significant difference due to design in repair costs. We have not been able to get that information. Not knowing what it is, we cannot really estimate as to whether or not the information as to what differences are is going to influence the consumers or not.

If there turned out to be big differences in repair costs and car A is on the average $100 cheaper to repair than car B, I am darned sure that the consumer would take account of that and do something about it.

We cannot lead the consumer to decisions on the basis of information we do not even have yet. I think the reason why the consumer is not paying more attention to these consumer information guides is that it is not significant, the differences are not significant. It does not tell him anything he does not already know.

If we do go to the actual data and find out what the differences are in cost of repairs on a statistical basis and it turns out that the differences are not very great, I am sure it would not mean much to the consumer.

Mr. SUTCLIFFE. You have 100 feet of stopping distance on that one, and you are suggesting that is not really a critical difference?

Mr. TERRY. I do not know what the high one is. I know what the low one is. It is a foreign-make car; and whether they would be able to do it on every car or not, I would bet you they could not.

At any rate, I am saying that the consumer thinks he knows that his car will stop satisfactorily and he is not interested in this data because he believes he has got good brakes and can stop under the conditions he wants to stop under.

Mr. SUTCLIFFE. I appreciate that exchange, and I think it will be very helpful for us to understand the import of your suggestion that we rely upon information in the free market system to foster these beneficial developments.

One final question. You argue against the setting of Federal property loss reduction standards on the theory that the free market system should be utilized instead. But then in another part of your testimony you argue for Federal preemption of existing State requirements.

Now, how do you propose to achieve Federal preemption of the statement requirements without having a Federal standard by which to prempt the State standards?

Mr. TERRY. Well, we have a Federal standard on bumpers.

Mr. SUTCLIFFE. But that is not on property loss reduction.

Mr. TERRY. I do not feel that a property loss reduction standard is required on bumpers.

Mr. SUTCLIFFE. But some States have promulgated property loss reduction standards on bumpers.

Mr. TERRY. Yes.

Mr. SUTCLIFFE. Or for vehicles through the use of bumpers.

Mr. TERRY. Yes. But, of course, what we are aiming at is not to have to build a lot of different kinds of cars for different States because of the cost involved and the complications involved.

Mr. SUTCLIFFE. So, one uniform standard at the national level would be preferable than 50 State standards that might be passed?

Mr. TERRY. Yes, sir.

Mr. SUTCLIFFE. I have no further questions.

Senator HART (presiding). Again, thank you very much, Mr. Terry, and for the third time my apology for having been unable to hear the testimony.

Mr. TERRY. Thank you, sir.

Senator HART. This concludes our list of witnesses for today. We adjourn to resume in this room at 10 o'clock tomorrow morning.

(Whereupon, at 3:20 p.m., the hearing was recessed, to reconvene at 10 a.m., Tuesday, May 11, 1971.)

(The following information was referred to on p. 1273:)

APRIL 16, 1971.

Hon. MILES KIRKPATRICK,
Chairman, Federal Trade Commission
Washington, D.C.

DEAR MR. CHAIRMAN: The most recent issue of the *Yale Law Journal* (Vol. 80, No. 3) contains an article by a third-year law student which effectively argues that the annual model year style change practiced by the American automobile industry is an "unfair" trade practice under Section 5 of the Federal Trade Commission Act. Based on the excellence of the research and reasoning of this article, I am joining with the editors of the *Journal* in signing the attached petition to the Federal Trade Commission, requesting an immediate investigation of the anticompetitive effects of the annual restyling practice in the American automobile industry.

This law journal article has significant and simultaneous impact in two independent areas. First, the subject of the article and petition affects us all. The automobile industry's annual style change has had its intended effect: all competitors but four have been forced out of American industry, while the immeasurably high cost barriers created by frequent restyling have excluded listing new entrants for almost 50 years. Although foreign companies have recently encroached on the United States domestic market—15.3% of all cars sold in this country in 1970 were foreign-made (although over 10% of these were [illegible] United States-owned companies)—it has not altered the persistent fact of [illegible]

centration: three American firms still account for about 83% of all auto sales in the United States last year and about 90% since 1935. It must also be emphasized that foreign sales have been limited mostly to either small, low-priced models (Volkswagen and Toyota) or to luxury types (Mercedes, Jaguars and Rolls Royce). The vast middle range of intermediate models remains virtually unchallenged by foreign manufacturers.

The styling issue is especially timely now, given recent statements by the Chairman of the two largest American auto manufacturers. James Roche of General Motors blames his critics for destruction of the free enterprise system when, in fact, that system lost out in the automobile marketplace shortly after initiation of the annual model year change introduced by General Motors in 1923. And Henry Ford II has stated with unaccustomed candor: "[O]ur customers are increasingly interested in reliability, safety, utility, and economy more than in styling novelty." So much for the oft-repeated industry myth that the public demands three-pronged fins and grinning grille patterns.

In an industry where competition has been centered on petty styling distinctions, sales are heavily dependent on industry advertising to transform trivia into deceptive significance. The huge advertising expenditures, which broadcasts annual style changes and their psycho-sexual associations, push the barriers to entry yet higher.

Not only is the dominant advertising of style changes costly and displacing of functional production information to the consumer; it is also inherently deceptive. Your "totally new Impala" is nothing of the sort; it is a warmed-over version of last year's "all new Impala", graced by the rhetoric of a complete change to induce new and trade-in sales. It is a scarcely changed Impala sold in a "new" model year. And you are not told that the cost of repairing your 1971 Impala after a five mile per hour front or rear crash is almost double the cost of similar repairs on last year's new Impala (see March 10, 1971 testimony by the Insurance Institute for Highway Safety before the Senate Commerce Committee). Thus, consumers are persuaded to accept styling changes because they believe they are getting a basically new product with the style change merely the indicia of that newness. They are manipulated into thinking they are getting something when they are not—when, indeed, they are losing the added quality, safety, and durability which styling expense and promotion displace. Believing the lies, consumers are then hoist on their own trust.

Moreover, the consumer has little choice in his preferences, since this tight oligopoly has imposed very limited options with stylistic features (like fins) as "standard equipment" without their distinct cost disclosed, while safety features are offered as optional, extra cost equipment. One could easily imagine wider choices and combinations around function (cheaper care without these so-called styling changes and cars with significant product improvements instead of expensive styling), if styling were *not* a strategy to perpetuate a tight oligopoly, aftermarket sales, and barriers to entry. The economies of scale of the Big Three more than afford such functional rather than stylistic product differentiation.

The annual model change has other detrimental by-products: (1) The billions spent on design (estimated by Senator Gaylord Nelson at $1.5 billion per year just for new dies and tooling) is money, talent and ingenuity withheld from important performance innovations (performance changes are estimated at three percent of style expenditures by the Bureau of Labor Statistics (BLS)). As former Ford Vice President Donald Frey told an engineering audience in 1964: "The automatic transmission [adopted in the late Thirties on a limited mass production basis] was the last major innovation of the industry."

(2) It has become a basic deterrent to rapid implementation of needed safety and pollution regulations. The Department of Transportation, for example, from the beginning has adjusted the effective dates of new rulemaking to the model year style change, allowing two, three and even four years lead time because *designs* are "locked up" several years in advance of production. Thus, while 56,000 people annually are killed and millions injured in auto crashes, vision-obscuring fastbacks are constructed, the wheel base is extended two inches, the antenna is molded into the windshield, and windshield wipers are hidden in sharp crevices which slice through passengers in frontal crashes.

(3) The styling changes *themselves* are often dangerous to pedestrians and occupants. The stylistic demons produced for annual model showing continue to incorporate pointed bumper weaponry which increases the toll of 10,000 vehicle/pedestrian deaths and half a million injuries each year. Hood ornaments, absent from American vehicles for the past several years, are now returning to their prominent frontal position at about the level of a five-year-old's head. The

notorious horn ring and dashboard slicers have severely injured vehicle drivers and passengers, while the hard top model has weakened the side and rollover protection for occupants. A violent stylistic pornography prevails over humane engineering integrity.

(4) Constant body and parts alterations to accommodate new exterior and interior designs often result in safety defects. By the time a design is perfected, new style changes sufficiently alter the structure to create new defects, *ad infinitum*. The car model does not endure long enough to benefit from manufacturing and usage experience. Only new safety and durability features justify such annual changes.

(5) Focusing on pollution, a three-firm oligopoly can resist public and governmental pressures to be innovative on anti-pollution implementation. With a huge capital investment in existing manufacturing equipment, any such change is viewed with hostility. The illegal collusion uncovered and described in the 1969 Justice Department "smog" complaint is an example of how an oligopoly can rest on its conspiratorially-orchestrated oars until challenged by the law. And the introduction of a wholly new propulsion system—whether steam, electricity, turbine, freon or hybrid—is made impossible by the entry costs of large plant economies, advertising outlays and vertical integration which annual styling change requires.

(6) Annual style change buttresses the industry's profiteering in "aftermarket" (replacement parts) sales. Frequently redesigning parts, many of which will need repair, and then coercing the car buyer to return to the franchised dealers for replacement under the warranty system, guarantees the companies a lucrative return. Sculpturing the sheet metal slightly differently from year to year, for example, insures a captive parts aftermarket. Only Chevrolet can afford to sell a replacement part for the the 1969 Chevy and a differently-shaped part for the 1970 Chevy. Style leads to fragile ornamental bumpers, which permit the aftermarket sales of enormous quantities of crash parts, as a widely acknowledged within auto insurance circles. A recent Ph.D. thesis argues that General Motors' 20% average rate of return on capital is due largely to its parts sales (R. W. Crandell, Vertical Integration in the United States Automobile Industry).

The *Yale Law Journal* article emphasizes Section 5 of the Federal Trade Commission Act as the preferred statutory vehicle for legal attack. It is understandable why the author is pessimistic about the prospects for a "shared monopoly" suit in the auto industry. The basic problem of such a suit, however, is *not* that adequate legal doctrine does not exist to support it. By combining the size *per se* language of *Alcon* (1946) with the oligopolistic parallelism found in *American Tobacco* (1946), *Cement Institute* (1948), motion picture cases (1948), and motion picture advertising case (1954), and by utilizing the ignored "retroactivity" principle of *General Motors-DuPont* (1957), a shared monopoly suit to divest the auto companies vertically and horizontally could be instituted. Such a theory has been discussed at the Justice Department and proposed by repeated high level staff studies as a basis for a complaint in the auto industry (among others), but it has never been favorably acted upon by an Antitrust Assistant Attorney General. The Section 5 approach presently appears the most favorable statutory route, but only until the Antitrust Division summons up its courage to utilize the ample precedent which exists.

One relief alternative mentioned in the Yale article would declare a "fixed term moratorium" on style changes—but not performance changes. The Bureau of Labor Statistics (BLS) presently makes such a distinction in computing the price indexes. But before a BLS or similar system is relied on to make such judgments, two things must be stressed: (1) engineers, not only economists, must help in the analysis of quality vs. styling changes; and (2) there must be independent sources of information on automobiles—sources other than the auto firms themselves. Since BLS presently lacks both, being largely tied to the industry for its source of information, it is an inadequate call for judging what are styling changes.

This petition is an important example of citizen involvement in our legal enforcement system. In the field of discrimination, *Brown* v. *Board of Education* and *Jonas* v. *Mayer*, two private suits, established the most innovative precedent on racial discrimination in the last two decades. The policing of our corporations is also too important to be left merely to government agencies—agencies which have often adopted the principle that least is best. This petition, however, is not a lawsuit (which the federal regulations do not permit in this case) but a request for an investigation pursuant to a complaint. It is now incumbent on the Federal Trade Commission to break the perennial failure of antitrust en-

forcement in the auto industry. The task is large but the return to consumers and a competitive economy is immense, both in economic and safety-health terms.

A second and related contribution is made by publication of this article and filing of this petition. It adds to the trend that law schools and law journals are no longer content to count angels on pinheads. Attentive to problems of policy as well as procedure, eager to have an impact beyond classroom recitation, law students are beginning to devote their skills to serious contemporary problems. The utilization of this reservoir of energy and creativity cannot be underestimated, for it is often the student-scholar who can best illuminate the difficult legal issues which the legal profession is too busy, or too financially jaundiced, to confront. Industrial corporations have for too long evaded the scrutiny of legal scholarship, often by coopting their potential critics. That is now and here changing.

Sincerely,

RALPH NADER.

Enclosures.

[From the Yale Law Journal, New Haven, Conn.]

(Contact, Brad Snell)

STATEMENT FOR THE PRESS, FOR RELEASE AT 12 NOON ON SUNDAY, APRIL 18, 1971; AND TO MORNING PAPERS OF MONDAY, APRIL 19, 1971

Annual change in the style of automobiles has become an accepted way of life in this country, but now such change is under attack as a violation of the federal antitrust laws.

The attack against the style change policies of the Big Three automobile manufacturers appears in a complaint by Ralph Nader and members of *The Yale Law Journal* which was filed with the FTC on April 19, 1971. The complaint is based on a new antitrust doctrine developed in a special study that appears in the latest issue of *The Yale Law Journal*, a publication edited by Yale Law students.

The study describes a new antitrust theory under which annual style change may constitute an antitrust violation. Currently, annual restyling in the automobile industry is considered immune from prosecution under conventional Sherman and Clayton Act doctrine because of the absence either of monopoly or of explicit agreement among the Big Three. The *Journal* report adopts a new approach and demonstrates that Section 5 of the Federal Trade Commission Act empowers the FTC to investigate and to bring suit against this practice. Style change, the article concludes, is an "unfair method of competition" under the Act because it prevents new firms from entering the automobile industry.

For nearly fifty years, General Motors, Ford and Chrysler have annually changed the styles of their automobiles. The study suggests that this practice has occasioned an exit by more than 80 smaller automobile producers and barred future entry into the industry. As a result, since 1935, the Big Three have accounted for about 90 per cent of automobile sales in the United States. This concentration of sales in three firms, the report notes, is generally considered to be inimical to competitive conduct in an industry.

The article demonstrates that "concentration-increasing" practices such as annual style change were what Congress sought to prohibit when it passed the Federal Trade Commission Act in 1914 and calls upon FTC to fulfill the role that Congress had originally designed for the agency.

The report urges that "the broad legislative mandate and judicial development" of Section 5 of the Act compels the FTC to strike down annual restyling by the Big Three as an "unfair method of competition." Breaking the automobile manufacturers into several autonomous companies, it adds, would be the most appropriate and effective remedy.

The study, "Annual Style Change in the Automobile Industry as an Unfair Method of Competition," written by Bradford C. Snell, a third year law student and editor of *The Yale Law Journal*, is contained in the *Journal's* most recent issue (Vol. 80, no. 3, pp. 567–613) which was released today. The *Journal*, published monthly, carries articles by students, faculty and other legal experts.

"Industrial competition is the unequivocal premise of free market economic theory and of antitrust doctrine," the study begins. "Automobile manufacturing is one of the least competitive industries in the American economy."

Ninety-seven per cent of domestic automobile production is centered in three firms; four firms account for all passenger vehicles produced in this country.

Such a highly concentrated structure, the report says, precludes effective competition and satisfactory performance.

As a result, "the industry is characterized by inflated selling costs, product imitation, higher than competitive prices, collusive suppression of technological innovation, and persistently high rates of return." The study notes, for example, that pollution-free electric and steam vehicles can now be produced which would cost half as much to own and even less to operate than conventional gasoline automobiles. Yet the introduction of these new vehicles has been suppressed by the Big Three.

Annual restyling required four activities which small producers could ill-afford to undertake: in-house production of body and engine components, formidable advertising campaigns to accompany new model introduction, a nation-wide network of franchised dealers, tremendous capital resources.

"Whether by design or mere accident," the report states, GM's introduction of annual style change in 1923 "eliminated smaller producers unable or unwilling to restyle their products every year." There were 88 American automobile manufacturers in 1921. In the course of three years, from 1923 to 1926, 43 left the market. By 1935, only 10 firms remained, with the Big Three holding 90 per cent of the market.

"Style change has proved to be as effective a market weapon" in discouraging newcomers as it had been in eliminating earlier automobile companies, the study observes. It constitutes an insuperable barrier to new entry. As the report points out, "not a single firm has entered and survived in the automobile industry since 1923."

A prospective firm would need nearly a billion dollars to break into passenger car manufacturing, the study estimates. Had annual restyling not restructured the industry, it calculates that a firm could enter today for less than one-tenth of this cost.

This Big Three may also employ style change as a substitute for cost savings innovations. "By introducing a restyled model each year," the report says, "they provide consumers with the illusion of progress" yet avoid making improvements which might extend the life of automobiles.

A sharp distinction is drawn in the study between style and performance changes. Smaller producers, it notes, were able to develop significant automotive innovations. But the style change race ultimately eliminated all but those with huge facilities and tremendous capital resources.

According to the report, the annual change of automobile models has consisted predominantly of style rather than performance alteration. It says that in the past four years the Big Three have spent about $1½ billion annually to change their models, but that less than 3 per cent of this amount was expended on performance improvements.

Annual style change by the Big Three has never been attacked under the antitrust laws. The law journal study suggest, however, that Section 5 of the Federal Trade Commission Act prohibits practices which, like annual restyling, substantially increase industry concentration.

Thirty years ago, recalls the report, the FTC expressed concern that the "increasing importance of the style factor, the huge capital and equipment resources required to finance new models" might eliminate smaller though no less efficient competitors of the Big Three. Today all but one, American Motors, have vanished. "Only the FTC's political or administrative paralysis," the study says, "bars bringing a successful suit against the three automobile manufacturers."

If the FTC sues the Big Three, and wins, it would be entitled to far-reaching sanctions. As the fundamental impact of annual restyling was concentration of production in the hands of three firms, suggests the report, breaking these corporations into several autonomous producers would be most appropriate and most effective in restoring competition to the automobile industry.

APRIL 19, 1971.

REQUEST FOR AN FTC INVESTIGATION

Pursuant to 16 F.C.R. sections 2.1 and 2.2 the following named individuals and organizations request that the Federal Trade Commission institute an investigation of annual restyling practices by General Motors Corp., with offices and principal place of business at the General Motors Building, Detroit, Michigan. 48202; Ford Motor Co., with offices and principal place of business at The

American Road, Dearborn, Michigan, 48121; and Chrysler Motors Corp., with offices and principal place of business at 12200 E. Jefferson Ave., Detroit, Michigan, 48231, for alleged violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. sec. 45 (1964). Supporting information regarding the alleged violations is attached to this request.

(S) RALPH NADER,

Benjamin W. Heineman, Jr., David E Kendall, Bradford C. Snell, Ron Gilson, John Rupp, David Cook, David Kaye, Jim Huntwork, David Schulte, John Kuhns, Barbara Brown, Eric Neisser, Nancy Gertner, Steve Hadley, Tom Jorde, John Crook, John Dystel, Mark Tushnet, Larry Lustgarten, Harold Kwalwasser, Jeff Glekel, Linda Tedeschi, Rick Block, Bill Kelly, Steve Oxman, Steve Munzer, David Schneider, Jerry Wilkerson, Reid Feldman, Al Wilensky, Jerry Siegel, Susan Goldberg, Henry Fields, Andy Hurwitz, Stan Jaspan, Dan Steinbock, Peter Hamilton, Stan Inghber, Bob Carter, Members of: The Yale Law Journal, Yale Law School, 127 Wall Street, New Haven, Conn. 06520.

Annual Style Change in the Automobile Industry as an Unfair Method of Competition

Bradford C. Snell

Since 1935, General Motors, Ford and Chrysler have accounted for about 90 per cent of automobile sales in the United States. This Note will argue that such a concentration of sales in three firms is inimical to competition in this industry. Moreover, it will contend that these firms achieved and preserved undue concentration in violation of Section 5 of the Federal Trade Commission Act through their pursuit of an "unfair" trade practice: annual style change. Part I briefly sets forth the relevant economic and legal criteria for evaluating competition in the automobile industry. The preliminary economic analysis in Part II suggests the anticompetitive nature of annual style change which justifies a more searching analysis by the Federal Trade Commission. Part III argues the applicability of Section 5 of the Federal Trade Commission Act to annual automobile style change, and Part IV outlines some considerations regarding appropriate relief which the FTC could seek.

I. Evaluating Competition

Industrial competition is the unequivocal premise of free market economic theory and of antitrust doctrine.[1] It is generally evaluated in terms of three distinct market elements: structure, conduct and performance.[2] The competitiveness of an industry's structure depends upon

1. The most thorough treatment of the combined legal and economic implications of industrial competition is that of C. KAYSEN & D. TURNER, ANTITRUST POLICY: AN ECONOMIC AND LEGAL ANALYSIS (1965). That competition is the fundamental premise of antitrust doctrine was proclaimed early by the Supreme Court in Standard Oil Co. v. United States, 221 U.S. 1, 52 (1911); and more recently in Northern Pacific Ry. v. United States, 356 U.S. 1, 4-5 (1958): "the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress . . . ."

2. For a lucid economic analysis of the structure-conduct-performance analysis, see R. CAVES, AMERICAN INDUSTRY: STRUCTURE, CONDUCT, PERFORMANCE (2d ed. 1967). A more exhaustive description of this analytic framework is provided in J. BAIN, INDUSTRIAL ORGANIZATION (2d ed. 1968) [hereinafter cited as INDUSTRIAL ORGANIZATION]. For a general application of this analysis to antitrust problems, see C. Mueller, *The New Antitrust: A Structural Approach*, 1 ANTIT. LAW & ECON. REV. 87 (Winter 1967); S. Smith, *Antitrust and the Monopoly Problem*, 2 ANTIT. LAW & ECON. REV. 19 (Summer 1969). This framework has also been recently employed in the courtroom. *See, e.g.*, transcript excerpts from Columbia Broadcasting System, Inc. (FTC 1967), reported by Hiura, *Economics in the Courtroom: A Structural Defense in a Monopoly Case*, 1 ANTIT. LAW & ECON. REV. 45 (Summer 1968); Golden Grain Macaroni Co. (FTC 1969), reported by Scanlon, *"Technology" of Antitrust Litigation*, 3 ANTIT. LAW & ECON. REV. 43 (Fall 1969).

market concentration (the number of firms and their individual shares of industry sales) and barriers to entry (obstacles that impose on newcomers higher costs per unit than those encountered by the established firms).[3] The competitiveness of an industry's conduct depends upon how constituent firms make price and output decisions (independently, interdependently or collusively) and with what purpose or effect (enhanced interfirm rivalry, exclusion of newcomers, or predation).[4] The competitiveness of an industry's performance depends upon the extent to which its conduct contributes to progressiveness (the number and importance of actual innovations as compared with what optimally could have been developed) and to efficiency (the reduction of costs and prices to absolute minima).[5]

A. *Economic Criteria; Market Structure as the Determinant of Industry Conduct and Performance*

Holding that structure determines conduct and conduct determines performance,[6] much antitrust economic theory posits that an anticompetitively structured industry precludes the long-run survival of effectively competitive conduct and performance.[7] In fact, empirical studies indicate that high market concentration and high barriers to entry (structural factors) engender price fixing, price leadership, product imitation and other forms of collusive and interdependent behavior

3. The competitive significance of market concentration is said to lie in the fact that, as the number of firms decreases and the percentage of total industry sales held by each increases, the probability of their recognizing their "mutual interdependence," *i.e.*, starting to price like collective monopolists rather than independent competitors, begins to increase significantly beyond a critical point. Mueller, *supra* note 2, at 89.

Barriers to entry are generally treated in three separate categories: (1) scale economy barriers (cost disadvantages resulting from inefficient levels of production), (2) product differentiation barriers (relating to promotional cost disadvantages), and (3) absolute cost barriers (primarily cost disadvantages encountered by entrants in securing essential input factors, *e.g.*, patents or capital). For a detailed explication of these various concepts, see J. BAIN, BARRIERS TO NEW COMPETITION (1956) [hereinafter cited as BARRIERS].

4. As distinguished from structure or performance, "conduct" refers to those actions taken by the individual firm as part of its competitive strategy. It involves two dimensions: (1) whether price and output decisions are made independently or collusively (collusion in the economic sense, thereby including interdependent oligopoly behavior as well as conspiratorial overt or tacit agreement), and (2) the intent (*i.e.*, predation) or effect (heightened interfirm rivalry or exclusion of competitors). Mueller, *supra* note 2, at 90.

5. "Performance" refers to the appraisal of how much the economic results of an industry's conduct deviate from the best possible contribution it could make to achieving the general goals of a free market economic system, particularly efficiency in production, distribution and progressiveness in the development and application of technological innovation. *See* CAVES, *supra* note 2, at 96-115.

6. Mueller, *supra* note 2, at 89-90.

7. *Id.* at 91. "[A]n industry which does not have a competitive structure will not have competitive behavior." United States v. du Pont (Cellophane), 351 U.S. 377, 426 (1956) (dissenting opinion).

(conduct), which lead to artificially inflated prices and diminished rates of innovation (performance features).[8]

More specifically, an impressive amount of economic data supports the judgment that concentration of more than 50 per cent of an industry's sales in four or fewer firms (*i.e.*, a "tight oligopoly") gives rise to conduct and performance which approximate that of a monopolist or well-disciplined cartel.[9] This degree of concentration destroys the incentive for independent decisions on price and output, and encourages instead the development of "oligopolistic interdependence," a recognition that the profits of each firm are dependent on the decisions of each of the others.[10] As a result, these few firms collectively eschew price and product competition in favor of "joint-profit maximization": output is restricted and prices are set above competitive levels, albeit in a noncollusive fashion.[11] In effect, the industry is "collectively monopolized."[12]

Barriers to entry comprise the second structural criteria for evaluating industrial competition. Leading firms in a tight oligopoly can set higher-than-competitive prices and reap monopoly profits only if they are able to deter new entrants whose added output would push prices back to a competitive level.[13] The effectiveness of these barriers is reflected generally by the persistence of high concentration levels.[14]

8. *See, e.g.*, Erickson, *The Economics of Price Fixing*, 2 ANTIT. LAW & ECON. REV. 94 (Spring 1969); Mueller, *supra* note 2, at 90-91; Weiss, *Average Concentration Ratios and Industrial Performance*, J. OF INDUS. ECON. (July 1963); Collins & Preston, *Concentration and Price Margins in Food Manufacturing Industries*, J. OF INDUS. ECON. 226 (July 1966); Stigler, *A Theory of Oligopoly*, 72 J. POL. ECON. 44 (1964); Mann, *Seller Concentration, Barriers to Entry, and Rates of Return in Thirty Industries, 1950-1960*, REV. OF ECON. & STAT. 296-307 (August 1966). *See generally* Machlup, *Oligopoly and the Free Society*, 1 ANTIT. LAW & ECON. REV. 11 (July-August 1967). A voluminous compilation of economic studies concerning the effect of high industry concentration on market competition and performance is contained in *Hearings on Economic Concentration, Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 89th Cong., 1st Sess. (1965).

9. Mueller, *supra* note 2, at 116-117.

10. *Id.* at 112-16. Galbraith refers to this form of price and output behavior as "oligopolistic rationality." *Hearing on Planning, Regulation and Competition in the New Industrial State, Before Subcomm. of the Select Comm. on Small Business*, 90th Cong., 1st Sess. 8 (1967). In ruling on mergers, the Supreme Court has acknowledged the problem of mutual interdependence in highly concentrated industries. It has noted that as industries become more highly oligopolistic ". . . the greater is the likelihood that parallel policies of mutual advantage, not competition, will emerge." United States v. Aluminum Co. of America, 377 U.S. 271, 280 (1964).

11. KAYSEN & TURNER, *supra* note 1, at 105; Mueller, *supra* note 2, at 114-16. *See also* REPORT OF THE WHITE HOUSE TASK FORCE ON ANTITRUST POLICY 5 (released May 21, 1969) [hereinafter cited as THE NEAL REPORT].

12. Mueller, *supra* note 2, at 115.

13. *See* CAVES, *supra* note 2, at 22-23; note 3 *supra*. Established firms in persistently concentrated industries have accomplished this by erecting obstacles that impose on newcomers higher costs per unit than those encountered by firms already in the industry. Mueller, *supra* note 2, at 89 n.7.

14. Thus, it has been suggested that where an industry's concentration ratio has been at

More precise measurements of entry barriers, however, have been developed. Empirical investigations reveal that large economies of scale, high promotional expenditures, and enormous capital requirements are powerful deterrents to new entry.[15] If an industry is surrounded by any one of these barriers, the possibility of new entry is substantially reduced. If it is protected by all three, entry is "effectively blockaded."[16] By preserving tight oligopolies from the deconcentration which would result if new firms were able to enter, barriers of such magnitude contribute to anticompetitive conduct and unsatisfactory performance.

Accordingly, some antitrust economists now urge divestiture of leading firms in industries with 4-firm concentration ratios of 50 per cent or more and with barriers which all but foreclose new entry.[17] They contend that deconcentrated industries would behave more competitively in making price and output decisions and would perform more satisfactorily by providing consumers with lower prices, reduced production and distribution costs, and an accelerated rate of technological innovation. In short, they argue that a larger number of competitors would provide a greater degree of competition.

B. *Legal Criteria: The Gap Between Economic Reality and Antitrust Laws in the Automobile Industry*

As measured by either of the structural economic criteria, automobile manufacturing is one of the least competitive industries in the American economy. Its structural concentration is unprecedented. Ninety-seven per cent of domestic production is centered in three firms; four firms account for all passenger vehicles produced in this country.[18]

70 per cent or more for 7 of the past 10 years, substantial barriers can be presumed. THE NEAL REPORT, *supra* note 11, at 5-7, 15. *But see* Brozen's criticism that the NEAL REPORT fails to deal explicitly with entry barriers. *The Antitrust Task Force*, 13 J. LAW & ECON. 279, 284 (1970).

15. *See generally* BARRIERS, *supra* note 3. In his intensive survey of 20 American industries, Professor Bain for example found that entry was extremely unlikely in concentrated industries with significant economies of scale up to 5 per cent or more of national sales volume *Id.* at 81. Tremendous promotional expenditures which compel newcomers to outspend established firms by an additional 5 per cent of unit retail price in countervailing promotion represented a further impediment to new competition *Id.* at 127. Moreover, when the initial capital required for entry into an industry at an efficient level of production and distribution exceeded $100 million, entry was highly improbable. *Id.* at 158.

16. Mueller, *supra* note 2, at 124. *See* BARRIERS, *supra* note 3, at 170.

17. *See, e.g.*, KAYSEN & TURNER, *supra* note 1, at 266-72; Smith, *supra* note 2, at 20-21. Other economists set the critical 4-firm concentration ratio for divestiture purposes at 70 percent. THE NEAL REPORT, *supra* note 11, 12-15.

18. STANDARD & POOR, INDUSTRY SURVEYS: *Autos—Basic Analysis* (October 1, 1970) at A161. The market shares by producers for 1969 were as follows: General Motors—53.7%, Ford—26.3%, Chrysler—16.9%, American Motors—3.0%. Although generally not considered a passenger car producer, Checker Motors accounted for the 0.1% remainder of 1969 production. *Id.* The Big Three continued to hold 96.6% of the market during the first half of

This degree of concentration is twice that generally considered inimical to competitive conduct and performance.[19] Moreover, the condition of entry into automobile production has been described as "effectively blockaded."[20] Concentration has exceeded the 70 per cent threshold for presumptively high barriers to entry not only for 7 of the past 10 years, but for each of the past 40 years.[21] More precisely, the industry strikingly exhibits the indicia of high barriers to entry: large economies of scale, high promotional expenditures, and enormous capital requirements.[22]

Given its anticompetitive structure, the anticompetitive nature of the automobile industry's conduct and performance is not unexpected. In fact, the Big Three interdependently engage in price and product conduct which has the same anticompetitive impact as if it had been collusively planned.[23] As a result, the industry is said to exhibit the indicia of unsatisfactory market performance: inflated selling costs, product imitation, higher-than-competitive prices, collusive suppression of technological innovation, and persistently high rates of return.[24]

1970. STANDARD & POOR, INDUSTRY SURVEYS: *Autos—Current Analysis* (August 13, 1970) at A152.

19. *See* note 9 *supra*.

20. L. WEISS, ECONOMICS AND THE AMERICAN INDUSTRY 375 (1966). Bain concludes that obstacles to entry into the industry are "insuperable." INDUSTRIAL ORGANIZATION, *supra* note 2, at 287. Economists Schupack and Carroll describe the wall surrounding the automobile industry as "insurmountable" and "impregnable," respectively. *Hearings before Subcomm. of the Senate Select Comm. on Small Business on Planning, Regulation, and Competition in the American Industry*, 90th Cong. 2d Sess. 907, 920 n.6 (1968) [hereinafter cited as *1968 Hearings*]. *But see* note 124 *infra*.

21. The Big Three (GM, Ford and Chrysler) have accounted for more than 70 percent of industry sales since 1929. FEDERAL TRADE COMMISSION, REPORT ON THE MOTOR VEHICLE INDUSTRY 29 (1939) [hereinafter cited as FTC REPORT]; AUTOMOTIVE NEWS, ALMANAC ISSUES, for each of the years since 1937.

22. Economies of scale in this industry require that, merely to survive, a firm must capture from 4 to 8 per cent or more of total sales. These percentages were derived from Bain's minimum scale economy estimates of 300,000-600,000 unit production per year, as applied to 1969 industry sales of 8.38 million. INDUSTRIAL ORGANIZATION, *supra* note 2, at 286; STANDARD & POOR, *supra* note 18, at A159. This scale economy disadvantage was found by Bain to be one of the most formidable of its kind in American industry. *See* note 15 *supra*. Promotional losses, resulting particularly from price concessions necessary to maintain a solvent national dealership system, would likely average at least 5 per cent of factory price over the first 5 to 10 years. INDUSTRIAL ORGANIZATION, *supra* note 2, at 285-86. This represents the severest of promotional disadvantages revealed in Bain's studies. *See* note 15 *supra*. The absolute minimum amount of capital required for efficient production and distribution has been estimated at $779 million, or more than 7 times larger than the amount considered by Bain as making entry highly improbable. *See* note 15 *supra* and p. 588 *infra*. Significantly, not a single firm has entered the automobile industry since 1923. *See generally* Vatter, *The Closure of Entry in the American Automobile Industry*, 4 OXFORD ECON. PAPERS 213 (1952).

23. *See, e.g.*, BARRIERS, *supra* note 3, at 216; Galbraith, *supra* note 10, at 8.

24. *See* WEISS, *supra* note 20, at 350-68; Lanzillotti, *The Automobile Industry*, in W. ADAMS, THE STRUCTURE OF AMERICAN INDUSTRY 338-46 (1961); Loescher in *1968 Hearings*, *supra* note 20, 913-17. The industry's protective imitation of product designs has been underscored by BAIN in INDUSTRIAL ORGANIZATION 425; Lanzillotti, *supra* at 329-30. Its failure to develop durable and pollution-free vehicles is emphasized in J. ESPOSITO, VANISHING AIR:

Just from available data, a strong presumption arises that in structure, conduct and performance, the automobile industry is, at least by comparison to other industries, markedly anticompetitive. Yet, it has escaped antitrust prosecution. It seems to represent, therefore, a striking example of the gap which exists between economic reality and antitrust remedies.

Unlike antitrust economic theory, the antitrust laws focus on the behavioral rather than structural element of the structure-conduct-performance triad. They are primarily concerned with outlawing offensive business conduct rather than with striking down anticompetitive structures which produce unsatisfactory performance.[25] Thus, the Sherman Act proscribes not structural monopoly but collusive activities "in restraint of trade" and activities that tend to "monopolize" trade.[26] Economists and antitrust officials generally agree, however, that while the Big Three's price and output conduct has an impact effectively equivalent to that of a Sherman Act conspiracy, these decisions are

THE NADER REPORT ON AIR POLLUTION ch. 2 (1970); and by Sen. Nelson in *Hearings on the Role of Giant Corporations Before the Subcomm. on Monopoly of the Senate Select Comm. on Small Business*, 91st Cong. 1st Sess. 538-39 (1969) [hereinafter cited as *1969 Hearings*]. *See also* the complaint filed by the Antitrust Division of the Department of Justice in January of 1969 charging that the Big Three had conspired in violation of section 1 of the Sherman Act to suppress the development of automotive emission control devices. United States v. Automobile Mfrs. Ass'n, Inc. (D. Cal. January 10, 1969). A consent decree was entered enjoining the conspiracy in October. (1969 Trade Cases ¶ 72,907). But fifteen states subsequently have sued *parens patriae* in the Supreme Court asking for a mandatory injunction compelling the auto makers to develop a pollution-free engine at the earliest possible date. State of Washington v. General Motors, 5 TRADE REG. REP. ¶ 50,285, at 55,613 (August 17, 1970). Indeed, within the past few months GM, Ford and Chrysler have joined in a major counter-attack against government agencies and consumer protection groups which complained that the industry was refusing to produce safer, pollution-free cars. Ford, for example, has sent brochures which term automotive air pollution a myth to its 7,000 dealers for redistribution to the public. Similarly, Chrysler has sent its chief emission expert around the country to argue that the elimination of automotive emissions "cannot be justified during most of this decade." N.Y. Times, November 18, 1970, at 6, col. 1. Meanwhile, GM has set a new trend in automotive safety by seeking a court injunction against a Department of Transportation recall order regarding serious safety defects in the wheels of 200,000 GM pickup trucks. NEWSWEEK November 23, 1970, at 112. *But see* recently enacted federal legislation encouraging the production of pollution-free automobiles. Pub. L. No. 91-604 (Dec. 31, 1970).

25. Mueller, *supra* note 2, at 105-06; Smith, *supra* note 2, at 41. It has been suggested, however, that the Supreme Court's merger opinions since 1962 reflect a growing judicial acceptance of the critical role of market structure. Brodley, *Oligopoly Power Under the Sherman and Clayton Acts—From Economic Theory to Legal Policy*, 19 STAN. L. REV. 285, 298 (1967). *See, e.g.*, Brown Shoe Co. v. United States, 370 U.S. 294 (1962); United States v. Philadelphia Nat'l Bank, 374 U.S. 321 (1963); United States v. Aluminum Co. of America, 377 U.S. 271 (1964); Federal Trade Commission v. Procter & Gamble Co., 386 U.S. 568 (1967). The influence of the "structuralist" approach in the merger area can also be seen in the heavy reliance placed on concentration ratios in enforcement guidelines by the Department of Justice and the Federal Trade Commission.

26. 15 U.S.C. §§ 1, 2 (1964).

84-345 O - 71 - pt. 3 -- 28

made interdependently, without any evidence of collusion.[27] Moreover, although the exclusion of nearly a hundred earlier producers and erection of insurmountable barriers to new entry were as effective as the conduct of a predatory monopolist, this result could not provide the basis for a Sherman Act charge of monopolization absent the emergence of a single monopoly firm.[28] Similarly, the Clayton Act reaches mergers or coercive practices such as exclusive dealing and tying arrangements.[29] Although the Big Three's conduct is analogous in anticompetitive impact to these forbidden practices, it is again distinguishable by its lack of agreement.[30]

For years, antitrust commentators have sought to stretch existing antitrust doctrine to reach the presumed anticompetitive aspects of the automobile industry. Professors Turner and Posner, for example, have argued that "agreement" under the Sherman Act might include or be redefined to include interdependent though non-collusive behavior by jointly-acting oligopolists.[31] The broadest reading of conspiracy law holdings under the Sherman Act, however, would not permit such an elastic interpretation of agreement.[32]

Alternatively, Professors Turner and Sherwood have suggested that since the Sherman Act looks to substance rather than form, the conduct of jointly-acting oligopolists should be treated as that of a single monopolist when their effects are almost identical. Thus, they have urged that where oligopolists effectively "share monopoly power" and engage in predatory or exclusionary practices, they might be charged with having monopolized in violation of the Sherman Act.[33] Significantly, however, neither Turner nor Sherwood could cite a single

27. WEISS observes, for example, that the automobile industry "avoids formal collusion" and that "[t]here is no evidence that blockaded entry was intentionally sought by members of the industry," *supra* note 20, at 375; BARRIERS, *supra* note 3, at 216.

28. *But see* note 33 *infra*.

29. 15 U.S.C. § 15 (1964).

30. *See* pp. 605-07 *infra*.

31. Posner argues that noncompetitive oligopoly pricing behavior results from "tacit collusion" which can be proceeded against under section 1 of the Sherman Act. *Oligopoly and the Antitrust Laws: A Suggested Approach*, 21 STAN. L. REV. 1562 (1969). Turner urges that although interdependent oligopoly pricing should not be prosecuted under section 1, interdependent oligopoly nonpricing conduct is arguably reachable under that section. *The Definition of Agreement Under the Sherman Act*, 75 HARV. L. REV. 655, esp. at 677-84 (1962).

32. Although Turner interprets conspiracy language in Interstate Circuit, Inc. v. United States, 306 U.S. 208 (1939), as reasonably including interdependent conscious parallelism, note 31 *supra* at 683, no subsequent antitrust decision has so held. *See also* A. NEALE, THE ANTITRUST LAWS OF THE UNITED STATES 171-72, 180-82, 445-46 (1960).

33. Turner, *Economic Regulatory Policies*, 82 HARV. L. REV. 1207, 1225-31 (1969); Sherwood, *Separate Statement: White House Task Force Report*, 2 ANTIT. LAW & ECON. REV. 61 (Winter 1968-69). *See also* S. Smith, *supra* note 2, at 58.

precedent in support of their argument. Indeed, after considering both these approaches, a recent White House Task Force on Antitrust Policy rejected them and concluded that competition in highly concentrated industries could probably only be restored by enactment of new legislation empowering courts to dissolve leading firms in entrenched oligopolies.[34]

With respect to restoring competitive structure and performance to the automobile industry, however, there may be a viable alternative to either stretching the Sherman or Clayton Acts beyond the limits of precedent or relying upon new structural, antitrust legislation. A particular form of conduct, annual style change, may have largely determined this industry's anticompetitive structure and may as a result constitute an "unfair method of competition" under Section 5 of the Federal Trade Commission Act.[35] The Sherman and Clayton Acts, to be sure, proscribe several kinds of specific business behavior such as mergers and predatory or exclusionary practices by a dominant firm which can severely alter the structure of an industry, rapidly transforming an unconcentrated competitive structure to a concentrated oligopolistic one.[36] They fail, however, to reach other forms of "concentration-increasing" conduct which may amass most of an industry's total sales within a few firms and erect formidable entry barriers to newcomers.[37] Arguably, annual style change is conduct of this latter variety and should be condemned as "unfair" under Section 5.

The primary purpose of this Note, therefore, is to suggest strongly that the three leading firms in the automobile industry have engaged in conduct—annual style change—which ultimately transformed a competitive structure to an anticompetitive oligopolistic one in violation of Section 5 of the Federal Trade Commission Act. By way of a preliminary economic analysis, this Note will argue that annual style change has drastically increased market concentration, raised impenetrable barriers to entry, and directly contributed to this industry's record of noncompetitive market performance. Then, by analogizing the anticompetitive impact of annual style change to recognized anti-

34. The White House Task Force proposed a new statute, the "Concentrated Industries Act," which would prohibit any market structure in which, for a prescribed period of years, four or fewer firms had an aggregate market share of 70 per cent or more and industry sales exceeded $500 million. Relief would take the form of dissolution to the point where no single firm would hold more than 12 per cent of total sales. THE NEAL REPORT, *supra* note 11.

35. 15 U.S.C. § 45 (1964).

36. Mueller, *supra* note 2, at 110.

37. *See* Smith, *supra* note 2, at 51-52 (advertising); Mueller, *supra* note 2, at 110 n.39 (exclusive distributorships).

trust violations, as Section 5 cases seem to require, a prima facie case of illegality under Section 5 will be established.

What follows, however, is no substitute for a full-scale economic investigation and legal assessment of this practice by the FTC. Rather this Note is designed to suggest on the basis of available evidence the anticompetitive implications of annual automobile style change and the compelling need for the FTC to undertake a more thorough inquiry of the possible illegality of annual automobile style change under Section 5 of the FTC Act.

II. Economic Impact of Annual Style Change in the Automobile Industry: A Preliminary Analysis

Before analyzing the anticompetitive impact of annual style change on structural concentration and barriers to entry and its impairment of this industry's competitive market performance, a distinction between style change and performance modifications must be drawn. As complex pieces of machinery, automobiles present manufacturers with practically unlimited opportunities for physical product modification in both appearance and performance. Their appearance may be drastically altered by varying the amounts of chromium and contour trim, changing the body shell patterns and radiator grill designs, and altering the range of colors and interior textures.[38] Their performance may be modified by structural changes which affect safety, durability, economy, reliability, carrying capacity, maneuverability, comfort, and convenience.

In this Note, "style changes" will refer solely to alterations in the appearance, as contrasted with modifications in the performance, of automobiles.[39] It is not unrealistic to distinguish style from performance changes, since the Bureau of Labor Statistics in the U.S. Department of Labor has for many years made this determination in compiling official consumer price indexes. Specifically, the BLS employs detailed

38. J. KEATS describes this process pithily:

> The basic shell is bent a little bit this way, this year, and is bent slightly that way next year. The headlights are higher one year, lower the next, or grow in double . . . The door knobs are hidden, or recessed, or turned into buttons or bars . . . Tail fins grow higher, or maybe, grow in sidewise.

THE INSOLENT CHARIOTS 54-55 (1958). Annual style change may be accomplished either by altering existing models or by annually introducing "entirely new" model lines.

39. This distinction is not always easily drawn. *E.g.*, has the migration of the gear shift from floor to steering column and, recently, back to floor again affected performance or appearance? INDUSTRIAL ORGANIZATION, *supra* note 2, at 423-24.

criteria for evaluating annual automobile model changes in order to adjust quoted prices of new automobiles for changes in "quality." In making these quality adjustments, it is compelled to distinguish between structural changes which affect safety, reliability, durability, economy, and comfort and "[s]tyle, or changes in appearance design solely to make the product seem new or different."[40] The BLS adjusts new automobile prices only for changes of the former variety.[41] Thus, a distinction between style and performance changes would appear to be empirically justifiable.

Annual model change has presumably consisted of both style changes and performance modifications. The industry's persistent refusal to provide inquiring Congressional committees with cost data, however, precludes a precise dichotomy between annual expenditures for style as contrasted with expenditures for performance alterations.[42] Nonetheless, several economists have testified that annual model change is predominantly oriented to changes in style rather than improvements in performance.[43] Indeed, they emphasize that, before the 1920's, models were changed every few years to incorporate significant technological breakthroughs, but that since then the rate of technological progress has declined while model changes have become an annual phenomenon.[44] Of course, the performance of automobiles has improved since the 1920's, but arguably not at a rate justifying annual model change. For example, in 1969, the Big Three spent $1.56 billion or about $195 per automobile to change its models; the Bureau of Labor Statistics reported, however, a net reduction in performance improvements of $—3 per automobile, or approximately $—23.9 million for the Big Three's combined output. Consequently, they spent more than a billion and a half dollars to make their 1969 models seem "new and different" in appearance. BLS performance data, computed for every model year since 1968, moreover, indicated that the 1969 results were not exceptional. The value of performance improvements in 1968 through 1971 models averaged $5.50 per automobile each year, or less than 3 per cent of the Big Three's total model change expenditures

40. U.S. Department of Labor, Bureau of Labor Statistics, Guidelines for Adjustment of New Automobile Prices for Changes in Quality of Product (July 19, 1968).

41. The BLS does make adjustments, however, for those style changes previously offered as options and purchased by the majority of consumers, *id.* Presumably, this exception allows for explicit consumer preference.

42. *See* S. Rep. No. 627, 91st Cong., 1st Sess. 48-51 (1969).

43. Senate Subcomm. on Antitrust and Monopoly of the Comm. on the Judiciary, Study of Administered Prices in the Automobile Industry, 85th Cong., 2d Sess. 81-87 [hereinafter cited as Administered Prices]; Lanzillotti, *supra* note 24, at 342-43.

44. Administered Prices, *supra* note 43, at 81-87; Lanzillotti, *supra* note 24, at 342-43.

during that period.[45] In short, it would be reasonable to assume that annual model change has consisted primarily of changes in styling characteristics.

A. *Style Change as a Market Weapon for Achieving Concentrated Economic Power*

The trend toward concentration in the automobile industry is unequalled in the history of American manufacturing.[46] From the inception of this industry in the late 1890's, the number of independent producers grew steadily to a peak of 88 in 1921.[47] Then, suddenly, about 1923, the number of automobile producers began to decline rapidly. In the course of three years, from 1923 to 1926, 43 firms left the market.[48] By 1935, only 10 firms were producing automobiles.[49] Today, 4 producers remain, with 3 firms accounting for 97 per cent of all domestic car production.[50]

Economists generally agree that four factors were primarily responsible for the rapid demise of competitors since the 1920's: components integration, large-scale advertising, franchised distribution, and a tremendous increase in capital requirements.[51] Arguably, these four decisive factors resulted from the development of an even more fundamental industry practice: annual style change. Significantly, it was in 1923, a near high-water mark in terms of the number of active

45. 1969 combined retooling figure for the Big Three obtained from STANDARD & POOR, *supra* note 18, at A170. Their combined output amounted to 7.98 million units in 1969. *Id.* at A161. The BLS reported a net performance increase in the 1969 models of $1 which included, however, a $4 expenditure to meet higher federal safety standards. Non-mandated performance changes, therefore, amounted to $-3. U.S. DEPARTMENT OF LABOR PRELIMINARY REPORT ON PRICES OF NEW PASSENGER CARS, USDL-9994 (October 7, 1969). Per unit average performance improvement figure of $5.50 for model years 1968-71 derived from the following BLS data: 1968 (Statement of Peter Henle, Chief Economist, Bureau of Labor Statistics, in *Prices of Motor Vehicle Safety Equipment, Hearings Before the Subcomm. on Executive Reorganization, of the Senate Comm. on Government Operations*, 90th Cong., 2nd Sess. 122-24 (1968)); 1969 (USDL-9994, October 7, 1969); 1970 (USDL-10-818, November 18, 1969); 1971 (USDL-11-535, November 6, 1970). Given annual sales by the Big Three at about 8 million units and average model change expenditures at about $1.5 billion per year for the 1968-71 period, a $5.50 performance increase represents 2.9 per cent of estimated total model change costs (8 mil. × $5.50/$1.5 bil. = 2.9%). See also Ralph Nader's criticism that as a result of industry pressures the BLS overstates quality improvements and that industry expenditures attributed to safety features actually include the costs of styling changes. *Prices of Motor Vehicle Safety Equipment, supra*, at 60-70.

46. Lanzillotti, *supra* note 24, at 312.

47. R. EPSTEIN, THE AUTOMOBILE INDUSTRY 176 (1928). The depression of 1921-1922 and consequent decline in automobile demand brought this figure down to 83 by the end of 1922. *Id.* at 176, 187.

48. *Id.* at 176.

49. ADMINISTERED PRICES, *supra* note 43, at 8-9.

50. *See* note 18 *supra*.

51. *See, e.g.*, WEISS, *supra* note 20, at 331-32, 336-39; Lanzillotti, *supra* note 24, at 321-34; Vatter, *supra* note 22, at 224-27.

automobile producers, that General Motors introduced annual change.[52] By 1928, it had become the industry practice.[53]

Prior to the introduction of annual style change in 1923, entry into the automobile industry was relatively easy, exits were insubstantial in number, and concentration was consequently low.[54] Scale economies in components integration provided no significant deterrent to the large number of early entrants to this industry.[55] Similarly, entry was not precluded by a need to engage in massive advertising.[56] Moreover, the availability of standardized interchangeable replacement components up until the 1920's obviated any need for integration forward into extensive networks of franchised dealers with specialized maintenance capabilities.[57] Thus, capital requirements for entry prior to the 1920's were negligible. The industry's emphasis upon external economies of independent parts manufacturers rather than internal scale economies of integrated fabrication, for example, greatly reduced the amount of initial investment required for operation.[58] The Ford

52. A. SLOAN, MY YEARS WITH GENERAL MOTORS 167 (1964); L. SELTZER, A FINANCIAL HISTORY OF THE AUTOMOBILE INDUSTRY 212 (1928). *See also* GM's account of its introduction of a "new dynamic product concept" in the early 1920's, *i.e.*, annual style change. GENERAL MOTORS, THE AUTOMOBILE INDUSTRY: A CASE STUDY IN COMPETITION 4-7 (1968).

53. Menge has argued that since the mid-1920's "[s]lowly and inexorably a code of behavior based upon rapid periodic style change" drove "the small producers from the industry." *Style Change Costs as a Market Weapon*, 76 Q.J. OF ECON. 632, 634 (1962).

54. *See generally* Lanzillotti, *supra* note 24, at 314. In 1915, 3-firm concentration stood at approximately 50 per cent. FTC REPORT, *supra* note 21, at 29. In only one year (1910) did the rate of failure greatly exceed the rate of entry. It has been argued that this deviation from an otherwise uniformly positive entry-exit ratio up until the early 1920's was due to the refusal by many producers to change from 1- and 2-cylinder engines to the 4-cylinder version. ADMINISTERED PRICES, *supra* note 43, at 4.

55. INDUSTRIAL ORGANIZATION, *supra* note 2, at 296. Automobile producers were primarily "assemblers" of bodies and engines purchased from firms specializing in automotive parts production. *Id.*; Vatter, *supra* note 22, at 216-17. Since producers had access to parts from external suppliers, they were not compelled to integrate backward into components production. Consequently, most of them engaged exclusively in assembly operations, which required only minimal levels of output for optimal efficiency (*i.e.*, lowest per unit production costs). INDUSTRIAL ORGANIZATION, *supra* note 2, at 296.

56. Since the designs of most automobiles produced before 1923 remained basically unchanged for substantial periods of time, the public became familiar with them. Thus, there was little to be gained by repeatedly calling the public's attention to the outstanding features of unchanged models. *See generally* ADMINISTERED PRICES, *supra* note 43, at 96. Total magazine advertising expenditures by all passenger car manufacturers in 1915, for instance, amounted to less than $3 million. EPSTEIN, *supra* note 47, at 147.

57. In fact, automobile manufacturers during this period generally distributed their products to independent wholesalers and retailers who resold to the public. FTC REPORT, *supra* note 21, at 106-10.

58. Engaged only in the assembly and sale of completed vehicles, early producers were therefore able to shift the financial burdens of automobile production to owners of already existing capital equipment: the specialized parts manufacturers. SELTZER, *supra* note 52, at 19; Lanzillotti, *supra* note 24, at 314. The assemblers were able to reduce their capital requirements further by purchasing parts on credit and then selling cars to dealers on a cash basis. SELTZER, *supra* note 52, at 20-21; FTC REPORT, *supra* note 21, at 108. Many of these firms were able to lower start-up costs even further by leasing rather than purchasing assembly facilities. Vatter, *supra* note 22, at 217.

Motor entry was typical. The Company was incorporated in 1903 with only $28,000 in cash.[59] This ease of entry was reflected in industry concentration. Not until the 1920's did the three leading firms account for much more than half of total sales.[60]

Product variation was not new to the automobile industry in 1923. From the very beginning, it had served as a key element of competition among the many early producers.[61] But pre-1923 variations differed from subsequent product changes in two significant ways: they occurred less frequently, and they generally represented substantial improvements in performance capabilities rather than mere changes in style.[62] Thus, before 1923, the frequency of model change was closely geared to the rate at which technological breakthroughs were achieved; these occurred every four or five years.[63] Moreover, it will be demonstrated that this rate of product change enabled independent parts manufacturers to supply small volume assemblers with efficiently produced and improved components. The advent of annual product variation, however, drastically altered this process.

In 1923, General Motors introduced annual style change.[64] Whether by design or mere accident, GM's device accomplished much more than planned obsolescence: it eliminated smaller producers unable or unwilling to restyle their products every year. As the first company to employ this market weapon, GM increased its share of total industry sales dramatically from 13 to 43 per cent in the 5 years between 1922 and 1927.[65] Chrysler, after its well-financed entry in 1923, quickly imitated GM's restyling policy and increased its market share to 6 per cent by 1927.[66] Ford, at first ignoring the practice of changing styles annually,

59. Of the $100,000 in stock originally subscribed to by a dozen people, $72,000 was paid in the form of patents, machinery and supplies. SELTZER, *supra* note 52, at 88 n.5.

60. EPSTEIN, *supra* note 47, at 163-64, 176. Three-firm concentration derived from FTC REPORT, *supra* note 21, at 29. In 1911, General Motors and Ford accounted for only 38 per cent of passenger car production. By 1929, they shared 64 per cent of sales, and together with Chrysler (which entered in 1923), 72 per cent of the industry. *Id.*

61. *See, e.g.*, EPSTEIN, *supra* note 47, at 87-93; Lanzillotti, *supra* note 24, at 314-15.

62. *See* p. 576 *supra*. There was a substantial variation in performance alternatives prior to 1923. In 1910, for example, consumers could choose among electric, steam and gasoline vehicles, which offered widely divergent performance capabilities. Among gasoline powered cars, for instance, there were one, two, three, four and six cylinder engines available. EPSTEIN, *supra* note 47, at 87-88; SELTZER, *supra* note 52, at 18.

63. *See* notes 43-44 *supra*. *See also* WEISS, *supra* note 20, at 342-43.

64. By 1920, the demand for new automobiles had been largely saturated and had become a replacement demand initially sensitive to the alternative supply of used cars and costs of repairs. Accordingly, price reductions were less effective in generating increased purchases as new car demand became less elastic. WEISS, *supra* note 20, at 332-34; Vatter, *supra* note 22, at 218. A new market device was required to coax additional purchases from consumers by persuading them that their present cars were obsolete.

65. Computed from data contained in SELTZER, *supra* note 52, at 213; FTC REPORT, *supra* note 21, at 29; Lanzillotti, *supra* note 24, at 319.

66. FTC REPORT, *supra* note 21, at 29; 549-51. Chrysler's successful entry was a function

suffered an equally dramatic decline in its market share during this same period, falling from 51 per cent in 1922 to 9 per cent by 1927.[67] In 1928, it adopted an annual restyling policy which within two years boosted Ford's share of the market to 31 per cent.[68] While aggressively pursuing annual style change, GM, Chrysler and Ford increased their collective share of industry sales from less than 65 per cent in 1923 to more than 90 per cent by 1935.[69]

An inevitable result of the drive to produce "all-new" cars annually was an industry trend toward components integration. Previously, producers had attained optimal efficiency at low output volumes by assembling basically interchangeable body and engine components purchased from external suppliers.[70] By contrast, after 1923 the annual need to produce uniquely styled vehicles, including redesigned bodies and rearranged (although not necessarily improved) engines, caused producers to integrate body and engine production within their own plants.[71]

This shift from assembly of body and engine components to their integrated fabrication had a substantial impact upon the scale of production necessary for optimum efficiency as measured in terms of lowest per unit production costs. For a firm engaged in both mass production and assembly of annually modified bodies and engines, the optimal output was from 3 to 5 times greater than that required for mere assembly operation.[72] After 1923, an integrated firm which changed its styles annually needed a volume of at least 250,000 cars

both of its sizeable financial resources and its early acquisition of a large integrated plant and powerful dealer organization. WEISS, *supra* note 20, at 338.

67. Lanzillotti, *supra* note 24, at 319; FTC REPORT, *supra* note 21, at 29.

68. BARRIERS, *supra* note 3, at 298 (1962). Ford had frozen the design on its "Model T" since 1909 and had concentrated its energies on mass production at low cost. Until the early 1920's, its efforts were completely successful as measured by its increase in market share from 9 per cent in 1909 to 55 per cent in 1921. With the introduction of its "Model A" in 1928, Ford managed briefly to regain its leading position in 1929-30; but then GM took and kept the lead thereafter. SELTZER, *supra* note 52, at 120-24; Lanzillotti, *supra* note 24, at 318-20.

69. FTC REPORT, *supra* note 21, at 29.

70. As significant technological breakthroughs were achieved, performance modifications had been made by ordering from independent components manufacturers specially-tooled parts which were then added to the basic body and engine assemblies. *See* Lanzillotti, *supra* note 24, at 314; Vatter, *supra* note 22, at 216-17.

71. This is not intended to suggest that all backward integration occurred after 1923. On the contrary Ford through internal growth and General Motors by merger had early begun integration of components production. *See* SELTZER, *supra* note 52, at Ch. 3 and 4. What it does imply, however, is that whereas before 1923 components integration did not affect entry or survival conditions appreciably, after 1923 it became an absolute necessity. Consult INDUSTRIAL ORGANIZATION, *supra* note 2, at 296.

72. The critical stage in plant economies is found in the production of body and engine components, not in assembly operations. Optimal size for assembly purposes ranges from 60,000 to 180,000 units per year. Integrated optimal production scale requires volumes of from 300,000 to 600,000 units per year. BARRIERS, *supra* note 3, at 245.

Motor entry was typical. The Company was incorporated in 1903 with only $28,000 in cash.[59] This ease of entry was reflected in industry concentration. Not until the 1920's did the three leading firms account for much more than half of total sales.[60]

Product variation was not new to the automobile industry in 1923. From the very beginning, it had served as a key element of competition among the many early producers.[61] But pre-1923 variations differed from subsequent product changes in two significant ways: they occurred less frequently, and they generally represented substantial improvements in performance capabilities rather than mere changes in style.[62] Thus, before 1923, the frequency of model change was closely geared to the rate at which technological breakthroughs were achieved; these occurred every four or five years.[63] Moreover, it will be demonstrated that this rate of product change enabled independent parts manufacturers to supply small volume assemblers with efficiently produced and improved components. The advent of annual product variation, however, drastically altered this process.

In 1923, General Motors introduced annual style change.[64] Whether by design or mere accident, GM's device accomplished much more than planned obsolescence: it eliminated smaller producers unable or unwilling to restyle their products every year. As the first company to employ this market weapon, GM increased its share of total industry sales dramatically from 13 to 43 per cent in the 5 years between 1922 and 1927.[65] Chrysler, after its well-financed entry in 1923, quickly imitated GM's restyling policy and increased its market share to 6 per cent by 1927.[66] Ford, at first ignoring the practice of changing styles annually,

59. Of the $100,000 in stock originally subscribed to by a dozen people, $72,000 was paid in the form of patents, machinery and supplies. SELTZER, *supra* note 52, at 88 n.5.

60. EPSTEIN, *supra* note 47, at 163-64, 176. Three-firm concentration derived from FTC REPORT, *supra* note 21, at 29. In 1911, General Motors and Ford accounted for only 38 per cent of passenger car production. By 1929, they shared 64 per cent of sales, and together with Chrysler (which entered in 1923), 72 per cent of the industry. *Id.*

61. *See, e.g.*, EPSTEIN, *supra* note 47, at 87-93; Lanzillotti, *supra* note 24, at 314-15.

62. *See* p. 576 *supra*. There was a substantial variation in performance alternatives prior to 1923. In 1910, for example, consumers could choose among electric, steam and gasoline vehicles, which offered widely divergent performance capabilities. Among gasoline powered cars, for instance, there were one, two, three, four and six cylinder engines available. EPSTEIN, *supra* note 47, at 87-88; SELTZER, *supra* note 52, at 18.

63. *See* notes 43-44 *supra*. *See also* WEISS, *supra* note 20, at 342-43.

64. By 1920, the demand for new automobiles had been largely saturated and had become a replacement demand initially sensitive to the alternative supply of used cars and costs of repairs. Accordingly, price reductions were less effective in generating increased purchases as new car demand became less elastic. WEISS, *supra* note 20, at 332-34; Vatter, *supra* note 22, at 218. A new market device was required to coax additional purchases from consumers by persuading them that their present cars were obsolete.

65. Computed from data contained in SELTZER, *supra* note 52, at 213; FTC REPORT, *supra* note 21, at 29; Lanzillotti, *supra* note 24, at 319.

66. FTC REPORT, *supra* note 21, at 29; 549-51. Chrysler's successful entry was a function

suffered an equally dramatic decline in its market share during this same period, falling from 51 per cent in 1922 to 9 per cent by 1927.[67] In 1928, it adopted an annual restyling policy which within two years boosted Ford's share of the market to 31 per cent.[68] While aggressively pursuing annual style change, GM, Chrysler and Ford increased their collective share of industry sales from less than 65 per cent in 1923 to more than 90 per cent by 1935.[69]

An inevitable result of the drive to produce "all-new" cars annually was an industry trend toward components integration. Previously, producers had attained optimal efficiency at low output volumes by assembling basically interchangeable body and engine components purchased from external suppliers.[70] By contrast, after 1923 the annual need to produce uniquely styled vehicles, including redesigned bodies and rearranged (although not necessarily improved) engines, caused producers to integrate body and engine production within their own plants.[71]

This shift from assembly of body and engine components to their integrated fabrication had a substantial impact upon the scale of production necessary for optimum efficiency as measured in terms of lowest per unit production costs. For a firm engaged in both mass production and assembly of annually modified bodies and engines, the optimal output was from 3 to 5 times greater than that required for mere assembly operation.[72] After 1923, an integrated firm which changed its styles annually needed a volume of at least 250,000 cars

both of its sizeable financial resources and its early acquisition of a large integrated plant and powerful dealer organization. WEISS, *supra* note 20, at 338.

67. Lanzillotti, *supra* note 24, at 319; FTC REPORT, *supra* note 21, at 29.

68. BARRIERS, *supra* note 3, at 298 (1962). Ford had frozen the design on its "Model T" since 1909 and had concentrated its energies on mass production at low cost. Until the early 1920's, its efforts were completely successful as measured by its increase in market share from 9 per cent in 1909 to 55 per cent in 1921. With the introduction of its "Model A" in 1928, Ford managed briefly to regain its leading position in 1929-30; but then GM took and kept the lead thereafter. SELTZER, *supra* note 52, at 120-24; Lanzillotti, *supra* note 24, at 318-20.

69. FTC REPORT, *supra* note 21, at 29.

70. As significant technological breakthroughs were achieved, performance modifications had been made by ordering from independent components manufacturers specially-tooled parts which were then added to the basic body and engine assemblies. *See* Lanzillotti, *supra* note 24, at 314; Vatter, *supra* note 22, at 216-17.

71. This is not intended to suggest that all backward integration occurred after 1923. On the contrary Ford through internal growth and General Motors by merger had early begun integration of components production. *See* SELTZER, *supra* note 52, at Ch. 3 and 4. What it does imply, however, is that whereas before 1923 components integration did not affect entry or survival conditions appreciably, after 1923 it became an absolute necessity. Consult INDUSTRIAL ORGANIZATION, *supra* note 2, at 296.

72. The critical stage in plant economies is found in the production of body and engine components, not in assembly operations. Optimal size for assembly purposes ranges from 60,000 to 180,000 units per year. Integrated optimal production scale requires volumes of from 300,000 to 600,000 units per year. BARRIERS, *supra* note 3, at 245.

a year to operate at maximum efficiency.[73] At lower outputs, it would experience production costs substantially higher than larger volume producers.

One of the most serious disadvantages for producers operating at below the optimal scale of output required for style changes was the premature scrapping of expensive tools and dies. Assume, for example, that prior to 1923 General Motors and firm X in Figure I had identical

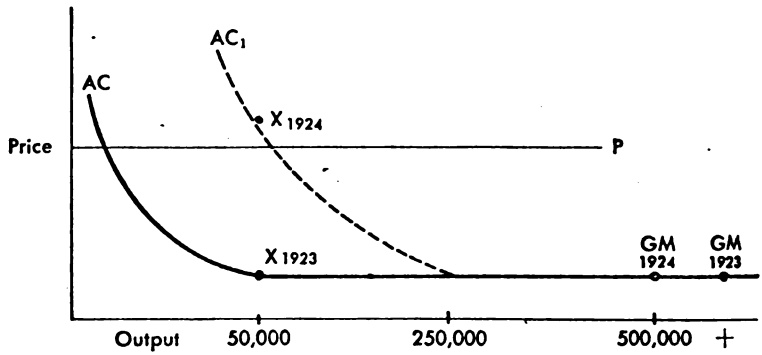


FIGURE I

cost curves (AC) but dissimilar outputs.[74] GM's production exceeded 400,000 units; while firm X produced a little more than 50,000 vehicles a year. Both producers, therefore, had achieved the minimum level of output necessary for optimally efficient assembly operations (50,000 units in 1923). Assume also that prices were constant at p.

In 1923, when it initiated annual style change, GM purchased at great expense the special tools and dies required for completely restyling its products. It found, however, that after the production of approximately 250,000 cars this equipment was physically deteriorated and could be fully amortized.[75] In 1923, it exhausted three full sets of dies and tools in producing a record 775,000 automobiles (point GM_{1923} in Figure I).[76] Thus, it could replace the 1923 dies and tools

73. Estimate by Paul Hoffman of Studebaker Corp., 21 TNEC HEARINGS 11218 (1941).
74. This graphic analysis draws heavily from Menge, *supra* note 55, at 634-43.
75. The average life of dies and special tools during this period approximated 250,000 units. *See* note 73 *supra*. Of course, if GM had produced 300,000 cars that year, it would have only partially exhausted a second set of equipment. Nonetheless the premature scrapping costs could have been spread over a larger volume of automobiles than if it had produced less than 250,000. Hence, its per unit scrapping costs would have been substantially lower if it exceeded rather than fell below this production level.
76. General Motors output amounted to 442,981 units in 1922; 774,617 in 1923. EPSTEIN, *supra* note 47, at 328.

with identical equipment or, at no extra cost, with dissimilar equipment. Consequently, GM changed the style characteristics of its 1924 models without increasing its costs, thereby remaining on AC in Figure I (point GM_{1924}).

In order to compete with GM's restyled 1923 models, firm X also purchased the expensive tools and dies necessary for the integrated production of uniquely styled vehicles. But unlike GM, it was unable to amortize this equipment over a year's production. Since dies and tools deteriorated only after the production of 250,000 units, its output in 1923 of 50,000 (point X_{1923}) consumed but one-fifth of their physical usefulness. Consequently, it could bring out a newly styled model in 1924 only by scrapping equipment which was not yet worn out and could only be partially amortized. As a result, it would experience higher average costs in 1924 (*i.e.* curve AC_1 in Figure I) for any level of output below 250,000 units. Assuming that its 1924 output did not exceed that of the prior year, its costs exceeded price at point X_{1924}, and it was forced out of the market.[77]

After 1923, therefore, survival as a style-change manufacturer required construction of a plant capable of producing at least 250,000 automobiles per year from internally manufactured and annually altered components. Significantly, only two of the 81 firms independent of Ford and GM which were operating at the beginning of 1923 ever reached the 250,000 minimum optimal integrated level of output.[78] These two companies, Chrysler and Hudson (which later merged

77. The slope of AC_1 was of critical importance for small volume producers and potential entrants after 1923. A steeper slope relative to AC indicated higher average costs due to style change expenses for every level of output below 250,000 units, the minimal scale for optimal efficiency in integrated production. Primarily, the slope of AC_1 was the product of additional costs incurred in the premature scrapping of special tools and dies. These costs, of course, were directly related to the expense of procuring new equipment. Significantly, the costs of special tools, dies and jigs have risen dramatically since 1923. Although about the same number of cars were sold in 1923 and in 1940, for example, special tools cost ten times as much in 1940. Again, about twice as many cars were sold in 1957 as in 1923, but tooling costs had increased 100 times. WEISS, *supra* note 20, at 356. As noted, by 1970, the Big Three were spending $1.5 billion each year for special tools and dies. Combined expenditures for special tools, dies, jigs and fixtures by the Big Three amounted to $1.559 billion in 1969. STANDARD & POOR, *supra* note 18, at A170. Sen. Nelson estimated the cost of annual style changes at $1.5 billion. N.Y. Times, Aug. 5, 1970, at 28, col. 3.

78. Chrysler has exceeded this sales volume for every year since 1928 with but one exception, in 1932; Hudson attained this output from 1924 through 1929, but then dropped below it during the 1930's. In 1954, Hudson merged with Nash to form the American Motors Corporation. AUTOMOTIVE NEWS, ALMANAC ISSUE 72 (1951).

It should be emphasized that after General Motors introduced annual restyling, abstention from this practice was apparently not perceived as a realistic alternative by smaller automobile producers. Menge, *supra* note 53, at 643. A possible explanation is that once all three leading companies began saturating the market after the 1920's with annually restyled cars, a small volume of standard-styled vehicles by comparison might have appeared obsolete.

with Nash to form American Motors), would become the sole competitors of Ford and GM by the 1960's. Neither Kaiser-Frazer nor Crosley, the only firms to attempt entry after 1923, ever achieved this production scale.[79]

Annual style changes imposed a second burden upon smaller automobile producers: large-scale annual investments in advertising. Before 1923, automobile designs remained basically unchanged for several years.[80] With the introduction of annual style change, however, producers were compelled to undertake annual advertising campaigns to impress consumers with the unique appearance of annually altered automobiles.[81] The style change race had engendered an advertising competition in which only the financially resourceful could remain.[82] Moreover, smaller producers were seriously disadvantaged because of the scale economies associated with extensive promotional efforts. To accomplish the same or even sparser market coverage, small volume producers spent considerably more per unit of output than did large volume manufacturers. For example, GM was able to obtain 10 times more advertising space in 1930 than did Nash, a lower volume firm, at half of the latter's per car cost.[83] Returning to the analysis accompanying Figure I, therefore, it can be argued that the need to engage in large scale advertising annually, no less than the need to scrap expensive dies prematurely, increased average costs and consequently the slope of AC_1, thereby driving scores of smaller producers from the market.[84]

The annual style change policy begun by GM also required a national system of adequately financed and strategically located dealers with

79. AUTOMOTIVE NEWS, ALMANAC ISSUE 60 (1970).

80. *See* note 56 *supra*.

81. *See* ADMINISTERED PRICES, *supra* note 43, at 96.

82. Advertising expenditures increased dramatically as producers attempted to convince consumers of the obsolete character of older models which only a year earlier had been advertised as the ultimate in new design. *Id.* Consequently, industry promotional expenditures rose rapidly during the 1920's from approximately $5 million in 1922 to nearly $25 million by 1930. Nor was this increase due to an expansion in automobile sales. Output remained about the same for both years. AUTOMOTIVE NEWS, ALMANAC ISSUE 1931. By 1969, industry advertising expenditures amounted to approximately $400-$600 million. *See* note 163 *infra*.

83. In 1930, GM secured nearly $20 million worth of advertising coverage at a per car cost of $17. By comparison, Nash obtained less than $2 million in coverage at a cost of $34 per car. FTC REPORT, *supra* note 21, at 714-15; WEISS, *supra* note 20, at 359.

84. Smaller producers were unable to spread advertising and retooling expenses over the large volumes of output enjoyed by the Big Three. Consequently, their advertising and retooling costs per unit of output (i.e. average costs) were substantially higher than those of GM, Ford and Chrysler. Compelled to charge higher prices to cover higher average costs, these smaller firms found themselves priced out of the market. WEISS, *supra* note 20, at 340-47.

unique service facilities. Prior to the advent of periodic restyling there was little need for manufacturers to establish retail outlets with specialized maintenance capabilities.[85] Independent retailers provided adequate sales and service for a wide variety of automobiles.[86] By contrast, the need to differentiate the appearance of automobiles annually and the consequent decline in the interchangeability of components required the establishment of unique nationwide service organizations.

The need to establish nationwide service networks posed not only a great financial burden for smaller producers; it also involved significant economies of scale. The minimum volume sufficient to permit the maintenance of a nationwide system of dealerships with servicing facilities probably ranged from 100,000 to 150,000 units per year.[87] As a certain minimal sales volume was necessary to maintain a solvent dealer, producers with smaller annual outputs would have experienced severe difficulties in retaining an adequate number of dealers for national coverage. Significantly, few producers other than the Big Three ever reached this volume after 1923.[88] Consequently, their average distribution costs were substantially higher than those of GM, Ford and Chrysler. Moreover, as the Big Three expanded their dealer networks, smaller producers found it increasingly difficult to establish and maintain retail outlets without experiencing increased per unit costs.[89]

The need to integrate forward into retail distribution, therefore, was another factor attributable to style change that substantially raised the amount of capital necessary for successful entry and survival in the automobile manufacturing industry. Each of the three factors necessary for annual style change involved tremendous capital investments of hundreds of millions of dollars.[90]

85. *See* p. 578 *supra*.

86. *See* note 57 *supra*.

87. Although this estimate was derived during the early 1950's it is most likely also applicable to periods before and after. BARRIERS, *supra* note 3, at 301-06. WEISS, *supra* note 20, at 343.

88. Of the 21 producers other than the Big Three operating during the years 1931-41, for example, only Studebaker reached this output for two years (1940-41). AUTOMOTIVE AND AVIATION INDUSTRIES, March 15, 1946, at 88.

89. As one economist has observed: "[b]y saturating an area with dealers handling their own respective products exclusively," the Big Three "can effectively deny their smaller existing and potential competitors access to the best sites and most efficient retailers, thus raising the per-unit sales and distribution costs of these actual and potential competitors . . . ." Mueller, *Sources of Monopoly Power: A Phenomenon Called "Product Differentiation,"* 2 ANTIT. LAW & ECON. REV. 59, 80 (Summer 1969).

90. "The most important factor that caused the defunct companies to fail was the lack of capital to meet the increasing emphasis and staggering cost of frequent product changes and other product differentiation policies and practices of the Big Three." Lanzillotti, *supra* note 24, at 348.

This brief analysis indicates that the automobile industry became increasingly concentrated following the introduction of annual style change in 1923. There are, however, other hypotheses which might explain this phenomenon. For example, declining economic conditions and a rise in automobile mergers might have contributed to increased industry concentration.[91] But these developments could not have been the primary cause of the dramatic change in this industry's structure. For example, the rate of attrition for automobile firms during the depressed 1930's was only slightly greater than in the booming 1920's.[92] Moreover, the predominant number of firms which left the market did so because of failure rather than combination.[93]

Instead, this economic analysis suggests that four factors (components integration, formidable advertising, franchised distribution, enormous capital requirements) were the direct cause of concentration and that each of these developments was linked in turn to the introduction of annual style change. Other hypotheses, however, could aid in explaining the emergence of these four factors. Substantial fluctuations in economic conditions following World War I, for example, may have contributed in part to the industry's movement toward captive production and distribution facilities.[94] On the other hand, these four developments cannot be accounted for, as some have urged, by a "drive for efficiency" in performance improvement.[95] The foregoing analysis demonstrates that without the need to restyle annually, optimal efficiency in the production of automobiles with increasingly improved performance capabilities had been reached by many firms in the industry. Once annual style change became the industry code of behavior, however, efficiency in the production of annually restyled vehicles made these four developments almost inevitable.

On balance, therefore, this brief analysis indicates that although other hypotheses might assist in the explanation of how this industry became highly concentrated in a short period of time, annual style change might well have been its fundamental cause.

91. *See, e.g.*, ADMINISTERED PRICES, *supra* note 43, at 8-9; EPSTEIN, *supra* note 47, at 187.
92. Lanzillotti, *supra* note 24, at 321.
93. *Id.*
94. *See* SELTZER, *supra* note 52, at 114-20, 191-97.
95. *See, e.g.*, GENERAL MOTORS, *supra* note 52, at 71-73 (1968). GM argues that these developments resulted from a drive for efficiency in the production of automobiles. Yet it admits that the concept of efficiency is not fixed and depends, *inter alia*, upon "product characteristics." *Id.*, at 73 n.36. In short, these developments were engendered not by any vague pursuit of "efficiency" but rather by a fundamental change in product policy, *i.e.*, the introduction of annual restyling.

B. *Style Change as a Market Weapon for Preserving Concentrated Economic Power: Barriers to Entry*

Style change has proved to be as effective a market weapon in preserving concentrated economic power in the automobile industry, it can be argued, as it had been in achieving it.[96] By causing formidable entry barriers to be raised, style change insured that the vacancies created by the exit of nearly one hundred firms were not filled by newcomers.

The same four factors which by eliminating earlier producers led to concentration seem also to have erected insurmountable barriers to potential entrants. The magnitude of these barriers can be measured in at least three separate ways. First, the experience of the only firm seriously to attempt entry since 1923, Kaiser-Frazer, can be evaluated. Second, industrial studies of the automobile manufacturing process can reveal the minimum scale of operations, minimum promotional expenditures, and minimum capital resources necessary for entry today. Finally the estimates of firms which have recently contemplated (but decided against) entry may be examined.

Since 1923, a handful of attempts at entry, all unsuccessful, have been undertaken.[97] Of these, only the Kaiser-Frazer endeavor of 1945-1954 could be considered a serious challenge.[98] Kaiser had already successfully broken into two of the most highly concentrated industries in the American economy (aluminum and steel). Given a most propitious time of practically insatiable postwar demand, its venture into automobiles seemed assured of success. It commanded the talents of experienced executives, the backing of a multi-million dollar industrial empire, and the acquired production and distribution facilities of an operative automobile organization (Graham-Paige Motors). Through stock offerings, loans from private and government agencies, and financial resources derived from other Kaiser enterprises, it raised more than $200 million. Within a record time of 11 months, it produced a car which was praised for both its engineering achievement and for its style.[99] Its market share rose to nearly 5 per cent of industry

96. *See* Vatter's account of closure of entry into this industry, *supra* note 22.

97. Unsuccessful attempts were made, for example, by Durant Motor Co. of Indiana (1924), Rollin Motors Co. (1924), Klieber Motor Co. (1926), Falcon Motors Corp. (1927), Crosley Motors, Inc. (1939), and Kaiser-Frazer Corp. (1945). EPSTEIN, *supra* note 47, at 377-82; ADMINISTERED PRICES, *supra* note 43, at 82.

98. WEISS, *supra* note 20, at 338-39. For a general account of the Kaiser venture into automobiles, see also Lanzillotti, *supra* note 24, at 328-29; Vatter, *supra* note 22, at 230-33; *Kaiser-Frazer: "The Roughest Thing We Ever Tackled,"* 44 FORTUNE 74 (July 1951).

99. FORTUNE, *supra* note 98, at 156, 158.

sales by 1948.[100] Yet, by 1949, the Kaiser venture was doomed to failure. Its share of sales fell back to a little more than 1 percent, and by 1954, it had ceased production.[101]

The reason for this sudden reversal in Kaiser's market position after 1948 has been succinctly stated by economists: its survival required the launching of a new model, yet it was unable to finance a restyled automobile for 1949.[102] Although sales in 1948 had reached 181,000 units, that volume was insufficient to finance formidable retooling and advertising costs.[103] As Kaiser Industries reported later:

> To stay in the market, Kaiser-Frazer now had to play the "new models" game for the first time; new models took tools; tools took major financing. An attempt was made to sell a third stock issue to the public in 1948, but that ran aground . . . .[104]

Consequently, it was forced to sell its 1948 models again in 1949 and 1950. In 1951, it managed to produce a newly styled model; but by then its output was far below the minimum volume necessary for optimum efficiency.[105] As a result, higher per unit production costs forced its prices above those of the Big Three.[106] Thereafter, its sales plummeted, and it accumulated uninterrupted losses until it withdrew from the market in 1954, with an earned surplus deficit amounting to more than $100 million.[107]

Evaluation of the short-lived Kaiser entry suggests that it suffered in varying degrees all the disadvantages which had contributed to the elimination of the earlier producers.[108] Formidable scale economies in production and retail distribution, massive promotional activities, and enormous capital requirements were the principal factors accounting for its demise.[109] As evidenced by its inability to finance a 1949 model, its 1948 record volume of 181,000 units was below the minimum optimal scale for integrated production, which had been estimated at about 250,000 for the early 1940's.[110] During succeeding years, how-

100. AUTOMOTIVE NEWS, ALMANAC ISSUE 60 (1970).
101. *Id.*
102. *See* Lanzillotti, *supra* note 24, at 328-29.
103. *Id.*; *see also* note 72, *supra*.
104. KAISER INDUSTRIES CORP., THE KAISER STORY 45 (1968).
105. After failure of the public issue in 1948, Kaiser went to the banks which had helped fund its breakthrough into aluminum and steel, but they considered the risks prohibitive and refused further participation. Lanzillotti, *supra* note 24, at 329.
106. FORTUNE, *supra* note 98, at 161. In 1950, it lost $13 million on its sale of 151,000 automobiles. *Id.*
107. MOODY'S INDUSTRIAL MANUAL 1616 (1955).
108. INDUSTRIAL ORGANIZATION, *supra* note 2, at 285-87.
109. *Id. See also* Lanzillotti, *supra* note 24, at 328-29.
110. *See* note 73 *supra*.

ever, it suffered further scale economy disadvantages as its volume dropped below the minimum 100,000-150,000 unit volume required for optimal efficiency in retail distribution.[111] To meet the retooling and readvertising requirements of annual style change, moreover, Kaiser would have needed an additional $150 million, which would suggest a total capital resources entry barrier exceeding $350 million.[112] In fact, this $350 million estimate is probably too low for a potential entrant today since Kaiser enjoyed several advantages which are no longer accessible to a newcomer in the 1970's.[113] Reviewing the failure of Kaiser's automobile venture despite its sizeable resources and its record as one of the country's most formidable challengers of concentrated industries, one industrial economist concluded in 1966: "The idea of any further entry into the industry today seems preposterous."[114]

Subsequent studies of the Kaiser-Frazer attempt and the recent operations of the Big Three now afford a more precise determination of the actual magnitude of barriers to entry into this industry, barriers which may be largely attributable to annual style change. In 1970, it would cost a company $779 million to enter the automobile industry. The costs of annual style change capability, it is estimated, account for fully $724 million, or more than 90 per cent of this figure.[115] More-

111. AUTOMOTIVE NEWS, ALMANAC ISSUE 60 (1970).

112. As sales fell, Kaiser's dealers were unable to meet their overhead costs and declined from a high of 4700 in 1948 to 2700 in 1951, scarcely 200 more than the number considered minimally necessary for national coverage. WEISS, *supra* note 20, at 343; FORTUNE, *supra* note 98, at 158. With regard to capital required for annual restyling and advertising, Kaiser later concluded conservatively that it needed at least $150 million more in equity resources. FORTUNE, *supra* note 98, at 161. When added to the more than $200 million Kaiser actually raised, this would indicate a capital requirement of more than $350. *See* p. 586 *supra*.

113. For example, through its acquisition of Graham-Paige Motors, it was able to obtain an operational manufacturing and dealer organization. By contrast, today's entering firm would have to construct both *de novo*. The production facilities of the earlier independents have either been sold to the four domestic producers or scrapped; their retail networks have long since disappeared. ADMINISTERED PRICES, *supra* note 43, at 14. Absent the opportunity to acquire existing facilities, however, newcomers would require from an estimated $779 million to $2 billion to build both systems at the minimum optimal volume necessary for annual style changes (*i.e.*, 300,000 units). *See* notes 115, 123 *infra*.

114. WEISS, *supra* note 20, at 339.

115. Yearly restyling requires efficient assembly and integrated components production facilities at a minimum plant investment of $250 million. Bain estimates that efficient production and assembly of body and engine components would require a minimum plant capacity of 300,000 units, at a cost of $250 million. INDUSTRIAL ORGANIZATION, *supra* note 2, at 286. Annual restyling also necessitates integration forward into a nationwide distribution network costing no less than $326 million. This was Romney's estimate of the capital required by a 250,000 unit firm in 1958 to establish a national distribution system. ADMINISTERED PRICES, *supra* note 43, at 16 n.28. Finally, annual style change would compel retooling and readvertising at a minimum annual rate of $180 million and $23 million, respectively. This annual retooling figure assumes output at the minimum efficient level of 300,000 units. It was obtained by multiplying the per unit full factor costs for style change (i.e. including the actual added production costs of producing the redesigned vehicle) as calculated at $600 by Fisher, Griliches & Kaysen, *The Costs of Automobile Model Change During a Decade*,

64-345 O - 71 - pt. 3 -- 29

over, to merely recapture its $779 million investment, an entering firm would need to secure from 4 to 8 per cent of total industry sales for an efficient scale of operations.[116] In addition, it would encounter for 5 to 10 years a net price disadvantage of at least 5 per cent of factory price due to higher per unit countervailing advertising expenses and price concessions necessary to maintain a solvent national dealership system.[117]

By contrast, had the industry not been restructured by annual style change, it is estimated that entry in 1970 could have been achieved for $55 million, or less than one-tenth as much as the actual capital requirement.[118] Absent annual style change, an entrant could operate efficiently with an estimated 0.7 to 2.1 per cent of the market[119] without encountering promotional or distributional price disadvantages.[120] To the extent, therefore, that style change transformed the condition of entry into this industry, barring all but completely integrated firms able and willing to spend not merely $55 million but $779 million, it

70 J. POL. ECON. 433, 450 (1962), by the output (300,000 × $600 = $180 million). The readvertising amount was obtained by multiplying the current $75 per car advertising expenditure of the Big Three (*see* Lanzillotti, *supra* note 24, at 343) by the minimum efficient output level of 300,000 units = $22.5 million. Realistically, a new firm would probably expend at least twice that amount overcoming consumer loyalty to current automobile models engendered by decades of advertising by established sellers. In 1958, Romney then president of American Motors estimated that a plant with a 250,000 unit output would require $55 million for annual advertising. ADMINISTERED PRICES, *supra* note 43, at 17, table 1. The costs of annual style change capability are $779 million less $55 million, or $724 million. *See* note 118 *infra*.

116. *See* note 22 *supra*.

117. *Id.*

118. Absent the need for an entering firm to restyle annually and assuming the existence of independent parts manufacturers and independent distributors, the formidable costs of components production and of distribution would have been borne not by the entrant but by these specialized independent enterprises. Thus, an assembler of automobiles could have accomplished entry under these hypothetical conditions by merely constructing an assembly plant at a cost of $50 million and by spending an additional $5 million for introductory promotion. On the basis of the Kaiser experience and from studies of the Big Three's manufacturing operations, Bain has estimated that an assembler could operate with optimal efficiency at a minimum output of 60,000 vehicles per year. BARRIERS, *supra* note 3, at 245. *See also* ADMINISTERED PRICES, *supra* note 43, at 14. The cost of an assembly plant one-fifth as large as that minimally required for annual restyling (*i.e.*, 300,000 units) has been assumed to be one-fifth of the cost of the latter facility, or $50 million. *See* note 115 *supra*. Assuming that a new entrant would engage in countervailing advertising at a rate equal to that of the Big Three, the cost of such advertising for the the first year may be computed by multiplying the average Big Three per car advertising expenditure of $75 (*see* note 115 *supra*) by the minimum efficient level of output for an assembler of 60,000 units: $75 × 60,000 = $4.5 million. Assuming further, however, that the assembler's product would remain basically unchanged pending major technological breakthroughs, subsequent advertising expenditures should decline as the public becomes acquainted with the characteristics of the assembler's unchanged model. *See* note 56 *supra*. But these conditions no longer obtain; entry as an assembler has not been feasible since the 1920's.

119. These percentages were derived by calculating the share of total industry sales in 1969 (8.38 million per note 18 *supra*) represented by the minimum efficient scale for assembly operation, estimated at from 60,000 to a high of possibly 180,000 units per year. BARRIERS, *supra* note 3, at 245.

120. *See* note 22 *supra*.

raised the capital costs of entry considerably more than tenfold.[121] To the extent that it required entrants to capture a formidable segment of industry sales and to endure substantial price disadvantages and hence losses for up to a decade, it made the risks of entry prohibitive.

A large number of companies have recently developed alternative automobile propulsion systems utilizing gasoline, electricity, steam and freon; but, significantly, not a single firm has attempted entry. Representatives of these companies have generally agreed in their testimonies before Congress that absent major antitrust action or some form of government subsidization, entry by firms offering innovative alternatives is economically infeasible.[122] Estimates made by these prospective entrants suggest that style change barriers today are higher than the foregoing analysis would suggest.[123]

121. This is a conservative estimate of the entry barriers attributable to annual style change. For example, Bain argues that an entering firm would probably encounter break-in losses of $15 million annually for a ten year period, or $150 million. INDUSTRIAL ORGANIZATION, *supra* note 2, at 286. Romney's estimate of the first year capital requirements necessary for a 250,000 unit integrated operation in 1958 amounted to $902.2 million. This figure included $326.2 million to establish a national dealer system. ADMINISTERED PRICES, *supra* note 43, at 16 n.28. *See also* Sen. Morse's statement as to a subsequent increase in Romney's estimate to roughly $2 billion. *Hearings Before the Senate Select Comm. on Small Business on the Status and Future of Small Business in the American Economy*, 90th Cong., 1st Sess., pt. 2, at 431 (1967).

122. *See, e.g., Joint Hearings on the Automobile Steam Engine and Other External Combustion Engines* [hereinafter cited as *J. Hearings—Steam*], 90th Cong., 2nd Sess. (1968); *Electric Vehicles and Other Alternatives to the Internal Combustion Engine, Joint Hearings Before the Senate Comm. on Commerce and the Subcomm. on Air and Water Pollution of the Senate Comm. on Pub. Works*, 90th Cong., 1st Sess. (1967) [hereinafter cited as *J. Hearings—Electric*]. For suggestions regarding "major antitrust action" to restructure the industry, see testimony of Arkus-Duntov in *1969 Hearings*, *supra* note 24, at 404-06. Regarding the alternative need for government subsidization of entry, see testimony of Ayres in *J. Hearings—Steam*, *supra* at 10-12.

123. Prospective automobile firms place the minimum optimal scale for integrated production at 500,000 instead of 300,000 units. Arkus-Duntov, *1969 Hearings*, *supra* note 24, at 406. They also state that an annual sales volume of 500,000 or more vehicles is minimally required to maintain a national dealer system. Wyman, *Can the Steam Automobile Come Back*, 9 STEAM AUTOMOBILE #2 (1967). The initial capital investment required merely to build an integrated plant with this annual capacity has been estimated at $1 to $2 billion. Arkus-Duntov, *1969 Hearings*, *supra* note 24, at 406.

Moreover, there are indications that the Big Three are pursuing programs which will raise entry barriers even further. While their trend toward more complete backward integration has continued unabated, *see, e.g.*, STANDARD & POOR, INDUSTRY SURVEYS: *Auto Parts —Basic Analysis* A138 (October 8, 1970), these firms have begun to place major emphasis on greater forward integration into retail distribution and are buying up formerly franchised outlets. Until recently, the Big Three distributed their automobiles through a large number of franchised dealers who although pressured to accept a policy of exclusivity might have been at least theoretically accessible to new automobile producers. *See* Ralph Nader's testimony in *1968 Hearings*, *supra* note 20, at 155. Now, however, they are rapidly eliminating dealerships and replacing franchised outlets with factory-controlled operators or "house dealers." *See* Note, *Antitrust Law and The New Industrial State: An Application to Automobile Distribution Practices*, 4 UNIV. OF SAN FRANCISCO L. REV. 78, 111 (1969). As a result, the number of active dealerships has declined from 49,173 in 1949 to 27,486 in 1969, or by more than 44 per cent. *See* testimony of Hammond in *1969 Hearings*, *supra* note 24, at 19. In addition, franchised dealers who have not yet been replaced by factory operators, increasingly are being bypassed by direct "fleet sales" made by the manufacturers to retail customers at below dealer or even production cost. *Hearings Before the*

Automobile Industry

General Motors, Ford and Chrysler reject any notion of "artificial" barriers to entry into the automobile industry. Instead, they contend that there are no obstacles which cannot be overcome.[124] In support of their position, they cite the possibility of conglomerate entry by General Electric and Westinghouse and the actual expansion of several foreign manufacturers into the market.[125] But conglomerate entry by either of these firms has failed to materialize despite the technological capability of both to produce reliable electric vehicles and the vast financial resources of the former.[126] The Big Three's second line of defense involves the successful expansion of standard styled foreign imports, particularly Volkswagen and Toyota, into the American market.[127] This comparison of foreign with domestic entry possibilities, however, is entirely inappropriate.[128] Moreover, it suggests that by

Special Subcomm. on Automobile Marketing Practices of the Senate Comm. on Commerce, 90th Cong., 2d Sess. 5-8 (1968). These developments, however, will not only absolutely foreclose retail outlets from new entrants, it will also deprive those few remaining independent parts manufacturers of the outlets they require for survival. Furthermore, the elimination of components producers will augment existing barriers to entry by new automobile manufacturers.

124. General Motors suggests, for example, that "entry into the business is open to all who are willing to assume the risks: there are no artificial barriers." GENERAL MOTORS, *supra* note 52, at 81. It concedes, however, that there are "certain critical requirements for entry" including large capital investment and substantial economies of scale. *Id.*, at 83. But it implies that these entry requirements are compelled in part by the "competitive necessity" of engaging in annual style change. *Id.*, at 83-84, 29. Thus, it argues that annual restyling is a form of efficiency mandated by consumer preference and that any barriers resulting therefrom are inherently "natural" rather than "artificial." *Id.*, at 29, 52-53, 71-75, 84-85. This argument assumes implicitly, however, that consumer acquiescence in the Big Three's policy of planned obsolescence is equivalent to consumer preference for that policy. Upon closer examination, such an assumption appears to be wholly unwarranted. *See* note 141 *infra*. Moreover, there is evidence that by substantially inflating production and distribution costs and by discouraging technological innovation, annual style change has actually led to a net reduction in efficiency. *See* note 136 *infra*.

125. General Motors, for example, relies on the rumored possibilities of electric car entry by General Electric or Westinghouse to support its argument that entry into the industry remains possible. GENERAL MOTORS, *supra* note 52, at 83-84. For a similar suggestion regarding the possibility of conglomerate entry into the industry, see Shubik, *A Game Theorist Looks at the Antitrust Laws and the Automobile Industry*, 8 STAN. L. REV. 594, 624-25 (1956).

126. *See J. Hearings—Steam*, *supra* note 138, at 205-06; *J. Hearings—Electric*, *supra* note 138, at 486-87. Moreover, as the nation's fourth largest industrial corporation, General Electric in particular should have no financial entry difficulties—if access is as open as General Motors suggests. For GE's sales rank, see FORTUNE, May 1970, at 184.

127. GENERAL MOTORS, *supra* note 52, at 81, 82 n.46.

128. Unlike a prospective domestic entrant, foreign producers such as Volkswagen and Toyota relied upon large plant scale economies in Germany and Japan, respectively, and enormous world-wide sales to support their expansion into the American market. These companies marketed vehicles in America for nearly a decade before their sales volumes here reached the 60,000 unit level considered minimally adequate for efficient production of standard-styled cars. *See* Schupack, *1968 Hearings*, *supra* note 20, at 920. Indeed, even GM admits this distinction. GENERAL MOTORS, *supra* note 52, at 23. Volkswagen began producing automobiles in 1945 but did not begin selling in the United States until 1949. In that year it sold two vehicles. Not until 1958 did its sales volume in this country exceed 60,000 units. FORTUNE, August 1957, at 106; FORTUNE, March 1969, at 116. Similarly, Toyota first began selling vehicles in this country in 1958, but only in 1968 did its sales

simply not annually changing model styles a domestic firm could overcome all the structural obstacles occasioned by nearly five decades of annual restyling by the Big Three. This is demonstrably untrue.[129]

The foregoing analysis suggests that by pursuing annual style change the Big Three may have created an anticompetitive industry structure of three well-entrenched manufacturers. High market concentration may enable them to restrict output and raise prices above competitive levels. High barriers to entry may deter newcomers attracted by the tight oligopoly's greater-than-competitive profits. Again, pending a more exhaustive investigation by the FTC, annual style change appears to have been the underlying cause of these developments.

C. *Style Change and Performance*

For most antitrust economists, noncompetitive performance (*e.g.*, high prices, high costs, retarded innovation) is an inevitable result of anticompetitive structure.[130] It has been suggested, however, that due to their relative inexperience in the economics of industrial organization, the courts might be less willing to make this causal leap and might demand instead a showing of both anticompetitive structure *and* noncompetitive performance.[131] Some manifestations of unsatisfactory performance resulting from the automobile industry's anticompetitive structure have already been described.[132] To the extent, therefore, that annual style change was responsible for this structure, it indirectly impaired the industry's performance. This section briefly suggests, however, that annual style change itself may directly con-

here reach the 60,000 volume level. FORTUNE, December 1969, at 77. By the time that sales volume was achieved in America, Volkswagen was selling nearly half a million, and Toyota a million and a quarter, automobiles in more than 100 countries. FORTUNE, August 1957, at 106; FORTUNE, December 1969, at 78.

129. Entry as an assembler is no longer feasible. The independent parts manufacturers and independent retail distributors of earlier years have largely vanished as the Big Three have moved toward complete vertical integration. *See* note 113 *supra*. Consequently, an entrant bent on producing a standard-styled vehicle in 1970 would need nonetheless to integrate backward into components production and forward into a nationwide distribution system, at a capital investment cost estimated at more than half a billion dollars. Backward integration would require a minimum of $250 million; forward integration could be achieved at a cost of no less than $326 million. Note 115 *supra*. Even were it able to raise this amount of capital, a firm offering standard-styled cars to consumers accustomed to annually restyled products would probably be compelled to undertake lengthy and expensive countervailing promotional campaigns and to sell its vehicles at a substantial price disadvantage for a decade or more. *See* p. 589 *supra*. Indeed, it took Volkswagen and Toyota that long; and unlike a domestic entrant, these firms were able to rely on substantial worldwide sales to subsidize their prolonged break-in losses in this country. Schupack, *1968 Hearings*, *supra* note 20, at 920 n.6.

130. *See, e.g.*, Mueller, *supra* note 2, at 89-90; notes 2 & 5 *supra*.

131. Smith, *supra* note 2, at 57-58.

132. *See* note 24 and accompanying text *supra*.

tribute to unsatisfactory market performance by reducing efficiency and retarding progressiveness.

Efficiency in terms of market performance is generally measured by comparing actual costs and prices with those that would obtain in a competitively structured market.[133] Annual style change has substantially inflated production and distribution costs, and hence prices, by vastly increasing selling and retooling costs. In 1969, as noted above, the Big Three spent $1.56 billion, or $195 per car, for restyling.[134] Advertising accounted for another $75 in per unit expenditures.[135] These costs amounted to several billion dollars in consumer expenditures for 1969. Yet buyers were never given a choice between purchasing the same model as last year's at a lower price and a new model at a higher price.[136]

Moreover, there is some evidence that the Big Three may employ annual style change as a surrogate for cost-saving innovations. By introducing a "new" model each year, they provide consumers with the illusion of progress and yet avoid the necessity of adopting technological improvements which would lower maintenance or initial purchase costs.[137] It has been argued, for example, that application of known

133. *See* note 5 *supra*.

134. *See* p. 576 *supra*.

135. *See* note 115 *supra*.

136. Turner has framed the cost savings loss argument in the following manner:

> The major producers evolved a policy of annual model changes that, by accelerating the scrapping of expensive machine tools and dies, substantially increased the cost of automobiles. Since all of the major producers pursued this policy, and since the products of small producers were for a variety of reasons unappealing to most consumers, buyers were never given a choice between purchasing the same model as last year's at a lower price and a new model at a higher price.

Conglomerate Mergers and Section 7 of the Clayton Act, 78 HARV. L. REV. 1313, 1335 (1965). *See also* WEISS, *supra* note 20, at 364-65. The study by Fisher *et al.* estimated that the cost savings loss to consumers resulting from annual style and performance changes amounted to approximately $5 billion annually, *supra* note 115, at 433-51. BLS data indicate that nearly all of the $5 billion model change cost to the consumer is attributable to restyling rather than performance modification. *See* pp. 576-77 *supra*. To this figure must be added the cost savings loss due to the diversion of resources from technological improvements to style alterations. For example, had the Big Three spent $36 of the estimated $195 consumed in restyling (*see* p. 576 *supra*) for processing its sheet metal with a chrome over galvanized steel process, the resulting doubling in the automobiles longevity would have saved consumers $2.1 billion a year. *See* p. 594 *infra*.

137. *See* testimony of Arkus-Duntov in *1969 Hearings*, *supra* note 24, at 402-03.

> For example, if the chrome over galvanized steel treatment discussed at p. 594 *infra*, were utilized, automobiles would physically deteriorate less than twice as rapidly. Presumably, industry sales would therefore fall as the demand for replacements declined. The failure of this industry to adopt measures such as these which would improve the durability of its products, coupled with its promotion of psychological deterioration through annual style changes, has led many economists to charge the Big Three with "planned obsolescence." *See, e.g.*, Lanzillotti, *supra* note 24, at 341-45; Dowd in *1969 Hearings*, *supra* note 24, at 524. Moreover, it has been suggested that the Big Three are reluctant to introduce steam or electric vehicles because the number of parts required for these propulsion systems is far less than those needed for conventional gasoline engines. Since these firms derive a substantial amount of profit from "aftermarket" (*i.e.*, replacement parts) sales, they

metallurgical processes would permit doubling the life of an automobile for an additional cost of $36 per year, resulting in an annual savings to consumers of more than $2 billion.[138] Crash-absorption bumpers have been developed which could save the public an additional $1 billion a year.[139] Pollution-free electric and steam vehicles can now be produced which would cost half as much to own and even less to operate than conventional gasoline automobiles.[140] These developments, however, would increase automobile durability and thereby reduce demand, price and profits on new car sales. It is suspected, therefore, that the Big Three have repressed these cost-savings advances while offering consumers instead an annual restyling policy designed to bolster replacement demand through planned obsolescence.[141]

Similarly, annual style change may have retarded this industry's

are unwilling to produce pollution-free vehicles which have a significantly smaller aftermarket. ESPOSITO, *supra* note 24, at 35. There is perhaps another reason for this reluctance. It has been suggested that were the Big Three to produce electric vehicles, for example, industry barriers to entry would decline due to lower production costs and minimum scale economies. AYRES, *J. Hearings—Steam*, *supra* note 122, at 8.

138. Testimony of LUNTZ in *1969 Hearings*, *supra* note 24, at 468-70.

139. N.Y. Times, October 2, 1970, at 19. Sen. Nelson also cites the automobile industry for its failure to use energy absorbing bumpers and crash bars in its products. *1969 Hearings*, *supra* note 24, at 542. The U.S. Steel Corporation has developed an automobile body with complete perimeter crash protection including steel roll bars front and rear. N.Y. Times, October 12, 1970, at 37.

140. *See, e.g.*, statement of Orr in *J. Hearings—Steam*, *supra* note 122, at 63; Federal Power Commission, *Development of Electrically Powered Vehicles* in *J. Hearings—Electric*, *supra* note 122, at 29.

141. *See* note 137 *supra*. It might be suggested, nevertheless, that unless consumers were completely content with annual restyling they would not continue to purchase vehicles from the Big Three. *See* note 121 *supra*. This argument, however, is specious. It is tantamount to suggesting that whenever consumers willingly buy products from a monopolist or tight oligopolist, they are content with the price and quality of the goods purchased. In fact, the public pays higher-than-competitive prices for less-than-optimum-quality goods when there is an absence of alternative suppliers, *i.e.*, an absence of competition. Such is the condition of the automobile industry. Unless a consumer can utilize the less than standard-sized vehicles of the foreign automobile producers, he has little choice but to purchase an annually restyled car from the Big Three. Moreover, the substantial rate of depreciation engendered by annual restyling will encourage him to repurchase on an annual or semi-annual basis. The fact that consumers continue to purchase annually restyled vehicles, therefore, does not necessarily imply that they would not prefer a wider range of alternatives provided by a less concentrated automobile industry. *See* Dowd in *1969 Hearings*, *supra* note 24, at 540; Schupack in *1969 Hearings*, *supra* note 24, at 541.

Within the past few months, the Big Three have introduced "subcompact" vehicles to compete with the imported standard-styled automobiles of foreign manufacturers, particularly Volkswagen and Toyota. Whether these subcompacts will be annually restyled is still an open question. Ford has suggested that its subcompact entry, the *Pinto*, might remain as basically unchanged as its earlier *Model T*. New York Times, November 6, 1970, at 42. Nevertheless, the Big Three's earlier introductions of "compacts" in the early 1960's were accompanied by similar overtones of standard-styling. Yet, the compacts were in fact restyled annually. Moreover, even if the subcompacts do remain unchanged, they will not encourage *de novo* entry into the automobile field by other firms. To meet the short-term threat of attempted entry into the subcompact market, the Big Three could rely on profits from their sales of restyled, regular-sized vehicles to subsidize increased promotion and near-cost sales of their subcompacts. To survive, a new domestic entrant would require a share of the regular-sized car market, but that larger field is still very much influenced by the Big Three's annual restyling policies.

progressiveness as measured by the number and importance of actual innovations that have been developed as compared with what could have been achieved absent style change. It has been noted, for example, that the innovative characteristics of the industry began to decline shortly after annual restyling was introduced in the 1920's.[142] Moreover, there is evidence that since then an increasing proportion of the Big Three's resources have been shifted from research and development to restyling and related promotional activities.[143] Perhaps as a result, most recent innovations have come from outside the leading firms. Improvements such as new suspension systems and disc brakes were first introduced by small European firms.[144] Other advances, notably automatic transmissions and power steering, originated in small domestic concerns.[145] In short, an emphasis on style change may have supplanted the drive for technological progress in this industry.

Furthermore, it has been suggested that, paradoxically, annual style change does not result in a wide variation in the appearance of different automobile makes.[146] Instead, given their high degree of interdependence, the Big Three protectively imitate each other's designs.[147] Thus, Professor Bain has found that in this industry "the highly imitative product policies of rival oligopolists seem to lead to substantial uniformity of available products and to a suppression of the potential variety in products."[148] Annual style change, then, may only have increased the rate rather than the degree of style innovation.[149]

As a fundamental determinant of this industry's highly anticompetitive structure, annual style change may have been the primary factor accounting for what could be termed noncompetitive performance in automobile manufacturing. In addition to increasing concentration and raising barriers to entry, it appears to have substantially impaired industry market performance by reducing efficiency and retarding technological growth.

142 [illegible]

143 [illegible] note 24, at 402-03. GM, for example, [illegible] R&D, as compared with $881 million [illegible] note 20, at 736, 746.

144 [illegible] were more produced by smaller European [illegible] before they appeared on American [illegible] note 20, at [illegible]

145 [illegible]

146 [illegible] note 2, at 240-42, 253-55; Mueller, supra [illegible] note 24, at 541.

147 [illegible]

148 [illegible] note 2, at 255.

149 [illegible] shift from floor to steering column and, [illegible] the [illegible] amount of change. Note 39 supra.

III. Automobile Style Change as an "Unfair Method of Competition" Under Section 5 of the Federal Trade Commission Act

As previously noted, annual style change is a form of oligopoly conduct apparently invulnerable to prosecution under conventional Sherman and Clayton Act standards. This, however, was the type of problem Congress sought to solve by enactment of Section 5 of the Federal Trade Commission Act in 1914. More than two decades had passed since its passage of the Sherman Act in 1890; but Congress believed that its earlier legislation had been largely ineffective in halting a widespread and growing concentration in industry.[150] To avert further concentration, it created the Federal Trade Commission as an administrative tribunal capable of undertaking intensive economic investigations and empowered under Section 5 to strike down "unfair practices" which, although lawful in themselves, nevertheless tended toward a suppression of competition through the elimination of actual or potential rivals.[151] Congress deliberately left unspecified those practices which the FTC might proscribe as "unfair" in order to allow the Commission the widest latitude in dealing with novel methods by which concentration might be increased.[152]

In reviewing FTC findings of "unfair methods of competition" in cases brought under Section 5, the Supreme Court has complied with the intent of Congress by establishing flexible guidelines for illegality. It has deferred to the FTC's administrative expertise, holding that "[t]he precise impact of a particular practice on the trade is for the Commission, not the courts, to determine"[153] and limiting its function

150. *See* Federal Trade Commission v. Gratz, 253 U.S. 421, 432 (1920) (Brandeis, J., dissenting).

151. *Id.* at 442-43.

152. *Id.* at 423; S. REP. No. 597, 63d Cong., 2d Sess. 13 (1914). The Conference Report stated: "It is impossible to frame definitions which embrace all unfair practices. There is no limit to human inventiveness in this field." *Id.* By enacting Section 5, Congress hoped to establish an expert body which by "careful study of the business and economic conditions of the industry affected" could detect and condemn concentration-increasing conduct which was impossible to reach under the Sherman Act or the recently enacted Clayton Act. Federal Trade Commission v. Keppel & Bros., 291 U.S. 304, 314 (1934); S. REP. No. 597, *supra*, at 9, 11.

The legislative history clearly evinces the intent of Congress to provide the FTC with a flexible weapon against novel forms of anticompetitive conduct. *See* H.R. REP. No. 1142, 63d Cong., 2d Sess. (1914); REP. No. 597, 63d Cong., 2d Sess. (1914). For commentaries on this history, see HENDERSON, THE FEDERAL TRADE COMMISSION (1927); Austern, *The Parentage and Administrative Ontogeny of the Federal Trade Commission*, 1955 N.Y.S.B.A. ANTITRUST LAW SYMPOSIUM 83; Baker & Baum, *Section 5 of the Federal Trade Commission Act: A Continuing Process of Redefinition*, 7 VILL. L. REV. 517 (1962); Votaw, *Antitrust in 1914: The Climate of Opinion*, 24 A.B.A. ANTITRUST SECTION 14 (1964). *But see* Posner, *The Federal Trade Commission*, 37 U. CHI. L. REV. 47 (1969).

153. FTC v. Motion Picture Adv. Co., 344 U.S. 392, 396 (1953). *See also* FTC v. Texaco, 393 U.S. 222, 225 (1968).

on review to "determining whether the Commission's decision has warrant in the record and a reasonable basis in law."[134] It has ruled that to be "unfair," conduct need not violate other antitrust laws, but must merely "conflict with the basic policies of the Sherman and Clayton Acts."[135] To give meaning to this general standard, the Court has upheld FTC findings of "unfair" practices when their anticompetitive impact as determined by the Commission was characteristic of conduct already proscribed under Sherman and Clayton Act standards.[136] Thus, the Court could be expected to uphold an FTC finding

134. Atlantic Ref. Co. v. FTC, 381 U.S. 357, [illegible] (1965).

135. FTC v. Brown Shoe Co., 384 U.S. 316, [illegible] (1966). See also similar statements in FTC v. [illegible], 312 U.S. [illegible] (1941); [illegible] v. Atlantic Ref. Co. v. FTC, 381 U.S. 357, [illegible] (1965). The [illegible] Section 5 falls into five separate categories: [illegible] FTC v. Beech-Nut Packing Co., 257 U.S. [illegible]; [illegible] v. Paper Trade Ass'n, 273 U.S. 52 (1927); [illegible] v. FTC, 312 U.S. 457 (1940); [illegible] v. FTC, [illegible] U.S. [illegible] (1945) (delivered pricing cases); [illegible] v. FTC, [illegible] (e.g., Fashion Originators' Guild v. FTC, 312 U.S. [illegible]); [illegible] v. United States, 343 U.S. 594 (1953); [illegible] *Federal Trade Commission Act*, [illegible] 34 Mich. L. Rev. 241, [illegible] (1935). Practices characteristic of Sections 3 and 7 of the Clayton Act violations: see, e.g., FTC v. Motion Picture Advertising Service Co., 344 U.S. 392 (1953) (quasi-monopolistic exclusive dealing); [illegible] v. FTC, 381 U.S. 357 (1965) (quasi-exclusive dealing); [illegible] v. FTC, [illegible] U.S. [illegible] (1966) (quasi-exclusive dealing franchise agreements); *Comment, Price Fixing and Section 5 of the Federal Trade Commission Act*, 35 Calif. L. Rev. 254, [illegible] (1947). Practices characteristic of but not explicitly proscribed by the Sherman or Robinson-Patman Acts: e.g., Grand Union Co. v. FTC, 300 F.2d 92 (2d Cir. 1962) (discriminatory promotional allowances); R.H. Macy & Co. v. FTC, 326 F.2d 445 (2d Cir. 1964) (excessive [illegible] allowances); Rahl, *Does Section 5 of the Federal Trade Commission Act Extend to Conspiracy?*, 5 Antitrust Bull. 533 (1960). (5) Practices characteristic of but not explicitly proscribed by Section 7 of the Clayton Act: see, e.g., Beatrice Foods Co., [illegible] Trade Reg. Rep. ¶ 17,244 (FTC 1965) (horizontal acquisition); Dean Foods Co., [illegible] 67 Transfer Binder Trade Reg. Rep. ¶ [illegible] (FTC [illegible] purchase agreement an unfair method of competition).

136. In Brown Shoe, [illegible] for example, it upheld the FTC's proscription of practices which accomplish the same anticompetitive end as exclusive dealing and tying arrangements [illegible] but which violated neither the Sherman nor Clayton Acts. In Atlantic Ref. Co. v. FTC, 381 U.S. 357 (1965), the Supreme Court held that the FTC was warranted in finding a sales-commission plan between a gasoline [illegible] and a major oil company to be an unfair trade practice because although not a tying agreement, "the effect of this plan is similar to a tie-in." 381 U.S. at 371. The arrangement involved Atlantic's sponsoring of Goodyear-supplied tires, tubes, and accessories to Atlantic's wholesalers and retail dealers. This arrangement has been termed a "quasi-tying agreement" because Atlantic did not manufacture the tires, tubes, and accessories, but received a commission on dealers' purchases. *See Comment, Price Setting and Section 5 of the Federal Trade Commission Act*, 34 Calif. L. Rev. 250, 253 [illegible] (1946). In FTC v. Brown Shoe, 384 U.S. 316 (1966), the Court found that respondent's franchise agreements, as effective in foreclosing competitors from selling to a substantial number of retail shoe stores, "obviously conflicts with the central policy" of the Sherman and Clayton Acts. 384 U.S. at 321. Here a franchise agreement, whereby Brown agreed to give volume service to independent retail stores in exchange for the latters' contractual promise to sell "primarily" in Brown shoes, was held an unfair method of competition. This agreement has been termed a "quasi-exclusive dealing" arrangement because of the absence of the usual promise from the dealer not to handle any goods which compete with those of the seller. *See Comment, supra*, at 2066-68. *But see* FTC v. Sperry & Hutchinson Co., 432 F.2d 146 (5th Cir. 1970), *cert. granted*, 39 U.S.L.W. 3424 (U.S. Mar. 30, 1971) (No. 1278).

that annual style change as interdependently pursued by the Big Three violated Section 5 if the Commission demonstrated that in the automobile industry this practice had accomplished the same anticompetitive ends as had recognized antitrust violations.

Part I of this Note established that the premise of antitrust legislation was unequivocally competition and that persistently high structural concentration and accompanying high barriers to entry are inimical to that objective. It suggested that certain forms of conduct could produce these anticompetitive structural features. Part II demonstrated that as pursued interdependently by the Big Three annual style change seemed to be conduct of this kind. As suggested above, the broad legislative mandate underlying Section 5 of the Federal Trade Commission Act was that concentration-increasing practices be identified and proscribed as "unfair." The case law under Section 5, however, requires analogy to antitrust violations. It will now be argued that the impact of annual style change upon industry concentration and entry barriers is sufficiently analogous to the structural impact of excessive promotional expenditures, predatory pricing and spending activities, and monopolistic practices to warrant a finding of illegality under Section 5.

The impact of any particular practice upon industry concentration can be factually demonstrated to a reviewing court by proving the extent to which it increases the market shares of the leading firms and increases the height of barriers to entry.[157] The issue of illegality, however, may pose a more difficult problem because it necessitates a determination of the threshold beyond which concentration and barriers to entry become clearly anticompetitive and the practices producing them may be termed "unfair." An abundance of economic evidence suggests that when 50 per cent or more of an industry's total sales is concentrated in four firms, and substantial barriers to entry are raised against newcomers, the survival of effectively competitive conduct and performance in that industry is highly improbable.[158] Consequently, while the question of threshold illegality might arise in other industrial contexts, it need not unduly concern a court reviewing competition in the automobile industry. As noted earlier, with three firms sharing 97 per cent of total domestic sales and without a successful newcomer in nearly fifty years, this industry is one of the most highly concentrated and entry-resistant enterprises in American manufac-

157. *See* note 3 *supra*.
158. *See* p. 569 *supra*.

turing. In short, if it could be shown that annual style change produced a high level of concentration and engendered substantial entry barriers and that these two structural effects could be analogized to results arising from other practices proscribed under the antitrust laws, there would be no problem in deciding that the degree of concentration and the height of entry barriers in the automobile industry were sufficient to warrant a finding of a Section 5 violation.

A. *The Analogy of Style Change to Excessive Promotional Expenditures: The* American Tobacco *and* Clorox *Cases*

Excessive promotional expenditures, those which might increase concentration beyond the tight oligopoly threshold (*i.e.*, four firms with persistently 50 per cent or more of industry sales), have been banned under the antitrust laws when they occurred in the context of collusion or merger. By vastly increasing the countervailing selling costs required for entry or survival in the market in which they are employed, promotional expenditures of large magnitude may threaten the existence of actual competitors and deter potential entrants.[159] Arguably, annual style change has an analogous impact upon actual and potential competitors in the automobile industry. Indeed, it has been suggested above that annual restyling may not only raise selling costs by requiring massive readvertising and retooling each year, but it also may increase distribution costs by requiring the establishment of a nationwide retail network and may increase production costs by requiring higher volumes of output.

Although the Supreme Court has never explicitly held that heavy promotional expenditures *per se* constitute an antitrust violation, it has recognized their anticompetitive implications when undertaken as a result of collusion or merger in Sherman and Clayton Act cases, respectively. As early as 1946, the Court noted that "tremendous advertising" outlays had been used by the Big Three cigarette manufacturers to foreclose new entry.[160] In *American Tobacco*, it affirmed the convictions of American, Liggett and Reynolds for conspiracy to monopolize in violation of Sections 1 and 2 of the Sherman Act.[161] Although these defendants had engaged in several exclusionary activities, including predatory price cutting and coercive purchasing programs, the Court placed substantial emphasis upon their $40 million annual advertising

159. *See* Smith, *supra* note 2, at 51-52; Turner, *Advertising and Competition*, 26 Fed. Bar J. 93 (1966); Mueller, *supra* note 89.
160. American Tobacco Co. v. United States, 328 U.S. 781, 797 (1946).
161. *Id.*

campaigns, finding that this activity required entrants to engage in equally massive and costly countervailing advertising. It concluded that to a considerable extent, the Big Three had preserved their two-thirds share of the tobacco industry by wielding a "powerful offensive and defensive weapon against new competition" which had served to warn any prospective competitor that it "dare not enter such a field, unless it be well supported by comparable national advertising."[162]

Of course, the practices condemned in *American Tobacco* are not precisely similar to the phenomenon of style change in the automobile industry. The former involved only advertising, whereas, the latter includes several additional activities which inflate entry costs. Moreover, conduct was pursued differently in these two cases. Unlike the leading automobile producers, the three largest cigarette manufacturers had acted in concert. Furthermore, the Court's statements concerning their promotional expenditures were dicta given the evidence of overtly predatory pricing practices.

Nonetheless, the concentration-increasing impacts of the cigarette and automobile firms' conduct are analogous. Although annual style change was pursued interdependently by the Big Three automobile companies, it could scarcely have served as a more effective deterrent to new entry had it been pursued in concert. In fact, annual restyling by the leading automobile producers very likely exceeded the deterrent capacity of the tobacco firms' advertising expenditures.[163] Thus, by analogy to the anticompetitive structural impact of advertising in *American Tobacco*, annual style change in the automobile industry would seem to constitute an "unfair method of competition" under Section 5.

In 1967, this time in the context of a Clayton Act Section 7 merger

162. *Id.*

163. Assuming, for example, that the costs of countervailing promotion might equal the established firms' collective promotional efforts, a newcomer would be at least ten times more able to meet the entry costs generated by the three tobacco firms' $40 million expenditures than those resulting from the Big Three's $400-$600 million advertising campaigns. The upper range of advertising expenditures was obtained by multiplying Lanzillotti's $75 per car figure (*see* note 115 *supra*) by the Big Three's current collective output of 7.98 million vehicles. STANDARD & POOR, *supra* note 18, at A161. The lower advertising estimate was based on advertising expenditures in selecting media for 1968 reported by STANDARD & POOR, *id.* at A170. Moreover, a firm contemplating entry into the automobile industry would encounter the additional costs and risks associated with requisite backward and forward integration as well as annual retooling expenditures.

That annual style change may have actually exerted a greater anticompetitive impact on the structure of the automobile industry than that of heavy advertising on the structure of the cigarette industry may be seen in the concentration trends of the two markets. From 1931 until the time of suit in 1939, the three cigarette firms' collective market share dropped from 91 to 68 percent. 328 U.S. 781 at 795. During that same period, the leading three automobile companies' share rose from 81 to 90 percent. FTC REPORT, *supra* note 21, at 29, 1058.

case, the Court reiterated its concern that advertising resources might be used by dominant firms in a tight oligopoly to increase and/or preserve high concentration. In *FTC v. Procter & Gamble Co.*, it upheld a Commission finding that Procter & Gamble's conglomerate acquisition of Clorox Chemical Co., the leading manufacturer of household liquid bleach, might substantially lessen competition or tend to create a monopoly in the production and sale of liquid bleach.[164] At the time of the acquisition, Clorox and one other firm accounted for 65 per cent of industry sales, and with four other firms, for almost 80 per cent.[165] In this already tightly concentrated industry, the Court held that Procter's acquisition of Clorox might increase concentration further or at least prevent possible deconcentration by raising barriers to entry. It specifically held that Procter's postmerger ability to divert a large portion of a promotional budget exceeding $120 million to meet the short term threat of attempted entry created a formidable obstacle to newcomers.[166] Moreover, it intimated that the substitution of the powerful Procter for the smaller but dominant Clorox might lead to promotional competition which would eliminate the remaining smaller firms in this industry.[167]

Although the Court's acknowledgement in *Clorox* of the anticompetitive implications of excessive promotional expenditures arose in the context of a merger, the holding might best be explained in terms of tight oligopoly structure. The Clorox-Procter merger had not been a horizontal merger of competitors but instead a conglomerate product extension. The Court was primarily concerned not with the elimination of competition by merger but with the postmerger impact that Procter's advertising resources might have upon concentration in the tightly oligopolistic bleach industry. Regardless of how the giant Procter had entered this industry, *i.e.*, whether *de novo* or via merger, its enormous promotional resources threatened to increase concentration by eliminating smaller firms and raising barriers to entry.

Viewed from this perspective, the situation the Court feared in *Clorox* begins to approach the factual setting of annual style change in the automobile industry. In both situations, competitive industry structure is threatened by the concentration-increasing conduct of dominant firms. Annual style change by the Big Three, no less than Procter's advertising advantages, might have raised selling costs above the level

164. FTC v. Procter & Gamble Co., 386 U.S. 568 (1967).
165. *Id.* at 571.
166. *Id.* at 578, 579.
167. *Id.* at 578.

tolerable for smaller actual and potential competitors. In fact, the former conduct seemed to produce the greater anticompetitive impact. For example, were Procter to have devoted its entire $120 million promotional budget to thwarting attempted entry, a newcomer to the liquid bleach industry would have confronted a barrier one-third as costly to surmount as that erected by the Big Three's collective advertising efforts.[168] Moreover, annual style change arguably occasioned more than massive advertising in the automobile industry; it might very well have led to the several other entry-deterring developments described earlier. Finally, in the automobile industry, unlike in *Clorox*, the anticompetitive impact quite possibly was real rather than merely potential. Annual style change may have actually eliminated nearly one hundred smaller producers. By contrast, the Court ordered Procter's divestiture of Clorox on the basis of a concentration-increasing impact that could *potentially* result were Procter to employ its promotional resources as a weapon against actual and prospective competitors. By reason of its arguably real and more formidable impact upon the competitive structure of the automobile industry, annual style change would seem to warrant condemnation as "unfair" under Section 5.

In *American Tobacco* and *Clorox*, the Court acknowledged that in highly concentrated industries excessive promotional expenditures whether actually undertaken by collusive oligopolists or merely threatened by a merger partner could seriously impair competitive structure. More recently, antitrust commentators have argued that excessive advertising *per se* by leading firms in a tight oligopoly should be proscribed under Section 5 because it can vitiate competitive structure and performance to the same extent as more common forms of concentration-increasing activities such as mergers.[169] One study has concluded:

> To be sure, there can no longer be any serious doubt about the capacity of certain kinds of advertising, pursued with sufficient intensity, to bring about a massive restructuring of an industry, to "concentrate" its sales volume in the hands of two or three firms and thus to impose on the consuming public all the ills the law has long recognized as being associated with inordinately high concentration ratios. In a situation where advertising has *in fact* been used to achieve this kind of result, it should enjoy no more immunity from the antitrust laws than any other kind of concentration-increasing behavior.[170]

168. *See* note 163 *supra*.
169. S. Smith, *supra* note 2, at 51.
170. *Id.*

This argument would seem to apply with even greater force to the concentration-increasing activities engendered by the Big Three's annual automobile restyling policy.

B. *The Analogy of Style Change to Predatory Price Cutting:* Standard Oil *and "Predatory Spending"*

The anticompetitive impact of annual restyling on industry structure is also similar to that produced by the recognized antitrust violations of predatory pricing and spending. Of course, these latter violations differ by nature from style change in that they involve some form of "predatory intent," whereas no such element has been discovered in various studies of the automobile industry.[171] Nevertheless, the effects of all three practices on competitive structure are fundamentally analogous.

Prolonged sales by powerful firms at prices below out-of-pocket costs are banned as predatory when they drive out competitors or bar new entry. This practice is illegal because it enables firms with vast financial resources to outlast smaller competitors and ultimately to reap the abnormally high profits associated with high industry concentration. Such "predatory price cutting" has been proscribed as an attempt to monopolize by the Sherman Act since the landmark *Standard Oil of New Jersey v. United States* decision of 1911[172] and has been recently condemned as a Robinson-Patman Act violation in *United States v. National Dairy Products Corp.*[173]

Similarly, excessive spending by huge manufacturers which requires countervailing expenditures that are unprofitable for smaller competitors has been regarded as predatory when it results in heightened concentration by excluding actual or potential competitors.[174]

171. *See* note 27 *supra*.

172. Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1911).

173. United States v. National Dairy Products Corp., 372 U.S. 29 (1963). For recent manifestations of concern regarding predatory pricing, see Reynolds Metals Co. v. FTC, 309 F.2d 223 (D.C. Cir. 1962); Foremost Dairies, Inc. v. FTC, 348 F.2d 674 (5th Cir. 1965), *cert. denied* 382 U.S. 959 (1965); Forster Mfg. Co. v. FTC, 335 F.2d 47 (1st Cir. 1964), *cert. denied* 380 U.S. 906 (1965).

174. *See* Turner, *Conglomerate Mergers and Section 7 of the Clayton Act*, 78 HARV. L. REV. 1313, 1345-46 (1965); P. AREEDA, ANTITRUST ANALYSIS 519-20 (1967). Indeed, careful study of the *Standard Oil* case revealed no evidence of that predatory tactic. *See* McGee, *Predatory Price Cutting: The Standard Oil (N.J.) Case*, 1 J. LAW & ECON. 137 (1958). Predatory promotional spending, however, is beginning to be recognized by the courts. An allegation that "excessive advertising expenses" and rapid product modification has been employed to drive out competition survived a motion to dismiss in Bailey's Bakery, Ltd. v. Continental Baking Co., 235 F. Supp. 705 (D. Hawaii 1964), *aff'd per curiam*, 401 F.2d 182 (9th Cir. 1968), *cert. denied* 393 U.S. 1086 (1969). By "predatory" nothing more is meant than the effect of unnecessarily impairing competition by raising barriers to new entry. No specific intent to exclude is implied, although it may very well exist. *E.g.*, refer to the

Predatory spending is an even more effective exclusionary weapon than predatory price cutting. Market strategies predicated upon price cutting are economically viable only if the surviving firm can recoup its losses through excessive profits obtained by pricing well above the competitive level. But these abnormally high profits will very likely bring new competition back into the field. A predatory price-cutter, therefore, might not be free from new entry for the length of time necessary to permit recovery of its original losses.[175] By contrast, a predatory spender not only drives out competitors unable to keep up, it also deters new competition by raising barriers to entry.[176]

Significantly, annual style change appears to be more closely analogous in anticompetitive impact to predatory spending than price cutting. As indicated earlier by the preliminary analysis of the automobile industry, this practice seemed responsible both for the elimination of smaller producers and the deterrence of firms attracted to the industry's extraordinarily high rates of return. In short, annual restyling is similar to predatory spending in that both practices increase concentration by setting expenditure rates at levels in excess of what either smaller producers or newcomers could afford.

Although the Supreme Court has never explicitly dealt with a case involving only allegations of predatory spending,[177] it has implied that this practice might violate the Sherman Act since its decision in the early *United States v. American Tobacco Co.* case of 1911.[178] In that case, it found as evidence of predatory intent American Tobacco's "persistent expenditure of millions upon millions of dollars in buying out plants, not for the purpose of utilizing them, but in order to close them up and render them useless for the purposes of trade"; the Court held that this firm had attempted to monopolize and had in fact monopolized the tobacco industry in violation of the Sherman Act.[179]

In *Tobacco*, the Court found that expenditures for the purchase and scrapping of plants helped achieve and preserve an extreme degree of concentration by eliminating potential as well as actual competition.

monopolization cases of *United Shoe* and *Alcoa* where practices "natural and normal" and "honestly industrial" were found nevertheless to discourage new entry unlawfully. United States v. United Shoe Machinery Corp., 110 F. Supp. 295, 344-45 (D. Mass. 1953), *aff'd per curiam*, 347 U.S. 521 (1954); United States v. Aluminum Co. of America, 148 F.2d 416, 431 (2d Cir. 1945).

175. *See* note 174 *supra*.

176. *Id.*

177. *But see* Bailey's Bakery, Ltd. v. Continental Baking Company, 235 F. Supp. 705 (D. Hawaii 1964), *aff'd per curiam*, 401 F.2d 182 (9th Cir. 1968), *cert. denied*, 395 U.S. 1086 (1969).

178. 221 U.S. 106 (1911).

179. *Id.* at 183.

sales by 1948.[100] Yet, by 1949, the Kaiser venture was doomed to failure. Its share of sales fell back to a little more than 1 percent, and by 1954, it had ceased production.[101]

The reason for this sudden reversal in Kaiser's market position after 1948 has been succinctly stated by economists: its survival required the launching of a new model, yet it was unable to finance a restyled automobile for 1949.[102] Although sales in 1948 had reached 181,000 units, that volume was insufficient to finance formidable retooling and advertising costs.[103] As Kaiser Industries reported later:

> To stay in the market, Kaiser-Frazer now had to play the "new models" game for the first time; new models took tools; tools took major financing. An attempt was made to sell a third stock issue to the public in 1948, but that ran aground . . . .[104]

Consequently, it was forced to sell its 1948 models again in 1949 and 1950. In 1951, it managed to produce a newly styled model; but by then its output was far below the minimum volume necessary for optimum efficiency.[105] As a result, higher per unit production costs forced its prices above those of the Big Three.[106] Thereafter, its sales plummeted, and it accumulated uninterrupted losses until it withdrew from the market in 1954, with an earned surplus deficit amounting to more than $100 million.[107]

Evaluation of the short-lived Kaiser entry suggests that it suffered in varying degrees all the disadvantages which had contributed to the elimination of the earlier producers.[108] Formidable scale economies in production and retail distribution, massive promotional activities and enormous capital requirements were the principal factors accounting for its demise.[109] As evidenced by its inability to finance a 1949 model, its 1948 record volume of 181,000 units was below the minimum optimal scale for integrated production, which had been estimated at about 250,000 for the early 1940's.[110] During succeeding years, how

100. AUTOMOTIVE NEWS, ALMANAC ISSUE 60 (1970).
101. *Id.*
102. *See* Lanzillotti, *supra* note 24, at 328-29.
103. *Id.*; *see also* note 72, *supra*.
104. KAISER INDUSTRIES CORP., THE KAISER STORY 45 (1968).
105. After failure of the public issue in 1948, Kaiser went to the banks which had helped fund its breakthrough into aluminum and steel, but they considered the risks prohibitive and refused further participation. Lanzillotti, *supra* note 24, at 329.
106. FORTUNE, *supra* note 98, at 161. In 1950, it lost $13 million on its sale of 151,000 automobiles. *Id.*
107. MOODY'S INDUSTRIAL MANUAL 1616 (1955).
108. INDUSTRIAL ORGANIZATION, *supra* note 2, at 285-87.
109. *Id. See also* Lanzillotti, *supra* note 24, at 328-29.
110. *See* note 73 *supra*.

ever, it suffered further scale economy disadvantages as its volume dropped below the minimum 100,000-150,000 unit volume required for optimal efficiency in retail distribution.[111] To meet the retooling and readvertising requirements of annual style change, moreover, Kaiser would have needed an additional $150 million, which would suggest a total capital resources entry barrier exceeding $350 million.[112] In fact, this $350 million estimate is probably too low for a potential entrant today since Kaiser enjoyed several advantages which are no longer accessible to a newcomer in the 1970's.[113] Reviewing the failure of Kaiser's automobile venture despite its sizeable resources and its record as one of the country's most formidable challengers of concentrated industries, one industrial economist concluded in 1966: "The idea of any further entry into the industry today seems preposterous."[114]

Subsequent studies of the Kaiser-Frazer attempt and the recent operations of the Big Three now afford a more precise determination of the actual magnitude of barriers to entry into this industry, barriers which may be largely attributable to annual style change. In 1970, it would cost a company $779 million to enter the automobile industry. The costs of annual style change capability, it is estimated, account for fully $724 million, or more than 90 per cent of this figure.[115] More-

111. AUTOMOTIVE NEWS, ALMANAC ISSUE 60 (1970).

112. As sales fell, Kaiser's dealers were unable to meet their overhead costs and declined from a high of 4700 in 1948 to 2700 in 1951, scarcely 200 more than the number considered minimally necessary for national coverage. WEISS, *supra* note 20, at 343; FORTUNE, *supra* note 98, at 158. With regard to capital required for annual restyling and advertising, Kaiser later concluded conservatively that it needed at least $150 million more in equity resources. FORTUNE, *supra* note 98, at 161. When added to the more than $200 million Kaiser actually raised, this would indicate a capital requirement of more than $350. *See* p. 586 *supra*.

113. For example, through its acquisition of Graham-Paige Motors, it was able to obtain an operational manufacturing and dealer organization. By contrast, today's entering firm would have to construct both *de novo*. The production facilities of the earlier independents have either been sold to the four domestic producers or scrapped; their retail networks have long since disappeared. ADMINISTERED PRICES, *supra* note 43, at 14. Absent the opportunity to acquire existing facilities, however, newcomers would require from an estimated $779 million to $2 billion to build both systems at the minimum optimal volume necessary for annual style changes (*i.e.*, 300,000 units). *See* notes 115, 123 *infra*.

114. WEISS, *supra* note 20, at 339.

115. Yearly restyling requires efficient assembly and integrated components production facilities at a minimum plant investment of $250 million. Bain estimates that efficient production and assembly of body and engine components would require a minimum plant capacity of 300,000 units, at a cost of $250 million. INDUSTRIAL ORGANIZATION, *supra* note 2, at 286. Annual restyling also necessitates integration forward into a nationwide distribution network costing no less than $326 million. This was Romney's estimate of the capital required by a 250,000 unit firm in 1958 to establish a national distribution system. ADMINISTERED PRICES, *supra* note 43, at 16 n.28. Finally, annual style change would compel retooling and readvertising at a minimum annual rate of $180 million and $23 million, respectively. This annual retooling figure assumes output at the minimum efficient level of 300,000 units. It was obtained by multiplying the per unit full factor costs for style change (i.e. including the actual added production costs of producing the redesigned vehicle) as calculated at $600 by Fisher, Griliches & Kaysen, *The Costs of Automobile Model Change During a Decade*,

64-345 O - 71 - pt. 3 -- 29

over, to merely recapture its $779 million investment, an entering firm would need to secure from 4 to 8 per cent of total industry sales for an efficient scale of operations.[116] In addition, it would encounter for 5 to 10 years a net price disadvantage of at least 5 per cent of factory price due to higher per unit countervailing advertising expenses and price concessions necessary to maintain a solvent national dealership system.[117]

By contrast, had the industry not been restructured by annual style change, it is estimated that entry in 1970 could have been achieved for $55 million, or less than one-tenth as much as the actual capital requirement.[118] Absent annual style change, an entrant could operate efficiently with an estimated 0.7 to 2.1 per cent of the market[119] without encountering promotional or distributional price disadvantages.[120] To the extent, therefore, that style change transformed the condition of entry into this industry, barring all but completely integrated firms able and willing to spend not merely $55 million but $779 million, it

70 J. POL. ECON. 433, 450 (1962), by the output (300,000 × $600 = $180 million). The readvertising amount was obtained by multiplying the current $75 per car advertising expenditure of the Big Three (*see* Lanzillotti, *supra* note 24, at 343) by the minimum efficient output level of 300,000 units = $22.5 million. Realistically, a new firm would probably expend at least twice that amount overcoming consumer loyalty to current automobile models engendered by decades of advertising by established sellers. In 1958, Romney then president of American Motors estimated that a plant with a 250,000 unit output would require $35 million for annual advertising. ADMINISTERED PRICES, *supra* note 43, at 17, table 1. The costs of annual style change capability are $779 million less $55 million, or $724 million. *See* note 118 *infra*.

116. *See* note 22 *supra*.

117. *Id.*

118. Absent the need for an entering firm to restyle annually and assuming the existence of independent parts manufacturers and independent distributors, the formidable costs of components production and of distribution would have been borne not by the entrant but by these specialized independent enterprises. Thus, an assembler of automobiles could have accomplished entry under these hypothetical conditions by merely constructing an assembly plant at a cost of $50 million and by spending an additional $5 million for introductory promotion. On the basis of the Kaiser experience and from studies of the Big Three's manufacturing operations, Bain has estimated that an assembler could operate with optimal efficiency at a minimum output of 60,000 vehicles per year. BARRIERS, *supra* note 3, at 245. *See also* ADMINISTERED PRICES, *supra* note 43, at 14. The cost of an assembly plant one-fifth as large as that minimally required for annual restyling (*i.e.*, 300,000 units) has been assumed to be one-fifth of the cost of the latter facility, or $50 million. *See* note 115 *supra*. Assuming that a new entrant would engage in countervailing advertising at a rate equal to that of the Big Three, the cost of such advertising for the the first year may be computed by multiplying the average Big Three per car advertising expenditure of $75 (*see* note 115 *supra*) by the minimum efficient level of output for an assembler of 60,000 units: $75 × 60,000 = $4.5 million. Assuming further, however, that the assembler's product would remain basically unchanged pending major technological breakthroughs, subsequent advertising expenditures should decline as the public becomes acquainted with the characteristics of the assembler's unchanged model. *See* note 56 *supra*. But these conditions no longer obtain; entry as an assembler has not been feasible since the 1920's.

119. These percentages were derived by calculating the share of total industry sales in 1969 (8.38 million per note 18 *supra*) represented by the minimum efficient scale for assembly operation, estimated at from 60,000 to a high of possibly 180,000 units per year. BARRIERS, *supra* note 3, at 245.

120. *See* note 22 *supra*.

raised the capital costs of entry considerably more than tenfold.[121] To the extent that it required entrants to capture a formidable segment of industry sales and to endure substantial price disadvantages and hence losses for up to a decade, it made the risks of entry prohibitive.

A large number of companies have recently developed alternative automobile propulsion systems utilizing gasoline, electricity, steam and freon; but, significantly, not a single firm has attempted entry. Representatives of these companies have generally agreed in their testimonies before Congress that absent major antitrust action or some form of government subsidization, entry by firms offering innovative alternatives is economically infeasible.[122] Estimates made by these prospective entrants suggest that style change barriers today are higher than the foregoing analysis would suggest.[123]

121. This is a conservative estimate of the entry barriers attributable to annual style change. For example, Bain argues that an entering firm would probably encounter break-in losses of $15 million annually for a ten year period, or $150 million. INDUSTRIAL ORGANIZATION, *supra* note 2, at 286. Romney's estimate of the first year capital requirements necessary for a 250,000 unit integrated operation in 1958 amounted to $902.2 million. This figure included $326.2 million to establish a national dealer system. ADMINISTERED PRICES, *supra* note 43, at 16 n.28. *See also* Sen. Morse's statement as to a subsequent increase in Romney's estimate to roughly $2 billion. *Hearings Before the Senate Select Comm. on Small Business on the Status and Future of Small Business in the American Economy*, 90th Cong., 1st Sess., pt. 2, at 431 (1967).

122. *See, e.g.*, *Joint Hearings on the Automobile Steam Engine and Other External Combustion Engines* [hereinafter cited as *J. Hearings—Steam*], 90th Cong., 2nd Sess. (1968); *Electric Vehicles and Other Alternatives to the Internal Combustion Engine, Joint Hearings Before the Senate Comm. on Commerce and the Subcomm. on Air and Water Pollution of the Senate Comm. on Pub. Works*, 90th Cong., 1st Sess. (1967) [hereinafter cited as *J. Hearings—Electric*]. For suggestions regarding "major antitrust action" to restructure the industry, see testimony of Arkus-Duntov in *1969 Hearings*, *supra* note 24, at 404-06. Regarding the alternative need for government subsidization of entry, see testimony of Ayres in *J. Hearings—Steam*, *supra* at 10-12.

123. Prospective automobile firms place the minimum optimal scale for integrated production at 500,000 instead of 300,000 units. Arkus-Duntov, *1969 Hearings*, *supra* note 24, at 406. They also state that an annual sales volume of 500,000 or more vehicles is minimally required to maintain a national dealer system. Wyman, *Can the Steam Automobile Come Back*, 9 STEAM AUTOMOBILE #2 (1967). The initial capital investment required merely to build an integrated plant with this annual capacity has been estimated at $1 to $2 billion. Arkus-Duntov, *1969 Hearings*, *supra* note 24, at 406.

Moreover, there are indications that the Big Three are pursuing programs which will raise entry barriers even further. While their trend toward more complete backward integration has continued unabated, *see, e.g.*, STANDARD & POOR, INDUSTRY SURVEYS: *Auto Parts—Basic Analysis* A138 (October 8, 1970), these firms have begun to place major emphasis on greater forward integration into retail distribution and are buying up formerly franchised outlets. Until recently, the Big Three distributed their automobiles through a large number of franchised dealers who although pressured to accept a policy of exclusivity might have been at least theoretically accessible to new automobile producers. *See* Ralph Nader's testimony in *1968 Hearings*, *supra* note 20, at 155. Now, however, they are rapidly eliminating dealerships and replacing franchised outlets with factory-controlled operators or "house dealers." *See* Note, *Antitrust Law and The New Industrial State: An Application to Automobile Distribution Practices*, 4 UNIV. OF SAN FRANCISCO L. REV. 78, 111 (1969). As a result, the number of active dealerships has declined from 49,173 in 1949 to 27,486 in 1969, or by more than 44 per cent. *See* testimony of Hammond in *1969 Hearings*, *supra* note 24, at 19. In addition, franchised dealers who have not yet been replaced by factory operators, increasingly are being bypassed by direct "fleet sales" made by the manufacturers to retail customers at below dealer or even production cost. *Hearings Before the*

General Motors, Ford and Chrysler reject any notion of "artificial" barriers to entry into the automobile industry. Instead, they contend that there are no obstacles which cannot be overcome.[124] In support of their position, they cite the possibility of conglomerate entry by General Electric and Westinghouse and the actual expansion of several foreign manufacturers into the market.[125] But conglomerate entry by either of these firms has failed to materialize despite the technological capability of both to produce reliable electric vehicles and the vast financial resources of the former.[126] The Big Three's second line of defense involves the successful expansion of standard styled foreign imports, particularly Volkswagen and Toyota, into the American market.[127] This comparison of foreign with domestic entry possibilities, however, is entirely inappropriate.[128] Moreover, it suggests that by

Special Subcomm. on Automobile Marketing Practices of the Senate Comm. on Commerce, 90th Cong., 2d Sess. 5-8 (1968). These developments, however, will not only absolutely foreclose retail outlets from new entrants, it will also deprive those few remaining independent parts manufacturers of the outlets they require for survival. Furthermore, the elimination of components producers will augment existing barriers to entry by new automobile manufacturers.

124. General Motors suggests, for example, that "entry into the business is open to all who are willing to assume the risks: there are no artificial barriers." GENERAL MOTORS, *supra* note 52, at 81. It concedes, however, that there are "certain critical requirements for entry" including large capital investment and substantial economies of scale. *Id.*, at 83. But it implies that these entry requirements are compelled in part by the "competitive necessity" of engaging in annual style change. *Id.*, at 83-84, 29. Thus, it argues that annual restyling is a form of efficiency mandated by consumer preference and that any barriers resulting therefrom are inherently "natural" rather than "artificial." *Id.*, at 29, 52-53, 71-75, 84-85. This argument assumes implicitly, however, that consumer acquiescence in the Big Three's policy of planned obsolescence is equivalent to consumer preference for that policy. Upon closer examination, such an assumption appears to be wholly unwarranted. *See* note 141 *infra*. Moreover, there is evidence that by substantially inflating production and distribution costs and by discouraging technological innovation, annual style change has actually led to a net reduction in efficiency. *See* note 136 *infra*.

125. General Motors, for example, relies on the rumored possibilities of electric car entry by General Electric or Westinghouse to support its argument that entry into the industry remains possible. GENERAL MOTORS, *supra* note 52, at 83-84. For a similar suggestion regarding the possibility of conglomerate entry into the industry, see Shubik, *A Game Theorist Looks at the Antitrust Laws and the Automobile Industry*, 8 STAN. L. REV. 594, 624-25 (1956).

126. *See J. Hearings—Steam*, *supra* note 138, at 205-06; *J. Hearings—Electric*, *supra* note 138, at 486-87. Moreover, as the nation's fourth largest industrial corporation, General Electric in particular should have no financial entry difficulties—if access is as open as General Motors suggests. For GE's sales rank, see FORTUNE, May 1970, at 184.

127. GENERAL MOTORS, *supra* note 52, at 81, 82 n.46.

128. Unlike a prospective domestic entrant, foreign producers such as Volkswagen and Toyota relied upon large plant scale economies in Germany and Japan, respectively, and enormous world-wide sales to support their expansion into the American market. These companies marketed vehicles in America for nearly a decade before their sales volumes here reached the 60,000 unit level considered minimally adequate for efficient production of standard-styled cars. *See* Schupack, *1968 Hearings*, *supra* note 20, at 920. Indeed, even GM admits this distinction. GENERAL MOTORS, *supra* note 52, at 23. Volkswagen began producing automobiles in 1945 but did not begin selling in the United States until 1949. In that year, it sold two vehicles. Not until 1958 did its sales volume in this country exceed 60,000 units. FORTUNE, August 1957, at 106; FORTUNE, March 1969, at 116. Similarly, Toyota first began selling vehicles in this country in 1958, but only in 1968 did its sales

simply not annually changing model styles a domestic firm could overcome all the structural obstacles occasioned by nearly five decades of annual restyling by the Big Three. This is demonstrably untrue.[129]

The foregoing analysis suggests that by pursuing annual style change the Big Three may have created an anticompetitive industry structure of three well-entrenched manufacturers. High market concentration may enable them to restrict output and raise prices above competitive levels. High barriers to entry may deter newcomers attracted by the tight oligopoly's greater-than-competitive profits. Again, pending a more exhaustive investigation by the FTC, annual style change appears to have been the underlying cause of these developments.

C. *Style Change and Performance*

For most antitrust economists, noncompetitive performance (*e.g.*, high prices, high costs, retarded innovation) is an inevitable result of anticompetitive structure.[130] It has been suggested, however, that due to their relative inexperience in the economics of industrial organization, the courts might be less willing to make this causal leap and might demand instead a showing of both anticompetitive structure *and* noncompetitive performance.[131] Some manifestations of unsatisfactory performance resulting from the automobile industry's anticompetitive structure have already been described.[132] To the extent, therefore, that annual style change was responsible for this structure, it indirectly impaired the industry's performance. This section briefly suggests, however, that annual style change itself may directly con-

here reach the 60,000 volume level. FORTUNE, December 1969, at 77. By the time that sales volume was achieved in America, Volkswagen was selling nearly half a million, and Toyota a million and a quarter, automobiles in more than 100 countries. FORTUNE, August 1957, at 106; FORTUNE, December 1969, at 78.

129. Entry as an assembler is no longer feasible. The independent parts manufacturers and independent retail distributors of earlier years have largely vanished as the Big Three have moved toward complete vertical integration. *See* note 113 *supra*. Consequently, an entrant bent on producing a standard-styled vehicle in 1970 would need nonetheless to integrate backward into components production and forward into a nationwide distribution system, at a capital investment cost estimated at more than half a billion dollars. Backward integration would require a minimum of $250 million; forward integration could be achieved at a cost of no less than $326 million. Note 115 *supra*. Even were it able to raise this amount of capital, a firm offering standard-styled cars to consumers accustomed to annually restyled products would probably be compelled to undertake lengthy and expensive countervailing promotional campaigns and to sell its vehicles at a substantial price disadvantage for a decade or more. *See* p. 589 *supra*. Indeed, it took Volkswagen and Toyota that long; and unlike a domestic entrant, these firms were able to rely on substantial worldwide sales to subsidize their prolonged break-in losses in this country. Schupack, *1968 Hearings*, *supra* note 20, at 920 n.6.

130. *See, e.g.*, Mueller, *supra* note 2, at 89-90; notes 2 & 5 *supra*.

131. Smith, *supra* note 2, at 57-58.

132. *See* note 24 and accompanying text *supra*.

tribute to unsatisfactory market performance by reducing efficiency and retarding progressiveness.

Efficiency in terms of market performance is generally measured by comparing actual costs and prices with those that would obtain in a competitively structured market.[133] Annual style change has substantially inflated production and distribution costs, and hence prices, by vastly increasing selling and retooling costs. In 1969, as noted above, the Big Three spent $1.56 billion, or $195 per car, for restyling.[134] Advertising accounted for another $75 in per unit expenditures.[135] These costs amounted to several billion dollars in consumer expenditures for 1969. Yet buyers were never given a choice between purchasing the same model as last year's at a lower price and a new model at a higher price.[136]

Moreover, there is some evidence that the Big Three may employ annual style change as a surrogate for cost-saving innovations. By introducing a "new" model each year, they provide consumers with the illusion of progress and yet avoid the necessity of adopting technological improvements which would lower maintenance or initial purchase costs.[137] It has been argued, for example, that application of known

133. *See* note 5 *supra*.

134. *See* p. 576 *supra*.

135. *See* note 115 *supra*.

136. Turner has framed the cost savings loss argument in the following manner:

> The major producers evolved a policy of annual model changes that, by accelerating the scrapping of expensive machine tools and dies, substantially increased the cost of automobiles. Since all of the major producers pursued this policy, and since the products of small producers were for a variety of reasons unappealing to most consumers, buyers were never given a choice between purchasing the same model as last year's at a lower price and a new model at a higher price.

Conglomerate Mergers and Section 7 of the Clayton Act, 78 HARV. L. REV. 1313, 1335 (1965). *See also* WEISS, *supra* note 20, at 364-65. The study by Fisher *et al.* estimated that the cost savings loss to consumers resulting from annual style and performance changes amounted to approximately $5 billion annually, *supra* note 115, at 433-51. BLS data indicate that nearly all of the $5 billion model change cost to the consumer is attributable to restyling rather than performance modification. *See* pp. 576-77 *supra*. To this figure must be added the cost savings loss due to the diversion of resources from technological improvements to style alterations. For example, had the Big Three spent $36 of the estimated $195 consumed in restyling (*see* p. 576 *supra*) for processing its sheet metal with a chrome over galvanized steel process, the resulting doubling in the automobiles longevity would have saved consumers $2.1 billion a year. *See* p. 594 *infra*.

137. *See* testimony of Arkus-Duntov in *1969 Hearings*, *supra* note 24, at 402-03.

> For example, if the chrome over galvanized steel treatment discussed at p. 594 *infra*, were utilized, automobiles would physically deteriorate less than twice as rapidly. Presumably, industry sales would therefore fall as the demand for replacements declined. The failure of this industry to adopt measures such as these which would improve the durability of its products, coupled with its promotion of psychological deterioration through annual style changes, has led many economists to charge the Big Three with "planned obsolescence." *See, e.g.*, Lanzillotti, *supra* note 24, at 344-45; Dowd in *1969 Hearings*, *supra* note 24, at 524. Moreover, it has been suggested that the Big Three are reluctant to introduce steam or electric vehicles because the number of parts required for these propulsion systems is far less than those needed for conventional gasoline engines. Since these firms derive a substantial amount of profit from "aftermarket" (*i.e.*, replacement parts) sales, they

metallurgical processes would permit doubling the life of an automobile for an additional cost of $36 per year, resulting in an annual savings to consumers of more than $2 billion.[138] Crash-absorption bumpers have been developed which could save the public an additional $1 billion a year.[139] Pollution-free electric and steam vehicles can now be produced which would cost half as much to own and even less to operate than conventional gasoline automobiles.[140] These developments, however, would increase automobile durability and thereby reduce demand, price and profits on new car sales. It is suspected, therefore, that the Big Three have repressed these cost-savings advances while offering consumers instead an annual restyling policy designed to bolster replacement demand through planned obsolescence.[141]

Similarly, annual style change may have retarded this industry's

are unwilling to produce pollution-free vehicles which have a significantly smaller aftermarket. ESPOSITO, *supra* note 24, at 35. There is perhaps another reason for this reluctance. It has been suggested that were the Big Three to produce electric vehicles, for example, industry barriers to entry would decline due to lower production costs and minimum scale economies. Ayres, *J. Hearings—Steam*, *supra* note 122, at 8.

138. Testimony of Luntz in *1969 Hearings*, *supra* note 24, at 468-70.

139. N.Y. Times, October 2, 1970, at 19. Sen. Nelson also cites the automobile industry for its failure to use energy absorbing bumpers and crash bars in its products. *1969 Hearings*, *supra* note 24, at 512. The U.S. Steel Corporation has developed an automobile body with complete perimeter crash protection including steel roll bars front and rear. N.Y. Times, October 12, 1970, at 37.

140. *See, e.g.*, statement of Orr in *J. Hearings—Steam*, *supra* note 122, at 63; Federal Power Commission, *Development of Electrically Powered Vehicles* in *J. Hearings—Electric*, *supra* note 122, at 29.

141. *See* note 137 *supra*. It might be suggested, nevertheless, that unless consumers were completely content with annual restyling they would not continue to purchase vehicles from the Big Three. *See* note 121 *supra*. This argument, however, is specious. It is tantamount to suggesting that whenever consumers willingly buy products from a monopolist or tight oligopolist, they are content with the price and quality of the goods purchased. In fact, the public pays higher-than-competitive prices for less-than-optimum-quality goods when there is an absence of alternative suppliers, *i.e.*, an absence of competition. Such is the condition of the automobile industry. Unless a consumer can utilize the less than standard-sized vehicles of the foreign automobile producers, he has little choice but to purchase an annually restyled car from the Big Three. Moreover, the substantial rate of depreciation engendered by annual restyling will encourage him to repurchase on an annual or semi-annual basis. The fact that consumers continue to purchase annually restyled vehicles, therefore, does not necessarily imply that they would not prefer a wider range of alternatives provided by a less concentrated automobile industry. *See* Dowd in *1969 Hearings*, *supra* note 24, at 540; Schupack in *1969 Hearings*, *supra* note 24, at 541.

Within the past few months, the Big Three have introduced "subcompact" vehicles to compete with the imported standard-styled automobiles of foreign manufacturers, particularly Volkswagen and Toyota. Whether these subcompacts will be annually restyled is still an open question. Ford has suggested that its subcompact entry, the *Pinto*, might remain as basically unchanged as its earlier *Model T*. New York Times, November 6, 1970, at 42. Nevertheless, the Big Three's earlier introductions of "compacts" in the early 1960's were accompanied by similar overtones of standard-styling. Yet, the compacts were in fact restyled annually. Moreover, even if the subcompacts do remain unchanged, they will not encourage *de novo* entry into the automobile field by other firms. To meet the short-term threat of attempted entry into the subcompact market, the Big Three could rely on profits from their sales of restyled, regular-sized vehicles to subsidize increased promotion and near-cost sales of their subcompacts. To survive, a new domestic entrant would require a share of the regular-sized car market, but that larger field is still very much influenced by the Big Three's annual restyling policies.

progressiveness as measured by the number and importance of actual innovations that have been developed as compared with what could have been achieved absent style change. It has been noted, for example, that the innovative characteristics of the industry began to decline shortly after annual restyling was introduced in the 1920's.[142] Moreover, there is evidence that since then an increasing proportion of the Big Three's resources have been shifted from research and development to restyling and related promotional activities.[143] Perhaps as a result, most recent innovations have come from outside the leading firms. Improvements such as new suspension systems and disc brakes were first introduced by small European firms.[144] Other advances, notably automatic transmissions and power steering, originated in small domestic concerns.[145] In short, an emphasis on style change may have supplanted the drive for technological progress in this industry.

Furthermore, it has been suggested that, paradoxically, annual style change does not result in a wide variation in the appearance of different automobile makes.[146] Instead, given their high degree of interdependence, the Big Three protectively imitate each other's designs.[147] Thus, Professor Bain has found that in this industry "the highly imitative product policies of rival oligopolists seem to lead to substantial uniformity of available products and to a suppression of the potential variety in products."[148] Annual style change, then, may only have increased the rate rather than the degree of style innovation.[149]

As a fundamental determinant of this industry's highly anticompetitive structure, annual style change may have been the primary factor accounting for what could be termed noncompetitive performance in automobile manufacturing. In addition to increasing concentration and raising barriers to entry, it appears to have substantially impaired industry market performance by reducing efficiency and retarding technological growth.

142. *See* Lanzillotti, *supra* note 24, at 345.

143. Testimony of Arkus-Duntov, *1969 Hearings*, *supra* note 24, at 402-03. GM, for example, reported that in 1967 it spent $664 million for R&D, as compared with $881 million for annual restyling. *1968 Hearings*, *supra* note 20, at 736, 746.

144. Lanzillotti, *supra* note 24, at 344. Disc brakes were mass produced by smaller European automobile manufacturers for more than a decade before they appeared on American cars. Nader in *1968 Hearings*, *supra* note 20, at 212.

145. Lanzillotti, *supra* note 24, at 344.

146. *See, e.g.*, INDUSTRIAL ORGANIZATION, *supra* note 2, at 240-42, 423-25; Mueller, *supra* note 89, at 90-91. *But see* Jacoby's testimony in *1969 Hearings*, *supra* note 24, at 541.

147. *See* note 24 *supra*.

148. INDUSTRIAL ORGANIZATION, *supra* note 2, at 425.

149. For example, the migration of the gear shift from floor to steering column and, recently, back to floor again affected the rate but not the net amount of change. Note 39 *supra*.

III. Automobile Style Change as an "Unfair Method of Competition" Under Section 5 of the Federal Trade Commission Act

As previously noted, annual style change is a form of oligopoly conduct apparently invulnerable to prosecution under conventional Sherman and Clayton Act standards. This, however, was the type of problem Congress sought to solve by enactment of Section 5 of the Federal Trade Commission Act in 1914. More than two decades had passed since its passage of the Sherman Act in 1890; but Congress believed that its earlier legislation had been largely ineffective in halting a widespread and growing concentration in industry.[150] To avert further concentration, it created the Federal Trade Commission as an administrative tribunal capable of undertaking intensive economic investigations and empowered under Section 5 to strike down "unfair practices" which, although lawful in themselves, nevertheless tended toward a suppression of competition through the elimination of actual or potential rivals.[151] Congress deliberately left unspecified those practices which the FTC might proscribe as "unfair" in order to allow the Commission the widest latitude in dealing with novel methods by which concentration might be increased.[152]

In reviewing FTC findings of "unfair methods of competition" in cases brought under Section 5, the Supreme Court has complied with the intent of Congress by establishing flexible guidelines for illegality. It has deferred to the FTC's administrative expertise, holding that "[t]he precise impact of a particular practice on the trade is for the Commission, not the courts, to determine"[153] and limiting its function

150. *See* Federal Trade Commission v. Gratz, 253 U.S. 421, 432 (1920) (Brandeis, J., dissenting).

151. *Id.* at 442-43.

152. *Id.* at 423; S. REP. No. 597, 63d Cong., 2d Sess. 13 (1914). The Conference Report stated: "It is impossible to frame definitions which embrace all unfair practices. There is no limit to human inventiveness in this field." *Id.* By enacting Section 5, Congress hoped to establish an expert body which by "careful study of the business and economic conditions of the industry affected" could detect and condemn concentration-increasing conduct which was impossible to reach under the Sherman Act or the recently enacted Clayton Act. Federal Trade Commission v. Keppel & Bros., 291 U.S. 304, 314 (1934); S. REP. No. 597, *supra*, at 9, 11.

The legislative history clearly evinces the intent of Congress to provide the FTC with a flexible weapon against novel forms of anticompetitive conduct. *See* H.R. REP. No. 1142, 63d Cong., 2d Sess. (1914); REP. No. 597, 63d Cong., 2d Sess. (1914). For commentaries on this history, see HENDERSON, THE FEDERAL TRADE COMMISSION (1927); Austern, *The Parentage and Administrative Ontogeny of the Federal Trade Commission*, 1955 N.Y.S.B.A. ANTITRUST LAW SYMPOSIUM 83; Baker & Baum, *Section 5 of the Federal Trade Commission Act: A Continuing Process of Redefinition*, 7 VILL. L. REV. 517 (1962); Votaw, *Antitrust in 1914: The Climate of Opinion*, 24 A.B.A. ANTITRUST SECTION 14 (1961). *But see* Posner, *The Federal Trade Commission*, 37 U. CHI. L. REV. 47 (1969).

153. FTC v. Motion Picture Adv. Co., 344 U.S. 392, 396 (1953). *See also* FTC v. Texaco, 393 U.S. 222, 225 (1968).

on review to "determining whether the Commission's decision has warrant in the record and a reasonable basis in law."[154] It has ruled that to be "unfair," conduct need not violate other antitrust laws, but must merely "conflict with the basic policies of the Sherman and Clayton Acts."[155] To give meaning to this general standard, the Court has upheld FTC findings of "unfair" practices when their anticompetitive impact as determined by the Commission was characteristic of conduct already proscribed under Sherman and Clayton Act standards.[156] Thus, the Court could be expected to uphold an FTC finding

154. Atlantic Rfg. Co. v. FTC, 381 U.S. 357, 367-68 (1965).

155. FTC v. Brown Shoe Co., 384 U.S. 316, 320-321 (1966). *See also* similar statements in FTC v. Motion Picture Advertising Serv. Co., 344 U.S. 392, 394-95 (1953); Atlantic Ref. Co. v. FTC, 381 U.S. 357, 369 (1965). The judicial application of Section 5 falls into five separate categories. (1) Sherman Act violations: *see, e.g.*, FTC v. Beech-Nut Packing Co., 257 U.S. 441 (1922) (resale price-maintenance); FTC v. Pacific States Paper Trade Ass'n, 273 U.S. 52 (1927) (price fixing conspiracy); Fashion Originators' Guild v. FTC, 312 U.S. 457 (1940) (group boycott); FTC v. Cement Institute, 333 U.S. 683 (1948) (delivered pricing conspiracy). (2) Section 3 Clayton Act violations: *see, e.g.*, Fashion Originators' Guild v. FTC, 312 U.S. 683 (1940); Times-Picayune Publishing Co. v. United States, 345 U.S. 594 (1953) (tie-in); Oppenheim, *Guides to Harmonizing Section 5 of the Federal Trade Commission Act with the Sherman and Clayton Acts*, 59 MICH. L. REV. 821 (1961). (3) Practices characteristic of but falling short of Sherman Act violations and Section 3 Clayton Act violations: *see, e.g.*, FTC v. Motion Picture Advertising Service Co., 344 U.S. 392 (1953) (quasi-monopolistic exclusive contracts); Atlantic Ref. Co. v. FTC, 381 U.S. 357 (1965) (quasi-tying arrangements); FTC v. Brown Shoe Co., 384 U.S. 316 (1966) (quasi-exclusive dealing franchise agreements); Comment, *Per Se Rules and Section 5 of the Federal Trade Commission Act*, 54 CALIF. L. REV. 2049 (1966). (4) Practices characteristic of but not explicitly prohibited by the Robinson-Patman Act: *see, e.g.*, Grand Union Co. v. FTC, 300 F.2d 92 (2d Cir. 1962) (customer induced promotional allowances); R.H. Macy & Co. v. FTC, 326 F.2d 445 (2d Cir. 1964) (coerced contributions from vendors); Rahl, *Does Section 5 of the Federal Trade Commission Act Extend the Clayton Act?* 5 ANTITRUST BULL. 533 (1960). (5) Practices characteristic of but not explicitly proscribed by Section 7 of the Clayton Act: *see, e.g.*, Beatrice Foods Co. 1965-1967 Transfer Binder Trade Reg. Rep. ¶ 17,244 (FTC 1965) (noncorporate acquisition); Dean Foods Co. 1965-1967 Transfer Binder Trade Reg. Rep. ¶ 17,765 (FTC 1966) (purchase agreement an unfair method of competition).

156. In *Brown Shoe* and *Atlantic Refining*, for example, it upheld the FTC's proscription of practices which accomplished the same anticompetitive end as exclusive dealing and tying arrangements, respectively (*i.e.*, market foreclosure), but which violated neither the Sherman nor Clayton Act. In Atlantic Ref. Co. v. FTC, 381 U.S. 357 (1965), the Supreme Court held that the FTC was warranted in finding a sales-commission plan between a gasoline distributor and a major tire manufacturer an unfair trade practice because although not a tying agreement, "the effect of this plan is similar to a tie-in." 381 U.S. at 371. The arrangement condemned here involved Atlantic's sponsoring of Goodyear-supplied tires, batteries, and accessories to Atlantic's wholesalers and retail dealers. This arrangement has been termed a "quasi-tying agreement" because Atlantic did not manufacture the tied product, although it received a commission on dealers' purchases. *See* Comment, *Per Se Rules and Section 5 of the Federal Trade Commission Act*, 54 CALIF. L. REV. 2049, 2055-63 (1966). In FTC v. Brown Shoe, 384 U.S. 316 (1966), the Court found that respondent's franchise program, by effectively foreclosing competitors from selling to a substantial number of retail shoe dealers, "obviously conflicts with the central policy" of the Sherman and Clayton Acts. 384 U.S. at 321. Here a franchise agreement, whereby Brown agreed to give valuable services to independent retail stores in exchange for the latters' contractual promise to deal "primarily" in Brown shoes, was held an unfair method of competition. This agreement has been termed a "quasi-exclusive dealing" arrangement because of the absence of the usual promise from the dealer not to handle any goods which compete with those of the seller. *See* Comment, *supra*, at 2066-68. *But see* FTC v. Sperry & Hutchinson Co., 432 F.2d 146 (5th Cir. 1970), *cert. granted*, 39 U.S.L.W. 3424 (U.S. Mar. 30, 1971) (No. 1278).

that annual style change as interdependently pursued by the Big Three violated Section 5 if the Commission demonstrated that in the automobile industry this practice had accomplished the same anticompetitive ends as had recognized antitrust violations.

Part I of this Note established that the premise of antitrust legislation was unequivocally competition and that persistently high structural concentration and accompanying high barriers to entry are inimical to that objective. It suggested that certain forms of conduct could produce these anticompetitive structural features. Part II demonstrated that as pursued interdependently by the Big Three annual style change seemed to be conduct of this kind. As suggested above, the broad legislative mandate underlying Section 5 of the Federal Trade Commission Act was that concentration-increasing practices be identified and proscribed as "unfair." The case law under Section 5, however, requires analogy to antitrust violations. It will now be argued that the impact of annual style change upon industry concentration and entry barriers is sufficiently analogous to the structural impact of excessive promotional expenditures, predatory pricing and spending activities, and monopolistic practices to warrant a finding of illegality under Section 5.

The impact of any particular practice upon industry concentration can be factually demonstrated to a reviewing court by proving the extent to which it increases the market shares of the leading firms and increases the height of barriers to entry.[157] The issue of illegality, however, may pose a more difficult problem because it necessitates a determination of the threshold beyond which concentration and barriers to entry become clearly anticompetitive and the practices producing them may be termed "unfair." An abundance of economic evidence suggests that when 50 per cent or more of an industry's total sales is concentrated in four firms, and substantial barriers to entry are raised against newcomers, the survival of effectively competitive conduct and performance in that industry is highly improbable.[158] Consequently, while the question of threshold illegality might arise in other industrial contexts, it need not unduly concern a court reviewing competition in the automobile industry. As noted earlier, with three firms sharing 97 per cent of total domestic sales and without a successful newcomer in nearly fifty years, this industry is one of the most highly concentrated and entry-resistant enterprises in American manufac-

157. *See* note 3 *supra*.
158. *See* p. 569 *supra*.

on review to "determining whether the Commission's decision has warrant in the record and a reasonable basis in law."[154] It has ruled that to be "unfair," conduct need not violate other antitrust laws, but must merely "conflict with the basic policies of the Sherman and Clayton Acts."[155] To give meaning to this general standard, the Court has upheld FTC findings of "unfair" practices when their anticompetitive impact as determined by the Commission was characteristic of conduct already proscribed under Sherman and Clayton Act standards.[156] Thus, the Court could be expected to uphold an FTC finding

154. Atlantic Rfg. Co. v. FTC, 381 U.S. 357, 367-68 (1965).

155. FTC v. Brown Shoe Co., 384 U.S. 316, 320-321 (1966). *See also* similar statements in FTC v. Motion Picture Advertising Serv. Co., 344 U.S. 392, 394-95 (1953); Atlantic Ref. Co. v. FTC, 381 U.S. 357, 369 (1965). The judicial application of Section 5 falls into five separate categories. (1) Sherman Act violations: *see, e.g.*, FTC v. Beech-Nut Packing Co., 257 U.S. 441 (1922) (resale price-maintenance); FTC v. Pacific States Paper Trade Ass'n, 273 U.S. 52 (1927) (price fixing conspiracy); Fashion Originators' Guild v. FTC, 312 U.S. 457 (1940) (group boycott); FTC v. Cement Institute, 333 U.S. 683 (1948) (delivered pricing conspiracy). (2) Section 3 Clayton Act violations: *see, e.g.*, Fashion Originators' Guild v. FTC, 312 U.S. 683 (1940); Times-Picayune Publishing Co. v. United States, 345 U.S. 594 (1953) (tie-in); Oppenheim, *Guides to Harmonizing Section 5 of the Federal Trade Commission Act with the Sherman and Clayton Acts*, 59 MICH. L. REV. 821 (1961). (3) Practices characteristic of but falling short of Sherman Act violations and Section 3 Clayton Act violations: *see, e.g.*, FTC v. Motion Picture Advertising Service Co., 344 U.S. 392 (1953) (quasi-monopolistic exclusive contracts); Atlantic Ref. Co. v. FTC, 381 U.S. 357 (1965) (quasi-tying arrangements); FTC v. Brown Shoe Co., 384 U.S. 316 (1966) (quasi-exclusive dealing franchise agreements); Comment, *Per Se Rules and Section 5 of the Federal Trade Commission Act*, 54 CALIF. L. REV. 2049 (1966). (4) Practices characteristic of but not explicitly prohibited by the Robinson-Patman Act: *see, e.g.*, Grand Union Co. v. FTC, 300 F.2d 92 (2d Cir. 1962) (customer induced promotional allowances); R.H. Macy & Co. v. FTC, 326 F.2d 445 (2d Cir. 1964) (coerced contributions from vendors); Rahl, *Does Section 5 of the Federal Trade Commission Act Extend the Clayton Act?* 5 ANTITRUST BULL. 533 (1960). (5) Practices characteristic of but not explicitly proscribed by Section 7 of the Clayton Act: *see, e.g.*, Beatrice Foods Co. 1965-1967 Transfer Binder Trade Reg. Rep. ¶ 17,244 (FTC 1965) (nonconcorporate acquisition); Dean Foods Co. 1965-1967 Transfer Binder Trade Reg. Rep. ¶ 17,765 (FTC 1966) (purchase agreement an unfair method of competition).

156. In *Brown Shoe* and *Atlantic Refining*, for example, it upheld the FTC's proscription of practices which accomplished the same anticompetitive end as exclusive dealing and tying arrangements respectively (*i.e.*, market foreclosure), but which violated neither the Sherman nor Clayton Act. In Atlantic Ref. Co. v. FTC, 381 U.S. 357 (1965), the Supreme Court held that the FTC was warranted in finding a sales-commission plan between a gasoline distributor and a major tire manufacturer an unfair trade practice because although not a tying agreement, "the effect of this plan is similar to a tie-in." 381 U.S. at 371. The arrangement condemned here involved Atlantic's sponsoring of Goodyear-supplied tires, batteries, and accessories to Atlantic's wholesalers and retail dealers. This arrangement has been termed a "quasi-tying agreement" because Atlantic did not manufacture the tied product, although it received a commission on dealers' purchases. *See* Comment, *Per Se Rules and Section 5 of the Federal Trade Commission Act*, 54 CALIF. L. REV. 2049, 2055-65 (1966). In FTC v. Brown Shoe, 384 U.S. 316 (1966), the Court found that respondent's franchise program, by effectively foreclosing competitors from selling to a substantial number of retail shoe dealers, "obviously conflicts with the central policy" of the Sherman and Clayton Acts. 384 U.S. at 321. Here a franchise agreement, whereby Brown agreed to give valuable services to independent retail stores in exchange for the latters' contractual promise to deal "primarily" in Brown shoes, was held an unfair method of competition. This agreement has been termed a "quasi-exclusive dealing" arrangement because of the absence of the usual promise from the dealer not to handle any goods which overlapped with those of the seller. *See* Comment, *supra*, at 2066-68. *But see* FTC v. Sperry & Hutchinson Co., 432 F.2d 146 (5th Cir. 1970), *cert. granted*, 39 U.S.L.W. 3424 (U.S. Mar. 30, 1971) (No. 1278).

that annual style change as interdependently pursued by the Big Three violated Section 5 if the Commission demonstrated that in the automobile industry this practice had accomplished the same anticompetitive ends as had recognized antitrust violations.

Part I of this Note established that the premise of antitrust legislation was unequivocally competition and that persistently high structural concentration and accompanying high barriers to entry are inimical to that objective. It suggested that certain forms of conduct could produce these anticompetitive structural features. Part II demonstrated that as pursued interdependently by the Big Three annual style change seemed to be conduct of this kind. As suggested above, the broad legislative mandate underlying Section 5 of the Federal Trade Commission Act was that concentration-increasing practices be identified and proscribed as "unfair." The case law under Section 5, however, requires analogy to antitrust violations. It will now be argued that the impact of annual style change upon industry concentration and entry barriers is sufficiently analogous to the structural impact of excessive promotional expenditures, predatory pricing and spending activities, and monopolistic practices to warrant a finding of illegality under Section 5.

The impact of any particular practice upon industry concentration can be factually demonstrated to a reviewing court by proving the extent to which it increases the market shares of the leading firms and increases the height of barriers to entry.[157] The issue of illegality, however, may pose a more difficult problem because it necessitates a determination of the threshold beyond which concentration and barriers to entry become clearly anticompetitive and the practices producing them may be termed "unfair." An abundance of economic evidence suggests that when 50 per cent or more of an industry's total sales is concentrated in four firms, and substantial barriers to entry are raised against newcomers, the survival of effectively competitive conduct and performance in that industry is highly improbable.[158] Consequently, while the question of threshold illegality might arise in other industrial contexts, it need not unduly concern a court reviewing competition in the automobile industry. As noted earlier, with three firms sharing 97 per cent of total domestic sales and without a successful newcomer in nearly fifty years, this industry is one of the most highly concentrated and entry-resistant enterprises in American manufac-

157. *See* note 3 *supra*.
158. *See* p. 569 *supra*.

turing. In short, if it could be shown that annual style change produced a high level of concentration and engendered substantial entry barriers and that these two structural effects could be analogized to results arising from other practices proscribed under the antitrust laws, there would be no problem in deciding that the degree of concentration and the height of entry barriers in the automobile industry were sufficient to warrant a finding of a Section 5 violation.

A. *The Analogy of Style Change to Excessive Promotional Expenditures: The* American Tobacco *and* Clorox *Cases*

Excessive promotional expenditures, those which might increase concentration beyond the tight oligopoly threshold (*i.e.*, four firms with persistently 50 per cent or more of industry sales), have been banned under the antitrust laws when they occurred in the context of collusion or merger. By vastly increasing the countervailing selling costs required for entry or survival in the market in which they are employed, promotional expenditures of large magnitude may threaten the existence of actual competitors and deter potential entrants.[159] Arguably, annual style change has an analogous impact upon actual and potential competitors in the automobile industry. Indeed, it has been suggested above that annual restyling may not only raise selling costs by requiring massive readvertising and retooling each year, but it also may increase distribution costs by requiring the establishment of a nationwide retail network and may increase production costs by requiring higher volumes of output.

Although the Supreme Court has never explicitly held that heavy promotional expenditures *per se* constitute an antitrust violation, it has recognized their anticompetitive implications when undertaken as a result of collusion or merger in Sherman and Clayton Act cases, respectively. As early as 1946, the Court noted that "tremendous advertising" outlays had been used by the Big Three cigarette manufacturers to foreclose new entry.[160] In *American Tobacco*, it affirmed the convictions of American, Liggett and Reynolds for conspiracy to monopolize in violation of Sections 1 and 2 of the Sherman Act.[161] Although these defendants had engaged in several exclusionary activities, including predatory price cutting and coercive purchasing programs, the Court placed substantial emphasis upon their $40 million annual advertising

159. *See* Smith, *supra* note 2, at 51-52; Turner, *Advertising and Competition*, 26 FED. BAR J. 93 (1966); Mueller, *supra* note 89.
160. American Tobacco Co. v. United States, 328 U.S. 781, 797 (1946).
161. *Id.*

campaigns, finding that this activity required entrants to engage in equally massive and costly countervailing advertising. It concluded that to a considerable extent, the Big Three had preserved their two-thirds share of the tobacco industry by wielding a "powerful offensive and defensive weapon against new competition" which had served to warn any prospective competitor that it "dare not enter such a field, unless it be well supported by comparable national advertising."[162]

Of course, the practices condemned in *American Tobacco* are not precisely similar to the phenomenon of style change in the automobile industry. The former involved only advertising, whereas, the latter includes several additional activities which inflate entry costs. Moreover, conduct was pursued differently in these two cases. Unlike the leading automobile producers, the three largest cigarette manufacturers had acted in concert. Furthermore, the Court's statements concerning their promotional expenditures were dicta given the evidence of overtly predatory pricing practices.

Nonetheless, the concentration-increasing impacts of the cigarette and automobile firms' conduct are analogous. Although annual style change was pursued interdependently by the Big Three automobile companies, it could scarcely have served as a more effective deterrent to new entry had it been pursued in concert. In fact, annual restyling by the leading automobile producers very likely exceeded the deterrent capacity of the tobacco firms' advertising expenditures.[163] Thus, by analogy to the anticompetitive structural impact of advertising in *American Tobacco*, annual style change in the automobile industry would seem to constitute an "unfair method of competition" under Section 5.

In 1967, this time in the context of a Clayton Act Section 7 merger

162. *Id.*

163. Assuming, for example, that the costs of countervailing promotion might equal the established firms' collective promotional efforts, a newcomer would be at least ten times more able to meet the entry costs generated by the three tobacco firms' $40 million expenditures than those resulting from the Big Three's $400-$600 million advertising campaigns. The upper range of advertising expenditures was obtained by multiplying Lanzillotti's $75 per car figure (*see* note 115 *supra*) by the Big Three's current collective output of 7.98 million vehicles. STANDARD & POOR, *supra* note 18, at A161. The lower advertising estimate was based on advertising expenditures in selecting media for 1968 reported by STANDARD & POOR, *id.* at A170. Moreover, a firm contemplating entry into the automobile industry would encounter the additional costs and risks associated with requisite backward and forward integration as well as annual retooling expenditures.

That annual style change may have actually exerted a greater anticompetitive impact on the structure of the automobile industry than that of heavy advertising on the structure of the cigarette industry may be seen in the concentration trends of the two markets. From 1931 until the time of suit in 1939, the three cigarette firms' collective market share dropped from 91 to 68 percent. 328 U.S. 781 at 795. During that same period, the leading three automobile companies' share rose from 81 to 90 percent. FTC REPORT, *supra* note 21, at 29, 1058.

case, the Court reiterated its concern that advertising resources might be used by dominant firms in a tight oligopoly to increase and/or preserve high concentration. In *FTC v. Procter & Gamble Co.*, it upheld a Commission finding that Procter & Gamble's conglomerate acquisition of Clorox Chemical Co., the leading manufacturer of household liquid bleach, might substantially lessen competition or tend to create a monopoly in the production and sale of liquid bleach.[164] At the time of the acquisition, Clorox and one other firm accounted for 65 per cent of industry sales, and with four other firms, for almost 80 per cent.[165] In this already tightly concentrated industry, the Court held that Procter's acquisition of Clorox might increase concentration further or at least prevent possible deconcentration by raising barriers to entry. It specifically held that Procter's postmerger ability to divert a large portion of a promotional budget exceeding $120 million to meet the short term threat of attempted entry created a formidable obstacle to newcomers.[166] Moreover, it intimated that the substitution of the powerful Procter for the smaller but dominant Clorox might lead to promotional competition which would eliminate the remaining smaller firms in this industry.[167]

Although the Court's acknowledgement in *Clorox* of the anticompetitive implications of excessive promotional expenditures arose in the context of a merger, the holding might best be explained in terms of tight oligopoly structure. The Clorox-Procter merger had not been a horizontal merger of competitors but instead a conglomerate product extension. The Court was primarily concerned not with the elimination of competition by merger but with the postmerger impact that Procter's advertising resources might have upon concentration in the tightly oligopolistic bleach industry. Regardless of how the giant Procter had entered this industry, *i.e.*, whether *de novo* or via merger, its enormous promotional resources threatened to increase concentration by eliminating smaller firms and raising barriers to entry.

Viewed from this perspective, the situation the Court feared in *Clorox* begins to approach the factual setting of annual style change in the automobile industry. In both situations, competitive industry structure is threatened by the concentration-increasing conduct of dominant firms. Annual style change by the Big Three, no less than Procter's advertising advantages, might have raised selling costs above the level

164. FTC v. Procter & Gamble Co., 386 U.S. 568 (1967).
165. *Id.* at 571.
166. *Id.* at 573, 579.
167. *Id.* at 578.

tolerable for smaller actual and potential competitors. In fact, the former conduct seemed to produce the greater anticompetitive impact. For example, were Procter to have devoted its entire $120 million promotional budget to thwarting attempted entry, a newcomer to the liquid bleach industry would have confronted a barrier one-third as costly to surmount as that erected by the Big Three's collective advertising efforts.[168] Moreover, annual style change arguably occasioned more than massive advertising in the automobile industry; it might very well have led to the several other entry-deterring developments described earlier. Finally, in the automobile industry, unlike in *Clorox*, the anticompetitive impact quite possibly was real rather than merely potential. Annual style change may have actually eliminated nearly one hundred smaller producers. By contrast, the Court ordered Procter's divestiture of Clorox on the basis of a concentration-increasing impact that could *potentially* result were Procter to employ its promotional resources as a weapon against actual and prospective competitors. By reason of its arguably real and more formidable impact upon the competitive structure of the automobile industry, annual style change would seem to warrant condemnation as "unfair" under Section 5.

In *American Tobacco* and *Clorox*, the Court acknowledged that in highly concentrated industries excessive promotional expenditures whether actually undertaken by collusive oligopolists or merely threatened by a merger partner could seriously impair competitive structure. More recently, antitrust commentators have argued that excessive advertising *per se* by leading firms in a tight oligopoly should be proscribed under Section 5 because it can vitiate competitive structure and performance to the same extent as more common forms of concentration-increasing activities such as mergers.[169] One study has concluded:

> To be sure, there can no longer be any serious doubt about the capacity of certain kinds of advertising, pursued with sufficient intensity, to bring about a massive restructuring of an industry, to "concentrate" its sales volume in the hands of two or three firms and thus to impose on the consuming public all the ills the law has long recognized as being associated with inordinately high concentration ratios. In a situation where advertising has *in fact* been used to achieve this kind of result, it should enjoy no more immunity from the antitrust laws than any other kind of concentration-increasing behavior.[170]

168. *See* note 163 *supra*.
169. S. Smith, *supra* note 2, at 51.
170. *Id.*

This argument would seem to apply with even greater force to the concentration-increasing activities engendered by the Big Three's annual automobile restyling policy.

B. *The Analogy of Style Change to Predatory Price Cutting:* Standard Oil *and "Predatory Spending"*

The anticompetitive impact of annual restyling on industry structure is also similar to that produced by the recognized antitrust violations of predatory pricing and spending. Of course, these latter violations differ by nature from style change in that they involve some form of "predatory intent," whereas no such element has been discovered in various studies of the automobile industry.[171] Nevertheless, the effects of all three practices on competitive structure are fundamentally analogous.

Prolonged sales by powerful firms at prices below out-of-pocket costs are banned as predatory when they drive out competitors or bar new entry. This practice is illegal because it enables firms with vast financial resources to outlast smaller competitors and ultimately to reap the abnormally high profits associated with high industry concentration. Such "predatory price cutting" has been proscribed as an attempt to monopolize by the Sherman Act since the landmark *Standard Oil of New Jersey v. United States* decision of 1911[172] and has been recently condemned as a Robinson-Patman Act violation in *United States v. National Dairy Products Corp.*[173]

Similarly, excessive spending by huge manufacturers which requires countervailing expenditures that are unprofitable for smaller competitors has been regarded as predatory when it results in heightened concentration by excluding actual or potential competitors.[174]

171. *See* note 27 *supra*.

172. Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1911).

173. United States v. National Dairy Products Corp., 372 U.S. 29 (1963). For recent manifestations of concern regarding predatory pricing, see Reynolds Metals Co. v. FTC, 309 F.2d 223 (D.C. Cir. 1962); Foremost Dairies, Inc. v. FTC, 348 F.2d 674 (5th Cir. 1965), *cert. denied* 382 U.S. 959 (1965); Forster Mfg. Co. v. FTC, 335 F.2d 47 (1st Cir. 1964), *cert. denied* 380 U.S. 906 (1965).

174. *See* Turner, *Conglomerate Mergers and Section 7 of the Clayton Act*, 78 HARV. L. REV. 1313, 1345-46 (1965); P. AREEDA, ANTITRUST ANALYSIS 519-20 (1967). Indeed, careful study of the *Standard Oil* case revealed no evidence of that predatory tactic. *See* McGee, *Predatory Price Cutting: The Standard Oil (N.J.) Case*, 1 J. LAW & ECON. 137 (1958). Predatory promotional spending, however, is beginning to be recognized by the courts. An allegation that "excessive advertising expenses" and rapid product modification has been employed to drive out competition survived a motion to dismiss in Bailey's Bakery, Ltd. v. Continental Baking Co., 235 F. Supp. 705 (D. Hawaii 1964), *aff'd per curiam*, 401 F.2d 182 (9th Cir. 1968), *cert. denied* 393 U.S. 1086 (1969). By "predatory" nothing more is meant than the effect of unnecessarily impairing competition by raising barriers to new entry. No specific intent to exclude is implied, although it may very well exist. *E.g.*, refer to the

Predatory spending is an even more effective exclusionary weapon than predatory price cutting. Market strategies predicated upon price cutting are economically viable only if the surviving firm can recoup its losses through excessive profits obtained by pricing well above the competitive level. But these abnormally high profits will very likely bring new competition back into the field. A predatory price-cutter, therefore, might not be free from new entry for the length of time necessary to permit recovery of its original losses.[175] By contrast, a predatory spender not only drives out competitors unable to keep up, it also deters new competition by raising barriers to entry.[176]

Significantly, annual style change appears to be more closely analogous in anticompetitive impact to predatory spending than price cutting. As indicated earlier by the preliminary analysis of the automobile industry, this practice seemed responsible both for the elimination of smaller producers and the deterrence of firms attracted to the industry's extraordinarily high rates of return. In short, annual restyling is similar to predatory spending in that both practices increase concentration by setting expenditure rates at levels in excess of what either smaller producers or newcomers could afford.

Although the Supreme Court has never explicitly dealt with a case involving only allegations of predatory spending,[177] it has implied that this practice might violate the Sherman Act since its decision in the early *United States v. American Tobacco Co.* case of 1911.[178] In that case, it found as evidence of predatory intent American Tobacco's "persistent expenditure of millions upon millions of dollars in buying out plants, not for the purpose of utilizing them, but in order to close them up and render them useless for the purposes of trade"; the Court held that this firm had attempted to monopolize and had in fact monopolized the tobacco industry in violation of the Sherman Act.[179]

In *Tobacco*, the Court found that expenditures for the purchase and scrapping of plants helped achieve and preserve an extreme degree of concentration by eliminating potential as well as actual competition.

monopolization cases of *United Shoe* and *Alcoa* where practices "natural and normal" and "honestly industrial" were found nevertheless to discourage new entry unlawfully. United States v. United Shoe Machinery Corp., 110 F. Supp. 295, 344-45 (D. Mass. 1953), *aff'd per curiam*, 347 U.S. 521 (1954); United States v. Aluminum Co. of America, 148 F.2d 416, 431 (2d Cir. 1945).

175. *See* note 174 *supra*.

176. *Id.*

177. *But see* Bailey's Bakery, Ltd. v. Continental Baking Company, 235 F. Supp. 705 (D. Hawaii 1964), *aff'd per curiam*, 401 F.2d 182 (9th Cir. 1968), *cert. denied*, 393 U.S. 1086 (1969).

178. 221 U.S. 106 (1911).

179. *Id.* at 183.

Unable to acquire existing tobacco facilities, prospective entrants were compelled to invest in the construction of new plants. Indeed, a similar form of predatory spending characterized the *United States v. Aluminum Co. of America* case.[180] There, Judge Learned Hand ruled that Alcoa's anticipation of increases in demand for aluminum by doubling and redoubling its capacity excluded new competition in violation of the Sherman Act.[181] In both *Tobacco* and *Alcoa*, the costs of survival and entrance were heightened by the established firms predatory spending programs.

Of course, *Standard Oil*, *Tobacco* and *Alcoa* all involved monopolists; automobile manufacturing is dominated by oligopolists. But this difference in the degree of structural concentration achieved does not negate a basic similarity in the anticompetitive impact of the conduct involved. By excluding competitors and raising barriers to entry, annual style change by the Big Three may have been as effective in creating a tight oligopoly in the automobile industry as price cutting by Standard or predatory spending by American and Alcoa were in establishing monopolies in the oil, tobacco and aluminum industries, respectively. Indeed, the Big Three's annual $400-$600 million advertising campaigns, their $1.5 billion annual restyling expenditures, and their past investment of billions of dollars in backward and forward integration might approach if not equal the anticompetitive structural consequences of the spending programs proscribed in *Tobacco* and *Alcoa*.[182] The predatory pricing and spending programs of the monopolists in these three cases resulted in Sherman Act violations. Accordingly, the similarity in anticompetitive impact of annual automobile style change with that of predatory pricing and spending provides another justification for the FTC declaring this practice "unfair" under Section 5.

C. *The Analogy of Style Change to Monopolistic Practices: The* Motion Picture Advertising *Decision*

The implication of annual restyling by the Big Three for competitive industry structure is also analogous to that of monopolistic practices which have been declared "unfair methods of competition"

180. 148 F.2d 416 (2d Cir. 1945).
181. *Id.* at 431.
182. See note 163 *supra* for advertising computation. Regarding the Big Three's annual restyling expenditures, see note 45 *supra*. Their combined investment in integrated production and distribution facilities as of 1970 has been reported as amounting to nearly $30 billion. STANDARD & POOR, CORPORATION RECORDS 1454, 1468, 2471 (June 1970).

under Section 5. When pursued interdependently by firms effectively sharing monopoly power, both forms of conduct tend to preserve if not increase high concentration by eliminating competitors with smaller market shares.

In *FTC v. Motion Picture Advertising*, for example, the Supreme Court held that an advertising film company with 40 per cent of the relevant market, together with its three major nondefendant competitors, had collectively monopolized 75 per cent of the advertising film industry by jointly, although noncollusively, negotiating similarly exclusive contracts with theater owners.[183] Since the theater owner was paid to display these films, the exclusive dealing prohibition of Section 3 of the Clayton Act was inapplicable.[184] Moreover, respondent's less-than-dominant market position precluded a charge of monopolization under the Sherman Act. Instead, the Court treated the four jointly-acting firms as one and weighed the collective impact of their conduct on the advertising film industry's structure. It accepted the FTC's finding that this shared conduct had foreclosed to competitors all but 25 per cent of the available outlets for this business in the country and had resulted in the exit of several smaller film distributors.[185] Consequently, it held that "a device which has sewed up a market so tightly for the benefit of a few" constituted an "unfair method of competition" within the meaning of Section 5.[186]

In effect, the Court in *Motion Picture Advertising* analogized the anticompetitive impact of the four oligopolists' exclusive contracts to that which would have resulted had the contracts been unilaterally undertaken by a single monopolist. The latter situation, of course, would have provided the basis for a Sherman Act monopolization charge. Given this similarity in the collective concentration-increasing effects of the advertising firms' conduct, therefore, with that of a recognized antitrust violation, Motion Picture Advertising's contracts were held "unfair" under Section 5.

Annual style change by the three leading automobile companies, like the exclusive contracts of these four advertising film firms, arguably excludes competitors and increases concentration. It would thus seem to fall well within the analysis employed in *Motion Picture Advertising*. If General Motors, for example, managed to increase its

183. 344 U.S. 392 (1953).
184. This section makes unlawful a lease, sale, or contract for sale which substantially lessens competition or tends to create a monopoly. 15 U.S.C. § 14 (1964).
185. 344 U.S. at 399, 396.
186. *Id.* at 399.

current market share to monopoly proportions and to preserve this position by accelerating the rate and extent of its style variations, a charge of monopolization under the Sherman Act would lie. Yet, if GM, Ford and Chrysler effectively share monopoly power and jointly deter new competition through annual variations in automobile styles, the consequences are as anticompetitive as if any one of these firms alone possessed monopoly power. Here, as in *Motion Picture Advertising*, the similarity in impact with that of a Sherman Act monopolization can be demonstrated. The results, therefore, should be the same: annual style change should be declared an "unfair method of competition" in the automobile industry.

The anticompetitive, concentration-increasing impact of annual style change by the Big Three in the automobile industry matches and surpasses that of several practices proscribed under the Sherman and Clayton Acts when undertaken by dominant firms: excessive promotional expenditures, predatory pricing and spending, monopolistic conduct. This analogy in terms of the comparable structural consequences of style change to recognized antitrust violations is all that is required for a Section 5 violation.

For over thirty years, the FTC has been aware that annual automobile restyling was impairing the competitive structure of this industry. In 1939, an FTC report recounted the marked decrease in the number of passenger car manufacturers and noted that the "introduction of yearly models, and the increasing importance of the style factor, the large amount of capital required to finance new models in good and bad years, all favored the large manufacturing company with huge capital and equipment resources."[187] Detailed examination of annual restyling practices undertaken by GM, Ford and Chrysler as an unfair method of competition under Section 5 would appear long overdue. Only the FTC's political or administrative paralysis would seem to stand in the way of bringing a well-founded antitrust suit against the automobile manufacturers.[188]

187. FTC REPORT, *supra* note 21, at 26.

188. For a recent attack upon the FTC's failure to divest GM, with the consequent loss in consumer savings of several billion dollars a year in lower automobile prices, see *Foreword* to 2 ANTIT. LAW & ECON. REV. 13-15 (Summer 1969). The Justice Department has also been severely criticized for its unwillingness to prosecute the passenger car industry. Indeed, it has failed to take any action despite its preparation of a 104 page complaint in 1966 charging GM with having violated sections 1 and 2 of the Sherman Act and section 7 of the Clayton Act. Significantly, the proposed suit alleged among other items that the effect of GM's annual restyling since the 1920's upon competitors was "obvious and dramatic." It declared further that "[t]ools and dies for new models are high-cost items that GM's smaller competitors can less easily afford." Wall Street Journal, October 31, 1967, at 24, col. 3. *But see* the FTC's recent complaint against the nation's five leading tire manufac-

IV. Some Considerations Regarding Relief

In antitrust, providing an adequate remedy is as important as proving the antitrust violation. Were style changing by automobile manufacturers found to violate Section 5, the formidable task of devising appropriate relief would still remain. Two different approaches suggest themselves which will be only briefly outlined here: structural dissolution of the Big Three or a moratorium on their annual style changes.

A. *The Appropriateness of Structural Dissolution*

If the preliminary economic analysis proves to be correct, restoration of competition to the automobile industry would require structural dissolution of the Big Three into independent assembly, manufacturing and distribution facilities. As discussed in Part II, GM's 1923 introduction of annual style change revolutionized this industry's structure. By giving rise to components integration, heavy advertising, franchised distribution and enormous capital requirements, it transformed an industry of numerous assemblers to one dominated by three completely integrated firms. In their drive to achieve full integration backward into manufacturing and forward into distribution, the Big Three have either acquired or eliminated the vast majority of companies which assembled cars, the manufacturers of automotive parts, and the independent wholesale/retail distributors. Dissolution would reverse this process. It might undo what more than four decades of annual style change have accomplished: a fully integrated, highly concentrated, anticompetitive industry structure.

The remedy of divestiture as applied to the automobile industry raises two important issues: is it economically feasible in an oligopoly setting and is it legally justifiable under Section 5?

Divestiture in oligopoly is no less feasible than in monopoly.[189] In both cases, feasibility depends upon the absolute size of the firm relative to economies of scale. Absent annual restyling requirements of integrated components production, technical efficiencies in the assembly

turers charging that their similar leasing agreements with bus companies enabled respondents to dominate the bus-tire market. In a significant break with precedent, however, the tire manufacturers were accused not of collusion, but of interdependently pursuing "parallel courses of business conduct constituting unfair methods of competition" under Section 5. 3 Trade Reg. Rep. ¶ 19,381 at 21,511. Moreover, the FTC is currently engaged in an investigation of the structure, conduct and performance of the automobile industry. 3 ANTIT. LAW & ECON. REV. 14-15 (Winter 1969-70).

189. Turner, *supra* note 33, at 1231 n.45.

of automobiles could be achieved at any level of output greater than 60,000 units per year. At this volume, performance capabilities could still be efficiently improved through the purchase and assembly of specially tooled parts from external suppliers. Significantly, the average annual output of the Big Three's 45 assembly plants is approximately 177,000 cars per plant.[190] Divesting GM, Ford and Chrysler of all but one of their respective assembly facilities, therefore, would provide plants with capacities well in excess of the efficiency threshold for 42 new producers.[191] Spin-off of the Big Three's parts and distribution facilities, moreover, would enable these competitors to assemble automobiles with improved performance capabilities from components supplied by a variety of independent parts manufacturers and sold through independent distributors. Consequently, economists have generally concluded that dissolution would not lessen the efficiency with which automobiles are produced.[192] On the contrary, they argue that it would lead to increased efficiency.[193]

Divestiture would also appear to be legally justifiable under Section 5. The Supreme Court has apparently sanctioned the FTC's use in Section 5 proceedings of this and other remedies designed to effect structural reorganization.[194] Although in the past, courts rarely imposed this drastic sanction, more recently the Supreme Court has indicated that such reluctance is unwarranted when other remedies alone could not adequately dissipate undue market concentration resulting from a proscribed activity.[195] Accordingly, if the impact of annual style change on the structure of the automobile industry has been as profound as suggested above, structural reorganization through divestiture might be warranted.

190. General Motors operates 23 assembly plants; Ford operates 15 and Chrysler 7 such facilities. AUTOMOTIVE NEWS, ALMANAC ISSUE 68 (1970). Given the Big Three's current (1969) production at 7.98 million (note 45 *supra*), each assembly plant produces an average of 177,000 units per year.

191. The Big Three would each operate a single assembly facility thereby freeing their other 42 plants for operation by new competitors.

192. Schupack, *1968 Hearings*, *supra* note 20, at 921. *See also*, ADMINISTERED PRICES, *supra* note 43, at 15.

193. *See, e.g.*, Loescher, *1968 Hearings*, *supra* note 20, at 915.

194. Whatever doubts may have existed concerning the extent of the Commission's remedial authority under section 5, they seem to have been firmly resolved in favor of according this agency the complete array of powers of a court of equity "including divestiture and other remedies designed to effect structural reorganization." Ekco Prods. Co. [1963-65 Transfer Binder] TRADE REG. REP. ¶ 16,879, at 21,904 (F.T.C. 1964), *aff'd* 347 F.2d 745 (7th Cir. 1965). See the Supreme Court's apparent recognition and sanction of this position in Pan American World Airways v. United States, 371 U.S. 296, 312 n.17 (1963) and United States v. Philadelphia National Bank, 374 U.S. 321, 339-40 n.17 (1963).

195. *E.g.*, United States v. du Pont & Co., 366 U.S. 316 (1961); United States v. Aluminum Co. of America, 377 U.S. 271 (1964); Maryland & Virginia Milk Producers Ass'n v. United States, 362 U.S. 458 (1960).

Dissolution of the Big Three along the lines suggested would not only be economically feasible and legally justifiable, it would also be competitively beneficial. It would substantially reduce entry barriers by weakening the market power of the leading producers. Under these eased entry conditions, economists have estimated that more than 100 additional firms could enter and compete effectively in the automobile industry.[196]

B. *A Moratorium on Annual Style Change*

Although economically feasible and legally justifiable, dissolution of the Big Three might nevertheless be precluded by political considerations. In that case, the FTC might wish to devise less drastic remedies specifically directed at the "unfair" practice. It might, for example, order a fixed term moratorium on all automobile style changes by the Big Three. Presumably, it would except performance modifications from its decree. As noted in Part I, the Bureau of Labor Statistics currently distinguishes between style changes (such as varying amounts of chromium and contour trim, changing body shell patterns and radiator grill designs) and performance changes (modifications of safety, efficiency, comfort or durability).[197] By framing its injunctive relief in terms of BLS criteria, the FTC could interdict anticompetitive annual style changes without affecting safety modifications or technological innovations.

A moratorium on style changes, however, might not be sufficient. Absent dissolution, new competition will emerge in the automobile industry only as a result of new entry. But proscribing annual restyling by the Big Three would not eliminate all the obstacles to entry which

196. Loescher in *1968 Hearings*, *supra* note 27, at 915. New companies could enter more easily and compete with those formed through dissolution of the Big Three's assembly facilities. *See* note 191 *supra*. These new producers, like those created by divestiture, would be able to obtain components and accessories from the independent suppliers created through spin-off. *See* p. 609 *supra*. They would be able to dispose of their products through dealers who were no longer pressured to deal exclusively with a single dominant firm. Finally, they would not need to undertake massive retooling and readvertising expenditures annually. *Id.*

By breaking up existing firms and encouraging new ones to enter, divestiture would improve competitive market performance. If a dozen firms of similar size replaced the current industry structure, there is evidence that the average ratio of price to cost would be substantially reduced, thereby enhancing efficiency. Loescher in *1968 Hearings*, *supra* note 20, at 915. Likewise, it has been suggested that an industry of from 15 to 30 firms would greatly advance the rate of technological innovation and result in a wider variety of automobiles. Schupack, in *1969 Hearings*, *supra* note 24, at 541. On the basis of these expectations, an automobile industry of perhaps 100 or more producers would contribute immeasurably to this industry's performance. This is the industry which dissolution would engender.

197. *See* pp. 575-76 *supra*.

have resulted from more than four decades of this practice. It would not, for example, recreate the independent distributors and parts manufacturers which no longer exist but which are indispensable to entry by nonintegrated firms. Consequently, additional relief would be necessary to provide prospective entrants with access to these facilities.

In fashioning supplemental relief to encourage the re-emergence of parts manufacturers and nonfranchised or factory owned distributors, the FTC could rely on ample precedents. It is well settled that in order to restore competitive conditions, the Commission may under Section 5 forbid acts lawful in themselves or compel affirmative acts of compliance.[198] To facilitate the growth of parts suppliers, for example, it could impose purchasing requirements upon the Big Three similar to those commonly contained in antitrust consent decrees. Such a requirement was included in a consent judgment entered in 1964 against American Cyanamid, a manufacturer of laminated melamine products which had integrated back into melamine production and with several co-conspirators had restrained competition in violation of Sherman and Clayton Act provisions.[199] To enhance entry opportunities for prospective non-integrated laminators, the decree encouraged the development of new sources of melamine supply. It did this by ordering American Cyanamid to purchase a specified amount of melamine from external suppliers.[200] Moreover, it imposed limitations upon the defendant's own production of this material.[201]

Similarly, the FTC could order the Big Three to freeze components production at current levels and purchase additional parts necessary for anticipated increases in automobile demand from external suppliers. Since industry sales forecasts indicate that demand should rise by more than 40 percent by 1975, future orders from the Big Three would constitute a certain and sizeable market for new parts manufacturers.[202] A reappearance of independent components firms would reduce, in turn, the backward integration requirements that bar entry by new automobile producers.

Alternatively, the FTC might simply order the Big Three to sell

198. *See, e.g.*, Ekco Prods. Co. [1963-65 Transfer Binder] TRADE REG. REP. ¶ 16,879, at 21,905 (F.T.C. 1964).

199. United States v. American Cyanamid Co., 1964 Trade Cas. 79,628 (S.D.N.Y.). *See also* marketing orders used in lieu of divestiture in Simpson Timber Co., 60 F.T.C. 43 (1962) and Gulf Oil Corp., 56 F.T.C. 688 (1960). *But see* a criticism of such orders when used as a substitute for structural relief. Elzinga, *The Antimerger Law: Pyrric Victories*, 12 J. LAW & ECON. 43, 66-71 (April 1969).

200. 1964 Trade Cas. 79,628, 79,635.

201. *Id.* at 79,631.

202. STANDARD & POOR, *supra* note 18, at A159.

parts to entering firms on a nondiscriminatory basis. Presumably, this entry of new automobile producers would be soon accompanied by the emergence of independent parts manufacturers seeking to supply the entering assemblers. When this occurred, the order could be rescinded.

With respect to other obstacles arguably occasioned by style change, the Commission could devise similarly specific relief. It could greatly alleviate the problem of achieving nationwide distribution, for instance, by requiring that the Big Three's franchised dealers carry the products of entering firms.[203] Moreover, it could reduce countervailing advertising requirements by setting limitations on the amount of annual advertising expenditures that the Big Three may undertake.[204]

Ideally, a style change moratorium accompanied by supplemental equitable relief would attract new firms formerly incapable of overcoming the obstacles established by annual restyling. In any event, jurisdiction could be retained by the court to permit either the FTC or the defendants to move for modification of the decree. If, for example, a substantial number of producers entered the market sooner than anticipated, the court might set aside certain portions of the injunctive relief. Conversely, if no entry was forthcoming, it might prolong the decree or take more drastic corrective steps, perhaps of a structural nature.[205]

203. Apparently, dual or multi-line retail automobile distribution is common in Europe where it is referred to as "the supermarket approach." *Hearings Before the Select Committee on Small Business on the Status and Future of Small Business*, 90th Cong., 1st Sess. at 431 (1967).

204. Turner has argued that extensive advertising by tight oligopolies create formidable barriers to entry and substantially increase concentration. He suggests that it would be quite appropriate to impose, for a limited time, absolute or percentage limitations on promotional expenditures of firms that have obtained undue market power through antitrust violations. Turner, *supra* note 159, at 93-96. *See also* p. 602 *supra*. A similar suggestion has been recently advanced by two antitrust economists. Asch & Marcus, *Returns to Scale on Advertising*, 15 ANTIT. BULL. 33, 39-40 (1970). Mueller contends that government limitations of advertising expenditures by oligopolists would not raise first amendment problems. Mueller, *supra* note 2, at 89-90. Subsection (e) of the proposed Concentrated Industries Act of the White House Task Force on Antitrust Policy also suggests possible limitations on advertising expenditures. THE NEAL REPORT, *supra* note 11, at 66.

205. In United States v. United Shoe Machinery Corp., 391 U.S. 244 (1968), the Supreme Court made it clear that an antitrust decree which has failed to accomplish its intended purpose of restoring effective competition may be modified to provide additional structural relief. The district court in the earlier United States v. United Shoe Machinery Corp. case, 110 F. Supp. 295 (D. Mass. 1953), had rejected the government's request for divestiture. Following the Supreme Court's ruling that the initial decree was inadequate, the district court has recently entered a divestiture order. United States v. United Shoe Machinery Corp., 1969 Trade Cas. 86,411 (D. Mass.).

Annual style change has been a characteristic of numerous other durable goods industries since the late 1910's. Significantly, concentration has increased more rapidly in this sector than in any other area of manufacturing. By 1966, style-changing industries exhibited the following 4-firm concentration ratios: home freezers—82%, typewriters—79%, washing machines—79%, vacuum cleaners—78%, refrigerators—72%, cameras—67%, computers—67%, and televisions—58%. *Hearings Before the Subcomm. on Antitrust and*

Automobile Industry

If annual style change in the automobile industry is an unfair method of competition under Section 5 of the Federal Trade Commission Act, only the FTC can sue for relief.[206] This Note calls upon that agency to investigate and, if appropriate, to bring suit against this practice.

Monopoly of the Senate Comm. on the Judiciary on Economic Concentration, S. 89th Cong., 1st Sess., 1901-1905 (1965); U.S. DEPT. OF COMMERCE, ANNUAL SURVEY OF MANUFACTURERS: 1966, at ch. 11. In light of this Note's findings with respect to the automobile industry, an economic and legal investigation of annual restyling in these concentrated industries might also be in order. Significantly, the FTC is currently studying "style or nonfunctional" model changes in household appliances and other consumer products for evidence of "planned obsolescence." The Commission suggested that "the practice might run afoul of Federal antitrust laws as well as those against unfair or deceptive trade practices." N.Y. Times, March 28, 1971, at 40, col. 2.

206. The Federal Trade Commission has exclusive jurisdiction to enforce Section 5. 15 U.S.C. § 45 (1964). As a result, the Department of Justice cannot bring suit against alleged violations of that section. Marquette Cement Mfg. Co. v. Federal Trade Commission, 147 F.2d 589 (7th Cir. 1945), *rev'd on other grounds sub nom.* Federal Trade Commission v. Cement Institute, 333 U.S. 683 (1948). Apparently, private antitrust suits cannot be brought under Sections 4 (treble-damage actions) or 16 (injunctive relief) of the Clayton Act (15 U.S.C. §§ 15(a), 15(b), 26) for alleged violations of Section 5 of the Federal Trade Commission Act. *See* Nashville Milk Co. v. Carnation Co., 355 U.S. 373, 376 (1958); Atlanta Brick Co. v. O'Neal, 44 F. Supp. 39 (E.D. Tex. 1942); Rader v. Balfour, 1968 Trade Cas. ¶ 72,709 (N.D. Ill. 1968). This does not prevent private parties, however, from calling upon the FTC to investigate and, if appropriate, to bring suit against the Big Three automobile manufacturers. See FEDERAL TRADE COMMISSION, PROCEDURES & RULES OF PRACTICE, 16 C.F.R. § 2.2: "Any individual . . . may request the Commission to institute an investigation in respect to any matter over which the Commission has jurisdiction" as long as the application sets forth "the alleged violation of law with such supporting information as is available . . . ."

ıtement for U.S. Senate Commerce
ımmittee on Senate Bill S. 976

UTOMOTIVE BUMPER DESIGN IMPLICATIONS ON DAMAGEABILITY

Ford Motor Company
Design Center

MAY 31, 1971

INTRODUCTION

The purpose of this report is to present to the U.S. Senate Commerce Committee pertin facts relative to the impact of bumper design on automobile damageability as relatel provisions of Senate Bill S. 976.

Specifically, this report will present additional and clarifying information on the de requirements, performance, and cost of an automobile bumper system capable withstanding 5 MPH barrier or pendulum impacts without damage. The U.S. Sen Commerce Committee has received certain information and data on this subject, but, in opinion, there are a number of points that need amplification.

At the outset, it should be made clear that we at Ford agree that significant improvemen the functional characteristics of modern automobile bumpers is required. In the last y and one-half there has been increasing concern among car owners with how easily their can be damaged, the high cost of repair, and rising cost of insurance. We share their conc because total cost of ownership is an important factor in customer satisfaction subsequent car sales.

There is little question that the trend in recent years relative to bumper design has b toward more highly stylized configurations, integrated with the sheet metal ornamentation. Widely varying styling workouts for various vehicles produced by industry have resulted in bumpers which are not of uniform height, adding significantl the damage problem in parking maneuvers.

EFINITION OF PROBLEM

bout a year and one-half ago, Ford began seeking statistically valid data concerning the lative frequency with which individual car parts were damaged, and the speed at the point f impact that would cause the damage. The insurance companies, while complaining that ere was a significant vehicle property damage problem in total, were unable to supply tailed data that would permit determining specifically the contribution of individual ements of vehicle design to damage levels. This information was needed in order to velop design changes that would reduce vehicle damage on a cost effective basis. To tain these data, Ford undertook a detailed survey of nearly 20,000 vehicles that had been volved in accidents and were in body shops awaiting repair. This analysis was pplemented by duplication of the damage under test conditions where speed at the point impact could be accurately measured. From this study, Ford reached the following nclusions:

1. 70% of all property damage accidents involved the front or rear of the vehicle. (40% involved front end, 30% involved rear ends.)

2. 60% of all front and rear end property damage accidents involved speeds at the point of impact equivalent to a 5 MPH barrier crash or less. 25% involved speeds of 2½ MPH or less – essentially parking encounters.

3. 60% of all front and rear end property damage accidents involved the corners of the vehicle, rather than being head-on (such as would be simulated with a barrier crash).

Figure 1

Damage Done by Loaded Railroad Car Impacting Parked Car at 5 MPH

Figure 2

Damage Done by Loaded Railroad Car Impacting Parked Car at 5 MPH

CORRECTIVE ACTION PROGRAM

It was clear that an improved bumper system could play a significant part in reducing vehicle damage and hence the cost of repair. At the time this conclusion was reached at Ford, the 1973 model design was under way and plans for an improved bumper system were undertaken on the Ford and Mercury as these car lines were scheduled for substantial changes in that year. It was contemplated that improved bumper systems would be adopted on other car lines in 1974, or as soon as major retooling of front and rear end components could be accommodated within cycle plans.

During the last year, there has been a great deal of publicity about the bumper problem and considerable regulatory action both at the State and National level. The issuance of the federal bumper standard by the DOT on April 16, 1971 required some modification of Ford's bumper plans to assure that we would be in a position to comply with the bumper standards on all 1973 and 1974 models (if the change proposed by Ford for 1974 is adopted).

BARRIER TEST

Before describing the specific components required to achieve a 5 MPH bumper system, we believe that some information relative to the barrier and pendulum test procedures would be helpful in putting the federal bumper standards in perspective.

Witnesses who have testified before the Commerce Committee have emphasized that a man can walk at a 5 MPH pace, and can impact a wall at this speed without injury. The implication is that meeting the 5 MPH barrier test with an automobile is "child's play." Don't be misled by the "walking man" simile. The mass of the object makes a difference. Figures 1, and 2 illustrate the damage to a parked automobile that will occur if it is impacted by a loaded railroad car moving at a walking pace – 5 MPH. The damage on impact is a function of the energy of impact which is a product of mass and velocity. ($KE=\frac{1}{2}MV^2$). At a 5 MPH impact, a man generates 125 ft-lbs, a car 3,500 ft-lbs. and the loaded railroad car 190,000 ft-lbs.

Figure 1

Damage Done by Loaded Railroad Car Impacting Parked Car at 5 MPH

Figure 2

Damage Done by Loaded Railroad Car Impacting Parked Car at 5 MPH

CORRECTIVE ACTION PROGRAM

It was clear that an improved bumper system could play a significant part in reducing vehicle damage and hence the cost of repair. At the time this conclusion was reached at Ford, the 1973 model design was under way and plans for an improved bumper system were undertaken on the Ford and Mercury as these car lines were scheduled for substantial changes in that year. It was contemplated that improved bumper systems would be adopted on other car lines in 1974, or as soon as major retooling of front and rear end components could be accommodated within cycle plans.

During the last year, there has been a great deal of publicity about the bumper problem and considerable regulatory action both at the State and National level. The issuance of the federal bumper standard by the DOT on April 16, 1971 required some modification of Ford's bumper plans to assure that we would be in a position to comply with the bumper standards on all 1973 and 1974 models (if the change proposed by Ford for 1974 is adopted).

BARRIER TEST

Before describing the specific components required to achieve a 5 MPH bumper system, we believe that some information relative to the barrier and pendulum test procedures would be helpful in putting the federal bumper standards in perspective.

Witnesses who have testified before the Commerce Committee have emphasized that a man can walk at a 5 MPH pace, and can impact a wall at this speed without injury. The implication is that meeting the 5 MPH barrier test with an automobile is "child's play." Don't be misled by the "walking man" simile. The mass of the object makes a difference. Figures 1, and 2 illustrate the damage to a parked automobile that will occur if it is impacted by a loaded railroad car moving at a walking pace – 5 MPH. The damage on impact is a function of the energy of impact which is a product of mass and velocity. ($KE=\frac{1}{2}MV^2$). At a 5 MPH impact, a man generates 125 ft-lbs, a car 3,500 ft-lbs. and the loaded railroad car 190,000 ft-lbs.

Figure 1

Damage Done by Loaded Railroad Car Impacting Parked Car at 5 MPH

Figure 2

Damage Done by Loaded Railroad Car Impacting Parked Car at 5 MPH

CORRECTIVE ACTION PROGRAM

t was clear that an improved bumper system could play a significant part in reducing ehicle damage and hence the cost of repair. At the time this conclusion was reached at Ford, the 1973 model design was under way and plans for an improved bumper system were ndertaken on the Ford and Mercury as these car lines were scheduled for substantial hanges in that year. It was contemplated that improved bumper systems would be adopted n other car lines in 1974, or as soon as major retooling of front and rear end components ould be accommodated within cycle plans.

During the last year, there has been a great deal of publicity about the bumper problem and considerable regulatory action both at the State and National level. The issuance of the ederal bumper standard by the DOT on April 16, 1971 required some modification of Ford's bumper plans to assure that we would be in a position to comply with the bumper tandards on all 1973 and 1974 models (if the change proposed by Ford for 1974 is dopted).

BARRIER TEST

Before describing the specific components required to achieve a 5 MPH bumper system, we believe that some information relative to the barrier and pendulum test procedures would be helpful in putting the federal bumper standards in perspective.

Witnesses who have testified before the Commerce Committee have emphasized that a man can walk at a 5 MPH pace, and can impact a wall at this speed without injury. The implication is that meeting the 5 MPH barrier test with an automobile is "child's play." Don't be misled by the "walking man" simile. The mass of the object makes a difference. Figures 1, and 2 illustrate the damage to a parked automobile that will occur if it is impacted by a loaded railroad car moving at a walking pace – 5 MPH. The damage on impact is a function of the energy of impact which is a product of mass and velocity. ($KE=\frac{1}{2}MV^2$). At a 5 MPH impact, a man generates 125 ft-lbs, a car 3,500 ft-lbs. and the loaded railroad car 190,000 ft-lbs.

Figure 3

1971 Production Ford after 5 MPH Barrier Impact

Figure 4

1971 Ford with Energy Absorbing Bumper System after 5 MPH Barrier I

Turning to the fixed barrier test for automobiles, figure 3 illustrates the damage done to the front end of a 1971 production Ford weighing about 4000 lbs. upon impact with a fixed barrier at 5 MPH. All of the energy of impact (nearly 3,500 ft-lbs) must be absorbed by deformation of the bumper and sheet metal. The damage is significant with bumper, hood, fenders and outer grille panels distorted. The results illustrated here are not significantly different than those reported to this committee by Dr. William Haddon, Jr. (In this test the center grille panel was undamaged, while the Insurance Institute for Highway Safety reported center grille replacement was necessary following the 5 MPH barrier test with a 1971 Ford Galaxie 500).

For comparison, figure 4 illustrates the lack of damage done following the same test procedure with a 1971 Ford equipped with the energy absorbing bumper system being developed for the 1973 model. Here the impact energy is absorbed by the bumper system and the car can withstand the 5 MPH barrier crash without significant damage.

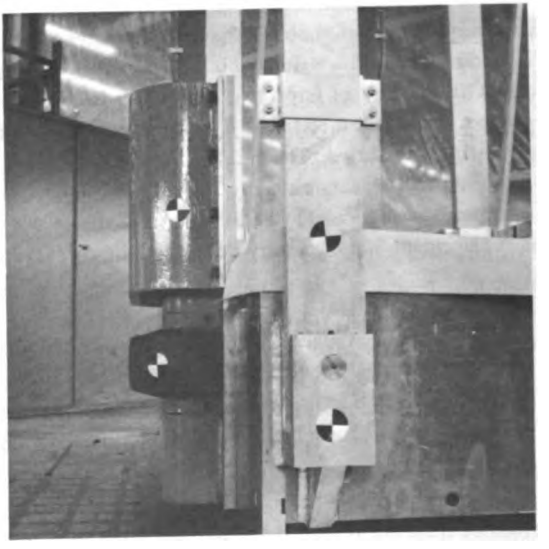


Figure 5

Ford Proposed Pendulum Shape

Figure 6

Pendulum Shape Specified by DOT

ENDULUM TEST PROCEDURE

here has been some comment made relative to the requirements of the federal bumper andard which include the pendulum tests. Ford has endorsed the concept of the pendulum :st because we believe it will assure a more effective bumper system for the consumer than barrier test.

he pendulum test requirement will assure uniform bumper height and, therefore, correct ıe mismatch problem that is one of the most significant causes of low speed property ımage. In addition, the pendulum test will establish bumper performance standards relative › corner impacts, a major part of the low speed collision damage problem.

'ith regard to the pendulum test procedure, I believe that a closer look at the pendulum ›nfiguration is in order to put the 1974 federal bumper standard in perspective. The eight-of-the-car pendulum is suspended from arms that allow it to swing into the car umper. In conducting the test, the pendulum is pulled back far enough so that on a free ving after release it will be traveling at 5 MPH speed at the point of impact.

igure 5 illustrates the side view of the pendulum, and demonstrates the shape of the npacting ridge – shown in black – that Ford has recommended to the DOT. This npacting ridge is blunter than that specified in the 1974 federal bumper standard (figure 6) ıd is more like another automobile bumper. In our opinion, the Ford impacting ridge ıape will result in a fully effective bumper from a consumer standpoint.

Figure 7

Minor Bumper Deformation Causes Test Failure

Contact constitutes failure (only the black ridge can touch)

he 1974 standard specifies that it will impact both front and rear bumpers 8 times, 6 cross the face and once on each corner (30° angle). Only the impacting ridge (the black art of the pendulum) is allowed to contact the vehicle and if any part of the car (including he bumper) touches the vertical (or yellow) surface of the pendulum it constitutes a test ailure. This requirement is really the controlling factor in the design of the bumper system, ot the much publicized requirement that only safety related items (lights, fuel and exhaust ystem, hood and deck locks) function normally after the test.

f there is any significant deformation of the bumper bar under the initial pendulum mpacts, additional hits (up to a total of 8) will inevitably cause some part of the bumper or ar to touch the vertical pendulum surface consituting a test failure. This type of situation is lustrated on figure 7. Here the pendulum impact from a prior hit has deformed the bumper ough so that on this hit, part of the bumper touches the vertical surface of the pendulum using a test failure. In this example, the 1971 Ford bumper shape has been used. It is ident from this illustration that a bumper shape with a more vertical front face will be quired to meet the federal standard.

or all practical purposes, the pendulum test requires a bumper design that will withstand peated impacts without incurring any significant damage to the bumper or car omponents.

Figure 8

1971 Production Ford after 5 MPH Pendulum Test – 8-Hits

Figure 9

Ford Energy Absorbing Bumper System after 5 MPH Pendulum Test – 8-H

There has also been some confusion about the relative severity of a 5 MPH barrier test versus a 5 MPH weight-of-the-car pendulum test. In a barrier crash, all of the energy of the impact must be absorbed by the vehicle. Since the car is free to roll in the pendulum test, only part of the pendulum impact energy is absorbed by the car with the balance translated into movement of the car. The pendulum test has thus been criticized as providing a less severe test than a barrier impact at the same speed.

With the pendulum test, however, multiple hits are specified across the face of the bumper, and with an off-center hit, one energy absorbing strut must be capable of handling the full pendulum impact transmitted to the car without any assistance from the other energy absorber. The total system can, of course, handle higher impact load in the center because the load is divided between the two absorbers.

In total, a system that can withstand a 5 MPH weight-of-the-car off-center pendulum hit can also accommodate a 5 MPH barrier hit. The severity of the two tests are equal.

Figure 8 illustrates the results of the 5 MPH Ford pendulum test (after the specified 8 hits) with a 1971 production Ford. The damage is extensive; considerably more with the multiple pendulum hits than was experienced with the 5 MPH barrier crash. (See Figure 3).

Figure 9 illustrates the results of the same test procedure with the Ford energy absorbing bumper system. Only minor denting of the bumper bar was experienced. There was no basic damage to the car.

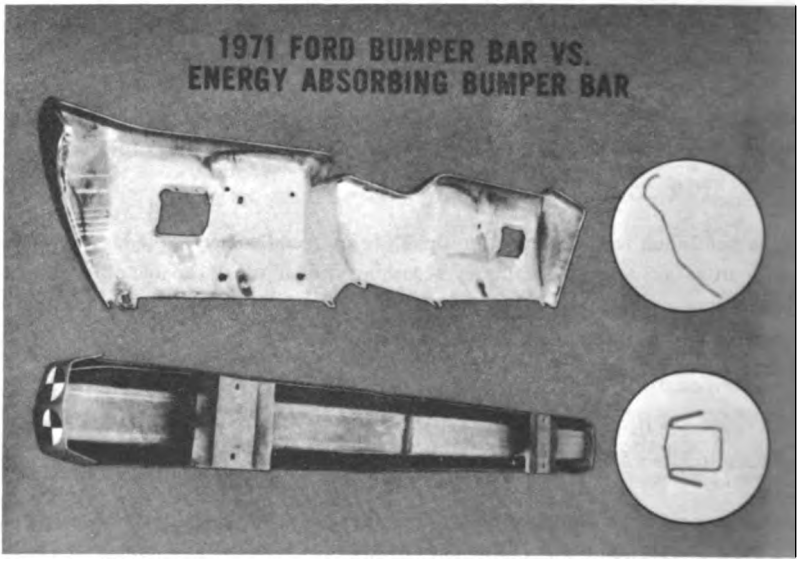


Figure 10

Energy Absorbing Bumper Bar and 1971 Ford Production Bumper Ba

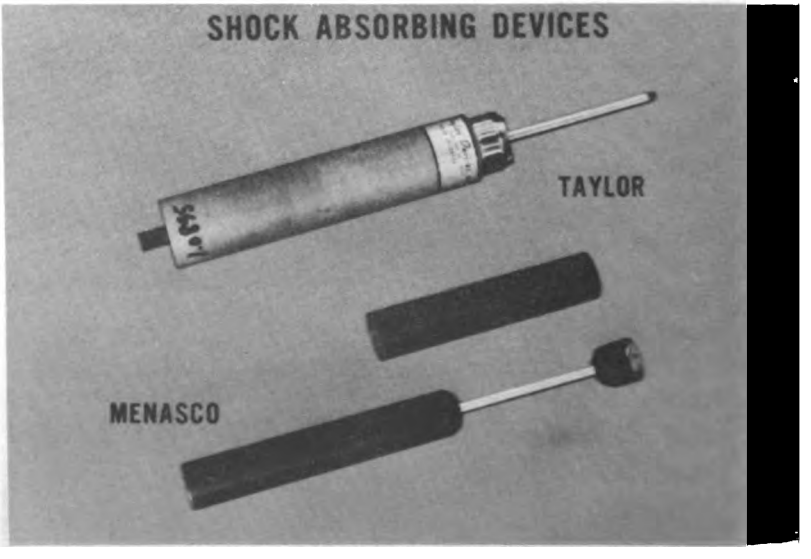


Figure 11

Taylor and Menasco Energy Absorbing Struts

COMPONENT CHANGES – 5 MPH SYSTEM

Now let's take a look at the specific components that are required to make a 5 MPH bumper system work. Vehicle changes associated with the 5 MPH bumper system are related to (1) changes to accommodate the new components; (2) changes required because of increased impact loads imposed on the vehicle, and (3) modifications to accommodate the effect of added vehicle weight. The following specific changes are required on the full size Ford, but are typical of changes required on all car lines.

Bumper Bar

Figure 10 illustrates the type of bumper bar being developed for the Ford energy absorbing system compared with the 1971 production bumper. Note the simple shape and heavy reinforcement of the prototype components. This heavy, boxed-in reinforcement design provides a much stronger impact bar, and when incorporated in the front and rear of the Ford car will add at least 80 lbs. over current production bumpers.

Energy Absorbers

An energy absorbing bumper system requires that the bumper be mounted on some sort of shock absorbing device. There are three types of shock absorbing units under consideration for the Ford 5 MPH bumper system: (1) the energy absorbing strut; (2) a spring steel shock absorber, and (3) an elastomeric shock absorber. Each type will be described in more detail on the following pages. A pair of absorbers will be used to replace the 1971 bumper arms.

Shown in figure 11 are two examples of one approach to an energy absorbing system. One is designed by Taylor Devices, Inc., and the other by Menasco Manufacturing Corporation. Both absorb impact energy by forcing fluid through an orifice, similar to a conventional car shock absorber. These struts stroke about 3-1/2" under a 5 MPH impact. The Taylor design uses a liquid silicone fluid, while the Menasco strut uses a silicone which is solid at normal temperatures and pressures, but behaves as a liquid under impact loads.

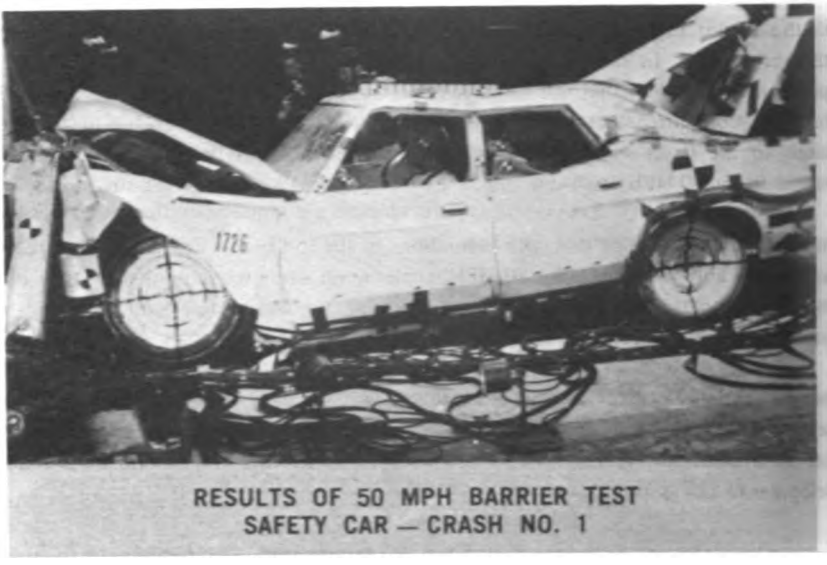


Figure 12

Ford Experimental Safety Vehicle after 50 MPH Barrier Crash

Both the Taylor and Menasco struts can be designed to accommodate higher speed impacts with more stroke. In fact, a special set of Taylor struts were incorporated in a Ford experimental safety car that was subjected to a 50 MPH barrier crash. Mr. Taylor testified before this committee that these struts had withstood repeated 50 MPH impacts without damage to the struts and only minor damage to the car. It is true, the struts were not damaged in the 50 MPH crash test, but as shown in figure 12, the car was a total loss.

This crash test was one of the early evaluations of the ability of a unique vehicle structural design to be able to withstand a 50 MPH barrier crash while retaining the integrity of the passenger compartment. This portion of the test was successfull with the windshield retained and doors remaining closed.

Passenger restraint systems used in this test proved inadequate, however, and recorded head accelerations of the "occupants" exceeded values which are generally considered to be the limits of human survivability. These problems are believed solvable with further design development.

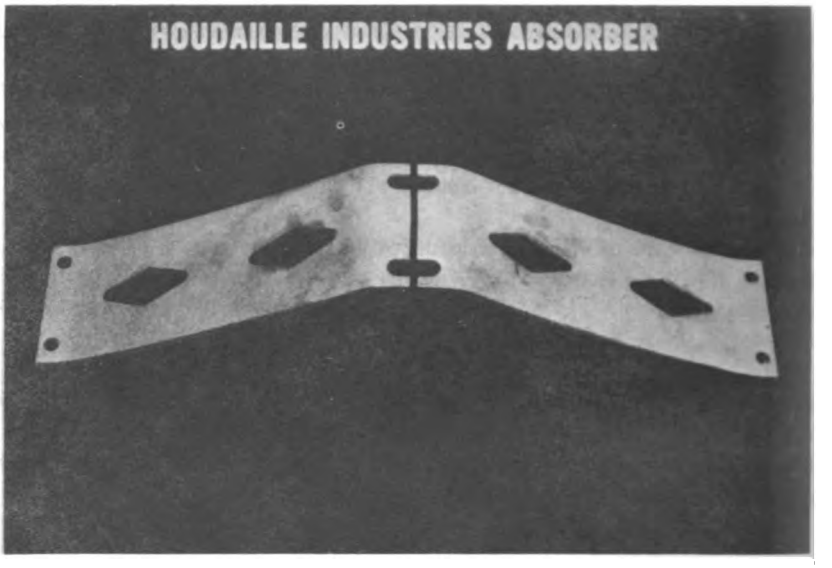


Figure 13

Houdaille Spring Steel Shock Absorber Device

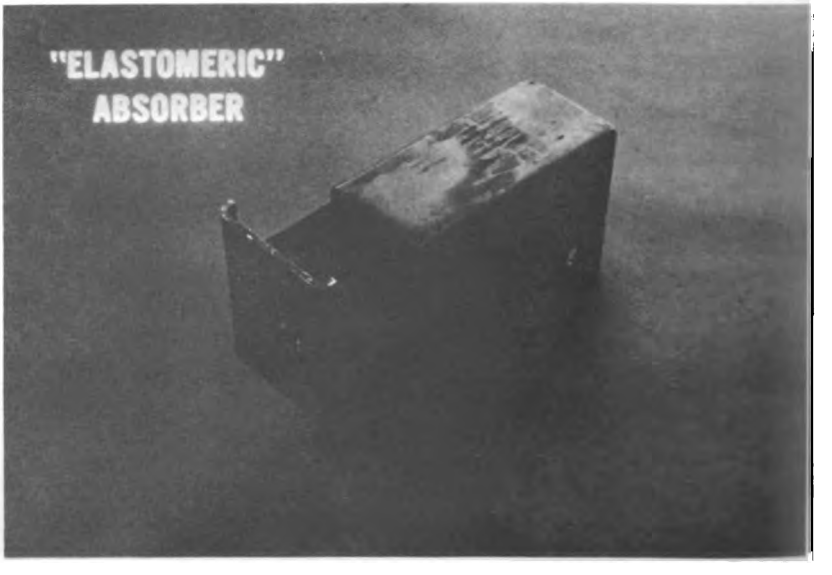


Figure 14

Elastometric Shock Absorber Device

Another approach to a shock absorber system is the spring steel hanger arrangement (figure 13). Technically, this is not an energy absorption device, but rather an energy storage system. This spring acts as a column that yields under impact load resulting in rather large deflection (3" to 4" at 5 MPH).

A third type of absorber is an elastomer system (figure 14) using rubber pucks moulded with steel inserts that function under load similar to an engine mount. Their load-deflection curve is essentially linear. This is a form of spring, and does not absorb energy. Similar devices have been used as railroad and ship bumpers for many years.

Each of the three energy management approaches perform the same shock absorbing function in the bumper system. The Taylor and Menasco struts absorb energy and, therefore, minimize, for a given deflection, the loads transmitted to the vehicle. The spring steel and the elastomeric devices store, rather than absorb energy and, therefore, transmit higher loading to the vehicle than an energy absorbing unit for the same deflection. This would tend to limit the impact speed for which a spring type device would be usable. At 5 MPH impacts, however, either an energy absorber or a shock absorber will function satisfactorily with both types reducing the loads transmitted to the occupant below those experienced with current production bumper systems under 5 MPH barrier impacts. These performance differences, as well as other factors such as durability, reliability and cost, are being evaluated by Ford to permit a final selection of the absorber to be used in the 1973 bumper system.

All of the absorbers require substantial brackets to provide secure attachment to the frame and bumper bar. Conventional bumper arms are, of course, deleted. The net increase in vehicle weight for four absorber units, two front and two rear with attaching brackets is about 20 lbs. over the conventional bumper hanger arrangements.

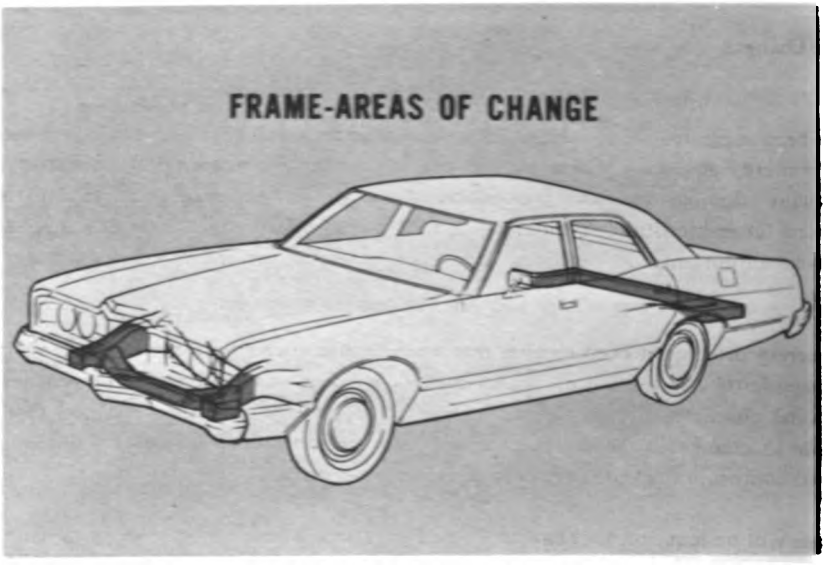


Figure 15

Ford Car Frame Changes Required for 5 MPH Bumper System

'rame Changes

t has been suggested that no chassis component changes would be required to incorporate a MPH energy absorbing bumper system, and the committee has been shown a vehicle that ıpposedly demonstrates this proposition. Although we recognize there are different tructural characteristics on different cars, it is our opinion that any such suggestion verlooks important considerations that relate to overall performance and durability of ehicles.

ngineering practice at Ford requires that when significant changes are made to the vehicle, ll components affected and the total vehicle be checked to determine that durability and ınctional characteristics are not adversely affected. Preliminary analysis indicates that, in ldition to changes in the bumpers themselves, a number of other changes will be required) avoid compromising durability or functional characteristics.

hanges will be required, for example, in the Ford frame. Shown in figure 15 by the colored 'eas are the portions of the Ford frame that must be changed. Front and rear siderail ɔnfiguration changes are necessary in order to accommodate mounting of the energy ɔsorbing devices. In addition, the higher impact forces necessitate gauge increases and fully oxed section on the rear cross member as well as extension of the inner rear siderails.

he front end of the current Ford frame is of an "S" design, specifically constructed to ficiently absorb crush forces in a high speed crash. This design makes it necessary that the ame be modified to accommodate the requirements imposed by a 5 MPH bumper system.

he changes to adapt the frame to the new bumper system, and to strengthen the frame for gher impact loads will add about 25 lbs. to vehicle weight.

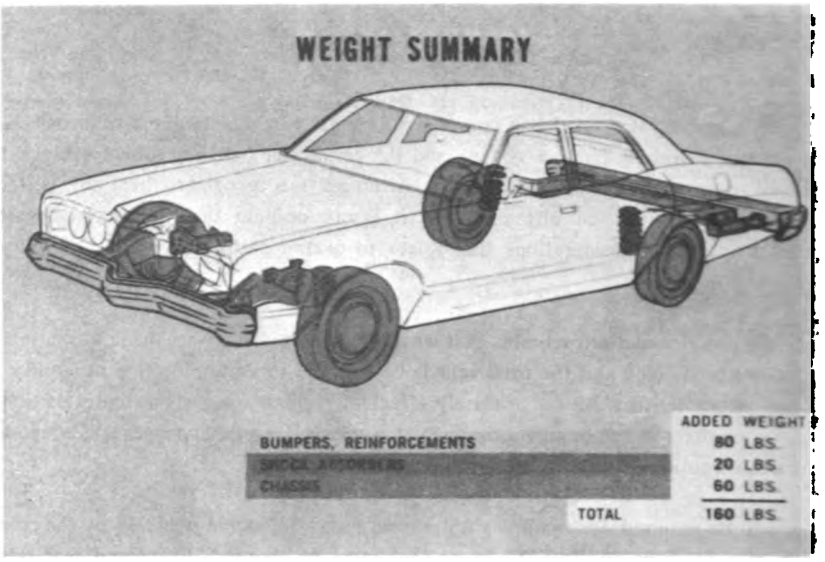


Figure 16

Added Vehicle Weight with 5 MPH Bumper System (Typical Full Size Ford

Other Chassis Changes

Other chassis structures, as in the case of frames, must be designed not only to withstand the anticipated maximum loading to which they may be subjected in severe service, but must have the durability characteristics to withstand the cumulative effect of such loads over the full life of the car. It is possible that impact loads from a 5 MPH bumper system could be carried without visibly distorting an unreinforced frame. However, the cumulative effect of bumper impact loads into the structure combined with the effect of continuing dynamic load encountered in vehicle operation could result in permanent deformation of the frame which could adversely affect front end alignment (resulting in tire wear and handling problems) and vehicle durability.

Changes to many other chassis components besides the frame are also essential to accommodate a 5 MPH energy absorbing bumper system and at the same time maintain current product performance capabilities. These include modified suspension springs for a heavier vehicle, revised engine mounts (addition of fore and aft restrictors) to withstand impact loading, and modified power steering for heavier loads. The increase in vehicle weight associated with these chassis changes which are required on the Ford car (exclusive of the frame) is 35 lbs. over the current production model.

To meet the federal and Ford standards on tire loading with the total added vehicle weight described above requires increasing tire size on most Ford body styles. Finally, the added vehicle weight necessitates brake modifications to assure that we do not deteriorate vehicle stopping ability with the heavier car.

VEHICLE WEIGHT INCREASE

In total, chassis changes constitute a significant part of the task in adopting an energy absorbing bumper system to the Ford car. The design implications of these components are complex and interrelated, and not easily understood by someone not associated with the engineering details of performance and durability of the automobile. As summarized, figure 16 chassis component changes will add about 60 lbs. to the weight of the typical Ford car model, while the 5 MPH bumper and absorber system itself will add about 100 lbs. for a total weight increase of about 160 lbs.

64-345 O - 71 - pt. 3 -- 32

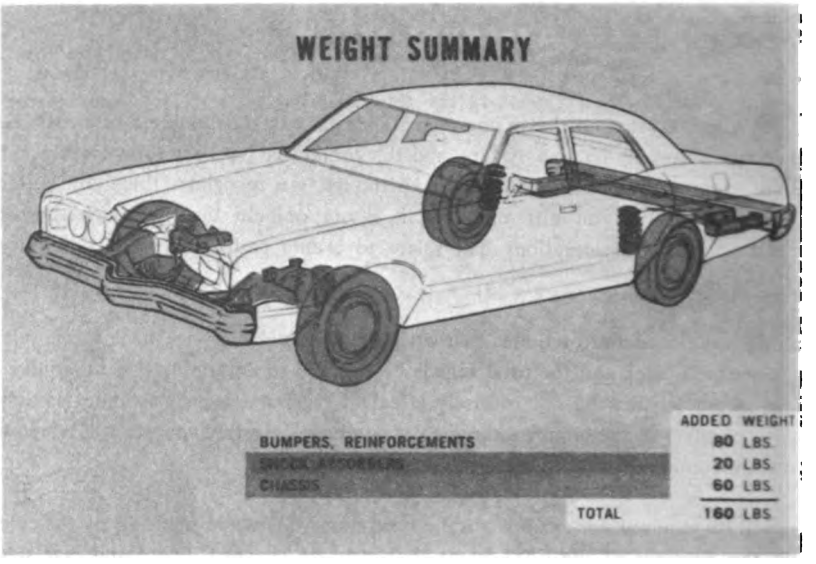


Figure 16

Added Vehicle Weight with 5 MPH Bumper System (Typical Full Size Ford

Other Chassis Changes

Other chassis structures, as in the case of frames, must be designed not only to withstand the anticipated maximum loading to which they may be subjected in severe service, but must have the durability characteristics to withstand the cumulative effect of such loads over the full life of the car. It is possible that impact loads from a 5 MPH bumper system could be carried without visibly distorting an unreinforced frame. However, the cumulative effect of bumper impact loads into the structure combined with the effect of continuing dynamic load encountered in vehicle operation could result in permanent deformation of the frame which could adversely affect front end alignment (resulting in tire wear and handling problems) and vehicle durability.

Changes to many other chassis components besides the frame are also essential to accommodate a 5 MPH energy absorbing bumper system and at the same time maintain current product performance capabilities. These include modified suspension springs for a heavier vehicle, revised engine mounts (addition of fore and aft restrictors) to withstand impact loading, and modified power steering for heavier loads. The increase in vehicle weight associated with these chassis changes which are required on the Ford car (exclusive of the frame) is 35 lbs. over the current production model.

To meet the federal and Ford standards on tire loading with the total added vehicle weight described above requires increasing tire size on most Ford body styles. Finally, the added vehicle weight necessitates brake modifications to assure that we do not deteriorate vehicle stopping ability with the heavier car.

VEHICLE WEIGHT INCREASE

In total, chassis changes constitute a significant part of the task in adopting an energy absorbing bumper system to the Ford car. The design implications of these components are complex and interrelated, and not easily understood by someone not associated with the engineering details of performance and durability of the automobile. As summarized, figure 16 chassis component changes will add about 60 lbs. to the weight of the typical Ford car model, while the 5 MPH bumper and absorber system itself will add about 100 lbs. for a total weight increase of about 160 lbs.

64-345 O - 71 - pt. 3 -- 32

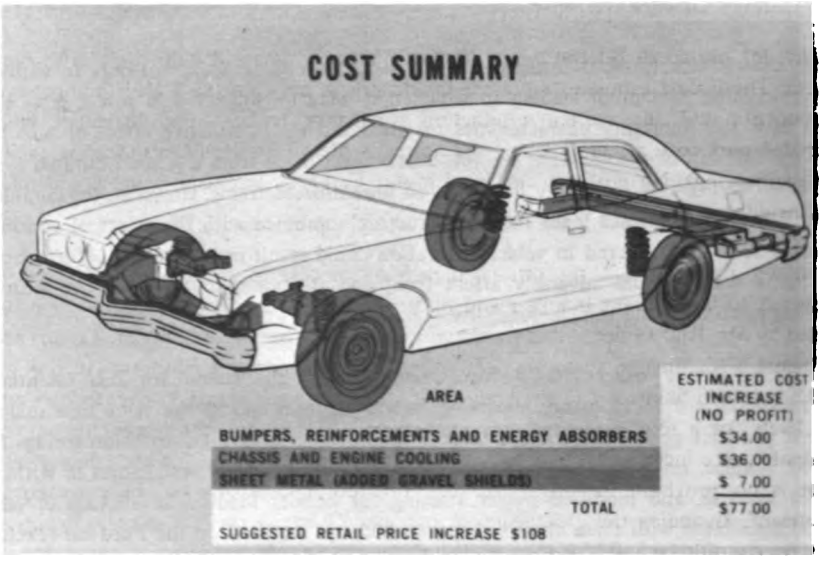


Figure 17

Cost Increase with 5 MPH Bumper System (Typical Full Size Ford)

VEHICLE COST INCREASE

Finally, let me speak briefly about the cost increase associated with the 5 MPH bumper system. These cost estimates represent the difference between the 5 MPH bumper system components and the current production parts they replace. The difference includes estimated part cost, assembly labor, and normal write-off of fixed costs (tooling, facilities, and engineering). No profit to the Ford Motor Company has been included and the cost data include no allocation of general overhead costs.

As shown in figure 17, the estimated increase in cost of the bumpers and absorbers compared to the current bumpers and hangers is $34. This closely parallels the estimate quoted by Mr. Paul Taylor. All of the various chassis changes (ignored by Mr. Taylor) add an additional $36. Finally, there are some minor body component additions (such as gravel shields between bumpers and the body) that will add an additional $7 over today's vehicle cost levels for a total estimated cost increase of $77. This would represent the minimum wholesale price increase of the Ford car to recover the added cost for the bumper system. There is no provision for profit for the Ford Motor Company on the extra cost and investment. Including the 25% dealer margin and 7% excise tax, the increase in suggested retail price would be $108 for the 5 MPH bumper system.

In this presentation, we have described the product changes and the cost effect of adopting a 5 MPH bumper system on the full-size Ford. Changes required on other Ford Motor Company car lines, ranging from the Pinto to the Lincoln Continental will vary in specific detail, but are expected to result in the same order of magnitude of weight and cost increase. The Ford car is believed typical of the average.

SUMMARY

In conclusion, summarizing the major points made in this presentation:

1. Bumper design in recent years has emphasized appearance at the expense function. Improvements in bumper function are required to reduce low spe accident damage, and significant changes will be made starting with the 1973 mod

2. We support the federal bumper standard for 1973 and 1974 with the revisio proposed by Ford, and believe that with the 1974 model this standard will assure essentially damage-free vehicle under the 5 MPH test conditions.

3. A 5 MPH bumper system applied to the front and rear of the Ford car will increa the weight of that vehicle by over 160 lbs., and increase the retail price to t consumer by $108, with no increase in profit for the Ford Motor Company.

We are hopeful that the information presented in this report has contributed to a bett understanding of the bumper situation, and has increased the committee's level confidence that bumper systems that comply with the 1974 federal bumper standard w achieve fully the level of bumper performance being sought in S.976.

The Ford Motor Company appreciates the opportunity to present this addition information on bumpers relative to Senate Bill S.976.

SUPPLEMENTARY STATEMENT OF THE FORD MOTOR COMPANY

The purpose of this statement is to supplement Ford's testimony of May 10, 1971, before the Senate Commerce Committee on S. 976, the proposed Motor Vehicle Information and Cost Savings Act.

Our objectives in submitting this supplementary statement are three-fold. First, we hope to clear up some of the misunderstanding that we feel has developed -- partly as the result of apparently conflicting testimony -- on the subject of bumper systems.

Our second and most important objective is to re-emphasize our principal concerns over major aspects of the proposed legislation that we believe may have been obscured by the attention that has been given to the relatively narrow subject of automotive bumper performance. In this connection, we shall offer suggestions for changes in the bill that we believe will contribute to the achievement of its basic goals.

Finally, we are submitting Ford's comments on two proposed amendments to S. 976, as promised during our May 10 testimony.

Bumper standards form but one aspect of the comprehensive proposal before the Committee. In fact, inclusion of a bumper standard in this legislation appears unnecessary and undesirable. It is unnecessary in view of the fact that, since the introduction of the bill, the safety specialists in the Department of Transportation have promulgated a standard for bumpers which, with amendments we have suggested, would be more rigorous than the statutory standard proposed in S. 976. We think the statutory provision is undesirable because it mandates both the level of the standard and the test to be utilized; i.e., a barrier test. If the bumper standard remains in S. 976, the result would be a barrier test for 1973; a barrier test plus an added pendulum test for 1974, and then, by statutory mandate, a barrier test only for 1975. It would be difficult to square such a result with good regulatory procedure.

In addition to this observation on bumper standards, we are including with this statement as Attachment A a report on bumper systems and standards which seeks to clarify the questions which have been raised on this subject during the Committee's hearings.

We turn now to some of the other major aspects of the proposed legislation. Currently, S. 976 is drafted as an amendment to the National Traffic and Motor Vehicle Safety Act of 1966 -- an act intended and designed to achieve life-saving goals of highest national priority. S. 976, on the other hand, is intended to save money, not lives, and this goal clearly should have a lower priority. In our judgment, this difference suggests two important reasons why any new legislation on vehicle damageability should be drafted to stand alone on its own merits and should be entirely separate from the Safety Act.

The first reason is that the assignment of a new set of functions to the National Highway and Traffic Safety Administration of the Department of Transportation would dilute the resources being devoted to the objectives of both the Motor Vehicle Safety Act and the Highway Safety Act, it would seem especially unwise to propose expansion of its responsibilities to include lower-priority purposes.

Our second reason for advising against passage of S. 976 as an amendment to the Safety Act is that the intermingling of safety and damageability provisions in a single act would tend to becloud the meaning of both sets of provisions for manufacturers and regulators alike. The inclusion of damageability provisions in the Safety Act would give them equal importance with the safety provisions of the act and it would be difficult to determine which should legally prevail in case of conflict between them. These are problems that cannot necessarily be solved by more careful drafting of the bill. It would be easier to assure that safety considerations will prevail over damageability considerations if these two goals are dealt with in separate legislation. In any event, however, it is essential that damageability legislation include language which makes it clear that vehicle safety will prevail whenever there is a conflict.

In our testimony of May 10, we endorsed several provisions of S. 976, with suggested changes intended to make these provisions more effective in serving the broad purposes of the bill. With the changes we have suggested, we support the propos to require a study of the feasibility of determining comparative risk of personal injury in different models of cars. We also support, with certain recommended changes, the provisions regard ing vehicle safety inspection and uniform certificates of title.

Our principal concern is with the provisions of S. 976 ıt would authorize the establishment of standards to reduce ıicle damage and to facilitate inspection and repair. We do : see how these standards would result in the cost savings consumers that are referred to in the title of the bill. we stated in our May 10 testimony, we believe that the ındards authorized by the bill -- along with associated sting and reporting requirements -- could add substantially the price of new cars. The consumer will benefit only if : savings he realizes through reductions in insurance premiums ı out-of-pocket costs are greater than the increase in new : prices.

The legislation before the Committee fails to assure surance premium reductions. Indeed, the most it calls for this connection is a report to Congress on the actions -- lack of actions -- by the insurance industry. The bill also ıls to require that any standards established under its author- / be based on a finding that the resulting savings to consumers -- the form of lower insurance and repair costs -- will be greater ın the resulting costs to consumers in the form of higher new : prices. As far as we know, there has been no discussion fore the Committee of the possible nature of repairability ı damageability standards other than bumper standards. Nor : there been any consideration of the possible savings and sts resulting from such standards.

We believe that a better way to achieve the goal of lucing consumer costs, as we suggested on May 10, would be strengthen the consumer information provisions of S. 976. :d would support legislation requiring the Secretary of Trans- :tation to undertake a study of the feasibility of developing :hods designed to allow a determination and comparison of the sceptibility to damage of passenger motor vehicles involved traffic accidents. Under this recommendation, the Secretary ıld be pursuing the problem of vehicle damageability in the ne manner as the bill proposes that he tackle the question comparative risk of personal injury or death to vehicle :upants.

Upon satisfying himself of the feasibility of such :hods, the Secretary would then be in a position to obtain ı make available to consumers information they otherwise ıld not have -- information that would enable them to choose ng different makes and models on the basis of susceptibility damage and costs of insurance.

If differences in susceptibility to damage result in surance rate adjustments -- and this is a very important "if" -- : consumer who wishes to reduce his insurance and probable :ident repair costs will be able to do so. In addition, this

approach would preserve what many of you have called for, namely, competition among the manufacturers in the design of cars that appeal to cost-conscious consumers. If, in fact, many consumers will be drawn to those makes and models which offe maximum savings in insurance and accident repair costs, the manufacturers will be forced to compete vigorously with each other on the basis of minimizing the damageability of their products.

In order to establish procedures to allow valid comparisons, the Secretary must find some way to assure that vehicle differences are reflected in insurance premium differences, and that both kinds of differences are reflected in the comparative data to be made available to consumers.

It seems clear to us that the present provisions of the bill with respect to insurance premiums are entirely inadequate to achieve this result. The bill places no obligation on the insurance companies to adjust premiums to reflect vehicle differences, and it places no obligation on the Secretary other than providing information to the insurers and observing and reporting the extent to which they make use of that information.

In our judgment, this is a basic flaw which must be remedied before there is any chance that the bill will have its desired results.

Devising a procedure to determine comparative damageability will not be an easy task. The procedure should, of course, correlate closely to the real world, and the real world involves a multiplicity of accident situations including impacts between different makes and models at various speeds and various car locations, as well as impacts between vehicles and other objects.

The procedure must recognize this complexity. It must be accurate both in order to save money for consumers and becaus it could have a major impact on the sales of the various manufacturers. At the same time, however, if the method itself is unduly complex and costly, it will defeat the basic goal of cost reduction.

In our opinion, a good method -- which combines accuracy with efficiency -- need not necessarily be confined to "tes and test procedures" but could include analysis based, for examp on computer models. We, therefore, suggest that the Secretary be authorized to establish "methods" rather than "a system of te and test procedures".

The requirement that production versions of each make and model be tested at several different speeds is unnecessary and would be unduly costly and burdensome. The testing burden would be especially heavy because it would have to be completed within a few weeks after the start of new model production in order to have the information available to consumers when the new models go on sale. As we suggested on May 10, we believe that the industry should be permitted to use the same reporting procedures, with respect to damageability, that it is now permitted to use in reporting consumer information under the regulations issued by the Safety Administration.

Subject to appropriate regulatory criteria and procedures, the Secretary should be empowered to specify the information he needs. The manufacturers should be free to decide how to develop that information, whether through crash tests of production cars or of prototype models or through engineering analysis or in some other way. The information reported by the manufacturers would, of course, be subject to verification by the government.

Any manufacturer who furnished false information would be vulnerable to penalties of law as well as to public censure. The manufacturers would therefore be under pressure to report information that would conservatively represent the performance of all their production vehicles. Such information would be more reliable and more useful to consumers than the precise results of tests of a limited number of vehicles.

This concludes our comments on the major provisions of S. 976 During our May 10 testimony before the Committee, we promised to provide certain additional information, including Ford's comments on several proposed amendments to S. 976. Attachments B and C to this statement present Ford's position on the proposed amendments dealing with odometers and with vehicle emissions testing.

The additional information we promised to provide on May 10 on the relationship between automobile retail and wholesale prices as established by the Bureau of Labor Statistics and on the number of Ford engineering personnel working on vehicle safety is now being developed and will be filed with the Committee very shortly.

Exhibit B

COMMENTS OF FORD MOTOR COMPANY
ON AMENDMENT NO. 68 TO S. 976 CONCERNING ODOMETERS

OBJECTIVE

The purpose of this paper is to state Ford Motor Company's position with respect to the amendment to Bill S. 976 that would prohibit the disconnecting or turning back of odometers with the intent to defraud purchasers of motor vehicles.

DISCUSSION

Ford Motor Company supports legislation that would prohibit altering odometer readings with the intent of defrauding the public. We believe that a uniform procedure throughout the United States would be in the best interest of all. Ford believes, however, that it would be more appropriate to enact odometer legislation as a separate entity rather than as an addition to the National Traffic and Motor Vehicle Safety Act of 1966.

Ford Motor Company seeks to prevent odometer rollbacks and warranty coverage is voided if the readings are altered so that true mileage cannot be ascertained. In addition, the Ford Warranty and Policy Manual directs dealers, when replacing speedometer heads, to set the new head to indicate the mileage recorded on the old head at the time of replacement

Accurate odometer mileage is necessary to permit proper periodic and preventative maintenance in areas such as oil changes, emission system checks and parts replacement, oil filter and air filter replacement, tune-ups and other routine maintenace. In addition, incorrect car mileage may seriously mislead or misrepresent the value of a used car in negotiating a proper price.

In the past few years, progress has been made with tamper-resistant odometers with the adoption of non-reversing shafts, die marking of odometer rolls, roll separator indicator and rearrangement of components to deter tampering. In spite of these improvements, however, attempts at odometer rollbacks continue.

Ford supports the various sections in the proposed legislation with clarification, and/or modifications to Section 604 and 608. With respect to Section 604 that covers the actua

isconnect, reset or alteration of odometers, a number of vehicles re driven for quality audit purposes at the assembly plant prior o shipment to the dealer. These vehicles generally do not have n odometer in operation. The mileage normally accumulated is inimal and generally a separate speedometer indicating device nd possibly other instrumentation is attached. We believe hat the proposed legislation is not intended to reach such ractices that are related to improved customer and dealer atisfaction. To remove possible ambiguity as to its meaning, he phase "After completion of assembly of the vehicle, including ncilliary tests by the manufacturer, it shall be unlawful ..." hould be added to Section 604. This would have the effect of larifying the applicability of provisions of Sections 605 and 08 with regard to the obligations of the manufacturer. Further, nsistence on having the odometer connected during the conduct f quality audit tests could create a question as to the expiraion of the warranty period.

In the absence of such clarification, Ford believes hat Section 608 as presently written would be objectionable to anufacturers for it requires a manufacturer of new motor ehicles to supply a form to the dealer indicating mileage ecorded. Most new vehicles leaving the assembly facility ave little or no mileage recorded on the odometer. It would eem to us that the benefits and/or protection to the consumer ould not justify the added cost to prepare documents prior to he first retail sale of a new vehicle. We recommend that ecording of mileage be made at the time of retail sale between he dealer and the buyer.

Ford strongly urges that federal legislation on the ontrol of odometers preempt state laws to the extent that those aws are inconsistent with the provisions of the final federal egislation. Although many states have passed odometer laws, ome of this legislation is not consistent between states and e believe that uniformity is necessary throughout the country n order that manufacturers may continue to work toward optimum amper-resistant systems.

RECOMMENDATION

The Ford Motor Company is in accord with the aims and bjectives of the proposed odometer legislation and fully supports ederal legislation in this area. We recommend, however, that inal legislation provide the manufactuer with the flexibility o selectively test-drive vehicles at assembly plants without iolation and that it is unnecessary to require that manufacturers upply a document indicating actual mileage of new vehicles. nstead, this could be accomplished by recording the mileage hen the car is delivered by the dealer.

Further, it is the view of Ford that the end sought o be achieved by the proposed odometer legislation would be est served if it stood as separate legislation and with nforcement possibly under the Federal Trade Commission rather han as an addition to the National Traffic and Motor Vehicle afety Act of 1966. The Federal Trade Commission is, of course, he federal agency which is primarily charged with the responsiility of preventing fraud on the consumers -- the purpose of he proposed legislation.

Exhibit C

COMMENTS OF FORD MOTOR COMPANY
ON AMENDMENT TO S. 976 CONCERNING THE
INSPECTION OF VEHICLE EXHAUST
EMISSION CONTROL SYSTEMS

As amended, S. 976 provides for mandatory inspection of exhaust emission control systems at specified intervals.

We regard this amendment as both unnecessary and undesirable; unnecessary because, by the Clean Air Amendments of 1970, Congress vested similar authority in the Administrator of the Environmental Protection Agency, and undesirable because it would diffuse authority and, as a result, undercut the centralization principle inherent in Reorganization Plan No. 3 of 1970.

Discussion

Title II of the Clean Air Act deals with emissions from moving sources on a comprehensive and exclusive basis. The obligations of vehicle manufacturers are spelled-out at each stage of the process; e.g., research and development (Section 202(b)), prototype testing (Section 206(a)(1)), production (Sections 206(a and 207(a)), and vehicles in actual use over their useful life (Section 207(b)). The amendment at page 15 of S.976 represents a unnecessary and undesirable departure from the plan followed by Congress since 1965 of dealing with the vehicular emissions probl on a unified and comprehensive basis in a single law.

As amended by PL 91-604, the Clean Air Act requires the Administrator of the Environmental Protection Agency to prescribe an emissions performance warranty at such time as he determines, among other things, that "inspection facilities or equipment are available" (Section 207(b)). As a matter of policy, Ford Motor Company has consistently supported periodic maintenance of engine and emission control systems. The recent amendments of the Clear Air Act create, for the first time, an incentive for owners to maintain the emission control systems with which their cars are equipped. If additional legislation is required to implement the objective of the amendment at page 15 of S. 976, we respectfully submit that it should take the form of an amendment to the Clean Air Act.

Consistent with Congress' method of dealing with the problem, the Environmental Protection Agency recently was created and vested with broad authority to deal with a wide range of air pollution problems. To the extent that the amendment at page 15 of S. 976 would inject another Executive Department into the picture, it would have the undesirable effect of eroding the principle of centralizing authority and responsibility in the hands of a single agency.

Recommendation

In light of the unnecessary and undesirable consequenc described above, we recommend that the proposed amendments to page 15 of S. 976 not be approved.

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

TUESDAY, MAY 11, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m. in room 5110, New Senate Office Building, Hon. Frank E. Moss presiding.

Present: Senators Hart and Moss.

Senator MOSS. The subcommittee will come to order.

We continue our hearings today on the several bills that are before the subcommittee, and we have some very outstanding witnesses to hear today.

Our first witness will be Mr. Robert Pitofsky, Director of the Bureau of Consumer Protection of the Federal Trade Commission.

I would ask Mr. Pitofsky to come forward and sit at the table and to identify the gentlemen who accompany you and proceed.

STATEMENT OF ROBERT PITOFSKY, DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION, WASHINGTON, D.C.; ACCOMPANIED BY JOSEPH MARTIN, JR., GENERAL COUNSEL; AND MORTON NEEDLEMAN, ASSISTANT TO THE BUREAU DIRECTOR

Mr. PITOFSKY. Thank you, Senator.

I am accompanied today by Joseph Martin, Jr., the General Counsel of the Federal Trade Commission, and Morton Needelman, Assistant to the Bureau Director in the Bureau of Consumer Protection.

Mr. Chairman, in response to your invitation, I am pleased to testify before you on S. 976, the Motor Vehicle Information and Cost Savings Act.

This bill would permit the Department of Transportation to set property loss reduction standards, and establish the machinery for the creation of a nationwide system of diagnostic centers to inspect for manufacturing faults and inadequate repairs. The Commission endorses the objectives of the bill.

At this point, I would like to read into the record the Commission's statement on this. Let me note, however, that the statement has been submitted to the Office of Management and Budget but there has been no time to receive comment from them on the statement.

This is in response to your request of March 8, 1971, for the Commission's comments on S. 976, 92d Congress, 1st Session, a bill 'To amend the National Traffic and Motor Vehicle Safety Act of 1966 in order to promote competition among motor vehicle manufacturers in the design and production of safe motor vehicles having greater resistance to damage, and for other purposes.'

The purpose of this bill is to establish the mechanisms for stimulating automotive design changes which will reduce the cost of normal collisions. The bill directs the Secretary of Transportation to develop tests for the susceptibility of automobiles to damage by collisions; to establish property loss standards; and to require energy absorbing bumpers which will withstand 5–10–15 mph collisions. The Secretary must publish the information gained from the tests and disclose his findings to insurance companies. Manufacturers, besides testing their vehicles and complying with the standards, must distribute to prospective purchasers information about their automobiles, including the collision withstanding capabilities and insurance costs. The bill also provides for cooperation with state and local governments and for the inspection of automobiles by independent inspectors prior to sale.

The Commission supports this regulation which could be an important first step in producing better designed cars which will reduce economic loss from accidents. This loss is a significant problem for consumers. Constantly inflating insurance costs alone are enough to suggest a thorough examination of methods to reduce the cost of normal collisions. Since there appears to be some evidence that design changes will go a long way towards remedying the situations, it seems imperative that the Federal Government assume responsibility for stimulating these design changes.

The agency entrusted with the Government's responsibility is the Department of Transportation. It is vested with the authority to study methods which might contribute to loss reductions. By publishing these studies and establishing standards based on them, it will use both competitive and regulatory pressures to encourage necessary changes. The Commission believes that responsibility under this bill is properly placed. The Department of Transportation is developing an increasing expertise in the regulation of the automobile industry.

The Commission endorses the objectives of the bill and considers it a potential boon to automotive customers, but it believes that the suitability of any particular legislative proposal should be considered by the Secretary of Transportation. Thus, the Commission suggests that the specific comments of the Secretary will be of greatest assistance in the deliberation of this bill.

That ends the Commission's statement on this matter.

Today, speaking as a member of the Commission's staff but emphatically not for the Commission, I propose to outline briefly my views on why legislation of this kind is needed to meet the severe consumer problems of mounting repair costs and defective cars.

At the outset, let me note that while the staff of the FTC does not have engineering expertise, we are aware of consumer needs in this area. Since at least the early 1960's when the FTC's warranty investigation began, the staff has continuously monitored consumer complaints about cars. Presently, we receive about 250 complaints a month indicating consumer dissatisfaction over defective new cars, unsatisfactory warranty performance, or poor repair work. In addition, our computer printout of complaints received by major law enforcement agencies in six major urban areas indicate that the problem of defective cars continues to be an overriding concern to consumers.

The Commission's 1970 Automobile Warranty Report and the proposals it contained largely reflected what the staff has learned about the growing sense of consumer helplessness and frustration over poor auto performance. At the conclusion of the warranty report the Commission recommended an Automobile Quality Control Act which would create a statutory obligation for manufacturers to design and build cars which, in all respects, would meet minimum standards of quality. In making this legislative recommendation, the Commission concluded that neither the competitive structure of the automobile industry nor the limited real bargaining power of consumers were likely to produce warranties which meet the problem of defects in new cars.

By the same token, it is my view that the regulatory and competitive

pressures contemplated by S. 976 can help to reduce the risk of economic loss. We cannot rely on industry alone to generate these improvements for as several students of the automobile industry have observed, by often engaging in frivolous year-to-year styling competition, the manufacturers may be largely responsible for creating these risks in the first place.

As for the argument that consumers may not be willing to pay the added costs which allegedly arise from design changes required under these standards, this assumes that rationally designed parts are more expensive than those now imposed on the public. I have seen no evidence that this is true. Moreover, even if the argument were valid, it overlooks the fact that consumers may be perfectly willing to pay a moderate increase in price for preventive engineering at the manufacturing level rather than subject themselves to the risk of enormous post-collision costs and increased insurance premiums.

As it happens, the plight of the consumer who is faced with post-collision bills is compounded by the fact that the cost of repairs depends upon the effectiveness of competition in the multistage system under which crash parts are now sold.

The Commission is deeply concerned about the alleged serious imperfections in competition in both the manufacturing and distribution of crash parts and how these imperfections may have contributed to the annual bill of billions of dollars for crash-related repairs.

As former Chairman Weinberger indicated in last year's Senate hearings, the staff of the Commission is now investigating the extent to which restrictive practices have eliminated competition at the manufacturing level as well as competition between independent body shops and franchised dealers.

Given these facts—an imperfect competitive climate, ever increasing costs, and an increase in consumer dissatisfaction—I believe it is essential that Congress legislate in this area.

As for the bill itself, I endorse the basic concept of a uniform Federal bumper standard. It is not feasible to impose varying and perhaps conflicting State standards on the auto industry. However, since some States may take the lead in proposing effective bumper legislation, it would be a substantial setback if the Federal law were so written to allow a permissive standard which could result in less consumer protection than would be available under effective State statutes.

While I do not profess to have any engineering expertise, I am impressed by a respectable body of expert opinion that holds that the standard set out in section 125(c) of the bill, that is, 5-mile collision by 1975 with minimum prescribed damage as determined by the Secretary, may be within current design capability, or, in any event, will be outdated by 1975. Whether this is true or not, as a matter of policy, I would not attempt to predict the state of the art in the future by adopting a specific standard.

I recommend, instead, that the bill contain a mandate for the Secretary to write bumper standards but that no specific standard should be set: there is always the danger that such a standard can become the maximum with the result that technology will be frozen with no incentive to advance. It seems to me that the public interest is best served by leaving the specific standard and effective date open, leaving it to industry, insurance companies, and consumer advocates to present their

most persuasive technical arguments to the Secretary about costs and engineering capability.

I also support the concept found in the bill of establishing tests and then subsequently rating and publishing reliable comparative data on the relative susceptibility of each make of car to damage from collisions. Dealers should be required to give new-car purchasers this information and the Department of Transportation should publicize it in plain language.

I believe comparative data is precisely the kind of information which consumers need in order to make a rational choice among competing products, and I would welcome the day when an advertiser boasts on national television that the latest results show that his particular model has the lowest incidence of collision loss.

It has been our experience that the development of this kind of informational competition should be encouraged as an alternative to either absolutely irrelevant advertising or a rivalry based upon groundless or deceptive claims which eventually require FTC intervention to deflate the rhetoric.

First, it represents a desirable form of private regulation in the sense that a competitor's unsubstantiated boast of uniqueness or superiority can be debunked by a few well-publicized statistics which will do the job faster than any legal process.

Second, this kind of disclosure may quickly produce pressure for actual change even though the general consumer population may not be influenced by the information. All that is really necessary is that comparative collision data influence the purchasing habits of some consumers. If the number is not insignificant, the message will not be lost on the decisonmakers in Detroit and the result could be improved cars for the entire population in short order.

We have seen this phenomenon occur already in the design area where a significant, although by no means overwhelming, majority of the population has indicated a preference for smaller compact cars. The response of the manufacturers to the influence of this segment of the population has resulted in the availability to all of a greater choice in car sizes.

Turning to the section of the bill which would establish a uniform titling code, I believe that is desirable to meet the national problem of reducing car thefts and to aid in locating cars which are recalled by the manufacturers for safety defects.

Finally, I support the objective behind title V of the bill which requires, before sale and after repair following crashes, that all cars, new and used, be inspected for vehicle performance by an independent diagnostic center. Certainly, the facts presented by the Commission in its warranty report in support of federally imposed minimum standards of quality, durability, and performance argue equally for this more limited proposal—presale independent testing. The warranty report said:

1. Inadequate quality control at the plant and poor predelivery inspection procedures has resulted in a substantial failure by the automobile industry to meet its obligation to provide the public with defect-free cars.

2. The industry response to consumer complaints about the quality of cars has been to issue formal warranties, but due to inadequate com-

pensation for warranty work and other factors, express warranties have proven to be largely illusory in protecting consumers. And while the consumer may have a legal remedy under implied warranties, litigation is far too expensive, too time consuming, and too mysterious and uncertain a procedure for all but a handful of purchasers to pursue to a successful conclusion.

3. Redress of legitimate consumer complaints through existing Government machinery such as invoking section 5 of the Federal Trade Commission Act is of limited utility. For example, we have no evidence that the handful of Commission cases against the most egregious deceptions in the auto repair field, including those involving unnecessary repairs or repairs never made, have substantially improved the overall quality of service.

Complaints followed by extensive litigation do not remedy the fact that the Commission possesses neither the physical facilities nor the technical expertise required to conduct an effective program of monitoring quality control and performance. This does not mean that we have abandoned the auto field—we are taking a hard look again at current warranty and advertising practices for the purpose of assessing realistically what we can do. But we know already that the Commission's procedures, facilities, and resources are inadequate to carry out a program under which the manufacturers, dealers, and repairmen could be held to appropriate standards, and other alternatives must be considered.

I believe the provision for inspection in S. 976 may be a step in the right direction in eliminating defective cars; assuming, that is, that defects in existing State inspection systems are also eliminated.

To the extent that the inspection provision covers sale of used cars, this represents a significant breakthrough for the poorest segment of the consuming public who have traditionally been victimized by sharp practices. And all segments of the consuming public should benefit from the provision in the bill which would require that repairs on safety-related parts be checked out after crashes.

This bill says, in effect, as the Commission said in its warranty report, that in present-day America where the automobile is no longer a luxury—it is the only available or practical means of transportation for millions—government must assume a positive role in seeing that our citizens get defect-free cars which can be maintained at reasonable costs. I agree with this purpose of S. 976.

Thank you very much.

Senator Moss. Thank you, Mr. Pitofsky, for that very good statement. We are glad to have it.

You mention in your statement that repair complaints were among the most frequent type that come into the FTC and other consumer protection agencies.

Do you think that diagnostic inspection would improve the complaint frequency by helping the mechanic to locate the items that need repair and by giving the consumer assurance that he is not being bilked?

Mr. PITOFSKY. I think if those centers are run competently that it would reduce those complaints. It would catch those complaints at an earlier point, so that they would not develop into the kind of consumer dissatisfaction that we see in complaints sent to our agency.

64-345 O - 71 - pt. 3 -- 33

Senator Moss. What is your opinion of the provision that would prohibit the inspection agency from also being the service agency to make the repairs? Do you think this gives the consumer protection or does it increase costs and it, therefore, would be undesirable from that standpoint?

Mr. PITOFSKY. I am somewhat hesitant to take too definite a position in this area. I think there are some open issues about these diagnostic centers. For example, what will the costs be? It would be unfortunate if the cost for inspection of cars at one of these centers turned out to be something like $15 instead of $2.50. I think there are questions relating to serious consumer inconvenience if the centers are not run efficiently, and also questions about whether they could best be operated independently. My inclination is that they should be independent, but I have not really given that particular matter a great deal of study.

Senator Moss. Do you visualize some sort of a standardized type of operation that constitutes an inspection system? What I have in mind is a place you go into almost like getting a physical examination. They have all sorts of machines to test different parts of the vehicle as well as a visual inspection.

Do you think there ought to be developed sort of a generalized inspection technique that is a required minimum?

Mr. PITOFSKY. Yes, I do. I think that is feasible, this would be the most effective way of dealing with this problem.

Senator Moss. You support the attempts of S. 976 to promote information competition, and some critics of this legislation are skeptical about the bill's seeming reliance on this informational competition as the means of forcing the auto makers to tackle what you refer to as preventive engineering.

What aspects of the bill do you consider encourage information competition? Do you have any suggestions for strengthening this provision?

Mr. PITOFSKY. Let me say at the outset that informational competition is not going to solve all the problems, but I do think it is an important step in the right direction.

As I recall the bill, section 125 requires that the Secretary of the Department of Transportation conduct tests to develop information about the ability of cars to withstand low speed collisions without incurring enormous expense to the owner, and then 127 (a) and (b) require that the information be made available and disclosed to insurance companies and to consumers.

I believe these are steps in the right direction.

I do notice in the bill that there is some ambiguity as to whether there is going to be a requirement that this information be disclosed to consumers as opposed to a provision that it be there and available for consumers who ask for it. I think the bill should be drafted in such a way as to insure that consumers will have access to this information and therefore should provide that the information must be given to consumers.

I also would hope that it would be made available in simple and plain language so that consumers will be in a position to make effective use of that data.

Senator Moss. Do you see consumers beginning to utilize the informational competition that exists now? Are they beginning to use this and relying on it?

Mr. PITOFSKY. Of course, the first thing to note is there is not a great deal of informational competition going on right now, so consumers don't have a great deal of relevant data, with respect to price, quality, and durability, which they can use to make their own sensible determination.

To the extent that there is such information, our experience at the FTC is that it definitely is used.

I might mention two areas by way of examples. One deals with the hearings that we have held on disclosure of octane ratings with respect to sale of gasoline, a rule that we have now promulgated, and the second has to do with hearings that have been held as to disclosure of care labeling directions for wearing apparel. Our hearings indicate in both those areas that that information is much desired by consumers and it is predictable that the information will be used.

I might also add that our record in the care labeling matter indicates that in Europe and Canada, where very substantial care labeling information is made available to consumers, they use it and they use it effectively.

Senator Moss. I am sure you are familiar with Ford talking about safety. Is Ford promoting informational competition in this?

Mr. PITOFSKY. I am sorry?

Senator Moss. The ad that comes on television talking about the safety features of Ford products. It is a pitch on safety features. I wonder if that is any kind of informational competition.

Mr. PITOFSKY. I am not familiar with that advertisement. It would depend whether it is image-oriented and vague puffing, on the one hand, as opposed to giving the consumer hard data, on the other. It is the latter that makes for effective informational competition.

Senator Moss. In your statement you referred to the study that the FTC is making an investigation of the automotive parts industry. Is there a time you have set when we might expect that report to be available?

Mr. PITOFSKY. That is a matter that is in the Bureau of Competition rather than my own Bureau, and I am afraid I don't have an estimate. I am sure I could obtain one and supply it to the committee. I am not sure where that project stands.

Senator Moss. I may be asking you although it is not directly in your department, but I was wondering if this investigation on automotive parts would cover the situation where the damaged part of the vehicle is, of course, made only by the manufacturer of that particular vehicle. If it is a Ford, it is a Ford fender or whatever. And I wonder how we might reach this so-called captive market that is thus provided to the manufacturer of the vehicle.

Do you have any suggestions on that?

Mr. PITOFSKY. No. Let me just say that the allegation that there is a kind of vertical integration or captive market is very much a part of this study. It is under review right now within the staff, and I have no suggestions or predictions as to what kind of proposal will come out of that study.

Senator Moss. Is the Commission study also looking into the complaints by consumers that the insurance industry is failing to get policyholders' cars promptly repaired following crashes?

Mr. PITOFSKY. I am not aware of any study at the FTC along those lines.

Senator Moss. Does the artificial labor cost which the insurance industry alleges force them or is forced on them by repair shops contribute to the shortage of qualified repairmen?

Mr. PITOFSKY. I don't think the Commission is looking into that question, and I really have not studied it sufficiently myself to have an opinion.

Senator Moss. Will this be part of that study on prices and costs of repairs?

Mr. PITOFSKY. I am not certain of that.

Senator Moss. Will the preliminary injunction power help the FTC to better control automobile repair practices?

Mr. PITOFSKY. Well, certainly the preliminary injunction power will allow the Commission across the board to be more effective in its consumer protection operations. I can imagine, for example, the preliminary injunction coming into play with respect to certain kinds of advertising exaggerations.

So far as repair practices are concerned, I can imagine a case in which a preliminary injunction would be in order, but to be candid about it, I don't believe that that is the central problem that we have to surmount in order to be effective in this area. I think on the contrary that the automobile repair problem is so pervasive, involves so many different business units, that it would be difficult for an agency like the Commission, operating on a case-by-case basis, to ever deal effectively with that problem.

It seems to me it would have to be solved either by rulemaking within the Commission or by legislation.

Senator Moss. When you say that S. 976 is a good initial step but we have to go further, what do you mean? Are you referring to your recommendations for establishing Government performance standards in automobiles, recommendations growing out of your warranty study?

Mr. PITOFSKY. Yes, exactly, that is a matter that has been under very serious review in the FTC and I would hope that we will have something for this committee very shortly on that, perhaps within the next month.

Senator Moss. Thank you.

Our subcommittee chairman has joined us now. I am pleased that Senator Hart is here. I don't know whether he has any comments or questions.

Senator HART. Thank you, Mr. Chairman. I apologize. I was testifying before the chairman of the Commerce Committee in his role as chairman of an appropriations subcommittee.

Senator Moss. Very good.

Senator Baker?

Senator BAKER. Mr. Chairman, thank you very much.

I, too, apologize to the subcommittee and the witness for being late, but I have read his statement and I have one or two questions

that I would like to put, in order to clarify the testimony. You may have touched on these before I arrived. If so, I apologize in advance for being redundant.

In your statement, the first paragraph, you state that you are speaking as a member of the Commission's staff but not for the Commission.

I would appreciate it if you could tell me if this statement and the positions expressed in it have been submitted to the Commission or cleared by the Commission for these purposes today?

Mr. PITOFSKY. No; most definitely not.

Senator BAKER. In your statement you point out that former Chairman Weinberger in testifying last year before this committee referred to restrictive practices and the elimination of competition at the manufacturing level as well as competition between independent body shops and franchised dealers.

Has the Commission investigation of the competition between independent body shops progressed to the point where you would indicate whether or not the legislation being considered by the committee would have any effect on the disparity of prices often encountered by the consumer seeking repairs? This was a point touched on in yesterday's question by Senator Griffin of Michigan.

Mr. PITOFSKY. I had touched on that in one of my earlier answers. That particular study is in the Bureau of Competition rather than the Bureau of Consumer Protection with which I am involved, and I do not know the scope of the study. I don't know exactly what matters are being taken up in that study. Therefore, I am very hesitant to comment on whether it would deal or not deal with that problem.

Senator BAKER. I apologize for asking a question beyond the jurisdiction of your division, but, since it was mentioned in your statement, I thought you might be in a position to elaborate a little further.

Thank you, Mr. Chairman.

Senator MOSS. Thank you very much, Mr. Pitofsky, Mr. Martin, and Mr. Needelman. We are glad to have you here for the committee and we appreciate very much your testimony.

Mr. PITOFSKY. Thank you.

Senator MOSS. Our next witness is going to be Mr. Paul H. Taylor of the Taylor Devices, Inc., from Buffalo, N.Y.

I understand he has in addition to a statement some illustrations that would be of interest to this committee.

We are pleased to have you, Mr. Taylor. Will you identify your associate?

STATEMENT OF PAUL H. TAYLOR, PRESIDENT, TAYLOR DEVICES CORP. AND TAYCO DEVELOPMENTS, INC., NORTH TONAWANDA, N.Y.; ACCOMPANIED BY DOUGLAS P. TAYLOR, DIRECTOR, RESEARCH, TAYCO DEVELOPMENTS

Mr. PAUL TAYLOR. Thank you for inviting us to testify.

This is my son Douglas, who worked with me in connection with this. He is director of research of our research corporation, Tayco Developments, which is heavily involved in this.

I am president of Tayco Developments and Taylor Devices which manufacture the products.

Senator Moss. Is the Commission study also looking into the complaints by consumers that the insurance industry is failing to get policyholders' cars promptly repaired following crashes?

Mr. PITOFSKY. I am not aware of any study at the FTC along those lines.

Senator Moss. Does the artificial labor cost which the insurance industry alleges force them or is forced on them by repair shops contribute to the shortage of qualified repairmen?

Mr. PITOFSKY. I don't think the Commission is looking into that question, and I really have not studied it sufficiently myself to have an opinion.

Senator Moss. Will this be part of that study on prices and costs of repairs?

Mr. PITOFSKY. I am not certain of that.

Senator Moss. Will the preliminary injunction power help the FTC to better control automobile repair practices?

Mr. PITOFSKY. Well, certainly the preliminary injunction power will allow the Commission across the board to be more effective in its consumer protection operations. I can imagine, for example, the preliminary injunction coming into play with respect to certain kinds of advertising exaggerations.

So far as repair practices are concerned, I can imagine a case in which a preliminary injunction would be in order, but to be candid about it, I don't believe that that is the central problem that we have to surmount in order to be effective in this area. I think on the contrary that the automobile repair problem is so pervasive, involves so many different business units, that it would be difficult for an agency like the Commission, operating on a case-by-case basis, to ever deal effectively with that problem.

It seems to me it would have to be solved either by rulemaking within the Commission or by legislation.

Senator Moss. When you say that S. 976 is a good initial step but we have to go further, what do you mean? Are you referring to your recommendations for establishing Government performance standards in automobiles, recommendations growing out of your warranty study?

Mr. PITOFSKY. Yes, exactly, that is a matter that has been under very serious review in the FTC and I would hope that we will have something for this committee very shortly on that, perhaps within the next month.

Senator Moss. Thank you.

Our subcommittee chairman has joined us now. I am pleased that Senator Hart is here. I don't know whether he has any comments or questions.

Senator HART. Thank you, Mr. Chairman. I apologize. I was testifying before the chairman of the Commerce Committee in his role as chairman of an appropriations subcommittee.

Senator Moss. Very good.

Senator Baker?

Senator BAKER. Mr. Chairman, thank you very much.

I, too, apologize to the subcommittee and the witness for being late, but I have read his statement and I have one or two questions

that I would like to put, in order to clarify the testimony. You may have touched on these before I arrived. If so, I apologize in advance for being redundant.

In your statement, the first paragraph, you state that you are speaking as a member of the Commission's staff but not for the Commission.

I would appreciate it if you could tell me if this statement and the positions expressed in it have been submitted to the Commission or cleared by the Commission for these purposes today?

Mr. PITOFSKY. No; most definitely not.

Senator BAKER. In your statement you point out that former Chairman Weinberger in testifying last year before this committee referred to restrictive practices and the elimination of competition at the manufacturing level as well as competition between independent body shops and franchised dealers.

Has the Commission investigation of the competition between independent body shops progressed to the point where you would indicate whether or not the legislation being considered by the committee would have any effect on the disparity of prices often encountered by the consumer seeking repairs? This was a point touched on in yesterday's question by Senator Griffin of Michigan.

Mr. PITOFSKY. I had touched on that in one of my earlier answers. That particular study is in the Bureau of Competition rather than the Bureau of Consumer Protection with which I am involved, and I do not know the scope of the study. I don't know exactly what matters are being taken up in that study. Therefore, I am very hesitant to comment on whether it would deal or not deal with that problem.

Senator BAKER. I apologize for asking a question beyond the jurisdiction of your division, but, since it was mentioned in your statement, I thought you might be in a position to elaborate a little further.

Thank you, Mr. Chairman.

Senator MOSS. Thank you very much, Mr. Pitofsky, Mr. Martin, and Mr. Needelman. We are glad to have you here for the committee and we appreciate very much your testimony.

Mr. PITOFSKY. Thank you.

Senator MOSS. Our next witness is going to be Mr. Paul H. Taylor of the Taylor Devices, Inc., from Buffalo, N.Y.

I understand he has in addition to a statement some illustrations that would be of interest to this committee.

We are pleased to have you, Mr. Taylor. Will you identify your associate?

STATEMENT OF PAUL H. TAYLOR, PRESIDENT, TAYLOR DEVICES CORP. AND TAYCO DEVELOPMENTS, INC., NORTH TONAWANDA, N.Y.; ACCOMPANIED BY DOUGLAS P. TAYLOR, DIRECTOR, RESEARCH, TAYCO DEVELOPMENTS

Mr. PAUL TAYLOR. Thank you for inviting us to testify.

This is my son Douglas, who worked with me in connection with this. He is director of research of our research corporation, Tayco Developments, which is heavily involved in this.

I am president of Tayco Developments and Taylor Devices which manufacture the products.

We are now working with every major manufacturer in the United States and five or six of the Japanese and European manufacturers.

At the moment I hold 46 patents in the United States and more abroad on aircraft, on machine tools, high-speed automated equipment and energy suppression systems, energy management systems.

As far as my own credentials go, I am a licensed aircraft mechanical engineer, a graduate aeronautical engineer, and was director of research for a Maine company making machine tools and automated equipment.

We are talking here today primarily in connection with energy absorbers as we known them. Among other things which Taylor Devices make, we make a series of very precisional shock absorbers for the Saturn 5, the F–111, and other types of aircraft.

We also make commercial units for heavy mining equipment. One of our main items of products concerns a crane buffer used in industrial steel mills. We also are approved for use on railroads as cushioners and material of this kind. Horizontal shock mitigation has been part of Taylor Devices and Taylor's work for almost 14 years.

We were called by Ford Motor and American Motors almost simultaneously to work with them on this energy management situation with regard to the energy bumper. We pioneered in this molecular compressibility field which includes using the space between molecules as an energy source.

The same material when shoved through an orifice with our fluid amplifier approach which we have pioneered provides almost a constant force shock absorber with a very few parts and at extremely low cost.

For your information, we have quoted Ford and others approximately $2 a unit for the bumper shock absorber in volume production and are prepared in connection with a Toronto corporation to produce the cylinder parts in the joint operation in Toronto or in the Canadian side for U. S. manufacture.

Senator Moss. By $2 a unit, would that be the whole front bumper or are there two or more of these shafts? Maybe I am premature.

Mr. PAUL TAYLOR. There is the $2.80 LTD shock absorber. This particular unit which you see here has passed all specifications. The unit has taken the original specification put out by the DOT—the original specification as put out. We are the only one that took a 45-degree impact in the original specification and passed every single specification put out originally by the DOT.

Now, with the watering down of the spec that occurred under the DOT, this same unit to take the specification that the DOT amended it to, this will take a 5-mile-an-hour barrier crash into the unit and will cost approximately $1.60 to produce.

Both units are qualified. The material has been submitted to every major manufacturer.

Senator Moss. Well, the estimate then that it will cost $100 on every unit produced is a little high; isn't it?

Mr. PAUL TAYLOR. I would assume so from my experience in tooling and elsewhere.

In fairness to the automobile manufacturers, they are entering an area that they are not that familiar with where high-strength materials and other stuff must be used. The experimental car which we will

show to you we have been promoting with them the use of high-strength steels in the bumper which will not affect adversely the passenger car handling characteristic and at the same time provide the necessary cushioning to absorb the energy of the bumper.

Now, the actual unit that we are trying to promote now is a smaller unit to meet the new DOT specification. We have been into these people and of course with the watering down of the spec, there is a tendency to go to something cheaper and made in-house. This is typical of what could be expected. They are after a profit, naturally.

The material that we have been working with has very unusual characteristics, and there are two other devices that are proposed for this use that have the same characteristic. This is an almost constant force. We are the best of the bunch. We show a 98-percent efficiency in some cases and in some cases as much as 95.

Let's suppose the crush strength of a car frame is 10,000 pounds. This particular unit at 10,000 pounds that you have in your hand, Senator, actually is a 9,500-pound shock force unit, 3½ inches. That will cushion an LTD at 5 miles an hour into the barrier on each frame rail and at 45 degrees to the corner end, and has done so at Ford Motor.

Mr. DOUGLAS TAYLOR. Just one of those particular units applied to the Ford LTD would absorb the full energy under the present spec. Two of those units would add to that force level. If mounted onto the car, it will meet the earliest proposed DOT spec which included a 45-degree angular pendulum input or on rail inputs, inputs into the center of the bumper itself.

The unit to meet the DOT spec as it is presently written if it was to be used as you would normally with two units per bumper on the vehicle, is roughly about two-thirds the size of that one and uses around a 2½-inch stroke. This would be for the average-size-to-intermediate car.

Your light cars require an even smaller unit. Your much heavier cars in the luxury-car class would require a somewhat larger unit.

Mr. PAUL TAYLOR. Some idea of the force of that unit, so that you may get some standard to go by and understand that the automobile people look at the problem rather in a difficult sense, that is a standard Ford shock absorber. Our shock absorber is equal to 60 of the standard Ford shock absorbers in energy capacity.

Senator MOSS. It will absorb 60 times as much?

Mr. PAUL TAYLOR. You would have to have 60 of these shock absorbers to absorb the same energy as this one does as presently rated.

One of the problems is: this is new technology to these people and they are not moving as fast as I would like them to move, naturally; but the energy involved is tremendous taken into the frame.

Our opinion has been for a long time that this could be managed better than it was in the various fixtures and materials that we have. We have made up frame attachments, the bracket and attachments, and now, finally, the bumper, ourselves, to take this to these people and say, "Here, you can do this; it is within the technology; it is not as difficult as you think it is.

My son has in his hand a complete attachment taken to Ford which has been adapted to some extent. This is the frame bracket which attaches to the frame rail and this attaches to the bumper.

Mr. DOUGLAS TAYLOR. It is taken apart like so. This small device in here is the energy absorber. This section here bolts to the bumper of the vehicle, and this section here bolts to the frame of the car.

As to the cost, this is the total bracket assembly. This is a bolt end installation. It bolts right into your vehicle, in many cases without a modified frame on the vehicle. There is no stiffening required with many of the hydraulic energy absorbers that are on the market today.

As to cost, if we are willing to sell this unit in the under $3 range, you can figure out pretty much for yourselves how much these small extruded aluminum brackets are going to cost.

Mr. PAUL TAYLOR. We don't think we even had in those original designs the best or the cheapest that could be done. Recently in desperation after hearing these comments on the cost, we proposed and built a car that is available here today for examination and on which we have movies and film clips of testing performed just last Friday when we decided we had to move. We said according to our calculations, an existing car right off the line ought to be able to take 10 miles an hour head-on into a barrier and 5 miles an hour in the back. That is four times the present DOT spec.

We have to remember the energy goes up by the square of the velocity. Therefore, 2½ miles an hour is only 25 percent of 5 miles an hour, and 5 miles an hour is only 25 percent of 10 miles an hour.

Now, in our early test just last Friday, we passed every single test, and we did do a 10-mile-an-hour impact. All tests were certified by an independent appraisal. No damage on the front at 7½ miles an hour and no damage on the back through 5 miles an hour.

Seven and a half miles an hour is double the present energy levels that it has been said they could meet. On the 10-mile-an-hour impact, we had been supplied an experimental car by the manufacturer to inhibit engine movement forward and that failed at 10 miles an hour.

Apparently, there was some consideration that they were supplying a 6-mile-an-hour unit. I guess they didn't know how fast we were going to hit the wall. There was minimal damage done to the car.

We have omitted it from the film clip since we have shown only items of zero damage.

Mr. DOUGLAS TAYLOR. Repair due to these experimental parts by the manufacturing failure was $91.70. This compares quite favorably with the present figures which are readily available from the Insurance Institute some of their writeups, which I believe is in the $400-to-$700 range from a permanent barrier impact of this velocity.

Senator MOSS. Just what kind of damage was it? Was it on the internal part?

Mr. DOUGLAS TAYLOR. No; this was the motor of the car, normally rubber, which isolates the mass of the engine from its own vibrations. Obviously, with the mass of a typical American car engine, well above 450 pounds in most cases, you have a tremendous amount of stored energy in the engine when the car hits the barrier. The engine is not rigidly connected to the frame, so those engine miles have to absorb the travel of the engine.

You can't take it on the rubber. So this particular manufacturer made especially, hopefully for a prototype 1973 engine mount, a couple of mounts with little steel buffers in them. So if you used up the travel in the rubber mounts in the collision, this little steel section would pick

up one of the steel components that are bolted onto the body of the car, the frame of the car, and it would absorb the energy.

As it was on this impact, he didn't have enough area on the steel mount and the engine mount came out and loosened up in the front, allowing the strength of the engine to contact the radiator.

Senator Moss. This is the engine sliding forward?

Mr. DOUGLAS TAYLOR. Yes. The manufacturer assured us that he can fix the mount readily enough at virtually no additional cost by adding a little bit more steel and it should be able to take it with no problem.

Problems like engine mounts vary between manufacturer and even between different cars of the same make due to the fact when they put the engine in the car, in order to not transmit any of the engine vibrations to the vehicle, different engines require different rubber mounts. Some require much softer mounts than others.

Mr. PAUL TAYLOR. Actually there was zero damage to the exterior of the car. It has been not touched since last Friday, and you gentlement can examine it yourselves.

There is an important thing we want to bring out here. We have contended since the public wants energy systems in their bumpers that they should make available a unit that would take the higher impacts as an accessory price, and we have designed our unit, the aluminum unit that you saw, to take 5-miles-an-hour impact using the jacking tool, the tool that you see, and at the manufacturer's option he may submit in there a steel unit which will take the same car at 10 miles an hour without any change whatsoever, just snap in place, and he has a 10-mile-an-hour system to be prepared for the 1975 cars.

Senator Moss. Would that increase the cost of the unit?

Mr. PAUL TAYLOR. That unit cost would probably go up about $2.50 I would judge because the steel cannot be impact extruded in the extrusion process as yet. The processes are coming. It may be done very shortly, but at the moment it cannot be coat extruded of steel. It would have to be made out of tubing which is welded which will increase the cost a couple of dollars per unit.

In connection with this, I should like to say one thing. We have already had a car at Ford Motor, a safety car, that has used our units that will go to approximately 50 miles an hour with no problems. The units have been crashed into the wall two or three times at 50 miles an hour and were operable after the crash.

It works in conjunction with other safety elements that Ford has developed which I am not at liberty to disclose. The same units will take the car into the wall, that particular car with the stronger frame, into the wall at 27.8 miles per hour or car to car at 55 miles per hour with absolutely no damage.

This we have verified in our own independent test in our own laboratory. So, there doesn't seem to be in the present technology as we know it any limitation except that of cost. As you go up to the larger units, the cost increases in proportion to the size of the unit and that goes up by the square of the velocity.

So, for 50 miles an hour, the unit gets quite a bit more expensive. However, that same unit if it were adapted as part of the car frame and other things that could be done would not be near as costly.

The same structure could be used as car frame.

In connection with all this work that we have done, we have been quite concerned with certain trends that we see that we think need examination by Federal authorities in connection with this. Everyone has been looking at protection of the car and no one has been paying any attention to protection of the individual that is riding in the car.

In this particular instance the best type of shock absorber ever devised to protect the individual was the crushing front end. The shock absorber which does the same thing must do it not to increase the energy applied against the passenger so he becomes a ping pong ball being thrown around inside the car. Certain of the systems under consideration and documented in our talk are just this kind of a system.

One of them in particular being considered by a major manufacturer by his own admission gives back 25 percent of the energy of collision which can only go to one place, the passenger. The other one is even worse. It is a rigid system. A rigid system at 2½ miles an hour in our opinion may offer serious damage to a passenger—at as low as 2½ miles an hour.

In conjunction with this, my son has run instrumented tests on dummies in connection with the State University of New York at Buffalo which prove that this is a dangerous thing and requires much more study than the limited study we have made of it. I will let him take over from here and explain what he has done and what the significance of this event is.

Mr. DOUGLAS TAYLOR. As you know, the DOT, of course, has given to us the S.S. No. 215, which requires that all 1973 vehicles be able to withstand a frontal barrier impact at 5 miles an hour, and a rear barrier impact of 2½ miles per hour, with zero damage to the Federal safety equipment.

Now, Federal safety equipment includes the lights, the horn, cooling system, fuel system. It doesn't include any of the sheetmetal parts, it doesn't include your hood, it doesn't include bumpers.

There are many ways to meet this spec. In fact, I would wager to say that a good many cars on the road today with crushable structures as they now have, will meet this spec. If you want to go with energy absorbing devices of some sort to meet the specifications that now stands, you can meet it in two ways.

One would be to make the car perfectly rigid. In other words, beef it up, beef your frame rails, beef your bumper, beef all the sections that have to take the impact force.

Now, any kind of input energy into a vehicle must be dissipated as an applied force over some amount of travel. In other words, you have to apply a force for a certain distance to absorb a certain amount of energy.

If you make a rigid system, you cut the travel down to a very, very small amount, and hence, the force which must be applied to the car and hence to the passenger, increases greatly.

If you make a rigid system, if you have your travel of that system go toward zero, the force which must be applied to the vehicle goes upward ad infinitum.

What it amounts to, right now what we did for some tests at the University of Buffalo, we took a simulated intermediate-size car with an effective mass weight of 3,400 pounds. Now, we mounted on the car two different types of energy-absorbing bumper systems. One was the tail, or liquid spring shock system.

In fact, we mounted a system that was basically designed for the intermediate-size car—Satellite, Coronet, cars in that range—mounted that on this car and ran it into a barrier.

Mounted in the car in a standard automobile bucket seat, wearing a lap belt, was an instrumented dummy with all the masses and resiliency specs that a human body duplicated.

Since we assume that for a collision of this nature, most of the damage which would occur would be in the form of a whiplash injury, such as you hear bandied about quite often, we mounted an accelerometer between the eyes of the dummy, ran it through a charge amplifier into a visual output on an oscilloscope screen and took pictures of it at the moment of impact.

We ran the car with a tail or liquid spring system, a system which on impact supplies basically a square wave of output, a constant force over about 2 inches of travel on this particular one, and it returns quite slowly, it comes back in 2 or 3 seconds.

A measure of how fast an energy-absorbing system returns is called the coefficient of restitution, which for a barrier crash is simply the velocity at which the car leaves the wall divided by the velocity at which it goes into the wall.

So far this system, with the very, very low return time from the liquid springs, the coefficient of restitution of this energy-absorbing system approached zero. We ran the car into the wall, we monitored a 5 G deceleration on the vehicle—this is at 5 miles per hour—5 G's on the vehicle, 5 G's on the passenger's head, but the maximum G's on the passenger's head did not occur as it went into the wall.

It occurred because the passenger stretched forward under the impact force basically because his mass was not rigidly affixed to the car. The passenger stretched forward, and as the units came to their full travel, an instance afterward, the seat belts acting as a spring, snapped the passenger back into his seat.

The total history of the passenger through the collision was about 3 G's going in and 5 G's rebound back into his seat.

We took the liquid springs out. We put in what would probably be the purist technical definition of the system with a coefficient of restitution of 1.0. We put in a battery of 18 automotive coil springs.

I might add that those of you who think that 18 automotive coil springs is a tremendously stiff bumper, it is only equal in energy capacity to one of these units and uses twice the stroke of this unit at any given energy input.

We took 18 automotive coil springs, mounted them on the bumper, smashed the car in the wall with the coil springs on them.

Again we recorded 5 G's on the car because we had picked the number of coil springs to give us equal G loadings with that impact.

Now the passenger again lagged the response of the car in his response. He was moving forward stretching his seat belt as the car was being stopped. As he came out, the instance where the passenger was farthest out in his swing forward, the coil springs began firing the car back. The passenger violently rebounded into his seat, in fact he rebounded into his seat with a series of impressions in the seat, bumps back and forth.

The G-loading history on that passenger showed 5 G's going in and 10 G's going out.

Now, 10 G's applied to a person's head—your head weighs 25 or 20 pounds—you are talking of a 25-pound force, which multiplied by 10, gives an equivalent of a 250-pound force on your head, shoving you back into that seat.

We feel pretty sure, after monitoring G loads of this nature, that with a system which has a high coefficient of restitution such as a spring system, basically the kind of system that many manufacturers are looking toward to meet this present Federal specification, that whereas damage claims for the vehicle itself may decrease, we feel this will be countered by a greater increase in liability claims due to the fact that people are going to be getting whiplash injuries rather than just costly crushing their fenders and such.

There are other types of spring systems on the market right now in addition to a steel-type spring. Some of the manufacturers are looking into rubber springs. This would be a solid chunk of rubber, which you either compress or you would sheer when you impact the wall.

Now, a rubber spring works better than steel springs in many respects, because it doesn't fire back quite as rapidly. But it only works well at ambient temperatures. You take a rubber spring down to —10° and the rubber is virtually solid, and the applied force of the vehicle, instead of having 5 G's for a 5-mile-an-hour impact, you are talking of 15 to 20 G's.

When you get up to that range, the passenger won't have to worry about any whiplash, he is going to be suffering enough from the basic input to the wall.

The Federal spec does not bother to mention anything on what temperature this system has to work out, it doesn't go into what type of loadings the passenger has to withstand, it doesn't mention the type of G loads the car has to stand.

It is quite possible to meet the Federal spec in a way that will kill the passenger each and every time at a 10-mile-an-hour impact with no problem whatsoever.

The question is, what good would a specification be if it protects the vehicle at the expense of the most important component in that vehicle, namely the passenger.

Mr. PAUL TAYLOR. In connection with this, we feel that this requires a good deal of investigation quickly. The timing for getting these systems in production is around July of this year, and once committed, it is very hard to reverse sights.

There are adequate research facilities, independent ones around, to which the manufacturers should be required to submit cars that they think may pass these specifications, and determine the effect on the dummy or on the passenger.

We have to consider that cars are built not for astronauts, but primarily for little old men like me and young girls and pregnant women, and old ladies and old people who are subject to blackouts at much lower limits than an astronaut might be.

There are occasions when a person could not leave a burning vehicle from a 5-mile-per-hour crash, and there have been instances where gas tanks have left cars at 5-mile-per-hour collisions. It is a very serious matter and we recognize we won't make many friends with some of our statements here, but to me the preservation of human life is of first importance.

Certainly we don't want to go backward. If we are trying to improve things, we want to go forward.

Getting back to our technical aspects before our photographs go on, we have taken the liberty of taking one of the standard sections of a current bumper system which you see here, and doing the same thing in high-strength steel.

The crushing loads of these two elements—this is the bumper you will see on our Hornet that hit the wall at 10 miles an hour—the crushing loads of these two sections are roughly 10 to 1.

Doug, do you remember the numbers you ran on the test?

Mr. DOUGLAS TAYLOR. For the standard American Motors bumper, we put the bumper in a compression tester and crushed it. We plotted a curve for displacement.

The bumper started to crush after being displaced at 50-thousandths of 1 inch. At that point the force shown was 700 pounds.

The bumper section continued to crush at this 700-pound level for four-tenths of an inch of travel at which time it finally violently buckled and that was the end of the section.

We took a similar section made by our plant, and as you can see from comparing the two sections, the one which we made is virtually the same thickness as the standard American Motors bumper. The difference is that we have replaced the normal cheap low-carbon steel which Detroit has been using for years, and years, and years. We have replaced it with an alloy of stainless steel, which the aircraft industry has been using for years, and years, and years.

The difference in cost between a steel section, a steel bumper section beefed to withstand force levels equivalent to what that stainless steel bumper section would withstand in a low-weight configuration, is almost no cost differences.

That thin stainless bumper section took quarter inch displacement and moved up to a crush strength of 6,000 pounds.

It maintained that 6,000-pound force level for nearly a half inch of travel at which time it slowly and very gently buckled into the final shape that you see it in now.

So, you are talking of a difference of energy capacity, the energy that bumper could absorb of probably a factor of 20, in that range.

Mr. PAUL TAYLOR. Now, in fairness to the automobile people, they have just recently been exposed to these steels. We have taken them to them and they are building and experimenting with bumpers of them. After this last test which was witnessed by American Motors executives, they asked if we would immediately take this car to Detroit, our Hornet, which you will see on the photograph today, for their examination of the bumper.

One of the most costly points on the bumper system has been the attachment to the bumper itself. The bumper because of mismatch and override and underride and other things tends to twist off, and carrying that force from the bumper into the ice later is a very difficult thing. You have a 7-inch bumper and you are taking it into a 1¾-inch cylinder. This has been one of their major problems. So we elected only 2 weeks ago to build the bumper, first showed and built the bumper and put it on the car and, as you will see in the photograph, it has performed admirably.

They have asked us to deliver the car to them. It is a very simple bumper attachment, simpler than what they have been considering,

and possibily it will cause a reduction in their estimates that they are now putting out.

I think in fairness to the estimates, and I just digress here for a moment, when the figure was quoted, a substantial figure by Ford internally for putting our product in production, I blew my stack and from certain investigations there was a few fudge factors in it which a manufacturer always does. If you tell them they have to build this, they will say I need $2,000 to do it. When you get down to analyzing it, you get down to $300.

A lot of the figures that are quoted are first figures off the top of the head of the automobile men. But they are certainly not realistic in regard to final production I am certain.

Mr. DOUGLAS TAYLOR. I would imagine the emissions control people have about the same statement to make on that as we do.

Mr. PAUL TAYLOR. I think if we can see our movies we can probably show what it is possible to do to these components we exhibited here.

Mr. DOUGLAS TAYLOR. Before we go to the movies, the car you will be seeing in these films has not been modified structurally by any method whatsoever. We put the bumper system on in about 4 hours' worth of time. The rears was mounted by cutting a couple of holes into the channel section.

I might add the channel section is the same 30 to 40 thousandths thick material that everybody in Detroit has been using for years. The front end is bolted directly on the standard American Motors frame rail. The only modification of the vehicle whatsoever was the addition of some stronger motor mounts as I have already mentioned. They were experimental MC devices designed basically to meet the 1973 spec as it now stands.

Mr. PAUL TAYLOR. They weren't strong enough.

(Whereupon, a movie was shown.)

Mr. PAUL TAYLOR. I think that about concludes our testimony, gentlemen. We are ready for any questions with regard to it.

I believe there is a car somewhere downstairs trying to hit some wall. It has been a problem trying to determine where to hit the wall, to find someone's property that you could do this on.

Our liability insurance isn't very high.

Senator HART (presiding). Thank you, gentlemen.

I and a good many people in this hearing room have sat through a number of these films, this type of showing. A couple of years ago we saw the first films produced by Dr. Haddon, then we saw the updated version just a few weeks ago, and now we have seen yours.

The question just screams out for an answer: Why haven't we done vastly better in the Department of Transportation's standards; why the heck do I have a bill in here that says by 1975 they will have a 5 and 5?

Mr. DOUGLAS TAYLOR. Senator, if I may digress upon your statement a little bit, our company has sent in at least four rather violent comments contrary to the DOT specs when they were in the stage where you were free to comment on them. I know in addition to us, Dr. Ezra of the University of Denver has made some rather violent comments. I think I received one reply back from DOT telling me that they had referred my last comment to somebody, from which I

never heard any reply whatsoever. I have had no reply from the DOT on any of my comments.

They have been fully documented. I have given them all the data they have required. I have written on the spec part by part. When we did this test with the instrumented dummies, we contacted members of the auto companies and told them if they would send us samples of the energy absorbing devices they were playing around with in their labs, we would test them free of charge, and the auto companies declined.

I think until the Federal Government makes a spec which is rigid, that the auto companies are just going to meet the bare minimum. They will always meet the minimum. I have yet to see an auto company say that their cars produce only half the emissions that the Government requires.

Senator HART. Without getting into the admittedly tangled question of whether you achieve better performance by having minimum standards or by having simply a broad directive and having an agency fix standards, we will hear from the Department of Transportation before these hearings conclude this week, and I would anticipate that they will be prepared to answer the question which will be addressed to them. How come you set standards to be achieved by 1973 of 5 and 2½ when there is a fellow in Buffalo that shows live, in color, that it is in reach now?

Mr. DOUGLAS TAYLOR. I might also add there is a couple of fellows in California that have systems that work. In fact, offhand I can think of at least seven completely different types of energy absorbing systems, all of which will work, none of which are dangerous to the person or to the vehicle and all of which will offer not only zero damage to safety equipment but zero damage, period, to vehicles.

Mr. PAUL TAYLOR. Senator, if I may reiterate one thing that I have been pushing at the automobile companies very strongly. A vehicle is primarily a means of advance for human beings. If it doesn't protect the human being, it ought to go back to crushing the fenders, because that is a better system than some of the systems that are now being considered that will pass that DOT spec.

Senator HART. Everyone who sits around and says what we are trying to achieve, as I understand it, is to reduce the 50,000 Americans killed in automobile accidents, reduce the amount of property damage and personal injuries and reduce the property repair bill in a way that is compatible. I think that is what we have agreed to pursue.

Mr. PAUL TAYLOR. I am sure that is the intent.

Mr. DOUGLAS TAYLOR. The unfortunate thing is the Federal spec as it is now worded really doesn't decrease property damage at all. I am sure there are many people in the room right now that can recall an accident with their car where they ended up with a $400 bill for sheet metal, but the horn worked, the radiator stayed good, and the fuel tank stayed in the car.

What is the purpose of the spec if they require equipment to be salvaged after the crash which usually isn't damaged?

Senator HART. That is still another chapter. But the more critical thing I think and one that we ought not to be diverted from is the need to get a solid answer to the question whether it will be possible in the next model car to have a bumper which reduces substantially the

damage to the occupant and substantially eliminates the damage to the property. Unless my eyes deceive me, I just saw one.

Mr. DOUGLAS TAYLOR. That bumper system we quoted to all the auto companies, and we are offering I believe a 3-month leadtime, 3 months after receipt of order for first delivery.

Mr. PAUL TAYLOR. With the aluminum extrusion process, the capacity is already at hand to turn it out.

Senator HART. The cost figures you have given them?

Mr. PAUL TAYLOR. They were quoted these figures in an official quote.

Senator HART. Let me make clear. I have never been a purist on the question of cost benefit. When the auto safety bill went through here. I took the position that the requirements that should be fixed by the Department should be feasible ones, and I make no apology for that. Hardly anyone can plead innocent of having used dollar savings to avoid some safety protection. I don't know anybody who puts his family in a home that couldn't be a safer home if he wanted to buy everything that would make it safe. But we don't. And we ought not to point fingers at others for raising this question. But having said that, if you can put that business on for $2 or $3 and achieve the life-protecting and property-protecting results, if in fact this can be done in the range of the figures you are quoting, it could be done nunc pro tunc assuming—let me ask, you have no idea as to how many lives will be saved, how many injuries?

Mr. PAUL TAYLOR. I wanted to get to that, Senator. I think we need to correct a misconception there. The crushing fenders that you have had have been an excellent shock absorber. The result is when you check the "G" loadings on our device against the crushing fender, they are almost identical. They can be made much lower on our device, but then the bumper must stick out from the car further, because for the lower the force you must lengthen the stroke.

So to protect the passenger at 10 miles an hour to the equivalent of 2½ miles per hour, I would say you need a 9-inch stroke device. They can be designed at some future time into the car, where the whole front end of the car will move in. With proper design, if you can limit the stylist—the engineers that these people have are excellent, and if they can be made preeminent so that they design the vehicle to do the shock absorbing that needs to be done, the 9-inch stroke which would protect passengers can also be incorporated. That would add cost however.

Mr. DOUGLAS TAYLOR. I would like to comment on that, too, I believe When we first got into this entire project of the bumper shocks, and as we stated before the auto people came to us, we were told by the people that they would accept a 3½-inch system, and that was it—that we would have to make what we could within a 3½-inch travel. They said they could hide that and no one would notice they had an energy-absorbing bumper on them. We have yet to find a vehicle with which we could not meet the 5-and-5 capability with the 3½-inch travel without crushing the frame. We can do it with unbeamed frames. If you want to go 10 and 10, something like that, you are going to require somewhat beamed frames. We usually set our units to the crash strength of the frame. Whatever the manufacturer quotes us, that will be the maximum force.

Mr. PAUL TAYLOR. May I add just one thing that may help us on reducing damage claims? The 10-and10-mile-an-hour system which

you saw demonstrated, which has gone to 10 but there was some modification required, is a safer unit at 5 miles an hour than our 5-mile-an-hour system, because the stroke is 5 inches instead of 3½.

So it would be safer to require a 10-mile-an-hour unit and have some limitations on it, and you have got a safer system at 5. At least the customer should have the option to buy these things if they are interchangeable.

Mr. DOUGLAS TAYLOR. There are systems which we are working on at the present time which normally, when the driver is driving the car, do not stick out at all from the vehicle. We have had a process which we have been using for military work for years now, since 1955, by which we can actually cause a liquid spring to be caught in the vehicle permanently, which, whenever an impact takes place, by means of—it is three or four very simple firing mechanisms—this spring system can be caused to extend in time to absorb the full energy of the impact.

We have sold systems like this to the military. The last one was to Goodyear Tire & Rubber, and it was a perfectly good, fail-safe device, has been around for years, and it is being evaluated by the auto companies.

Senator HART. What bothers me after seeing your pictures and hearing your comments is—I guess it is frustration.

If we think we are doing well to establish an authority in the Department of Transportation to fix initially safety related standards and our bill proposes property loss reduction standards, and there is a great hue and cry we shouldn't do that; we finally get over that and now the question is how we can do it, then the danger is we will assume that if the schedule is fixed with respect to the safety feature and if we get the bill through with respect to property damage, then progress is being made that is significant and the assumption would be that it is progress that would not be made absent the legislative/executive leverage; yet, if that is the way we proceed at the pace that we are going, the dramatic improvement that you describe as available will apparently never turn up.

Mr. PAUL TAYLOR. True; overcoming the inertiability in industry is a very difficult job. Nobody beats a path to your door. In this case Ford came to us, but you have to understand that we demonstrated cars to them 4½ years ago with a liquid spring system that would maintain the bumpers and they bought this, and those liquid spring systems were the ones that brought them to us the second time.

They are progressive people, these organizations, and then there are those who drag their feet—in my organization, too—and it is difficult to get the inertia going and sometimes it takes a push from above. I am going to get shot for that one.

Senator HART. That last model that you showed, that 5 and 10 miles against the barrier, that same model in the Insurance Institute films showed a front-end repair damage bill for a 5-mile hit as $204 and at a 10-mile front-end hit of $508.

Now, what damage repair cost was involved in your 10- and 5-mile-an-hour hits?

Mr. PAUL TAYLOR. It was approximately $90. It cut a hole in the radiator. There was none at 7½, none whatsoever.

American Motors is making some new motor mounts for us which will overcome that damage.

Due to the fact we wanted to present to the public a completely unmodified—unmodified by ourselves with respect to the basic mechanical components, we did not race the engine. We went on what AMC told us was a 1973 engine mount.

Senator HART. What was shown for the Haddon film was a repair bill equivalent to $508. What you have shown is a repair bill of $90, which itself can be reduced.

Mr. PAUL TAYLOR. Which shouldn't be there at all. It will be down to zero dollars.

Senator HART. What about the repair damage bill for your 5-mile an-hour hit?

Mr. PAUL TAYLOR. There was none.

Senator HART. As compared to a $204 front-end repair bill and a $104 rear-end repair bill of the same model.

Mr. PAUL TAYLOR. May I make a correction, sir. That was the same model, but I don't test lightly. That was loaded for bear. The station wagon is approximately 300 or 400 pounds heavier than the car that you were talking about. The station wagon is a heavier model. I picked the heaviest model on that car to demonstrate that even the heaviest could be protected.

So, that is really a more serious test than what you thought.

Also, the test was run with the engine running into the wall. In all tests presently run at Detroit that I have observed, the car is pushed into the wall. Now, on our normal testing——

Senator HART. Now, wait a minute, on the Haddon film——

Mr. PAUL TAYLOR. Yes, they were, but on the ones currently to pass the spec, the car is pushed into the wall. On our tests on crane buffers, for instance, we have to add about 15 to 20 percent more energy for the driving energy carrying it into the wall.

These are much more severe than what you are going to get even at 5 miles per hour on what the manufacturer is going to supply. They push them into the wall or tow them into the wall.

Senator HART. The comparison I made, I think, is a fair one.

Mr. Sutcliffe?

Mr. SUTCLIFFE. Mr. Taylor, in order to have a very clear record as to your cost estimate and so forth, let me go over some rather specific questions.

You have testified that you have submitted a bid to Ford Motor Co. for your attenuation devices.

Mr. PAUL TAYLOR. Right.

Mr. SUTCLIFFE. Could you please provide the committee with those figures as to what the bid was?

Mr. PAUL TAYLOR. They are included in the back of the committee's report that we submitted to them. There is a general impact extrusion quote. We are teamed up with them on a joint corporate effort.

Mr. SUTCLIFFE. For 4½ million a year it would be $2.88 with the Teflon seal?

Mr. PAUL TAYLOR. That is this one.

Mr. SUTCLIFFE. And for the nylon seal it would be $2.58.

Mr. PAUL TAYLOR. Right.

Mr. SUTCLIFFE. That is a firm bid from what corporation?

Mr. PAUL TAYLOR. General Joint Impact Extrusion of Toronto and Taylor Devices.

Mr. SUTCLIFFE. How many of these devices would be required per vehicle for 5-mile-per-hour front- and rear-end impact?

Mr. PAUL TAYLOR. The 1973 spec would require four of these.

Mr. SUTCLIFFE. So that we multiply four times that price figure for the impact device?

Mr. PAUL TAYLOR. Right.

Mr. SUTCLIFFE. Which automaker was that quote submitted to?

Mr. PAUL TAYLOR. Everyone except General Motors. We are dealing late with General Motors. We have orders and are working with them now, but there was a delay on our part because some patents were on file and our patent clause required a delay.

Mr. SUTCLIFFE. And the barrier impact capability of those devices is at 5 miles per hour for those cars?

Mr. DOUGLAS TAYLOR. Those devices are at about 7-mile-an-hour barrier. Those devices were done to the earliest Federal spec, the spec which really should never have been changed.

But that device is actually too large for the present spec by a pretty good factor. I imagine those prices for the minimal DOT spec for 1973 would probably see a price reduction of, oh, 10 or 15 percent.

Mr. SUTCLIFFE. As to the bumper itself, the metal that would be suspended between those devices, could existing bumpers be used?

Mr. PAUL TAYLOR. No.

Mr. SUTCLIFFE. If not, would substitute bumpers necessarily cost more than the existing bumpers to produce?

Mr. PAUL TAYLOR. They would cost more but not by that much of a factor. First, you forget the chrome plate and make it out of stainless steel, and use a high-strength alloy that would carry the loads.

Mr. SUTCLIFFE. Do you have any estimate as to the increment per unit for an average bumper?

Mr. PAUL TAYLOR. Well, to give you some idea how difficult that is at the moment, the steel in question sells if I buy it for aerospace use at about $1.90 per pound. I have from the manufacturer's words that it would sell for 70, 80, or 90 cents a pound, in that range. They have not given us a firm price.

If it got down to the 70-, 80-, or 90-cent range, then you are talking about a 10-mile-an-hour capability, and I would assume the bumper probably would be in the neighborhood of two times the cost of the present bumper, and I don't have this exact costs, so I can't tell. That would be a measure of figuring it.

Mr. DOUGLAS TAYLOR. I would like to add something to that. For a five and five specification, if you put a decent set of bumper guards on the car, you will meet the 1973 Federal spec with zero damage to anything from barrier collision.

The high-strength bumpers are required only when you put the pendulum inputs into the car. If you are just talking barrier impacts, a good set of bumper guards, the bumper guards only pick up the barrier, you can use standard bumpers.

Mr. SUTCLIFFE. How much would the brackets cost that the shocks are attached to and then are in turn attached to the frame rings?

Mr. PAUL TAYLOR. I would say a safe guess would be double the cost of the units. Again this is for the old specification. You would be talking of $25 for the whole assembly. You would have to double the price of the unit to include the brackets. I can tell you I think that is a little high. I didn't design all the tools, though.

Mr. SUTCLIFFE. So, you are talking about $25 a car plus what might be required to beef up the metal between the units?

Mr. PAUL TAYLOR. Yes.

Mr. SUTCLIFFE. And you have said that the labor charge—you did in 4 hours?

Mr. DOUGLAS TAYLOR. I did it by hand. I would imagine the labor charge is as long as it takes the guy in the line to put in about six or seven bolts per unit, and I don't think that is unusually long.

Mr. PAUL TAYLOR. I would say it could be spot-welded along with the other spot-welding operations. I don't think it is an additional cost. Attaching the bumper is no different from attaching the present bumper so far as the labor cost.

Mr. SUTCLIFFE. So your best guess is $25 for those things you know about, plus the possible additional cost to meet impacts other than a barrier crash by strengthening the bar that is suspended between the two devices that you would have on both ends of the car?

Mr. PAUL TAYLOR. I would strengthen the bumper enough to do the whole job. Every time you start putting pieces together, it costs money.

Mr. SUTCLIFFE. Now, you have testified that the Department of Transportation was aware of your technology prior to the promulgation of the standard?

Mr. PAUL TAYLOR. Yes.

Mr. SUTCLIFFE. You mentioned safety car work. Is this an experimental safety vehicle?

Mr. PAUL TAYLOR. Yes. We have talked to several of them.

Mr. SUTCLIFFE. What manufacturer was that?

Mr. PAUL TAYLOR. It is Ford.

Mr. SUTCLIFFE. Ford Motor Co.?

Mr. PAUL TAYLOR. Yes.

Mr. SUTCLIFFE. Are they participating?

Mr. PAUL TAYLOR. No, they are not participating. They are working on their own various safety aspects.

Mr. SUTCLIFFE. Senator, those are all the questions I have.

Senator HART Gentlemen, thank you.

I repeat the impression that I am sure is shared by all who have been following these hearings, your testimony would suggest that dramatic advances can be made with existing technology, both to reduce injuries and death and property damage resulting from automotive vehicle use.

Without getting into any theological arguments about whose duty primarily it is to reduce death and injury, wee resolve that question by the old bromide that it is everybody's, but some have to make steps earlier than others.

We are going to ask the Department of Transportation how come, given what you have told us today. They are suggesting that we wait until 1973 to do less.

Mr. PAUL TAYLOR. Thank you for having us.

Our car you saw in the movie is out at First and C Streets.

Mr. SUTCLIFFE. Mr. Taylor, if you will excuse me, the Senator would like to observe that procedure, and if you could wait until after the next witness has completed his testimony, then we could recess the hearing until 2 and see the demonstration.

Senator HART. Our next witness is a consultant in biotechnology and product design from California, Mr. Byron Bloch.

STATEMENT OF BYRON BLOCH, CONSULTANT IN BIOTECHNOLOGY AND PRODUCT DESIGN, LOS ANGELES, CALIF.

Mr. BLOCH. Senator, I would like to first express my appreciation for the opportunity to testify here today to present information on another safety bumper system, including a demonstration videotape showing the effectiveness of this safety bumper system which exceeds the proposed standards by the National Highway Traffic Safety Administration and those included within the proposed legislation, which is the subject matter of this hearing.

The safety bumber system that I am referring to is known as the INCA safety bumper system, and has been in development over approximately the past 6 years. From its original concept, there has been both test and feasibility hardware development, as well as preproduction hardware development which will soon lead to mass production manufacture.

In the interest of conserving time, I would like to skip the overview being read to the committee at this time and would like to instead herewith submit it in written form for inclusion as part of my testimony.

Senator HART. The testimony will be printed in full in the record.

Mr. BLOCH. I would like to point out that this INCA safety bumper system has been personally crash tested by myself, in a sequence of multiple impacts into a concrete barrier, in the Los Angeles area. These tests were in a 1971 Dodge Challenger equipped with the INCA safety bumper system—for the front of the vehicle—and I was wearing the standard lap-type safety belt. In addition, I have witnessed many other similar barrier impacts that have clearly demonstrated the merits of the INCA system; no visible damage to the vehicle, the reduction of deceleration loads to the vehicle occupants, and the automatic resetting of the system to enable repetitive impacts.

The barrier collisions were at speeds in excess of 5 miles per hour.

My original intention was to utilize the 1971 Dodge Challenger in producing the videotape to show to you. However, and as the previous witness also pointed out had occurred in his own tests, there was displacement of the engine and other components of the 1971 Dodge Challenger and in approximately 1 week's time, service garages were unable to make satisfactory repairs.

There were still problems of the transmission erratically shifting on its own volition, the muffler of the exhaust system had come forward so that it was essentially jammed against the right rear shock absorber, and there were other problems with other vehicle components as well.

So in the best interest of having an operable vehicle for the videotaping of barrier crash tests for this committee to observe, we changed from a 1971 Dodge Challenger to a 1967 Ford Mustang which, as some of the members of the automotive press know, has not been one of my favorite automobiles because of other reasons, including its front suspension design.

At this point, I would like to show the videotape and again in the interest of conserving time, I will show only that portion of the videotape which shows a series of barrier collision demonstrations of the INCA safety bumper system in action.

I appreciate the committee's acceptance of the text submitted here, plus additional information including reference to the relevant U.S. Patent 3,313,567 as a further description of the merits and components of the concept, system, and its embodiments.

Senator HART. We would like to see the videotape.

(Whereupon, a videotape was shown.)

Mr. BLOCH. Also, I have with me a letter that I would like to submit for the record, which states as follows:

On May 9, 1971, the undersigned conducted a series of barrier crash tests of the INCA bumper. The vehicle used was a 1967 Mustang. The tests were conducted by driving the vehicle into a solid concrete wall at approximately 5 miles per hour. The test was supervised by George C. Roberts, chairman of the INCA Corp. Videotaping and camera was accommodated by Harlan Bloch.

Incidentally, Harlan Bloch is a relative of mine, a cousin, and also he is the father of the two young ladies, Liza and Paula, whom you just saw in some of the barrier crash demonstrations, showing that one need not be either a professional driver or an astronaut in order to demonstrate the effectiveness of this safety bumper system in action.

The letter is signed by Mr. George Roberts and Mr. Harlan Bloch. I would like to submit this letter for the record, along with the photographic synopsis of what the committee has just witnessed on the videotape TV monitor.

Senator HART. It will be received.

Mr. BLOCH. Essentially, as the demonstration showed and as Mr. Roberts who provided the narration at the end of the videotape stated, the heart of the system is a purely mechanical energy-absorbing unit which consists of special belleville spring-washers which are arranged strategically within a strong, heat-dissipating cylinder. These spring-washers are essentially like pie plates, to make an analogy, in that they are slightly dished. Then by strategically stacking these components in series, some concave, some convex, it is possible to control the amount of energy absorbed at different velocities by different masses, as the vehicle impacts into barriers or other vehicles. Further, there is very minimal rebound, and the system will automatically reset itself and thereby be ready to absorb additional and repetitive impacts.

So, that is essentially the heart of the system.

The hardware assembly that you saw protruding from the front of the vehicle is for both demonstration and test purposes, as well as being able to adequately serve as an effective add-on system for many vehicles presently on the highways. The hardware can also be modified to approximate what is more akin to a normal-appearing bumper, as evolutionary developments that we are currently designing and developing, for both new and already-produced vehicles.

The safety bumper systems have concerned themselves, and correctly so, with minimizing property damage to the vehicle, and also with concern for reducing the deceleration forces to the human occupants of the vehicle.

A third category that I believe is also of merit and should be included in both the Department of Transportation motor vehicle safety standards as well as within the context of your bill, would also include minimization of injury to pedestrians in such pedestrian impact situations as might occur.

I would think the three basic categories would be: Reduction of crash damage to the vehicle, reduction of deceleration loadings upon the human occupants, and reduction of pedestrian impact injury forces that might be generated when such a vehicle were to impact into a pedestrian.

Senator HART. Yesterday Mr. Nader said that a rule has been proposed—it has been pending since 1967—with respect to exterior protrusions as threats to pedestrians; that even as of now the rule has not been promulgated. So, we will inquire of the Department the reasons for delaying that application.

Mr. BLOCH. Yes, there is correlation with safety bumper systems. I might also point out, and in the interest of time I would keep this very brief, that in my own professional activities, I occasionally serve as what the courts call an expert witness. It is not an ego-related term. It is a legally recognized term.

As such, I have testified in court, having analyzed various automobile accidents both for the plaintiff and initially years ago for the defense. In these efforts, I have assisted in the taking of depositions of members of the automobile industry, and have been dismayed and in some cases shocked at the lack of concern for a vehicle's frontal protrusions impacting into humans that may be struck crossing a street, for example.

I would like to cite this as only one of many examples in disputing some of the statements made yesterday that the auto companies do all they can to maximize safety. To use their own example of the Continental Mark III, I would like to very strongly point out the lethality of the front fender and bumper edges and protrusions of the Continental Mark III which Ford Motor Company testified yesterday was the kind of example to show that they are concerned with maximizing safety.

Also, to point out further evidence of the auto industry's tragic disregard for many safety aspects that should be taken into account in vehicle design, I would point to the "earmuff" roof designs and the "fast-back" roof designs that cause visual blind spots by reducing the effective rearward and rear-quadrant visibility, which thereby hampers backing into a parking space and lateral lane-changing on a street or highway, and thereby relates to potential collisions and resultant vehicle damage, which is of concern to this hearing.

So, by having these "blind spots" as typified by the Continental Mark III "ear muff" roof design and also by the Mustang "fast-back" roof design (which probably is one of the smallest effective rear windows of any Ford Motor Co. product in the past 10 years), I think we should also be concerned at these hearings with trying to reduce the insidious accumulation of vehicle property damage that can occur when the driver's visibility is reduced by unsafe roof designs and the inability to perceive the four corners of his vehicle, especially the two rear corners when backing up, in parking, or in lane-changing maneuvers.

There was a time, not too long ago, when the auto manufacturers proudly advertised the high degree of visibility that the driver had in their particular brand of car, including the driver's ability to see all four fender tips. Whatever happened to that safe and sane design criterion?

I appreciate the committee's acceptance of the text submitted here, plus additional information including reference to the relevant U.S. Patent 3,313,567 as a further description of the merits and components of the concept, system, and its embodiments.

Senator HART. We would like to see the videotape.

(Whereupon, a videotape was shown.)

Mr. BLOCH. Also, I have with me a letter that I would like to submit for the record, which states as follows:

On May 9, 1971, the undersigned conducted a series of barrier crash tests of the INCA bumper. The vehicle used was a 1967 Mustang. The tests were conducted by driving the vehicle into a solid concrete wall at approximately 5 miles per hour. The test was supervised by George C. Roberts, chairman of the INCA Corp. Videotaping and camera was accommodated by Harlan Bloch.

Incidentally, Harlan Bloch is a relative of mine, a cousin, and also he is the father of the two young ladies, Liza and Paula, whom you just saw in some of the barrier crash demonstrations, showing that one need not be either a professional driver or an astronaut in order to demonstrate the effectiveness of this safety bumper system in action.

The letter is signed by Mr. George Roberts and Mr. Harlan Bloch. I would like to submit this letter for the record, along with the photographic synopsis of what the committee has just witnessed on the videotape TV monitor.

Senator HART. It will be received.

Mr. BLOCH. Essentially, as the demonstration showed and as Mr. Roberts who provided the narration at the end of the videotape stated, the heart of the system is a purely mechanical energy-absorbing unit which consists of special belleville spring-washers which are arranged strategically within a strong, heat-dissipating cylinder. These spring-washers are essentially like pie plates, to make an analogy, in that they are slightly dished. Then by strategically stacking these components in series, some concave, some convex, it is possible to control the amount of energy absorbed at different velocities by different masses, as the vehicle impacts into barriers or other vehicles. Further, there is very minimal rebound, and the system will automatically reset itself and thereby be ready to absorb additional and repetitive impacts.

So, that is essentially the heart of the system.

The hardware assembly that you saw protruding from the front of the vehicle is for both demonstration and test purposes, as well as being able to adequately serve as an effective add-on system for many vehicles presently on the highways. The hardware can also be modified to approximate what is more akin to a normal-appearing bumper, as evolutionary developments that we are currently designing and developing, for both new and already-produced vehicles.

The safety bumper systems have concerned themselves, and correctly so, with minimizing property damage to the vehicle, and also with concern for reducing the deceleration forces to the human occupants of the vehicle.

A third category that I believe is also of merit and should be included in both the Department of Transportation motor vehicle safety standards as well as within the context of your bill, would also include minimization of injury to pedestrians in such pedestrian impact situations as might occur.

I would think the three basic categories would be: Reduction of crash damage to the vehicle, reduction of deceleration loadings upon the human occupants, and reduction of pedestrian impact injury forces that might be generated when such a vehicle were to impact into a pedestrian.

Senator HART. Yesterday Mr. Nader said that a rule has been proposed—it has been pending since 1967—with respect to exterior protrusions as threats to pedestrians; that even as of now the rule has not been promulgated. So, we will inquire of the Department the reasons for delaying that application.

Mr. BLOCH. Yes, there is correlation with safety bumper systems. I might also point out, and in the interest of time I would keep this very brief, that in my own professional activities, I occasionally serve as what the courts call an expert witness. It is not an ego-related term. It is a legally recognized term.

As such, I have testified in court, having analyzed various automobile accidents both for the plaintiff and initially years ago for the defense. In these efforts, I have assisted in the taking of depositions of members of the automobile industry, and have been dismayed and in some cases shocked at the lack of concern for a vehicle's frontal protrusions impacting into humans that may be struck crossing a street, for example.

I would like to cite this as only one of many examples in disputing some of the statements made yesterday that the auto companies do all they can to maximize safety. To use their own example of the Continental Mark III, I would like to very strongly point out the lethality of the front fender and bumper edges and protrusions of the Continental Mark III which Ford Motor Company testified yesterday was the kind of example to show that they are concerned with maximizing safety.

Also, to point out further evidence of the auto industry's tragic disregard for many safety aspects that should be taken into account in vehicle design, I would point to the "earmuff" roof designs and the "fast-back" roof designs that cause visual blind spots by reducing the effective rearward and rear-quadrant visibility, which thereby hampers backing into a parking space and lateral lane-changing on a street or highway, and thereby relates to potential collisions and resultant vehicle damage, which is of concern to this hearing.

So, by having these "blind spots" as typified by the Continental Mark III "ear muff" roof design and also by the Mustang "fast-back" roof design (which probably is one of the smallest effective rear windows of any Ford Motor Co. product in the past 10 years), I think we should also be concerned at these hearings with trying to reduce the insidious accumulation of vehicle property damage that can occur when the driver's visibility is reduced by unsafe roof designs and the inability to perceive the four corners of his vehicle, especially the two rear corners when backing up, in parking, or in lane-changing maneuvers.

There was a time, not too long ago, when the auto manufacturers proudly advertised the high degree of visibility that the driver had in their particular brand of car, including the driver's ability to see all four fender tips. Whatever happened to that safe and sane design criterion?

Since we are talking about occupant protection, I think it is very ironic, Senator, that the automobile industry, including auto safety specialists such as myself, have known for many, many years that stronger seats in our vehicles, coupled with built-in, inertia-reel retractable shoulder belts and lap belts, would be more effective—and would be much more inclined to be used by the general public—versus the present-day situation in which the lap and upper-torso safety belts are tacked into the car in an inconvenient, hard-to-use, uncomfortable, and shoddy manner.

So, I think it is rather ironic in the example that Ford Motor Co. mentioned, the Mark III Continental, which has no excuse for cutting costs for any safety equipment. Yet, the inertia-reel retractable belts which are used in military aircraft, in some commercial aircraft, in some race cars, and has been urged upon the auto industry by the various manufacturers of such equipment as well as by the auto safety community, has been callously disregarded being included.

Since one of the intents of the safety bumper systems would also be to minimize occupant injury, then improved safety restraint systems would help in that regard. I would hope the auto industry could greatly encourage the use of belts and harnesses if they were to include the inertia-reel retractable belt and harness systems and the stronger seats which are much more inclined therefore to be utilized by the occupants.

There are also other safety restraint systems, such as the so-called airbag automatic restraint system, that are worthy of diligent efforts to further develop and refine them as practical and effective systems for integration within all cars as standard equipment.

My own experience, by the way, includes the design and development and fabrication of the new and unique "Bio-Medical Automobile," which is essentially a mobile "mini-hospital" built within an automobile, to provide medical and health-care diagnostic, therapeutic, and emergency resuscitation services into and throughout the communities of America.

In addition, I've served as the research editor of *Road Test* magazine, as a professional avocation, in order to learn about and write about matters of auto safety, pollution reduction, design, value, and other consumer-interest aspects of the automobile.

I've also served as a consultant to help develop and upgrade the Kinematic safety seat system for automobiles, because I believe, as I still do, that such a system offers great promise for reducing occupant injuries in frontal-impact collision situations. Integrated within a comprehensive safety seat system and safety vehicle interior, and possibly cojoined with a compatible airbag restraint system, the Kinematic safety seat system is worthy of continued positive efforts by the auto industry and auto safety community.

I've mentioned these various aspects of my background to help indicate an experienced comprehension of the need for and merits of an effective safety bumper system—not as an island unto itself, but rather as a vital aspect of developing truly safe automobiles in a humane and comprehensive and realistic manner.

Senator HART. I am glad you made the comment you did with respect to the fact that this is an experimental example that you are showing and that the protrusion could be modified if it went into

production, because that was the first thing that struck me when I looked at it.

I thought, my God, we will be picking up pedestrians as we turn the corner.

Mr. BLOCH. Though the present bumper design will be modified in subsequent versions to also optimize that goal, the present hardware is nonetheless highly effective in reducing collision damage to the vehicle, as well as reducing deceleration effects on the occupants, which are two of the basic performance goals of any safety bumper system. Thus, the INCA safety bumper system is both effective and practical today . . . . and can be readily installed on new and used cars today. Obviously, however, our continuous product development efforts will lead to various refinements and improvements in the evolution of the system and its components.

The heart of the system, and the point that should be focused upon, is the proven effectiveness of the energy-absorbing unit of the INCA safety bumper system. Because of the merits of such an energy-absorbing unit, the resultant safety bumper system is capable of absorbing and dissipating high-energy impacts, is itself of small size and mass and low in cost, has the desired minimal rebound after impact, and automatically resets itself after each collision impact.

Senator HART. I will ask why you estimate a consumer cost in the $200 to $250 range for a typical auto installation where the earlier witness described an absorption system that came for less than $25.

Mr. BLOCH. In answer to that question, I would just like to add a brief preface.

When this INCA safety bumper system was called to my attention about 2 months ago, there were certain tasks that had to be assigned to the various handful of people that comprise the organization, with myself serving initially as a consultant and now as systems safety director to the INCA Manufacturing Corp., of Los Angeles.

The manufacturing costing was not one of the tasks assigned to myself, and so today I can best respectfully offer the information that is part of the documents that were submitted in quantity to your committee, plus another technical information document that has the part-by-part breakdown of processes and materials and costs.

In analyzing the part-by-part breakdown of costs, however, it would be of interest for the committee to know that this was in reference to very, very low volume—nowhere near the 4½ million units that have been discussed with previous witnesses, such as those from the auto manufacturing corporations. We were talking about only 5,000 and 10,000 units, and quantities of that sort.

Also, the component costs did not include amortization across such multiple units. The tooling costs per unit were also necessarily much higher than they would be in extremely high-quantity production of millions of units.

Thus, conditioned by these various facts and assumptions, my own estimate is that the energy-absorbing units could be mass produced in the multimillion category for under $5 per each energy-absorbing unit. Therefore, a total vehicle that would have four energy-absorbing units would include approximately $20 just for the four energy-absorbing units.

The related hardware that would protrude out from the energy-absorber units would then depend upon the particular design of the bumper, modifications to the vehicle structure, shock attenuation of various other components, and total integration within the overall engineering, esthetics, and manufacturability of the vehicles in high-volume production. I would estimate a manufacturing cost in the $25 range for the energy-absorbers and related fittings, in multimillion production volumes for new vehicles. For low-volume installations on existing cars, inclusive of new bumper assemblies and installation costs, the cost to a consumer for a total system, front and rear, would necessarily and fairly be in the $200 range.

Senator HART. Mr. Sutcliffe?

Mr. SUTCLIFFE. I have no questions. Thank you very much for your very interesting testimony.

Senator HART. Thank you again.

(The letter referred to earlier:)

INCA INDUSTRIES,
Century City, Calif.

INCA SAFETY BUMPER TEST

On 9 May, 1971 the undersigned conducted series of barrier crash tests of the INCA bumper. The vehicle used was a 1967 Mustang. The tests were conducted by driving the vehicle into a solid concrete wall at approximately 5 mph. The test was supervised by George C. Roberts, Chairman of the INCA Corporation. Video taping and camera was accommodated by Harlan Bloch.

GEORGE C. ROBERTS.
HARLAN BLOCH.

THE INCA SAFETY BUMPER SYSTEM

OVERVIEW

In automobile accidents, the collision forces that are generated often injure or kill the human occupants and damage the vehicle(s) involved.

The yearly toll of such tragic accidents now exceeds 55,000 fatalities. In addition more than four million total injuries are experienced, hundreds of thousands of which are crippling. The cost of this carnage exceeds an estimated six billion dollars annually in collision repair damage. The combined costs for personal injury, medical expenses, lost earnings, property damage, vehicle collision repair, insurance compensation, and related costs add up to tens of billions of dollars annually.

Most of the fatalities, injuries, and much of the vehicle damage can be attributed to automobile designs that are not "crashworthy". That is they do not absorb and dissipate collision impact energies in an acceptable manner as to preclude or minimize occupant injury and vehicle damage.

As frequently noted in Congressional hearings, including those on "Traffic Safety", "Motor Vehicle Safety Standards", "Prices of Motor Vehicle Safety Equipment", and "Automotive Repair Industry", the development of a safety bumper system is always referenced as an urgent and necessary requirement.

In recognition of this significant need for safety bumper systems, the National Highway Traffic Safety Administration (NHTSA) has recently announced a Federal Motor Vehicle Safety Standard applicable to new cars beginning with the 1973 models. The initial "Bumper Standard" specifies a nominal performance requirement for a 5 m.p.h. barrier crash test for front bumpers and a 2.5 m.p.h. test for rear bumpers.

The Standard's criteria for specific minimal damage to the vehicle's safety related equipment will provide a prime measure of the bumper systems performance and protective ability.

While the NHTSA intent is commendable, many critics have chastised the Bumper Standard as "too weak" and have urged raising the crash test criteria from the initial 5 m.p.h. level to a more meaningful fifteen or twenty miles per hour which better approximates the realities experienced in auto accidents. Another weakness of the Bumper Standard is that it is applicable only to new

cars (beginning with the 1973 models) thereby eliminating any standard for similar margins of safety protection for the approximate ninety million passengers cars presently on our highways.

As cited in the aforementioned Congressional Hearings analysis of all impact speeds in auto accidents, it was concluded that the average speed of frontal and rear collisions at the onset or instant of impact was a low sixteen miles per hour.

Because energy absorbing devices have been developed and are available to accommodate all safety criteria, there is no foreseeable reason why these products cannot be readily accepted for use in motor vehicles. Safety Bumper Systems must be efficient, economical and capable of being installed as a retrofit to existing and new vehicles.

SYSTEM DESCRIPTION

The INCA Safety Bumper System is a patented and barrier-crash tested energy-absorbing safety bumper system for automobiles and other motor vehicles.

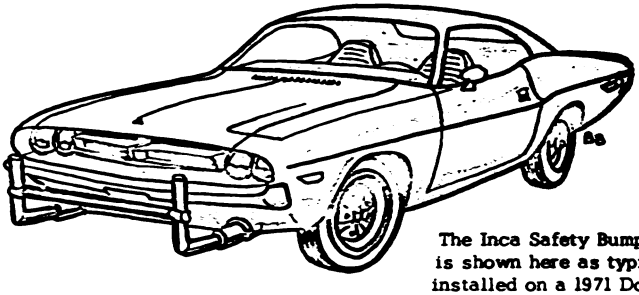
The basic function of the bumper is to absorb and dissipate the energies generated during collision impart, thus eliminating or minimizing damage to the vehicle and injuries to the occupants.

The "heart" of the system is a purely mechanical energy-absorbing unit composed of belleville spring-washer components strategically stacked within a strong, heat-dissipating cylinder. Two of these energy-absorbing actuators are rigidly mounted by adaptor brackets to the front stub-frame or frame of the vehicle. Projecting forward from each of the two actuators is a rigid tube which serves as a "piston" within each actuator. These tubes also serve as structural members to transfer forces from the "bumper bar" which is mounted outward and parallel to the vehicle bumper.

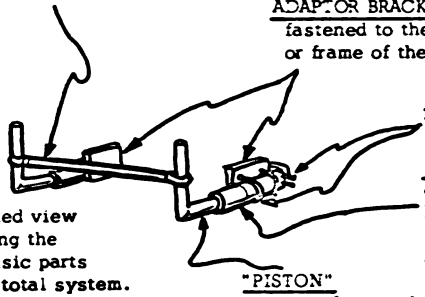
When a collision impact occurs, the "bumper bar" is moved toward the vehicle body causing the "pistons" to move into the energy-absorbing units. The compression of the stacked belleville spring washers severity distorts them within the confining tube. The distortion requires extremely high energy loads which dissipate as heat.

The INCA Safety Bumper System has a demonstrated barrier-crash effectiveness of approximately 15 m.p.h. with no overt damage to the vehicle and with significant reduction of applied deceleration forces to both the vehicle and occupants.

Projecting outward from each of the two energy-absorbing actuators is a rigid tube which serves as a "piston" within each actuator. These tubes also serve as structural members to transfer forces from the "bumper bar" assembly which is mounted outward to and parallel to the vehicle's own original-equipment bumper (which is retained as is).

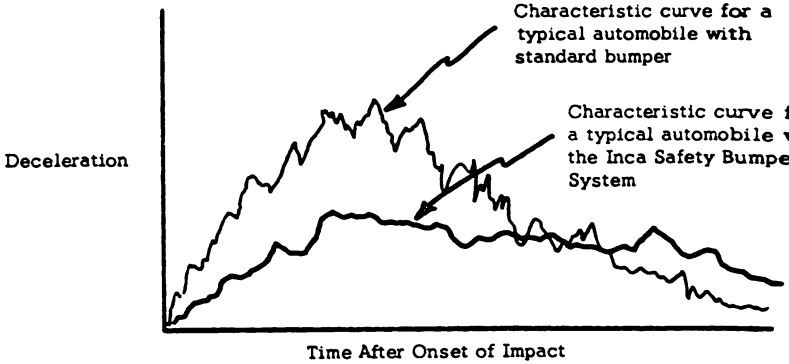


The Inca Safety Bumper System is shown here as typically installed on a 1971 Dodge Challenger sports hardtop model.



PERFORMANCE DESCRIPTION

The basic performance characteristics of the INCA Safety Bumper System is to reduce the severity of the forces transmitted to the vehicle occupants by "softening" the applied deceleration loads over a less-abrupt period of time.



Similarly, the INCA Safety Bumper System reduces the severity of the forces transmitted to the vehicle structure and significantly eliminates or minimizes physical and shock damage. The appended auxiliary bumper bar moves or reacts in a region in front of the vehicle fenders and body panels, providing additional measure of protection.

ADVANTAGES

Performance and Functional Advantages

Reduction of injuries to vehicle occupants . . . by reducing the applied deceleration levels as the vehicle is abruptly stopped during a collision.

Reduction of damage to the vehicle . . . by absorbing and dissipating the impact energy within the belleville spring-washer units, the bumper aids in avoiding impact with the vehicle's body surfaces.

Automatic resetting . . . after a collision, the system automatically resets to its normal position with minimal spring-rebound. This feature permits multiple collision protection.

Technical Advantages

Ultra-high reliability . . . because it is essentially a purely mechanical system (and does not thereby include nor require any hydraulic, pneumatic, electrical, chemical or other components which would require periodic calibration, testing, adjustments, repairs or monitoring).

High efficiency . . . because of the high erengy-absorbing and energy-dissipating character of the patented belleville spring-washer units, the total system is highly efficient, thus eliminating massive equipment, large displacements or heavy force-transfer structures.

Compact size and light weight . . . because of its inherent high efficiency in absorbing and dissipating impact energies, the belleville spring-washer units and other components are very compact in size and light in weight. Hence, the absorbers do not add any notable dimensional or weight changes, nor do they adversely affect road performance of the vehicle.

Easily integrated within vehicle design . . . due to modular design, with few basic parts and inherent simplicity, the system can be easily integrated within both present-day and evolving vehicle designs for the future.

For new vehicles, the belleville spring-washer units and force-transfer bumper assembly can be easily adapted within the structural and esthetic design of the particular vehicle as to blend within both the constraints of engineering and esthetics.

Cost Advantages

Low cost of parts and installation . . . due to the simplicity and efficiency of the system design and individual components, the consumer's cost will be generally in the $200 to $250 range for a typical auto installation.

Reduction of vehicle repair costs . . . approximately half of all collision impacts are in the range of 16 m.p.h. or less (at the moment of actual impact). The INCA Safety Bumper System eliminates vehicle damage at impact speeds up to the range of approximately 15 m.p.h. Subsequently, repair costs for the vehicle will be eliminated and greatly reduced at high impact speeds.

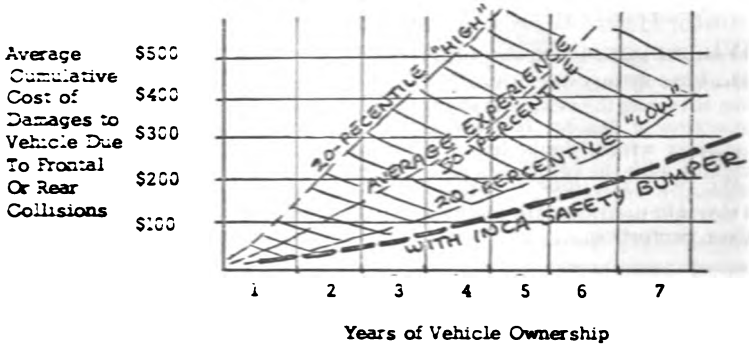
Reduction of personal injury costs . . . there are less severe forces applied to the vehicle occupants due to the "softened" or cushioned deceleration.

Reduction of auto insurance costs and premiums . . . as typified in the public offer by Allstate Insurance Company to reduce premium costs by twenty percent for those cars that could withstand a 5 m.p.h. barrier crash test with no resultant vehicle collision damage.

REDUCTION OF REPAIR COSTS AND INSURANCE COSTS

The INCA Safety Bumper System can significantly reduce the collision impact damage to the vehicle, as well as reduce the injury-infliction potential to the vehicle's occupants.

Because of this capability, there develops a *cost-effective* rationale whereby the cost of installing an INCA Safety Bumper System will effectively displace and save the much-higher costs that would otherwise occur in any subsequent collision(s) resulting in vehicle damage and personal injuries. In a simplified way, this rationale can be graphically described as follows:



In addition to the savings realized in the cost reduction due to collision impact damage of the vehicle, there would also be a reduction of personal injuries and consequently, further reduction of associated medical expenses. In addition, insurance costs would likely be reduced to provide further savings (i.e., the Allstate Insurance Company offer to reduce insurance premiums by twenty percent for any car that can withstand a 5 m.p.h. front and rear barrier collision test without damage.)

The Insurance Institute for Highway Safety (IIHS), led by the former Director of the National Highway Safety Bureau (now the NHTSA), Dr. William Haddon, has sponsored collison tests which demonstrate the high cost of vehicle damage in low-speed crashes. The results of these tests may be summarized as follows:

VEHICLE CRASH DAMAGE—1970 MODEL SEDANS

5 m.p.h.—Test crashes conducted by Insurance Institute for Highway Safety showed that damage to the largest-selling 1970 sedans averaged $217.55 at five miles an hour—walking speed.

10 m.p.h.—At 10 miles an hour—that's jogging speed—average damage was $541.56.

15 m.p.h.—At 15 miles an hour, sedans crashing into test barrier suffered average damage of $728.83.

Senator HART. We recess to resume at 2.

(Whereupon, at 12:20 p.m., the hearing was recessed, to reconvene at 2 p.m., this same day.)

AFTERNOON SESSION

Senator MOSS (presiding). The subcommittee will come to order, and we will resume by calling Mr. Richard Chilcott, vice president, Family Insurance, Nationwide Insurance Cos., Columbus, Ohio.

We are very glad to have you, Mr. Chilcott.

STATEMENT OF RICHARD G. CHILCOTT, VICE PRESIDENT, FAMILY INSURANCE, NATIONWIDE INSURANCE COS., COLUMBUS, OHIO; ACCOMPANIED BY ROBERT W. GRIFFITH, VICE PRESIDENT OF CASUALTY ACTUARY

Mr. CHILCOTT. Thank you. I have with me today Mr. Robert W. Griffith, vice president of Casualty Actuary, and I would like to have him join me.

Senator MOSS. Very good. I appreciate your coming too.

Mr. CHILCOTT. My name is R. G. Chilcott. I am a vice president of the Nationwide Insurance Companies. Nationwide's home office is in Columbus, Ohio, and we are the fourth largest insurer of automobiles in the United States.

I want to thank your committee for this opportunity to appear here to discuss our company's position regarding the automobile insurance system and the related subjects being considered by this committee.

We will be glad to answer questions on any aspect of the auto insurance business—now or later. But I will confine my prepared remarks to four subjects. They are:

S. 945, "The Uniform Motor Vehicle Insurance Act," which would create a partial no-fault auto insurance system in every State.

S. 946 which is designed to remove state restrictions on the sale of group automobile insurance.

S. 976 which is intended to promote the production of safe motor vehicles having greater resistance to damage.

And finally, I will briefly present for your consideration the Nationwide auto insurance reform plan developed by our companies.

I am pleased to say that Nationwide supports—without reservation—Senate bill 946 which would make it possible to market auto insurance on a group basis. In 1957 and 1958 Nationwide devoted considerable time, and executive manpower, in an effort to gain permission to market auto insurance through a true group plan.

Our efforts were not successful, but our interest in group marketing has not diminished. We fully endorse the bill that would make the economies of group sales, service, and loss prevention plans possible.

We also support, generally, Senate bill 976 although we do have some reservations about parts of it.

We favor the provision which establishes requirements for State motor vehicle registration and a uniform certificate of title program. We believe this would be a substantial improvement over the present system.

We also support the proposal that new cars can be tested against Government-developed safety standards, and that the results of the testing be made available to the insurance industry. But we have reservations about the provision which directs the Secretary of Transportation to determine how insurance companies use that information, and then to make recommendations for additional Federal legislation.

We believe, too, that it would be highly impractical for automobile dealers to attempt to provide useful and accurate information about the cost of auto insurance to their prospective customers. For example, in our home State of Ohio alone, there are over 300 separate companies whose rates would have to be communicated by the auto dealers.

In regard to the postrepair testing of automobiles, we suggest that the Department of Transportation be authorized to make further studies to determine whether such a program would be beneficial to the consumer when the costs of such inspections are compared with the possible benefits. We believe that not enough is known about how much defective replacement parts, or faulty workmanship, may contribute to highway accidents.

Turning now to the auto insurance liability system, we have studied many bills and many plans—including the Uniform Motor Vehicle Insurance Act. We find that there is much in this bill that we could support, and there are other provisions which we would recommend be eliminated or revised.

Specifically, here are some of the changes we would recommend in S. 945:

1. That the bill be expanded to include property damage, as well as personal injury, under the no-fault concept.

2. That automobile insurance be made the primary source of reimbursement for injuries or disabilities arising from automobile accidents—rather than a secondary source.

3. That reimbursement for loss of earnings be extended to age 65, rather than just for 30 months, and that disability benefits also be provided for housewives and other unemployed persons who may be accident victims.

4. That the provision for recourse to the liability system in cases of catastrophic loss be eliminated.

5. That benefits in the case of death be more tailored to the needs of survivors, and that these benefits be payable in equal monthly installments of a specified period.

6. That provision be made for the equitable distribution of high-hazard risks by spreading these risks among all companies through a reinsurance facility.

7. That the provisions be eliminated which would require a common, uniform statistical plan as well as standard policy provisions, classes of risk, and rating territories.

We believe that this also represents a step toward Federal regulation. We would much prefer a bill that would assure continuation of the established network of State regulation, but with provisions for broad Federal guidelines to establish reasonable countrywide uniformity.

As a matter of business philosophy—and, indeed, as a working principle—Nationwide has long supported a concept of self-determination and the decentralization of authority. We conduct our business that way.

Accordingly, we strongly support the position of the vast majority of insurance companies that the auto insurance business should continue to be regulated by the States, within the framework of the McCarran Act.

It is our judgment that State insurance departments should continue to provide direct regulation of insurance companies, but that they should allow a full measure of open competition. The primary concern of State insurance departments would be to assure maximum competition consistent with insurance company solvency and equitable treatment of policyholders.

This is not to say that the Federal Government cannot make a major contribution toward solution of current problems. Steps in that direction are being taken in some of the bills which already have been mentioned—such as those pertaining to group sales, to automobile safety and repair costs, and the vehicle registration and certificate of title programs.

Moreover, we believe that State regulation could be conducted within prescribed Federal guidelines adopted to encourage reasonable uniformity among State insurance laws or plans. We believe that the need for some uniformity is increasingly important at this point in time when many proposals for change are being made, and the adoption of different plans by different States could compound the problem.

While we believe that the Uniform Motor Vehicle Insurance Act is workable, it is our judgment that it does not go far enough in applying the no-fault concept.

We make this judgment on the basis of our experience, our convictions, and our extensive study and research.

As background, I would like you to know that for 9 years, Nationwide offered an auto insurance policy which gave the accident victim a choice of accepting guaranteed benefits, regardless of fault, or of pursuing his claim under the liability (fault) system.

Now on the basis of that experience, supplemented by extensive research, we at Nationwide have concluded that complete elimination of the negligence principle is the best solution to overcome some of the most pressing auto insurance problems—and their causes.

I will not dwell on those problems; this committee is quite familiar with them. I mention some of the major ones, only to put this report in perspective, and to remind you of the problems which the Nationwide plan seeks to remedy.

First, there is the question of whether the principle of liability—as it applies to auto accidents—continues to be valid in a society characterized by almost universal automobile ownership.

Second, the steadily increasing dollar costs of automobile insurance is of great concern. I should point out that some rise in costs will continue under any system as long as economic and accident trends follow their present direction.

Third, there is often delay and inadequacy in the recovery of economic loss from auto accidents, and some victims are not reimbursed at all because they cannot find a wrong-doer.

Fourth, the problem of availability of auto insurance to all car owners—or the lack of availability—in the open market is of increasing concern.

One way or another, most criticisms of the existing system are related to the liability principle upon which automobile insurance is based. Under the Nationwide plan, the liability system would be completely replaced by a compulsory first-party system. Policyholders would recover their auto accident losses from their own insurance companies. The owner of a car could not be sued by someone else as a result of an auto accident.

This is acknowledged as a point of contention. Critics of the no-fault concept argue that it relieves negligent drivers of their responsibility. But the fact is, under the present liability system, the careless driver is rarely held responsible or accountable in an economic sense. Actually, after a wrong-doer has been identified—often at great expense—he pays nothing. It is his liability insurance company that pays the bill.

What happens is that all policyholders chip in to pay the bill for the careless driver through the accumulation of premium dollars administered by the insurance mechanism. We share the public view that the wrong-doer should be punished. But we submit that punishment should be handled under the traffic laws. Insurance should not be a substitute for law enforcement.

It is illogical and unnecessarily expensive for the insurance industry to continue to spend millions of policyholder dollars to identify the wrongdoer when, in actual practice, the whole of society pays for the damage he caused anyway.

The Nationwide plan therefore disregards the question of fault in all respects. It is a compulsory system designed to make the injured party whole by taking care of his economic losses. Briefly, here is what it would do.

1. It would pay all medical expenses for as long as necessary. There is no limit on the amount.

2. It would reimburse victims for loss of wages at the rate of 85 percent of their regular earnings, up to 200 percent of the State's average weekly wage. Persons earning more than that average could buy additional income protection.

3. It would reimburse the victim for all other economic loss, including those expenses incurred for services he must hire someone to do because his injury prevents him from doing them himself.

4. It pays all necessary costs of rehabilitation, and provides incentives for the injured person to return to work.

5. It pays survivors benefits up to $30,000. These are paid in monthly installments over a specified period.

6. It pays for property damage—up to the actual cash value of the policyholder's automobile, and up to $5,000 for other property that may be damaged.

We believe this plan is entirely feasible and that it responds to the problems associated with the existing system of liability—that is, the increasing costs of auto insurance, the delay and inadequacy in recovery of economic loss, and the availability of protection. Here are examples of how the plan is designed to meet these problems.

1. As a first-party, no-fault system, the plan will bring about more prompt and timely payments for economic loss without the time-consuming and expensive delays associated with the liability system.

2. Because the benefits would be based on measurable economic loss, there would be a closer correlation between the amount of the loss and the amount of recovery.

3. Because the benefits would be associated with measurable economic loss, ability to recover would not be restricted to the liability limits of the "other driver's" auto liability policy. Each policyholder could obtain the amount of insurance he needs for his own protection.

4. Because all injured persons would be eligible for recovery, the plan directly meets the social problem of hardships resulting from delayed payments, or those in which the victim is not compensated because a wrongdoer cannot be found.

5. The first-party system is customer and consumer oriented. Because the customer would be dealing always with the company of his choice, the plan places a premium on prompt and efficient service.

6. The insurance product under the Nationwide plan would be available to all motorists. We would not have the tight market which is present today. This would be true because more applicants will be desirable to insurance companies than is now the case; there will be a narrower spread of rates between adult and youthful drivers and between metropolitan and nonmetropolitan areas; the reinsurance facility will broaden the voluntary insurance market to include all licensed drivers. The present assigned risk plans, or auto insurance plans, would be discontinued.

7. The plan should clarify the distinction between economic loss arising from auto accidents, and criminally irresponsible behavior which produces accidents. Under today's system, settlement of a loss by an insurance company often serves to absolve the wrongdoer from appropriate criminal penalty.

8. The plan holds promise of stabilizing the cost of auto insurance because:

It eliminates payment for pain and suffering, which cannot be identified as economic loss.

It eliminates that part of a settlement which does not reach the injured person because of legal fees.

It eliminates the expense incurred in connection with subrogation.

It reduces the expense of claims investigation, litigation, and arbitration.

It reduces the cost of the court system.

It gives impetus to the elimination of duplication of benefits which occur when payments also are made by various forms of health insurance.

We are under no illusion that the Nationwide plan will answer every conceivable problem associated with the automobile insurance business today. Every system has its imperfections.

We are quite conscious, for example, that some people will object to the elimination of payment for pain and suffering. We do not deny that pain is very real; and we know that accident injuries can cause considerable inconvenience and emotional reaction.

Under the present system, payments for pain and suffering are the largest single item of expense in compensating accident victims. Payments to injured people for pain and suffering amount to more than the reimbursements for hospital bills, doctor bills, and loss of wages all put together.

Eliminating this item should have beneficial effect on the cost of insurance coverage.

In addition, there is no equitable way to put a dollar value on pain and suffering. The amount an accident victim receives for pain and suffering—if he receives anything—depends too much on where the accident happened, the makeup of the jury, and even the persuasiveness and the forensic ability of legal counsel.

Payments are inequitable and in this sense the system is patently unfair.

There's one other consideration. It's true that a seriously injured victim may not be able to play golf, or to go fishing. But we submit to this committee that no amount of money would enable him to do those things if medical science is unable to correct the damage that has been done.

Money paid for intangible losses of this kind does not restore the ability that was lost.

We believe it is a much better thing that all injured people be reimbursed for actual economic loss—as they would be under our system—than that some people be reimbursed for economic loss, as well as for pain and suffering, and others receive inadequate compensation and sometimes nothing at all.

While our basic plan does not provide compensation for intangibles, coverage for such things would be available as an optional item at extra cost. Those policyholders who want to protect themselves against the possibility of pain and suffering in the event of an accident could buy this coverage. The amount of reimbursement would be on a fixed dollar schedule, and limited so that it would have some relation to the degree of injury.

Gentlemen, we have submitted to you only a brief summary of the Nationwide plan. Copies of the full plan have been provided for members of the committee, and at this time, Mr. Chairman, I request that the full plan be entered into the records of this hearing.

Senator Moss. Without objection, that will be done after your oral testimony.

Mr. CHILCOTT. Thank you, sir.

In summary, I want to say that we favor a bill which would permit sale and service of group auto insurance. We favor, with some exceptions, the bill designed to assure safer automobiles and lower repair costs. We believe the Uniform Motor Vehicle Insurance Act is workable but that it doesn't go far enough in applying the no-fault concepts.

And finally, we offer for your consideration the Nationwide auto insurance reform plan, which we believe to be superior to the existing system, and better than any of the other proposals for change that have come to our attention.

In our judgment, the Nationwide plan will do the most to resolve the problems associated with the present system.

Senator Moss. Thank you, Mr. Chilcott. That is a fine statement. Very specific and precise, and we appreciate it greatly.

It's most interesting to have a large insurance company like Nationwide come in with a plan worked out that is defensible and one that you have presented to us very clearly.

Where does Nationwide rank in size in insurance companies on liability?

Mr. CHILCOTT. We are the fourth largest insurer of automobiles in the country.

Senator Moss. Fourth largest?

Mr. CHILCOTT. Yes, sir. We saw you some few weeks ago when we were fifth, but we have the new records as of the end of 1970.

Senator Moss. Thank you. I congratulate you.

Mr. CHILCOTT. Thank you.

Senator Moss. And there are approximately how many insurance companies in the field? You are fourth largest out of how many? A good many?

Mr. GRIFFITH. I think close to a thousand.

Mr. CHILCOTT. I think over a thousand.

Senator Moss. At least, somewhere around a thousand? That's most interesting.

You advocate the inclusion of the property damage under the no-fault umbrella. Will such inclusion give a beneficial impact to the design of vehicles, do you think, and if so, why?

Mr. CHILCOTT. Well, I guess we'd like to hope so. We of course are hoping that the design of vehicles is going to be substantially improved in any event, whether they be paid for by insurance or otherwise.

The primary reason that we advocate inclusion of property damage is that in any change of this kind, people are probably going to be inclined to be thinking of the old system, so that if I have an accident where I strike your car, for some time ahead at least you would be thinking that you could recover from me if I was legally liable for your damage.

And if the system doesn't provide something to take care of the damage to your automobile—and this is why we would make it a compulsory system and include property damage—from which you would then recover from your own insurance company.

We could conceive of some difficult public reaction to this situation. In other words, if a person doesn't go about providing themselves with coverage for their own car, thinking they always drive carefully, and would never be at fault, and if they have a loss and there isn't some system by which they can recover that loss, we think that the public reaction would not be good.

Have I communicated the point?

Senator Moss. Well, yes. I am wondering, suppose a fellow has a very inexpensive car, all worn out, and he doesn't think that the property value is enough to even carry any insurance for himself. Is there any way for him to get out of it?

Mr. GRIFFITH. Under the proposal that we made, Mr. Chairman, there is no provision made for that. But any system of this kind is flexible.

Let me give you a few things that might be done to it. You might establish a dollar value under which it would not be necessary to carry compulsory collision insurance. Or you might use an age factor, any car over 5 or 6 years old, you wouldn't have to carry collision coverage.

I would suggest that if you feel that is a problem, it is very simple to modify the system to take care of that.

Senator Moss. That probably leads to another question I wanted to ask.

You advocate Federal guidelines to achieve uniformity, although the general administration of the system would remain with the States. Will these guidelines be mandatory, and how strict will they be?

Mr. CHILCOTT. Well, this is a kind of difficult one. I guess the ideal situation would be for there to be a layer of a minimum coverage that would be required in some given period of time—say maybe a 3-year maximum or whatever was reasonable. This would provide the various States time to comply with the minimum amount of coverage to be made available to every motorist holding a valid driver's license. It would also provide time for the States to determine what additional coverage they feel the industry should make available to the public on an optional basis.

Senator MOSS. There would be sort of a model bill. A minimum figure, that would be mandatory by Federal law, with States empowered if they wished to make it stricter?

Mr. CHILCOTT. Yes, sir.

Senator MOSS. Now in your testimony you state that the biggest cost of the present reparation system relates to payments for pain and suffering. How much of the bodily injury benefits paid are for intangibles losses of that sort?

Mr. CHILCOTT. Approximately 60 percent of the payments under the bodily injury coverage.

Senator MOSS. And how much of that gets through to the accident victim? How much do they benefit?

Mr. CHILCOTT. Well, I guess that, Chairman Moss, will be determined a little bit by the part of the county you are in. I think it will range somewhere between 50 and 75 percent; maybe 67 percent being a fairly good average.

Senator MOSS. I think the most revolutionary part of your proposal is the complete elimination of the reparation feature for pain and suffering. And I wonder if your rationale for this, since you advocate that the traffic laws be enforced is related to the pain and suffering a person experiences if he is a victim of another kind of crime, say a mugging on the street? He may get pounded on the head and have his head cut open and his vision impaired or something, and since the criminal ordinarily doesn't have any way to respond, he really gets nothing for that, does he?

Mr. CHILCOTT. Yes, sir. And I think it's basically the same thing. When we started our study in 1967, the assignment to our subcommittee was that if we didn't have any system for automobile reparation that we have right now, with no system at all, what would be the best system to compensate the largest number of people for economic losses as a result of automobile accidents.

Now when the committee worked on that, they started looking for where these dollars are going right now. And in that analysis, and it was later supported rather exactly, or at least heavily supported by the Department of Transportation study, a large chunk of the money presently is being paid for the noneconomic loss that we referred to as pain and suffering.

And there is no question that it's a very real thing, but those same studies also pointed out that a good high percentage of the people weren't compensated at all.

They may have been negligent, and created their own loss, so to speak, or in some cases they found the other cars were not insured, or the person wasn't economically sound, so that there was no place for recovery.

So the point I am making is that in a good many cases, under the present system, they don't recover from pain and suffering, and secondly, we believe that this is a place where the consumer should have an opportunity—if a person is a piano player and has to have his hand, and he knows that, and he knows the possibility of accidents, we believe that he would purchase that coverage, as many of them who are in this profession do now.

Senator Moss. Just a regular insurance, outside of any vehicle?

Mr. CHILCOTT. Yes; it is a supplemental coverage for which he would pay an additional premium, and if he is injured in an accident he would receive $100 or $500 a week. This can be actuarially calculated quite easily and made available to those who felt they needed it.

But in order to keep the cost down, and reimbursement of the greatest majority of people for actual economic loss, something had to give, something had to come out, and we felt that is one that could come out and be supplied on a voluntary basis by a payment of an additional premium.

Senator Moss. Isn't contributory negligence a defense in most of the States now?

Mr. CHILCOTT. A great majority of them, although more and more in recent years they have been adopting the comparative negligence laws. But this is still true in a great many States; yes, sir.

Senator Moss. And for those States that still have contributory negligence as a defense, and it's a sizable accident, it's pretty hard to be able to withstand the allegation of contributory negligence; isn't it?

Mr. CHILCOTT. Yes, sir. Unless it's a very obvious case, where the car is stopped at a stop sign and struck from the rear or something like that. The answer is yes, it is in most cases.

Senator Moss. The DOT study indicated that only a third of the economic loss is recovered by the victim if the accident exceeds $25,000.

Mr. CHILCOTT. Yes.

Senator Moss. In amount?

Mr. CHILCOTT. Yes.

Senator Moss. And so that is a very small part that comes through.

Mr. CHILCOTT. Yes, sir. And what I have said here in another way is that 66 percent—we believe that it's better that that 66-percent receive their basic economic loss than to have the smaller percent paid those much larger sums, especially since it would be made available to them if they wanted to pay for it.

We are really talking about an extremely small percentage when we talk about these unusually heavy losses. In 1968, for example, losses involving more than $10,000 were 2 percent of our total losses, of the total number of losses reported to us.

Senator Moss. Only 2 percent?

Mr. CHILCOTT. Only 2 percent, and 27 percent of the dollars. So you see, we are talking really about a small percentage of the total people involved in the accidents.

Senator Moss. Well, it's very interesting. I think Mr. Sutcliffe said he had a technical question or two he would like to ask.

Mr. SUTCLIFFE. Mr. Chilcott, you discussed with Senator Moss the desire to mandate coverage for property damage. Can you give this committee information about any price differentials that would result,

that might be greater under a first-party system as opposed to a third-party, first-party combination?

Let me be more specific. We have received testimony that indicates that if you insured cars on a first-party basis, that any disparity between the cars as to the design for injury prevention either to the person or to the exterior of the vehicle, that any price differentials would be augmented, would be increased under a first-party mandated property damage system as opposed to a combination first-party, third-party liability system where the vehicle population, or the vehicle you are insuring was that vehicle and an unknown number of vehicles.

Do you have the information, have you collected any actuarial data to show what increase in price differential might result from a first-party property damage system?

Mr. GRIFFITH. Right off hand, I can't see any increment, but this was mentioned yesterday in the testimony—I believe it was a professor from the University of Indiana that presented it—if it would be possible for you to furnish us a copy of his testimony, we would be glad to submit a detailed response to it in terms of cost savings as we see it.

(The following information was subsequently received for the record:)

NATIONWIDE MUTUAL INSURANCE CO.,
Columbus, Ohio, June 11, 1971.

Mr. S. L. SUTCLIFFE,
Staff Counsel, New Senate Office Building,
Washington, D.C.

DEAR MR. SUTCLIFFE: This is a follow up to Mr. Chilcott's testimony before the Committee on Commerce. We agreed to review the testimony of Samuel Loescher, Professor of Economics, University of Indiana, concerning his theory that the consumer's preference for a car with lower damageability may be heightened under a first party coverage system.

We agree that first party coverage is more adaptable to offer rate incentives for safety features and lower repair costs because the incentive would be directly related to the consumers' own car. However, we differ with Professor Loescher as to the degree of incentive that can be offered.

The Nationwide policyholders who carry both coverages under the present system pay $50 on the average for collision and $30 for property damage liability on an annual basis. Thus, a discount on $50 of collision premium in the present system would still be the major factor in a first party system discount.

Professor Loescher's point is more forceful in its application to personal injury coverage. Annually, Nationwide policyholders pay $51 on the average for bodily injury liability coverage and about $11 for medical payments or related first party coverage.

Thank you for the opportunity of commenting further on this matter. If we can provide further clarification, we will be glad to do so.

Sincerely yours,

R. W. GRIFFITH,
Vice President and Actuary.

Senator MOSS. That would be very helpful.

Mr. SUTCLIFFE. Thank you very much.

Mr. CHILCOTT. I want to be sure there isn't anything implied in your question. Let me make a statement. We do not feel that the system we proposed to you would cost any more than the present system. And we know it would reimburse a great many more people.

Mr. SUTCLIFFE. Yes, yesterday we had an exchange which was based upon some testimony that had been presented to the House, which said that suppose you give a discount for vehicles that have low sus-

eptibility to damage, and say that discount is 20 percent of the premium rate on the collision coverage, if you went to a first-party system, you would be eliminating the bodily-injury liability part of the policy

And the theory was that you would have a multiplier effect on the discount, so that instead of a $24 indicator, of difference between car A and car B as to the property loss potential, that might be multiplied, as this professor said, by a factor of three, so that the price differential per year came out to $72 a year, which was a larger indicator to the consumer, so that his preference for the car with the lower damageability would be heightened under a first-party liability system.

That is the kind of information I would like you to furnish to see whether or not that argument has validity.

Mr. CHILCOTT. I understand now the point you are making, and we would be glad to see what we could develop to give you some idea on that, at least an opinion on it.

Mr. SUTCLIFFE. Thank you. Now under your proposed plan, every insurer is required to write every applicant that it receives. In other words, it parallels the provision in S. 945 that requires you to accept every application of every insurer that has a valid license and hasn't committed fraud and pays the premium?

Mr. CHILCOTT. Right.

Mr. SUTCLIFFE. For the committee, would you at this point in the record explain the reassurance program you have in mind, and how it would displace—as I assume it would—the assigned risk plans in the States.

Mr. CHILCOTT. Yes, sir.

Mr. GRIFFITH. The idea is shown in exhibit 2 of the report that you have. The fact is that in order to make sure that all persons who are entitled to auto insurance can get it without any difficulty whatsoever, we have to find a way to distribute the costs of the less desirable risks.

Mr. SUTCLIFFE. Are the assigned risk plans presently supposed to be doing that?

Mr. GRIFFITH. Yes, for the liability coverages only, and for basic limits only. This system of course goes well beyond liability since it includes of course the medical and collision insurance also.

We think people ought to have these coverages available to them.

Now to spread the risks of the less desirable drivers, those with poor records, we suggest a reinsurance facility so no individual insurance company would be hurt financially by insuring such risks, because it could be fully reinsured in the pool, and then all companies would take their proportionate share of whatever loss there might be in the reinsurance pool.

Mr. SUTCLIFFE. This would be a total reinsurance pool; in other words, each company wouldn't have a reinsurance applied to it above a certain level of loss, it would be total?

Mr. GRIFFITH. A total reinsurance pool.

Mr. CHILCOTT. The primary difference in the proposal we have and the operation of the present auto insurance plans, or assigned risk plans, is that you keep the public out of this consideration.

So that if I applied to X company for insurance, and I am a bad risk, I am accepted; and as far as I am concerned, I never know

that there is some kind of a facility by which these are distributed equally.

We think it will be a lot better from a public acceptance point of view.

Mr. SUTCLIFFE. In your prepared testimony, you mentioned that one advantage of the system that you propose, which parallels to a great extent the S. 945 before this committee, is that you would eliminate the expenses connected with subrogation or arbitration.

Could you be specific as to what those expenses are, because we have had testimony from other insurance industry representatives suggesting that their plans embodying subrogation or arbitration procedures also have a cost-effective savings.

Mr. GRIFFITH. This may be true. One of the reasons we recommend the complete elimination of the tort system is that it takes away any need to determine fault.

Now when you talk about subrogation or arbitration, you are talking about the fault system. And it is certainly much cheaper to completely eliminate all need for arbitration or subrogation than it is to simply modify the present system.

Mr. CHILCOTT. Some of the expenses incurred in the present system in subrogation, just the same as the rest of the liability system; and one of the things we were searching for was how to keep the expense part of the dollar down, too.

Mr. SUTCLIFFE. In that connection, could you supply the committee for the record as detailed an analysis as you can of what you think your plan would do to the allocation of resources under the present insurance system?

And if you would, assume a premium volume of $14.4 billion, which the update of the Department of Transportation's study now pegs as the total premium collected, and we will also provide you the figures that we have for benefits paid out and principal economic loss and bodily injury and property damage information.

If you take those figures and then for the record try as best you can analyze what the net impact of the implementation of your plan would be on our present compensation system?

Mr. CHILCOTT. We will surely take a stab at it, yes, sir.

(The following information was subsequently received for the record:)

[illegible] INSURANCE [illegible]

[illegible] billions of dollars)

	All auto insurance	Bodily injury	Property damage
Premiums earned	14.4	6.9	7.[illegible]
Insurance overhead	5.0	2.0	3.[illegible]
Lawyers fees and other litigation expense	.2	.1	.[illegible]
Net benefits paid to cover bodily injury and property damage	9.2	[2] 4.8	[2] 4.[illegible]
Compensable economic loss [1]	12.0	6.5	5.[illegible]
Percent of loss covered	75.8	72.3	80.[illegible]

[1] Wage and medical loss, and future earnings of totally victims with dependent survivors and property damage.

[2] Property damage benefits are reduced from the present system even though the proposed plan has a compulsory collision coverage. The reason for this is that, while all persons will have this coverage, it will have a deductible feature. The reduction because of the deductible is greater than the increase due to universal coverage. The net benefits for bodily injury are much greater than in the present system mainly because the plan will compensate all parties injured in automobile accidents for their full economic loss.

Source: Adjustments were made to data developed by the Senate Commerce Committee to estimate the working of Nationwide's plan.

Mr. SUTCLIFFE. We will appreciate having that kind of input. It would be very helpful to our deliberations.

You suggest that all coverages under the plan be primary?

Mr. CHILCOTT. Yes, sir.

Mr. SUTCLIFFE. On Monday, May 3, we received testimony from consumers Union suggesting that that decision be left open to individual consumers because some insurance coverages, in the health area particularly, have a higher cost efficiency benefit than present first-party coverages under the automobile compensation system.

He was talking about ranges of 90 percent efficiency as opposed to first-party coverages of 70 percent. Assuming differences in efficiency, would you allow for that consumer choice and only insist on primary coverage if you could assure that there would be comparable efficiencies between competing coverages?

Mr. CHILCOTT. Let me comment and then I will have Mr. Griffith comment too.

One, there is some expense involved in determining what, other insurance is available. And coming back to the point, one of our efforts was to try to pick out all of the expense money that was possible under this system.

So that if this is the primary coverage, we believe in the not-too-distant future, that the other types of coverage that might handle this loss would be revised or amended, or whatever, so that they became secondary coverage.

Mr. GRIFFITH. We believe that the automobile ought to carry the total cost of its operation. That is the reason the plan is built the way it is.

We also recognize that it would be extremely difficult to attempt to price a system where other benefits, other coverages or types of policies would come in first.

To be fair, you would have to consider on each individual case what accident and health coverage, Blue Cross, Blue Shield, medicare, was available to the individual applicant. And thus modify the price for each one of those individuals.

Furthermore, if after having done so, the man changes employment, no longer is eligible for group insurance benefits from his old employer, and then has an accident, he would find himself underinsured.

So we think it is far better to be sure that everybody recovers their economic loss, and, to do this, you almost have to make the auto insurance system the primary system.

Mr. SUTCLIFFE. Do you believe that your particular company can meet the efficiency competition of other insurance sources?

Mr. GRIFFITH. I am sure we could not meet the efficiency of, for example, the Social Security System, or group accident and health insurance where you have large groups.

But this is one reason we are favoring the group insurance law that you are proposing. Now, this would greatly improve the efficiency.

Mr. SUTCLIFFE. Have you considered the utilization of standard deductible approach for meeting the duplication of benefits problem, so that your cost problems of ascertaining different levels of coverage for individuals would be minimized?

Mr. GRIFFITH. That would help to minimize them, yes.

Mr. SUTCLIFFE. So that would be one alternative you might have in the way of primary-secondary problems?

Mr. GRIFFITH. Yes.

Mr. SUTCLIFFE. Did I understand you to say that your company would consider selling what in fact might be a first-party pain-and-suffering provision within the policy?

Mr. GRIFFITH. Yes; something, however, that would be definitely limited in sum. Perhaps geared to economic loss, perhaps geared to medical expenses, so it would be some direct relationship to the amount of pain and suffering.

Mr. SUTCLIFFE. So you would avoid the determination costs? You would fix that cost at the time the policy was issued?

Mr. GRIFFITH. Yes. Right.

Mr. SUTCLIFFE. And suppose that the pain-and-suffering part of S. 945 were amended to require this as an available option, would that be something that you think would be satisfactory?

Mr. GRIFFITH. That would be a big improvement, we think.

Mr. SUTCLIFFE. What do you do with the problem of disfigurement? We have constantly in these hearings heard about the disfigurement hypothetical, where you can't base it on any kind of a medical loss necessarily, but you do have something that many people feel should be compensated.

Do you have any response to the disfigurement hypothetical?

Mr. GRIFFITH. This is the same issue as all your intangible benefits. What is a true dollar value of disfigurement that cannot be corrected? None of us know.

Mr. SUTCLIFFE. Let me stop you right there. I guess you mean all costs connected with trying to repair any disfigurement?

Mr. GRIFFITH. Right.

Mr. SUTCLIFFE. No matter how long it took?

Mr. GRIFFITH. Correct. The rehabilitation effort includes all medical procedures to correct disfigurement, for example. Now when you get into such things as loss of limb, sight, hearing, if this is felt to be desirable, the health industry now offers coverage for loss of limb, sight and hearing, in specific dollar amounts, if they want to pay the premium for that type of coverage.

Mr. CHILCOTT. We would want to include this as an optional thing in any plan we would have.

Senator MOSS. That is what I understand.

Mr. SUTCLIFFE. But you wouldn't mind it being treated as a mandatory option?

Mr. GRIFFITH. Right.

Senator MOSS. Is Nationwide a member of the National Association of Independent Insurers?

Mr. CHILCOTT. Yes, sir.

Senator MOSS. You then are not in agreement with the position taken by the association, is that right?

Mr. CHILCOTT. One of the privileges you enjoy by belonging to the National Association of Independent Insurers, Mr. Chairman, is that you are not bound by the policy or the decisions that are made in individual situations.

Senator MOSS. Which is a happy thing. I'm glad to hear it.

Mr. CHILCOTT. Yes, sir. Now as a matter of fact, Mr. Griffith and another one of our associates participated in the development of the plan that has been offered by the NAII, and it's a fine plan, we think,

as far as it goes. We just—our difference with it is it doesn't go far enough.

Senator Moss. It doesn't go far enough?

Mr. CHILCOTT. Yes, sir.

Senator Moss. Senator Hart is here. Do you have any questions?

Senator HART. Except to thank the gentlemen very much for the tone of their testimony. Needless to say, it's encouraging.

Senator Moss. Thank you, Mr. Chilcott, and Mr. Griffith, for your very fine testimony. We appreciate your willingness to respond to the additional requests for information we have made. Thank you.

Mr. CHILCOTT. Thank you, Senator, for the opportunity to appear before you.

(The attachments follow:)

STATEMENT R. G. CHILCOTT, VICE PRESIDENT, FAMILY INSURANCE, NATIONWIDE INSURANCE COMPANIES, COLUMBUS, OHIO

PART I—STATEMENT OF THE PROBLEM

The existing auto liability insurance system has been the subject of increasing concern during the last decade. Nationwide Mutual Insurance Company has long been concerned with the type of system and insurance product that would meet the real needs of the auto owning public. Our concern has resulted in specific attempts to meet these public needs ranging from our revolutionary family compensation coverage introduced in 1956 to our action of adopting a five year guaranteed renewable auto policy in 1968. The family compensation coverage provided for payment for medical expenses and wage losses to all persons injured in an auto accident, regardless of fault, provided that those who had a right to payment because of the negligence of our policyholder would sign a release. This coverage was meant to supplement the legal liability system.

As another evidence of the company's concern for meeting the auto insurance needs of the public as well as answering the mounting criticism of the present system, a research committee was appointed to study the social, political and economic aspects of the existing auto insurance system. Prominent in the research group's efforts has been in-depth investigation of all the alleged shortcomings of the automobile tort liability system as well as the public and legislative criticism directed at insurance industry practices. This investigation included an examination of the many plans which have been advanced since 1930.

The research group has identified the major areas of concern as follows:

I. The principle of tort liability as it applies to auto accidents and its continuing validity in a society characterized by the phenomenon of almost universal car ownership

A related consideration is the increasing difficulty of establishing fault for auto accidents in these days of high powered automobiles and high speed highways. The following quotation from one critic of the tort system will serve as an example:

"The whole system of liability insurance rests squarely on the accepted premise that each individual should be held accountable for his misdeeds. I am sure this was recognized in human relationships long before the principle was formally set forth in law. It has worked well in criminal law because the individual can, indeed, be made accountable—by jail sentence if need be.

"It does not work so simply in automobile liability insurance. The fact is, the wrongdoer in an automobile accident is rarely held accountable in an economic sense. Actually, after a wrongdoer has been determined to be the guilty person, often at great expense, he pays nothing—it is his liability insurance company that pays the bill. What happens is that all society chips in to pay the bill for him through the accumulation of premium dollars administered by the insurance mechanism.*

"It is not at least valid to ask whether the insurance industry should continue to spend millions of dollars to identify the wrongdoer when, in actual practice, the whole of society pays for the damage he caused anyway"?

*In the public mind the wrongdoer should be punished. It is more appropriate that punishment be handled under the criminal law.

II. The steadily increasing dollar cost of automobile liability and auto physical damage insurance

The gradual increase in the numbers of automobile accidents combined with the inflationary effect of almost every element involved in the evaluation of economic loss from automobile accidents has necessarily forced the price of both automobile liability and physical damage insurance upward in recent years. Although the public understands that the cost of repairing automobiles and the cost of repairing human bodies is steadily increasing, they are not happy when it comes their turn to pay their share of these economic costs. The public also realizes from their reading of the daily newspaper that numbers of automobile accidents are on the rise, but again, they are unhappy when they are asked to pay their part of these increased costs—particularly if they, themselves, have been fortunate enough to have avoided an automobile accident in the recent past.

Lest the point be missed, *any* automobile accident reparations system, whether it be the present system or some other, will be confronted with the need to finance payments for injuries and for damaged property. Economic losses from auto accidents under any system will steadily increase in the years ahead unless by some miracle automobile accidents become fewer, and such economic losses as wages, garage labor rates, hospital daily room costs, and doctor's fees decline.

The concern about rising automobile insurance costs has thrown the limelight on certain features of the present automobile reparations system. This is so because these costs are necessarily built into the insurance premiums which the public is asked to pay. Critics of the system make these points:

1. *Inefficiency.*—The process of determining fault under the tort liability system is often time-consuming and costly. Under the adversary system it is necessary that each accident be investigated by legally trained personnel to determine the individual responsible for the accident. Once fault is determined, the system calls for sometimes lengthy negotiation with the injured person in order to establish a dollar value of the injured person's losses. In case of disagreement, the courts are asked to make a final determination, both as to the issue of fault and as to the issue of damages.

2. *Cost of legal services.*—The tort liability system supports and fosters the provision for expensive legal services. In the case of the plaintiff he must pay his attorney, usually on a contingent fee basis. For the defendant, there must be costly defense counsel which is usually paid by the defendant's insurance company which becomes a part of the expense that must be considered in setting the insurance rate.

3. *Excessive build up in medical costs.*—It is claimed that the present tort system encourages the build up of so-called "specials" because it is on them that the settlement for general damages on pain and suffering is based. Together, these increased medical costs and increased amounts for pain and suffering maximize the amount of the plaintiff's attorney's contingent fee.

III. Delay and inadequacy in recovery of economic loss from auto accidents

The tort liability system provides no guarantee that economic losses resulting from automobile accidents will be compensated at all. Many injured persons or persons with damaged property are uncompensated because of their inability to establish negligence on the part of some wrongdoer. Others, where fault is questionable, may recover only partially for their losses or injuries.

Even where there is full recovery for both economic and intangible losses under the tort liability system, such recovery is often secured only after substantial delays. These are the delays inherent in the adversary system where fault must first be determined and finally the amount of damages established—sometimes via the judicial process. Even a delay of a few months works a substantial economic hardship on many accident victims.

It is claimed that there is a lack of reasonable relationship between the amounts of settlement and the extent of losses in automobile accident cases. Studies have consistently shown that relatively small claims are over compensated whereas accident victims involving substantial injury are often inadequately compensated.

Critics of the tort liability system emphasize that the uncertainty, the delay, and often the inadequacy of compensation imposes substantial hardship on members of the public and that therefore consideration should be given to some type of reparations system which is based on a no-fault principle.

IV. Availability of automobile insurance to all car owners

Tied in with the tort liability system has been the enactment of laws requiring car owners to prove they are financially responsible before they can operate their cars on the nation's highways. To protect society, such laws have been progressively strengthened over the years until today the vast majority of car owners find it necessary to purchase automobile liability insurance. Licensing authorities and the judiciary are often criticized for permitting dangerous drivers to continue to jeopardize the life and property of the general public. But because many of these dangerous drivers are still permitted to drive, the insurance industry is asked to provide insurance protection for them, often at substantially inadequate rates. In a free enterprise society, and particularly one where a substantial degree of competition exists, automobile insurance carriers must necessarily attempt to attract as customers the vast majority of car owners who are average or better than average drivers. The small residue of drivers who fall in the marginal category often find it difficult to secure auto liability insurance at standard rates. The insurance industry makes provision for insuring these drivers under the so-called automobile insurance plan, usually at rates that are grossly inadequate for this group of drivers.

A phenomenon of recent years has been the inability of insurance companies to secure adequate prices for their product in some states. The natural consequence of being forced to operate at an inadequate price is a tightening of the market for automobile insurance—forcing many car owners who were formerly considered average risks into the marginal risk market.

The lack of the availability of insurance, where it exists, militates against adequate protection of the public.

PART II—A PLAN FOR REFORM

A. A first party reparations system

It is clear that the criticisms of the existing system are overwhelmingly intimately related to the tort liability system upon which automobile liability insurance is based. This fact leads to the conclusion that the best long-range solution to the problem of assuring compensation to all automobile accident victims lies in the development of a system under which compensation for economic loss will be provided without regard to fault and on a first party basis between the insurer and the insured. In other words, the tort system, as far as its application to automobile bodily injury and property damage is concerned, would be eliminated and completely replaced by a compulsory first-party system. This means that policyholders would recover their economic loss from their own insurance companies. The owner of a car could no longer sue the person who caused the accident nor could he be sued by someone else.

The details of such a first-party system are spelled out in Exhibit I. In general, it is designed to make the injured party whole by taking care of his economic loss arising from:

1. Medical expenses—Unlimited.
2. Short and long-term wage loss—85 percent of earnings up to 200 percent of the state average weekly wage.
3. All other economic loss including expenses reasonably incurred for services in lieu of those the injured person would have performed without income.
4. Cost of rehabilitation (with incentives to return to work)—Unlimited.
5. Survivors' benefits—Up to $30,000.
6. Property damage—Actual cash value for automobiles; up to $5,000 for other property.

This coverage is designed to make certain that *every* person injured in an automobile accident can recover his economic loss. To accomplish this objective it is necessary that these benefits be made compulsory. This plan is designed to provide reasonable coverage at reasonable rates. For those who feel that they should have higher benefits, optional coverage at an additional charge will be made available.

The plan, as outlined, has several features which distinguish it from other plans. Some of these features are truly innovative.

1. The plan would be notably more comprehensive in conventional benefits than other plans have offered and hence would meet the criticism that too often the existing system fails to meet reasonably the total economic loss incurred. Examples of this greater comprehensiveness are to be found in the:

a. Unlimited payment for reasonable and necessary medical expenses, including that incurred in extended care facilities and for medically supervised home care services.

b. Payment for extended disability income up to age sixty-five.

2. A rehabilitation benefit would be included that, uniquely, would be an integral part of the benefit system and provides for cooperative procedures involving the claimant, the insurer, and bona fide rehabilitation agencies.

3. The plan uniquely provides incentives to return to gainful employment. This is accomplished by disregarding, in the computation of the benefits to be paid, a portion of the earnings in new employment.

4. The plan avoids the pitfalls of scheduled benefits by:

a. In the case of medical procedures, basing compensation on reasonable and necessary costs rather than on fixed limits per procedure; and

b. In the case of wage loss, incorporating an upper limit that will be automatically adjusted to the level of average weekly wages in the State.

5. Survivors' benefits are designed to serve during an adjustment or tiding-over period and hence, in the case of survivors of principal wage-earners or housewives, are payable in monthly installments; in the case of survivors of wage-earners, the installments are related to previous earnings.

The plan does not deal directly with the problem of payments received from other sources of insurance or wage continuation plans, etc. except for those provided under governmental programs which do not impose a needs test. Under current conditions, taking into account these other sources of duplicate payments would have very uneven, and a probably inequitable, effect. Furthermore, it wolld not be long before other systems would themselves preclude duplication as they now do with Workmen's Compensation.

B. Competitive administration in a free enterprise system

The Plan contemplates and, indeed has as an essential element, implementation through a competitive system of pricing, merchandising, and product development. The public interest is best served by a competitive system for the following reasons:

1. The best claims and other policyholder services can be expected to result from a competitive system. Each company may be expected to try to excel in providing policyholder satisfaction because such satisfaction is a principal ingredient of any company's program to grow and to increase its share of the market.

2. A competitive system will serve best to keep the price of the product at a level which will reflect most efficient administration. Specifically, it can be expected that companies will compete in devising:

a. improved and more efficient methods of claim administration, and

b. methods for reducing general expenses.

In this connection, it is important to recognize that the trend of increasing medical costs and increasing wages will inevitably cause the insurance cost of the proposed compensation system to increase. Competitive efforts to reduce costs (both expenses and loss costs) will help offset these inflationary trends.

3. Associated with the preceding point is the fact that experience demonstrates that under a competitive system a persistent effort will be made to achieve improved ways to relate premiums paid by policy-holders to the hazard insured. Competition assures a more equitable distribution of the cost of insurance.

4. A competitive system will encourage making available to the public a product that excels the statutory minimum. Examples of what may be offered are higher limits on wage loss (for the upper income groups), loss-of-use coverage under damage to property, and even, as suggested by Keeton-O'Connell, payment for pain and suffering.

5. It is basic to the free enterprise system that competition provides better regulation of prices, products, and services than that which can be effectively imposed by government. The concern of government should be to assure maximum competition consistent with insurance company solvency.

6. A plan providing for minimum statutory benefits under private competitive administration is in accord with the climate of current public and government thinking and practice; e.g., specialized products developed and produced by private enterprise under competitive bidding for governmental use. To duplicate in government the know-how already possessed by private insurance agencies would be wasteful and inefficient.

C. Equitable distribution of high hazard risks

Every company and agent will be required to accept every applicant for insurance. High hazard risks will be insured under a standard, uniform rating plan established by the industry.

It is recognized that under any plan, there will be drivers whose loss experience or driving record will make them undesirable as insurance risks. These drivers will probably have to pay higher premiums under any system which allows competitive rating or classification. It is doubtful, however, that premiums charged to these poor drivers will be adequate to pay the losses they produce. There is, therefore, a need to provide for a method to spread the cost of insuring these high hazard individuals equitably among all individuals insured in a state. The basic principle to spread such risk will be reinsurance—in contrast to the poor arrangement of the assigned risk plan—so that the policyholder can be insured in the company of his own choice. Policyholders to be reinsured would be a different group than presently in the assigned risk plans. Present plans have many elderly, youthful, low-income, and military personnel drivers. Some of these, under the Reform Plan, would be acceptable at normal or standard rates. Relatively few risks would need to be involved in the reinsurance process. See Exhibit II for the outline of this reinsurance proposal.

D. Uninsured claim fund

Acknowledgment is also given to the fact that compulsory insurance is never completely enforceable; hence an uninsured claim fund is established to provide benefits to persons who are not members of a car-owning family and who are involved in an accident with an uninsured automobile. A similar principle is applied to property loss.

E. Residual liability

Assuming the enactment of this plan in a given state, it will be necessary to provide policyholders with a residual liability coverage especially for out-of-state driving where the tort system is in effect.

PART III—EVALUATION OF THE PLAN

The Plan for Reform serves to meet the problems associated with (a) the existing system of tort liability, (b) increasing costs of auto insurance, (c) delay and inadequacy in recovery of economic loss and (d) the availability of protection, as they were reviewed in Part I of this Report. Features of the plan designed to meet these problems are:

A. As a first party, no-fault system, the plan lends itself to the prompt, timely, payment of benefits for economic loss without the delays associated with the adversary system. The tort system presents controversy as to the question of fault as well as the amount of damages. There may still be some controversy under the first party system as to the amount of loss but this should be minor.

B. Because benefits would be associated with measureable or ascertainable economic loss, there would be a closer correlation between the loss or damages and the amount of recovery. Thus, the plan avoids results which are now found where individuals with substantially the same loss are reimbursed with substantially different amounts.

C. Because benefits would be associated with measureable or ascertainable economic loss, ability to recover would not be restricted to the liability limits (or even existence) of someone else's automobile liability policy. (The effect of this limitation is particularly evident in coverage for the assigned risk, the underinsured, and the uninsured.)

D. Because all injured parties would be eligible for recovery, the plan directly meets the social problem created by hardships resulting from delayed payments or unmet losses arising from automobile accidents. Under a liability insurance system, it is the innocent third party who suffers when a car owner fails to carry insurance. Under the suggested first party system, failure to carry insurance penalizes only the car owner and his family.

E. A first-party system is customer and consumer oriented. It places a premium on prompt and efficient service. In addition, it enables the customer to deal with the company of his choice. Consequently, by replacing the adversary system and providing for the payment of benefits by the injured person's own insurer, a more wholesome relationship between the insurance industry and the public will result.

F. The public should find that the insurance product under the Plan is substantially more available to it than is the automobile liability product. This will be true because under the Plan:

1. More applicants will be desirable to insurance companies than is now the case. Examples of the more acceptable risks are the youthful, the elderly, and servicemen.

2. There will likely be a narrower spread in premium rates than exists today. It is expected that under a first-party system, the spread of rates between adult and youthful drivers—and between metropolitan and non-metropolitan areas—will be less.

3. The optional reinsurance provision for Special Class business will broaden the voluntary insurance market to include all licensed drivers and will remove the stigma of the assigned risk plan.

G. The Plan may serve a socially useful purpose in clarifying the distinction between economic loss arising from auto accidents and criminally irresponsible behavior resulting in accidents. To too large a degree today the settlement by an insurer of the loss serves to absolve the guilty wrongdoer from criminal penalty.

H. The Plan holds promise, in spite of compensating *all injured persons* for their total economic loss, of stabilizing the total costs of the existing system because it should:

1. Eliminate the cost now incurred for that part of "pain and suffering" which cannot be identified as economic loss.

2. Eliminate that part of settlements, included in the "pain and suffering" referred to above, which does not reach the injured person because of contingent fees.

3. Eliminate expense incurred in connection with subrogation.

4. Reduce claims investigation, litigation and arbitration expense.

5. Reduce the cost of the court system which now spends a substantial portion of its time on automobile accident cases.

6. Give impetus to the elimination, by various forms of health insurance, of duplication of benefits.

These reduced costs will be counterbalanced by the fact that the Plan will compensate many more people than under the present system simply because fault no longer has to be established to receive payment.

Exhibit I—Automobile Compensation Coverage

(This coverage would completely replace the present tort system for property damage, injuries and death arising from automobile accidents.)

This is a compulsory compensation coverage for property damage, bodily injury, and death resulting from automobile accidents. The coverage compensates for:

1. Collision damage to the described automobile and to other property (but not including other automobiles).

2. Injury and/or death to the insured and his dependents resulting from any automobile accident.

3. Injury and/or death to other occupants of the described automobile who have no coverage under their own policy.

4. Injury and/or death to pedestrians and cyclists who are struck by the described automobile and who have no coverage under their own policy.

5. Other out-of-pocket expenses, including paid help, transportation, and miscellaneous loss.

The coverage is payable without regard to fault and without regard to other forms of insurance except that it shall be excess over like benefits payable by Workmen's Compensation and by governmental programs which do not impose a needs test such as Medicare, Social Security, Veterans' Plans, and State Temporary Disability Benefits.

Coverage provisions are tied closely to rehabilitation services and are designed to encourage early recovery from serious injury.

The basic compulsory coverage is outlined below. Higher limits of coverage for extended disability income and for survivors' benefits will be made available for those who desire to purchase it.

DAMAGE TO PROPERTY

To pay for accidental collision damage to the described automobile and to other property (excluding other automobiles). Damage to the described automobile will be subject to a deductible selected by the insured. Damage to other property will not be subject to the deductible provision. The coverage limit on damage to the described automobile is its actual cash value; the coverage limit on damage to other property is $5,000. Comprehensive coverage will be made available but will not be compulsory.

MEDICAL PAYMENTS AND REHABILITATION EXPENSE

To pay all reasonable expenses for necessary medical, dental, surgical, ambulance, hospital, extended care facility, professional nursing, and medically supervised home care services; to pay all reasonable expenses for necessary prescribed prosthetic devices; to pay for reasonable funeral costs up to $1,000.

To pay all reasonable expenses not included above for necessary rehabilitation center services; for occupational, physical and speech therapy; for prostheses and other adaptive mechanisms, including training in their use; and for vocational counseling, pre-vocational training, vocational training or retraining, work try-outs and placement services. The company shall not be liable, however, for any costs of rehabilitation which are available and accessible from existing public or community rehabilitation services.

DISABILITY INCOME

To pay the benefits stated in the schedule below during the period of disability up to and including sixty days following the accident. The period of disability is defined as the time during which the injured person is unable to engage in his regular occupation or, if not employed, in those normal pursuits to which he is accustomed. The injured party must be under the care of a licensed physician.

EXTENDED DISABILITY AND REHABILITATION INCOME

To pay extended disability income stated in the schedule below, after sixty days from the accident and up to age sixty-five, if:

(1) The injured party is actively engaged in restorative procedures as recommended by the company which are reasonably designed to correct or substantially reduce his injury or to prepare him for a different and appropriately selected occupation for which he would not be handicapped;

(2) Both the injured party and the company agree to continue such procedures and so long as the injured party cooperates with bona fide rehabilitation agencies.

(3) The injured party is unable to actively engage in restoration procedures for good and sufficient cause.

In the event that the injured party assumes a different occupation at a reduction of income from his occupation prior to the injury, the extended disability income will be continued and will be determined by deducting two-thirds of the injured party's earnings from the income benefit.

INCOME SCHEDULE

Beneficiary	*Income benefits*
1. Person earning a regular income.	1. 85 per cent of weekly wage or weekly earnings up to 200 per cent of the average weekly wage in the state.
2. Housewife.	2. $50 each week.
3. All others.	3. $25 each week.

SURVIVOR'S BENEFIT

To pay the benefits stated below for death within five years following the accident, payable to the surviving spouse or to a duly appointed representative.

Deceased	*Benefits*
1. Principal wage earner with dependent child surviving.	1. 100 per cent of three years' wages or three years' earnings up to a benefit maximum of $30,000, payable in equal monthly installments.
2. Principal wage earner with no dependent child surviving but with spouse surviving.	2. 100 per cent of one year's wages or average yearly earnings up to a benefit maximum of $10,000, payable in equal monthly installments.
3. Housewife with a dependent child surviving.	3. $5,000 payable in one year in equal monthly installments.
4. Child under ten years of age.	4. $1,000—lump sum payment.
5. All others.	5. $2,500—lump sum payment.

(Where the deceased fits the description in more than one category, that category with the higher benefits will be applied.)

UNINSURED CLAIM FUND

This fund will be administered by insurance companies designed to provide these coverage benefits for injury to persons who are not members of a car-owning family and who are involved in an accident with an uninsured automobile or automobiles. This fund will not provide coverage, however, to the owner of any uninsured car or to his dependents. All other injured parties will have coverage.

This fund will also be used to pay for damage to other property (excluding automobiles) where damage results from collision involving an uninsured automobile.

EXHIBIT II—A REINSURANCE PROCESS TO ASSURE EQUITABLE DISTRIBUTION OF HIGH HAZARD RISKS

In order to broaden the insurance market to include all licensed drivers and to remove the stigma of the assigned risk plan, an "optional reinsurance provision for Special Class risks" is recommended. (Special Class risks are those high hazard individuals who, because of driving record, physical or mental disability, or some other personal characteristic, warrant special rating.)

Each company would be required to insure any individual who seeks coverage. The company would have the option to reinsure any individual from whom it had collected a Special Class rating under a standard, uniform rate plan established by the industry. All companies doing business in a state would be required to participate in the reinsurance losses or profit on the basis of each company's total car years of exposure to the total of all car years of exposure in the state. This would have the effect of distributing to each individual insured in the state an equal share of the cost which cannot, because of prohibitively high rates, be passed on to high hazard risk individuals. Since not all Special Class rating cases would require reinsurance, neither the individuals involved in reinsurance nor their agents would know who the reinsured cases are.

The insurance carrier would be required to cede 100% of the premium to the reinsurance pool. A commission equal to the ceding carrier's expense level, including loss adjustment expense, as shown in its insurance expense exhibit, or 30%, whichever is smaller, would be paid. Actual losses would be paid by the insurance carrier and recovered from the reinsurance pool.

In conjunction with the reinsurance pool, there should be an industry committee to work with regulatory authorities of the individual states. Machinery should be set up to review those insureds whose records would indicate the need to consider whether or not the individual should be allowed to drive. The committee would also be responsible for policing the industry and for establishing safeguards to prevent individual companies from abusing, or profiteering from the commissions in, the reinsurance arrangement.

Senator Moss. Mr. Warren J. McEleney, president of the Automobile Dealers Association, will be our next witness. He is accompanied

by Mr. Frank E. McCarthy, executive vice president. We are glad to have you gentlemen before us, and look forward to hearing your testimony.

STATEMENT OF WARREN J. McELENEY, PRESIDENT, NATIONAL AUTOMOBILE DEALERS ASSOCIATION; ACCOMPANIED BY FRANK E. McCARTHY, EXECUTIVE VICE PRESIDENT

Mr. McELENEY. Thank you very much. My name is Warren J. McEleney. I am a Chevrolet-Oldsmobile-Cadillac dealer from Clinton, Iowa, and the president of the National Automobile Dealers Association.

As president of NADA, representing some 20,000 franchised new car and truck dealers, both domestic and foreign, I appreciate the opportunity to present the views of our association to your committee on S. 976, the Motor Vehicle Information and Cost Savings Act.

Our members are vitally interested in many provisions of this far-reaching piece of legislation. However, in the interest of time, I would like to direct my remarks primarily to those areas of most immediate concern to our dealers. The first item I would like to discuss is the odometer amendment.

Before taking up the original provisions of S. 976, I would first like to indicate our strong support for the adoption of an amendment to the bill, offered by Senators Magnuson and you, Senator Hart, and I want to add we are grateful for your interest in this legislation, which would provide for a Federal odometer law.

NADA has consistently supported governmental action, either by way of a Federal regulation requiring tamperproof odometers or by legislation which would prohibit the alteration of odometers with intent to defraud purchasers.

In 1967, the Federal Highway Administration announced that it was considering the issuance of a Federal motor vehicle safety standard specifying requirements for tamperproof odometers on passenger cars, multipurpose passenger vehicles, trucks, buses, and motorcycles. NADA supported their proposal at that time.

Since a completely tamperproof odometers has not been developed, such a standard has never been issued. Consequently, NADA supports the enactment of Federal legislation which would offer a national, uniform solution to curb the practice of tampering with or altering of odometers.

On April 29, Senator Magnuson and again, you, Senator Hart, offered an amendment to S. 976 which, we believe, would go far toward achieving this objective. The key provisions of this proposal would:

1. Prohibit the sale or use of any device which changes the mileage actually registered on the odometer, except for purposes of legitimate repair;

2. Make it unlawful to disconnect, reset, or alter the odometer or to operate a vehicle with a disconnected odometer with intent to defraud;

3. Permit legitimate service, repair, or replacement of an odometer as long as the recorded mileage remains the same or, where this cannot be done, posting written notice in the vehicle that the odometer has been reset at zero, the date of the repair, and the mileage indicated at the time of repair; and

SURVIVOR'S BENEFIT

To pay the benefits stated below for death within five years following the accident, payable to the surviving spouse or to a duly appointed representative.

Deceased	*Benefits*
1. Principal wage earner with dependent child surviving.	1. 100 per cent of three years' wages or three years' earnings up to a benefit maximum of $30,000, payable in equal monthly installments.
2. Principal wage earner with no dependent child surviving but with spouse surviving.	2. 100 per cent of one year's wages or average yearly earnings up to a benefit maximum of $10,000, payable in equal monthly installments.
3. Housewife with a dependent child surviving.	3. $5,000 payable in one year in equal monthly installments.
4. Child under ten years of age.	4. $1,000—lump sum payment.
5. All others.	5. $2,500—lump sum payment.

(Where the deceased fits the description in more than one category, that category with the higher benefits will be applied.)

UNINSURED CLAIM FUND

This fund will be administered by insurance companies designed to provide these coverage benefits for injury to persons who are not members of a car-owning family and who are involved in an accident with an uninsured automobile or automobiles. This fund will not provide coverage, however, to the owner of any uninsured car or to his dependents. All other injured parties will have coverage.

This fund will also be used to pay for damage to other property (excluding automobiles) where damage results from collision involving an uninsured automobile.

EXHIBIT II—A REINSURANCE PROCESS TO ASSURE EQUITABLE DISTRIBUTION OF HIGH HAZARD RISKS

In order to broaden the insurance market to include all licensed drivers and to remove the stigma of the assigned risk plan, an "optional reinsurance provision for Special Class risks" is recommended. (Special Class risks are those high hazard individuals who, because of driving record, physical or mental disability, or some other personal characteristic, warrant special rating.)

Each company would be required to insure any individual who seeks coverage. The company would have the option to reinsure any individual from whom it had collected a Special Class rating under a standard, uniform rate plan established by the industry. All companies doing business in a state would be required to participate in the reinsurance losses or profit on the basis of each company's total car years of exposure to the total of all car years of exposure in the state. This would have the effect of distributing to each individual insured in the state an equal share of the cost which cannot, because of prohibitively high rates, be passed on to high hazard risk individuals. Since not all Special Class rating cases would require reinsurance, neither the individuals involved in reinsurance nor their agents would know who the reinsured cases are.

The insurance carrier would be required to cede 100% of the premium to the reinsurance pool. A commission equal to the ceding carrier's expense level, including loss adjustment expense, as shown in its insurance expense exhibit, or 30%, whichever is smaller, would be paid. Actual losses would be paid by the insurance carrier and recovered from the reinsurance pool.

In conjunction with the reinsurance pool, there should be an industry committee to work with regulatory authorities of the individual states. Machinery should be set up to review those insureds whose records would indicate the need to consider whether or not the individual should be allowed to drive. The committee would also be responsible for policing the industry and for establishing safeguards to prevent individual companies from abusing, or profiteering from the commissions in, the reinsurance arrangement.

Senator Moss. Mr. Warren J. McEleney, president of the Automobile Dealers Association, will be our next witness. He is accompanied

by Mr. Frank E. McCarthy, executive vice president. We are glad to have you gentlemen before us, and look forward to hearing your testimony.

STATEMENT OF WARREN J. McELENEY, PRESIDENT, NATIONAL AUTOMOBILE DEALERS ASSOCIATION; ACCOMPANIED BY FRANK E. McCARTHY, EXECUTIVE VICE PRESIDENT

Mr. McELENEY. Thank you very much. My name is Warren J. McEleney. I am a Chevrolet-Oldsmobile-Cadillac dealer from Clinton, Iowa, and the president of the National Automobile Dealers Association.

As president of NADA, representing some 20,000 franchised new car and truck dealers, both domestic and foreign, I appreciate the opportunity to present the views of our association to your committee on S. 976, the Motor Vehicle Information and Cost Savings Act.

Our members are vitally interested in many provisions of this far-reaching piece of legislation. However, in the interest of time, I would like to direct my remarks primarily to those areas of most immediate concern to our dealers. The first item I would like to discuss is the odometer amendment.

Before taking up the original provisions of S. 976, I would first like to indicate our strong support for the adoption of an amendment to the bill, offered by Senators Magnuson and you, Senator Hart, and I want to add we are grateful for your interest in this legislation, which would provide for a Federal odometer law.

NADA has consistently supported governmental action, either by way of a Federal regulation requiring tamperproof odometers or by legislation which would prohibit the alteration of odometers with intent to defraud purchasers.

In 1967, the Federal Highway Administration announced that it was considering the issuance of a Federal motor vehicle safety standard specifying requirements for tamperproof odometers on passenger cars, multipurpose passenger vehicles, trucks, buses, and motorcycles. NADA supported their proposal at that time.

Since a completely tamperproof odometers has not been developed, such a standard has never been issued. Consequently, NADA supports the enactment of Federal legislation which would offer a national, uniform solution to curb the practice of tampering with or altering of odometers.

On April 29, Senator Magnuson and again, you, Senator Hart, offered an amendment to S. 976 which, we believe, would go far toward achieving this objective. The key provisions of this proposal would:

1. Prohibit the sale or use of any device which changes the mileage actually registered on the odometer, except for purposes of legitimate repair;

2. Make it unlawful to disconnect, reset, or alter the odometer or to operate a vehicle with a disconnected odometer with intent to defraud;

3. Permit legitimate service, repair, or replacement of an odometer as long as the recorded mileage remains the same or, where this cannot be done, posting written notice in the vehicle that the odometer has been reset at zero, the date of the repair, and the mileage indicated at the time of repair; and

4. Provide a method of certifying actual mileage on the vehicle upon its transfer.

The amendment would be self-enforcing by providing recovery of $1,500 or three times the actual damages sustained, whichever is the greater. Court costs and attorneys' fees for successful plaintiffs would also be awarded.

The amendment would not infringe on State odometer laws except to the extent that the State laws were inconsistent with provisions of the proposed amendment. Criminal penalties provided under State laws would continue in force.

Senator Magnuson noted in his remarks when offering the amendment that consumers rely heavily on the odometer reading to determine a vehicle's fair value as well as to evaluate its safety characteristics based upon apparent use.

The adoption of this amendment would give a purchaser greater assurance that the mileage indicated on the odometer is an accurate representation of the actual mileage a vehicle has traveled.

Seventeen States presently have odometer laws, thus resulting in a patchwork pattern of State legislation. Furthermore, each State law has its own unique characteristics and penalties resulting in a lack of uniformity among the laws of these States. Given the mobility of motor vehicles and their interstate use, it is essential that some degree of equality and uniformity of treatment on a national scale be provided.

A Federal law would provide uniformity in the provisions, application, and enforcement of the law. As members of the retail automobile industry, our dealers have already experienced the undesirable effects which arise when one State has an odometer law and an adjoining State does not.

Similar problems develop when adjoining States have odometer laws with different basic provisions. The problem is simply this: A flow of vehicles develops into or out of a particular State either in order to avoid the application of that State's law, or to take advantage of the provisions of a different law.

Purchasers, including dealers, in States with odometer laws suffer when vehicles with altered odometers are brought into their States. They may pay inflated prices based on an inaccurate odometer reading. The irony is that the citizens in States with odometer laws are victimized by the failure of other States without such laws to curb this practice.

A Federal law which applies evenly to all will, we believe, benefit both customers and dealers alike. While the amendment may not solve all problems, it is an excellent start toward providing an equitable solution in an area which is presently a source of considerable frustration and unfairness. For this reason, NADA fully endorses the proposed amendment.

On the matter of property loss reduction standards, NADA supports the concept of reducing motor vehicle property losses as well as measures which will result in the increased safety and repairability of motor vehicles. However, we are concerned that the Secretary may not be able to develop and prescribe a meaningful system of tests and testing procedures designed to allow a determination and comparison

of the susceptibility to damage of passenger motor vehicles by July 1, 1972, the date which has been proposed.

We are also concerned that a hurried implementation of this legislative mandate may result in an increase in the cost of the motor vehicle to the consumer.

We fully agree with the bill's requirement that property loss reduction standards should be compatible with safety standards. Moreover, we contend that conflicts which may arise between the property loss reduction and safety standards should probably be resolved in favor of the safety standards.

NADA believes that the National Highway Traffic Safety Administration is the proper governmental unit to promulgate technical safety or property loss reduction standards and to evaluate the cost factor to the ultimate consumer. We recommend that Federal standards should preempt any conflicting State law or regulation.

Through its rulemaking procedures, the National Highway Traffic Safety Administration provides an appropriate forum for the evaluation of highly technical information which can be submitted by any party interested in a proposed regulation.

We believe that the Administration is in the best position to objectively consider and analyze the arguments concerning safety, property loss reduction, environmental, cost/benefit, and the numerous other factors which must be evaluated and coordinated in established individual safety and property loss reduction standards.

On the matter of motor vehicle bumper standards, NADA supports the concept of more effective bumpers for automobiles. We believe that economic benefits may accrue to the consumer by the development of more effective bumpers.

While NADA does not have the expertise to comment on the technical requirements of the energy absorption bumper standard proposed in S. 976, we believe that there should be national uniformity in all safety or property loss reduction standards, including those for bumpers.

We believe that a multiplicity of standards with respect to any component of equipment or area of design of a motor vehicle promulgated by more than one governmental authority could result in defeating the objectives for which such standards were developed. Specifically, NADA is aware of the Federal Motor Vehicle Safety Standard issued April 14 of this year, applicable to passenger car bumpers, as well as bumper legislation recently enacted in Florida and Maryland, and pending in many other States.

The bumper standard in S. 976 has been proposed to help reduce or eliminate costs to automobile owners resulting from minor collisions. NADA's concern is simply that the design and production costs generated at the manufacturing level as a result of the obligation of the manufacturer to meet several different standards may result in a net increase in the cost of the automobile to the consumer. We do not wish to see cost decreases offset by cost increases.

Again, NADA respectfully submits that the National Highway Traffic Safety Administration is the appropriate governmental unit for the promulgation of all technical standards applicable to the manufacturing of passenger automobiles and to evaluate the cost benefit factors to the consumer.

In the area of public information of test results, one proposed change in the National Traffic and Motor Vehicle Safety Act of 1966 requires that the Secretary compile and furnish to the public data submitted to him by the manufacturers to determine a vehicle's susceptibility to damage.

NADA considers it extremely important that any tests or testing programs to determine a vehicle's susceptibility to damage be developed and administered fairly. All pertinent factors should be analyzed in such testing programs and the results made public. This is absolutely necessary in order to insure fairness to the manufacturers and dealers who market these vehicles to the public.

NADA opposes the proposed provision which would require the manufacturers of motor vehicles to furnish prospective purchasers the results of testing prior to sale. We believe that such information should be made available through a third party such as the Department of Transportation.

Regarding the manufacturer's testimony yesterday about the problems that could occur in the testing of production models. I would like to point out that it would certainly be a major problem to the dealer as well, because of the time element involved in the testing.

So we support their request that pilot models might be considered for such testing if these requirements have to be met.

Periodic motor vehicle inspection. NADA supports periodic motor vehicle inspection because we are convinced that it leads to increased safety on the highway. Thirty-one States presently have periodic inspection programs. Eight other States have a random or spot inspection system.

We strongly support the provision in this legislation which would require inspection of motor vehicles whenever title is transferred for purposes other than resale and whenever the vehicle sustains damage to any safety-related equipment.

Many automobile dealers are presently equipped and staffed to perform inspection of vehicles and to operate sophisticated diagnostic equipment as contemplated under this proposal. In fact, automobile dealers, as well as other service repair facilities, are licensed to perform, and do perform, motor vehicle inspections under a number of the State systems which are presently in effect.

It would appear absolutely necessary to include automobile dealers in any plan to implement a nationwide periodic motor vehicle inspection system, if this system is to be fully functional and effective at the earliest possible date.

NADA opposes that provision of this bill which would prohibit any motor vehicle inspector from receiving any benefit in or from a business or enterprise engaged in the sale of motor vehicles, automotive repair parts, or accessories. Each State should have the option to develop a periodic motor vehicle inspection system which suits the particular needs of that State. States should not be precluded from licensing automobile dealers as vehicle inspection stations.

NADA supports the proposal which would provide assistance to States in establishing or improving programs of periodic motor vehicle inspection and motor vehicle registration.

In the area of insurance cost data to prospective purchasers, NADA recognizes the merit in providing customers with insurance cost infor-

mation. However, the insurance cost data with respect to a vehicle's susceptibility to damage is only one of many factors in determining the total insurance premium. Other factors which in our opinion are of even greater significance include the age, driving record, marital and family status, purpose for which the vehicle is being used, number of drivers, and the location where the car will be operated.

For the Government to require a dealer to furnish a prospective customer with only one of a number of variables involved in the total cost of insurance is to mislead the public.

Uniform title law requirements. NADA supports the proposal contained in this legislation for a State motor vehicle registration and uniform certificate of title program similar to the registration and title program contemplated by the Uniform Motor Vehicle Code and Model Traffic Ordinance. We believe the establishment of title laws on a national basis will effectively act as a deterrent to auto theft.

Furthermore, NADA urges that such a uniform title law include the requirement that all liens against a motor vehicle be recorded on the face of the certificate of title in order to facilitate the transfer of title between vehicle owners and vehicle purchasers.

We thank you for the opportunity to present our views before this committee.

Senator HART (presiding). Thank you very much, Mr. McEleney. I am delighted that you are stating so strongly support for the odometer aspect of the pending legislation. You make a point that sometimes is lost in the shuffle I think, that even a State which has attempted to protect dealer and consumer by enacting the odometer bill is trapped and punished if a neighbor has open season and the car is driven across the line; you are hurt as a dealer in the first State, you are taken as a dealer in the second, and the consumer in the first State who is thought to have been protected is done a disservice, and the consumer on the other side of the line is stuck, too.

So the thing has a nice symmetrical balance to it. It makes sense from every point of view I think.

Mr. MCELENEY. We certainly think so, Senator, and that is why we are so actively supporting this legislation. We think it will clean up an area that needs a lot of cleaning up, Senator.

Senator HART. I hope at least this much, we can get promptly on to the law, because a lot of the problems that confront us admittedly are different in solution, but it seems to me that this is a manageable problem.

Ideally, when we drew this bill with respect to inspection stations, again the symmetry is great, let's have an inspection testing service that is unrelated to any merchandising or repairing place. Let it be unconnected to anything like that, and as I would anticipate you say no to that, you feel in order to put an inspection program on the road at the earliest possible date we would have to include in the inspection system dealers and other places that are now engaged in repair work and sale of replacement parts.

Can you suggest any requirements or limitations that would eliminate the abuses that obviously could be there? Is there any way to reduce the temptation without ruling out of bounds the repair shop or the dealer or the garage?

Mr. McELENEY. At first thought, Senator, I imagine the strongest way to obtain compliance by everyone would be to put some form of penalty on any abuse of the program by the licensed station. I might add that many dealers today have heavy investments in diagnostic equipment. I recognize the fact that much of it might have to be tailored to comply with the program which might be established on a nationwide basis. But nevertheless the fact remains many dealers already have this equipment in their operations and are staffed and in a position to proceed.

I am thinking primarily of States where there are no periodic motor vehicle inspection laws today. I realize the States that have them have automobile dealers and other repair stations licensed to perform these inspections.

I know I am deviating a little bit from your question, Senator, but I have to say this, there must be a pretty strict policing of this in the States where they have periodic motor vehicle inspection, borders the State of Illinois, where they do have mandatory inspection of trucks—not passenger cars. It is a very strict law and it is adhered to very closely not only by residents of Illinois but by those of us who operate vehicles in the State of Illinois, such as my service trucks and so on. It is very strict, and these include repair stations operated by dealers.

Mr. McCARTHY. I might add one thought, Senator, and that is in the inspection performed by any repair facility I certainly think the person having his automobile inspected should be free to have repair done any place. I recognize this will not in itself cure the abuses that you and we are concerned with, but it does provide some protection to the automobile owner that if he feels that the inspection report or the person performing it is not really up to par, then he would be free to take it to another repair facility.

Senator HART. We would not be able to make a trade here, that you permit a dealer to inspect but have the law prohibit his doing repairing?

Mr. McCARTHY. We have actually thought about that, but we did not believe that would lead to curing the problem.

Mr. McELENEY. Yes, that was under discussion.

Senator HART. It is to your credit that you even thought about it.

You say on the business of giving the customer insurance cost information for the Government to require a dealer to furnish a prospective customer with only one of the number of variables involved in his total insurance cost is to mislead. I would suggest really the only variable to the customer is the item of the vehicle's susceptibility to damage and its relationship to insurance, because he is always the same age, he is always the same father or father of the irresponsible 22-year-old or whatever you want to call him.

Mr. McCARTHY. Maybe a better way to put that Senator—I recognize your point, but in arriving at the cost of the insurance premium it is our feeling that the insurance cost data with regard to the vehicle would be rather insignificant in comparison with the elements that these other factors we mentioned would contribute to an insurance premium.

Senator HART. To the extent that we can provide him with information that is understandable and relevant we should try.

Mr. McELENEY. There are some variables too, Senator. For instance the age does become a factor when they go into a different age bracket

as far as the insurance companies are concerned. I think the fact that a man that is picked up while intoxicated, say yesterday, certainly alters the likelihood of his obtaining his insurance the next year at the same rate. I think there are some variables that enter into this picture besides the susceptibility to damage that would affect insurance cost information.

Mr. McCarthy. On this question I would like to raise a few questions which I hope will be helpful. In the bill itself, it is not clear as to what exactly is meant by insurance cost data, as to whether this means an element of premium or some other type of rating system. That is not particularly clear. We also are not sure whether this will be limited to new cars only or whether it may be extended to any car sold by a dealer. And if such information were required, being consistent with our earlier statement, we would prefer that the Department of Transportation make this information available to the prospective purchasers as they are attempting to do in their other areas of automobile information disclosure.

Senator Hart. I guess the next to the last point I would raise with you involves the section for the providing of test result information. You say that we should not require the manufacturer to give to you and you to provide the prospective buyer the results of testing, and you suggest that a third party such as the Department of Transportation do it. Our problem is we have already attempted to make available to the buying public information from the Department now. You know, it is in that book that occupies space in every showroom, I am sure, but does not get much use, and you can explain that in a variety of ways.

But if, and I understand you recommend against this, but if in the distribution of automobiles the test information was required to be given by you to a prospective buyer, you have Olds, Cadillacs, and Chevrolets, if several models of Chevrolet in a model year were way down the list of desirables under this test, wouldn't you put the heat on Detroit to improve the performance under tests of that model? Isn't there at least some encouragement to upgrade performance standards if we do this? I understand you do not want us to.

Mr. McEleney. I understand that, Senator. Let me answer it in this light. I realize the competitive situations that could be a result of this procedure, and I recognize that; however, I think that there are many ways in which the public—and I cannot give you ways off the top of my head right now—but I would think someone would find ways to circumvent this program somehow at the retail level, Senator. That is just a conviction I have on it.

For instance, let me give you some personal experience, and again you have touched it. But let's take the booklets that are provided to the customers today in the glove compartment of the car, and I am talking here about the stopping distance, the load factor as far as tires are concerned and so on. I can give you this from a firsthand experience, and we are a fairly large dealership—we sell approximately 1,100 new cars a year, I have yet to find a customer to request this information.

We have provided it voluntarily, and seeing the lack of customer interest or consumer interest, I do not know, but I would almost be inclined to say that I think you might even have the same situation with this test result information on the part of the consumer.

I guess that is just what I am relating it to from our past experience in the other area. It is a difficult one. Naturally I am biased. I have to

say that in all candor with you. While it could be a detriment to us in a certain year, it could be an asset in another year, I recognize that, and it does provide again the competitive situation that I guess we would all like to see develop. Hopefully the manufacturers will take on this challenge voluntarily, Senator, but that is the only thought I can express at this time.

Mr. McCarthy. On this topic I would like to note an earlier point, and that is before such test data is made available to the public, we would hope it is representative data, that you just not pick one item which a certain series of cars would fail badly, while other cars would score well. We would hope it would be representative of the vehicle so it would be a fair comparison.

Senator Hart. We would want it to be.

Mr. McEleney. I guess you can relate to that the performance cars. There are a number of tests evaluated on automobiles in January every year in the Florida races. Some cars may have a certain weakness in some areas as to performance while they stand out in others, which gives you a rounded out picture.

Senator Hart. Well, certainly not just out of curiosity, but to get a dealer's point of view, do you think you would be able to sell more cars in the next 30 days if you had them equipped with bumpers such as we saw this morning than you would without them? Do you think it would make any difference? Did you see those?

Mr. McEleney. Yes, I did this morning, and quite interesting I must say. Senator, I am going to draw on my experience in the past and the apathy on the part of the consumer when it comes to a lot of this material on automobiles. As an example, I can refer to shoulder belts. A very, very small percentage of people buying new cars today will ever take that shoulder belt off the receptacle that it is in when they get the car. It is usually only when they trade it off. I think a similar experience might prevail here. That is a hard one to answer. I think what you are doing is assuming the cost information that was given to us this morning, but even with say a $40 or $50 add-on, I question the customer's interest in purchasing this for his automobile.

His attitude I think in a lot of cases would be, "this won't happen to me," and that is the apathy that I speak about.

I might even go back into the air emissions system on automobiles today. Frankly there is very little customer interest in maintaining your air emission systems on automobiles today. That bothers me a great deal. We can put all this equipment on automobiles like the bumper and the passive restraints and so on that are looked for in the years ahead here and the air emission controls, which are fine, and I know they are needed, but we must somehow either educate the public or train the public or convince them that the servicing of these units where there is servicing required has to be done or should be done. But there is a complete lack of interest.

I know of one program, for instance, and I am sure you are probably aware of it, General Motors' test out in Phoenix last year where for a limited period of time, at least long enough to see if it would be picked up by the public, where the air emission controls were available for older model automobiles at a very reduced price, and the result was a very decided lack of interest on the part of the public. I think this is what happens in all of these areas frankly.

Senator HART. At this late hour in the afternoon I won't ask you your opinion as to what does persuade us—I am a consumer—to make our shopping decision on cars. Apparently you are suggesting our sights are not as high or our understanding as broad as it should be.

Mr. MCELENEY. No, Senator, I think it is broad. I am not trying to say that at all; I am concerned, and I guess we can all express opinions and yet at today's writing I do not think any of us can really support anything with enough factual information. But I am concerned about the retail price of automobiles in the next 3 to 4 years as a result of all the regulations and legislation coming forward. I really am, not only as a retail automobile dealer, but I am concerned for our whole industry, because I think it could have a very detrimental effect, and yet I recognize the need for some of the things that are regulated and also legislated. But there has to be a balance somewhere. Where that balance is I do not know.

You asked a question a moment ago, and I do want to offer this thought. I think styling or change, Senator, is still a big factor in persuading people to change or buy automobiles. I think, too, that recognition ought to be given to the attempts of the manufacturers on a voluntary basis to provide added safety equipment and innovations in the way of safety over the past 4 or 5 years.

I recognize, too, that legislation and regulation has probably prompted some of this. This is an area of concern to me as a retail automobile dealer. Are we taking away the ingenuity and probably the voluntary action on the part of the manufacturers to come up with new ideas in the area of safety equipment by the regulation and the legislation that is being forced upon this industry? I am concerned about it very much.

Not to inject personalities, but my whole background is automobiles. I am a second-generation automobile dealer. We have a large investment in my area, in a retail automobile facility. I have sons coming into the business. So I am very concerned about what happens here, what happens over at DOT, what has happened at the manufacturing level, and that is why I have a deep interest in our association, because of the future in the business.

Senator HART. All of which is understandable.

Mr. Sutcliffe.

Mr. SUTCLIFFE. I have no questions.

Senator HART. Did Mr. McCarthy have anything he would like to add to that?

Mr. MCCARTHY. No, sir, Senator.

Senator HART. He has followed this legislation very attentively.

Mr. MCCARTHY. Thank you very much.

Senator HART. Gentlemen, thank you very much.

Mr. MCELENEY. We want to thank you, Senator and Mr. Sutcliffe, for having us.

Senator HART. We adjourn to resume at 10 o'clock tomorrow morning in this room.

We would anticipate first hearing Congressman Eckhardt, Dr. Haddon second, and we will move Mr. Kemper up because I understand he has some late afternoon schedule problem. Mr. Pradko and his associates, Mr. Noettl, and then the delegation from Maryland led by Mr. Johnson.

(Whereupon, at 3:30 p.m., the hearing was adjourned, to reconvene at 10 a.m., Wednesday, May 12, 1971.)

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 12, 13, 14, 28, AND JUNE 16, 1971

PART 4

Serial No. 92–18

Printed for the use of the Committee on Commerce

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

UNIFORM MOTOR VEHICLE INSURANCE ACT

S. 946

MOTOR VEHICLE GROUP INSURANCE ACT

S. 976

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

S. Con. Res. 23

CONGRESSIONAL CALL FOR STATE ACTION

MAY 12, 13, 14, 28, AND JUNE 16, 1971

PART 4

Serial No. 92–18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
64-345 WASHINGTON : 1971

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
WILLIAM B. SPONG, JR., Virginia

NORRIS COTTON, New Hampshire
WINSTON PROUTY, Vermont
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan
HOWARD H. BAKER, JR., Tennessee
MARLOW W. COOK, Kentucky
MARK O. HATFIELD, Oregon
TED STEVENS, Alaska

FREDERICK J. LORDAN, *Staff Director*
MICHAEL PERTSCHUK, *Chief Counsel*
S. LYNN SUTCLIFFE, *Staff Counsel*
ARTHUR PANKOPF, JR., *Minority Staff Director*
PETER POWELL, *Minority Professional Staff*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

MAY 28, 1971

JUNE 16, 1971

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

WEDNESDAY, MAY 12, 1971

U. S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 10:10 a.m. in room 5110, New Senate Office Building, Hon. Philip A. Hart presiding.

Present: Senators Hart and Cook.

Senator HART. The committee will be in order.

We are delighted this morning to be able to open with the testimony of a Member of Congress who has brought the issue that concerns this committee so effectively to the attention of the country, the distinguished Texan, its representative in the House from the Eighth Texas Congressional District, the Honorable Bob Eckhardt.

STATEMENT OF HON. BOB ECKHARDT, U.S. REPRESENTATIVE FROM TEXAS

Mr. ECKHARDT. Thank you, Senator.

Senator HART. We will put the statement in the record in full. As you go along, if there is any expansion or footnoting, feel free to do it.

Mr. ECKHARDT. I shall summarize it if it is suitable to the committee.

I come before this committee with some trepidation because, frankly, my total concept with respect to this very difficult question is not completely formulated.

I would like to set out first, if the committee please, a certain number of basic propositions that seem to me should underlie any desirable change in the present system.

The first is the proposition that the tort liability concept is not sacrosanct as the sole possible means of recompensing injured persons who are considered under the law a deserving reparation.

Actually, in many respects, the tort system is fortuitous with respect to its either making persons whole or discouraging negligence. Take, for example, the situation of two young men driving down a street at a high rate of speed crossing an intersection. One strikes a pedestrian crossing the street, seriously injuring him for life; the other engaged in the same race is not so unlucky. The first may be in effect fined $100,000; the second $100. And, of course, perhaps all the question of discouragement of negligence or illegal action is taken out of the picture by the fact that the two men are probably insured.

Staff member assigned to these hearings: S. Lynn Sutcliffe.

Then, consider for a moment the situation whether or not reparation is really given in an actual case. A child in the back of a station wagon is injured as the result of negligent driving by the mother in a collision with another car and, of course, there may be any degree of negligence on the two sides which will affect the child's claim depending on the law of the particular jurisdiction. The child may have no valid claim—as would be the usual case—or may have varying measures of recovery depending on the law of the State.

At any rate, the tort method of remedying wrongs and of giving reparation is a very inexact method at best. So, there is nothing sacrosanct about it.

The second proposition that I should like to make is that the goal of any legislation in this field should be to increase the percentage of the premium dollar which goes to the damaged party.

Presently the division of the premium dollar is about like this—and exact percentages cannot be established—but roughly these are the percentages: One: About 15 percent usually goes to plaintiff's attorneys and to the cost of lawsuits by claimants; two, about 15 percent goes to the other side of the contest, the cost of litigation and adjustment of the insurance company; three, about 15 percent for acquisition cost, including advertising and sales cost by the insurance company; and, four, about 15 percent for other overhead insurance administration costs and profits, leaving approximately 40 percent for the injured party. This I shall call item five.

Now, the real problem that is posed here for legislation if the goal that I have set out is to be met is to reduce one or more of these items.

Our course, the no-fault system goes to the reduction largely of items 1 and 2; that is, the cost of attorneys' fees and of adjustment costs—and of determining the question of who is entitled to reparation and who is not.

One of the difficulties, though, with some of the proposals that have been brought before our committee and yours is that not only is the no-fault concept enveloped in the bills before our committees, but also nearly all of the bills and the proposals also include limitation on measure of damage.

For instance, the nationwide plan as I recall calls for a non-fault system across the board, but it eliminates all but economic injury. So, you are not only saving money out of items 1 and 2, that is, the litigation cost, but also out of item 5, that is, the amount of money that goes to the injured party.

It seems to me that this is a mistake and that such a limitation is not necessary.

That leads to proposition No. 3. The burden on the premium dollar should not be reduced at the cost of instituting a less sensitive method of determining damages than that which has developed in a common law manner through long experience.

It seems to me that it is extremely difficult to establish in a statute as sensitive a means of determining the measure of damages, the amount of money that is likely to recompense a person or make a person whole after an injury, than that which has been established at common law.

The argument I am making here in no way conflicts or precludes the movement from a tort system to a no-fault system.

It seems to me that if we can in fact eliminate some of the overburden on the premium dollar through reducing the cost of determining fault, we do not have to further relieve that burden by more or less arbitrarily eliminating certain types of injury.

We had witnesses before our committee that were more or less insurance-oriented who made the contention that economic reparation was sufficient. Well, I asked this question: Do you really believe that merely because a man can continue to do the job he has always done before, even with pain, do you believe that under those circumstances he is sufficiently recompensed by simply relieving his economic losses? Of course, he would have virtually no economic losses ultimately in that situation.

The witness thought that economic losses were sufficient.

The question then arose: Is a man really a whole man merely because he continues to be a producing machine at the same rate of efficiency he had been before?

It seems to me, that is to treat man as a machine rather than as a human being.

There are very real losses with respect to a man's whole life, his inability to play golf or to sleep with his wife or to wade in a trout stream. All these things are terrific losses that I don't think can be thrown out the window. Though some advocates of no-fault call for that with respect to the limitation of damages, I do not believe that that is a necessary concomitant of a no-fault system.

That leads me to the second portion of my testimony here, and that is how could we frame in somewhat general terms what a bill should contain.

Some work is being done on that in our committee on the House side now, but, frankly, I am only attempting here to lay out in somewhat broad terms what seems to me to be an acceptable no-fault bill. That leads me to Roman II of this statement.

I have set down here certain elements of a proposal that I think are desirable.

No. 1, eliminate fault or the negligence suit concept altogether. (2) remove the high incentive for aggressive adversary action in the stage immediately following the accident. (3) afford an incentive to the insurance company to pay for the economic loss promptly. (4) leave intact the traditional measures of damages. And, (5) finance medical and hospital elements of recovery through a tax-supported, national health plan.

Now, as to point No. 1. If any part of the fault systems be allowed to remain, two problems arise:

(*a*) Some liability coverage must be obtained to cover the cases which are excluded from no-fault coverage, or exceed no-fault coverage and permit a tort recovery;

(*b*) It is necessary to devise some trigger for application of tort liability, and the application of the trigger is itself subject to judicial determination.

Let's take, for instance, the Massachusetts plan. Under the Massachusetts plan you have a $500 medical and hospital trigger after which tort liability attaches. Well, now, what enterprising lawyer cannot meet that trigger requirement. Perhaps they have not yet, but ultimately they certainly will. And why put an artificial burden on that

portion of our facilities which are most used, that is, hospitals and medical service?

It seems to me that the trigger is somewhat artificial any way you draw it.

Another means is found in the Hart and Moss bill. It uses a trigger which is rather high, in my opinion, so as to eliminate permanent partial disability below 75 percent. So, you run into difficulty there with a person who may be, say, 50-percent permanently disabled who loses important measures of damages that seem to me should be allowed.

The trigger there is relatively high.

But, at any rate, you always run into the difficulty of where you are going to draw the line. If you draw it relatively high, and you eliminate certain measures of damages within the no-fault system, you deprive persons of recovery for real injury.

On the other hand, if you make it relatively low, as I think the Massachusetts system makes it, you create an almost totally artificial base for triggering tort liability which can frequently be hurdled quite easily by an attorney, and you really in effect retain mostly the tort system.

So, my suggestion is that you not have any trigger at all: provide total no-fault liability—total no-fault insurance from bottom to top—but that you in no manner restrict the measure of determining damages. The suit would simply be against the first-party insurance company rather than the third. If the no-fault system has merit with respect to the lower levels of damages, it has the same merit with respect to the whole gamut, the whole range of damages. That is what I am suggesting here.

Of course, it may be argued in this connection that if you do this, since you are bringing under the system cases which would have fallen out under a liability system, that you are overburdening the premium dollar.

But let me suggest that the experience in Massachusetts has not indicated that.

As I pointed out before, it would be quite easy to move into the tort system in Massachusetts, and yet the great majority of cases drop out through the no-fault system.

Let me give you an example, and I think this is a rather typical automobile accident example. Joe Smith is injured in an automobile accident. The windshield is shattered and his face is cut somewhat. He has a sprain in his shoulder and neck. He doesn't know how bad that is at the time it occurs.

Of course, if he has to prove liability ultimately he has got to go to a lawyer right now because he has to establish that he was not at fault in the accident. But if you have a no-fault system he is not in such a hurry. He gets his face sewed up; he is in the hospital for a day or so; he has got medical costs which are paid for under the system; he has got his hospital cost paid for, he is out of work for a week, but he has recovered his loss of pay, at least to a certain percentage, and ultimately he goes back to work.

Why, he can wait for several years, just short of the statute of limitations running, before he decides whether he is going to take further action under the no-fault system against an insurance company for permanent disability. The chances are, during that period, his pain

has left him, his neck has not bothered him anymore, his face has healed up, he is doing his job—why, he is going to forget about it. If he doesn't forget about it and if he goes to a lawyer and says what can I do now, and the lawyer really doesn't believe he is injured the lawyer is very foolish to take his case because Joe Smith has already received say $5,000, the lawyer cannot get any part of that because it has already been paid out, so the lawyer has got to gamble that this imagined pain in Joe Smith's neck is a real one, and the X-rays do not show it. Well, that kind of case is going to drop out even if you permit full recovery on all measures of present tort liability against the first-party insurance company, and it is going to lighten the load on the premium dollar. I suggest that it will do it just about as much as if you had limited liability.

I simply believe that to limit liability is not called for. It runs in the face of common law experience, and it is not necessary with respect to accomplishing a no-fault system, and it also impairs the practical possibility of letting the no-fault system run the full gamut of injury.

If you limit liability under the no-fault system, you have always got to have somewhere in the wings the catastrophic injury that is tried under the tort system. I think that brings you right back to a lawsuit to determine liability.

Indeed, I do not know what would happen under the proposed bill in a case where a person's lawyer really seriously believes that the person is injured in excess of 70 percent. He goes to court, I suppose, to a State court, and tries his case, and the jury finds that the damage was 60 percent. Well, that wipes him out, and there is no way, of course, that he can get any of these permanent partial disability recoveries under that system.

I believe that the law should contain an incentive to the insurance company to pay for economic loss promptly. I think this is really the key to the issue or the small case dropping out.

In the case I described I assumed that Joe Smith was going to be paid promptly and that, of course, is what is going to keep him from going to a lawyer, because he is satisfied with respect to his economic losses. But it would be a mistake to depend merely on the fact that you are dealing with a first-party insurer rather than a third-party insurer in drawing the assumption that there would be a prompt payment of valid claims. There really is no difference between the two in this respect.

The reason the first-party insurer pays off quicker now is because the liability is relatively small and relatively positive, and the reason the liability insurer is difficult to collect from is because the claim against him is very large and there is a range of uncertainty with respect to establishing it.

So, in the system that I advocate, I would keep the provisions of section 5(a)(3) that require that the economic losses, certain limited losses, be paid within 30 days of accrual and that they be paid currently, and that if they are not paid that there would accrue upon these losses 2-percent interest rates per month.

I would also keep section 8 which provides that the court may grant attorneys' fees and recovery of reasonable costs of suit in cases in which the insurer denies all or part of a claim for benefits under a first-party, no-fault policy.

I think that is the key to making the small cases drop out.

The last thing I should like to discuss here is the linkage of a no-fault system with the national health plan. Since the plan that I am advocating here proposes substitution of insurance for the whole range of rights under tort liability, and since it takes away from the individual a right which he really has, so to speak, free—and I must qualify by saying it is not altogether free, because he has to pay for his lawyer—but since this replaces a right with a purchased insurance policy, it seems to me society should substitute something for that right.

My argument here is perhaps a little subtle and perhaps a little difficult, but I think it is best understood when it is considered in terms of the poor man, for instance, the pedestrian. Today he may have no insurance, but if he is injured he at least has a right, and he can usually, if he is injured seriously, get somebody to represent him and get some recovery on that right.

Now, under the system that is here proposed, his right in my opinion would be much more complete and much more certain, but he would be buying it—he would be buying it with the premium dollar.

It seems to me that a part of the cost of that premium dollar ought to be borne socially, that is, ought to be borne by some type of national insurance in the framework of a national health plan, and it ought to be available to him, because it seems to me extremely important that whatever type of insurance we put into effect compulsorily be at really bargain rates, that is, really reasonable rates so that you have got complete coverage of all persons.

If we do enact a national health plan and, of course, there are several here before us, it seems to me we can bring that price down to make it within reach of all.

I would strongly advocate that the national health plan take care of that hospital and medical cost involved in auto accidents so as to lighten the load on the premium dollar. It would very substantially lighten that load because the statistics and information we have before our committee is that approximately half of that load with respect to personal injury cases is in hospital and medical.

So, I would certainly advocate that that be done in this plan, and I think that it is a necessary ingredient of the plan that the two should be considered together and that it would be most desirable if both were passed.

That completes my testimony, Mr. Chairman.

Senator HART. Congressman, I have often wondered whether it made sense for a Member of one House to go to a committee of the other House and discuss legislation that both were considering. In 25 minutes you have convinced me. There is no doubt about it, it is very helpful. That does not mean, of course, that I will be galloping over all the time.

Mr. ECKHARDT. There should be some colloquy.

Senator HART. This has been a very useful exchange for us. I shudder at your concluding suggestion, desirable though it is. I do not know what the bookmakers quote on the possibility of a no-fault bill getting through or a national health program getting through, but—I do not know what the Kentucky expression is—but if you put the two together the odds will get substantially longer, and I am not sure that we can run with both.

I understand clearly the merit of having the two as a unit.

I do not have any questions, but I repeat, you have raised our sights. Senator Cook?

Senator COOK. Well, I would like to correct one thing the chairman said, and I think I see somebody in the audience who may well agree with me. When you present, so to speak, to the odds makers an entry, which means one can buy a ticket on more than one horse, it lowers the odds. It does not raise them.

Senator HART. That shows what an innocent person I am about betting.

Senator COOK. I think we just had that experience in the field in the Kentucky Derby.

Congressman, there are two things that I would like to express and see if you agree with me. The latter part of your remarks—and I apologize for being late—recommend a personal health insurance for automobile drivers, as such, if you consider combining the two. In other words, a national health insurance program that would relieve the premium dollar.

Obviously this would have to be borne at the other end of the spectrum. But, in essence, this is what we are talking about.

I was interested in your comments on limited liability because I think this is one thing that you did not talk about that becomes very apparent, particularly in regard to the Massachusetts plan, in which medical expenses of $500 and above automatically qualifies you to go into the field of tort liability. What we are doing is asking every lawyer and every client on the basis of a minimum, to have a footrace with the statute of limitations in an effort to build this case to the point where he can get above the minimum.

You increase the potential of his pleading medical expenses not now incurred but which will be incurred in the future, in an effort to get over this limitation, it would seem to me.

Mr. ECKHARDT. I think that is one of the greatest difficulties with that plan. If what you fall into when you get out of the primary coverage is tort liability, then you have got to run a footrace with the statute of limitations in building your case on the question of liability.

If your whole system, both your primary economic payments which are compelled to be paid in a short period of time and your other additional recovery, is all no-fault, then you do not have this footrace. The person who is injured may take his time. He is not under compulsion to run to an attorney immediately to keep his case viable. I think that is very important.

Senator COOK. Also it is not so much just the matter of the client running to the lawyer, but the lawyer running to the courthouse.

Mr. ECKHARDT. That is right.

Senator COOK. What we do on that basis is automatically inflate his claim in an effort to get into the courthouse within the statute of limitations, it would seem to me.

Mr. ECKHARDT. Well, this is another thing, too. Of course, I am advocating the coverage of all damages, including property damages, and I think that is important along the lines you are discussing here because you know, as a practical matter, if a man has no insurance on his old car—you know, his old car costs him more to insure than he is likely to get out of it, so he probably has not got any collision insurance, he has liability insurance under the law—and he gets into a

collision with another car that is covered under liability insurance, his lawyer will suggest to him, now, are you sure you do not have any injury in your neck or back so when I make my claim against the other insurance company we are not just talking about a couple of hundred dollars, we may potentially be talking about $25,000.

This is another thing that tends to proliferate court cases.

Under the system I am suggesting of no-fault, the $200 would be paid off without respect to fault.

Senator COOK. Thank you very much. This is very helpful.

Thank you, Mr. Chairman.

Senator HART. Mr. Sutcliffe.

Mr. SUTCLIFFE. Congressman, a part of the proposal that you have made to this committee has been tentatively explored through questioning of witnesses on Friday and yesterday. In the questioning of Nationwide Insurance Co. the question was asked: Would you sell first-party coverage for the intangible pain and suffering damages to the policyholder, because under their system they advocate completely abolishing the tort liability system. They responded that they would.

My question to you is: Do you believe that this coverage which you are advocating should be mandatory or optional for the particular policyholder?

Mr. ECKHARDT. I think that the best system is the one that provides for one single policy that will substantially cover the whole field. I think whenever we get into one little policy that covers, say, economic loss, on the one hand, something else covers pain and suffering, and under some of the plans you have to buy residual liability insurance to take care of the castastrophic accident, I think we get into a situation in which public agencies cannot possibly control rates.

It seems to me the simpler we make it, the broader the coverage, the cheaper we make it per unit cost, the more controllable the structure is: so, I would advocate a single coverage that covers the whole field.

Another reason for that is I do not believe we should trade off a person's right to recover in tort liability against the person who hurts him, we should trade off that right with respect to all the ramifications of his damages that he could receive in court, for his buying some insurance to cover it without affording some means of assuring that that insurance covering it is protected publicly so that he gets the absolute minimum rate.

The proposal that Nationwide is making a proposal that would create them a market for a certain area of insurance and let them sell some more on top of that, and I do not advocate that at all.

Mr. SUTCLIFFE. So you would advocate making the first part coverage mandatory within the policy you described?

Mr. ECKHARDT. Yes, sir.

Mr. SUTCLIFFE. Would that policy have to be mandated at the Federal level?

Mr. ECKHARDT. Frankly, I cannot see a program that would be worth advocating or that I would favor that is not totally Federal.

Mr. SUTCLIFFE. Does this include rate regulation as well?

Mr. ECKHARDT. With respect to this kind of insurance; yes, sir.

Mr. SUTCLIFFE. You suggested that this plan would reduce litigation cost. Would you explain how you would have litigation as to what the

measures of damages was but not litigation as to liability? Is that where you suggest the cost savings would be effected?

Mr. ECKHARDT. That, and since you put penalties on the company for not paying off economic loss promptly, you drop out a whole lot of potential litigation with respect to the question of damages as well

Mr. SUTCLIFFE. Do you have a correlative burden upon the policyholder who, in order to pursue his damages, must undertake his own legal expenses, initially at least, unless the court finds that it was reasonable for the insurance company to cause him to litigate as to those damages?

You say you have an incentive for the insurance company not to litigate. Do you also have built into your proposal an incentive for the policyholder not to litigate?

Mr. ECKHARDT. That is right. I think it is desirable he has to bear his attorneys' fees if he goes beyond the economic damages which are paid off quickly and sufficiently.

Mr. SUTCLIFFE. One final question. Would the inclusion of property damage under the proposal you advocate have any beneficial impact on the design and construction of automobiles?

Mr. ECKHARDT. Yes. I have not brought this before the committee, but I have been working on an approach either as an amendment to this bill or as a separate bill that would require the seller of an automobile to pay the basic premiums for the purchase of a 1-year policy, the owner of the automobile to carry on after that.

Of course, there would be certain surcharges with respect to the insurability of the person who was involved, but the rate to the automobile manufacturer on a particular model would be determined by a system of determining the danger factors and the cost of repair of that model which I think could be a considerable incentive to safety design.

Now, of course, perhaps a less innovative approach could be simply to require that safety factors of an automobile be considered in the rate structure to all persons buying insurance.

The suggestion I am making I think would result in that without further legal enactment, because once the standard of safety and cost of repair was established the first year, presumably that would go on in the rate structure; it would be picked up by the commercial insurance carrier after the first year.

Mr. SUTCLIFFE. Would you require disclosure of those costs to the public at the time of sale of the vehicle?

Mr. ECKHARDT. Well, I think probably the best disclosure to the public is reflected in the price of the vehicle which, of course, would be carried——

Mr. SUTCLIFFE. That would be under your innovative proposal. I was referring to your secondary alternative to that.

Mr. ECKHARDT. The secondary alternative would also make insurance cost greater respecting unsafe cars, and people would, I think, automatically know that they were greater because of the price of the car.

Mr. SUTCLIFFE. Thank you very much, Congressman.

Senator HART. Congressman, where does the Moss bill stand in your committee now?

Mr. ECKHARDT. Hearings have been completed and the record of the hearings is being printed. We will probably be in markup sessions next week, sir.

Senator HART. Again, thank you very much.

(The statement follows:)

STATEMENT OF HON. BOB ECKHARDT, U.S. REPRESENTATIVE FROM TEXAS

I

Certain propositions emerge so forcefully from the two weeks of hearings on no-fault insurance in the House that they compel me, with all deference, to try to organize them and present them to this Committee as a rational philosophy concerning automobile damage reparation and an insurance policy which will effect such reparation. I hope that this Committee will not consider it presumptuous of one who himself feels somewhat overwhelmed by the magnitude and complexity of this problem to try to outline these propositions.

PROPOSITION NUMBER ONE

There is nothing sacrosanct about the tort theory based on negligence or fault as the means of recompensing injured persons who are considered under the law as deserving reparation. The fault theory as the basis of automobile accident reparation is quite imperfect, both with respect to making whole innocent parties and with respect to punishing guilty ones.

The question of fault is really irrelevant to the question of liability, as a practical matter.

Today, when liability insurance is commonplace and most motorists are induced to carry it by law, no party is really punished in a particular automobile accident situation except a party who sustains bodily injuries as the result of the accident. But, in the whole field of automobile accident liability insurance, insured persons are constantly punished by premium rates which are overloaded by costs which could and should be eliminated or reduced by a more efficient and less archaic system of tempering ill fortune by the processes of law and of an insurance system.

These costs (which are loads on the premium dollar) break down roughly in the following proportions:

(1) 15% for plaintiffs' attorneys and other litigation costs of the injured party;

(2) 15% for insurance adjusters, defense attorneys and other costs in resisting the claim;

(3) 15% for insurance companies' acquisition costs including advertising and selling insurance;

(4) 15% for other insurance company overhead and profits; and

(5) 40% paid out in damages to insured persons.

PROPOSITION NUMBER TWO

The goal of any legislation in this field should be to increase the percentage of the premium dollar which goes to the damaged party.

The question then arises: Which of the items listed above in (1), (2), (3), and (4) can be reduced by a reform in the automobile accident insurance system?

The studies that we have received and the testimony that we have heard in the Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce strongly support the proposition that there is a basic unsoundness in the present tort system and that such has led to a demand for reform through an insurance system that does not rest upon fault or negligence. Much of the steam behind the public demand for such reform is generated by a public revolt against high insurance rates. Publications have for some time dramatized large jury verdicts and attorneys' fees in personal injury cases. Proponents of the type of no-fault insurance recommended here also point to disproportionately high settlements in cases where only slight injuries are probably actually involved.

Thus, on the whole, the emphasis has been upon reducing premiums through cuts in items (1) and (2), the attorney fee items, and indeed in item (5), the payout item. Little attention has been given in the approaches recommended to cut-

ting advertising and sales costs (item (3)) or other overhead and profits (item (4)).

It is true that legal costs (including those of both the claimants and the insurance companies) absorb nearly one-third of the premium dollar. It is also true that a no-fault system of insurance could reduce such costs substantially, but it would also broaden the base of persons eligible to receive restitution or damages. Therefore, all of the bills calling for no-fault insurance brought before our Committee contained provisions for measuring impairment, or damages, which would have the effect of diminishing the insurance pay-out to an injured party.

I support the adoption of the no-fault system and realizing the savings in *unnecessary* costs that this would effect, but I do not favor reduction of those costs which are *necessary* to give full and complete damages to an injured party

PROPOSITION NUMBER THREE

The burden on the premium dollar should not be reduced at the cost of instituting a less sensitive method of determining damages than that which has developed in a common law manner through long experience.

Thus, all the bills propose a system calling for both (a) a no-fault theory of insurance and (b) a diminution of recoverable damages. What is attempted to be done is to excise from items (1) and (2) listed above (that is, from the litigation costs included in the premium dollar) a large enough amount (a) to offset the cost of paying damages to persons who would be denied recovery under a tort-negligence system and (b) to bring the rates down.

What seems to me to have been overlooked, by witnesses who seem absorbed with the issue of insurance, is that the sweeping changes proposed here do not only involve matters of economics but also equities between parties who cause and receive injuries. In this respect they deal with the typically judicial question of how these persons can be made whole. There are here two problems: (a) the making of the insurance system efficient and economical, and (b) the retention of a judicial system that will give an injured person fair and reasonable relief.

The challenge presented here for a legislative solution is:

To provide the most efficient way to deliver an insurance service to motorists and those injured in automotive accidents so that injured persons can be made whole, or partially whole, at the least social cost.

With these propositions in mind, I should now like to present a proposal for a complete, federal no-fault insurance system, one which would:

1. Eliminate fault or the negligence suit concept altogether,
2. Remove the high incentive for aggressive adversary action in the stage immediately following the accident,
3. Afford an incentive to the insurance company to pay for economic loss promptly,
4. Leave intact traditional measures of damages, and
5. Finance medical and hospital elements of recovery through a tax supported, national health plan.

1. The fault or negligence suit concept should be eliminated altogether.—If any part of the fault systems be allowed to remain, two problems arise:

(a) Some liability coverage must be obtained to cover the cases which are excluded from no-fault coverage, or exceed no-fault coverage and permit a tort recovery;

(b) It is necessary to devise some trigger for application of tort liability and the application of the trigger is itself subject to judicial determination.

The public would still have to buy liability insurance for those cases falling outside the no-fault system. If enough cases are excepted from no-fault to prevent the grave injustices and inadequacies of the limitations on damage recovery which appear in all proposed plans, the premium cost of liability insurance would be considerable. On the other hand, if much of the area of permanent partial disability and related considerations of "pain and suffering" is simply wiped out by the no-fault coverage, then much real pain, misery and physical restriction is not compensated for.

Furthermore, the Massachusetts law and the bills before the House and Senate Committees all eliminate property damage insurance coverage, and this would still have to be purchased. Costs are rising highest in this area.

A good bill should provide coverage under the no-fault concept for the entire field of auto accident injury reparation, including both personal injury and property damage. If property damage is not covered, then every automobile

accident must be investigated with respect to the question of fault unless the insurance company is willing to write off its defenses in that area.

2. *Full coverage under a no-fault system would remove the high incentive for aggressive adversary action in the stage immediately following the accident.*—All of the witnesses favoring any type of no-fault coverage believed that the affording of readily available pay-outs for economic damages by the first party insurer would satisfy the great bulk of claims and the great preponderance of the total money paid out to the insured.

The availability of readily available economic loss payments would help to remove the high incentive for aggressive adversary action in the stage immediately following the accident.

The elimination altogether of the question of fault would also tend to remove such high incentive. Under present law it is very important to the establishment of the liability elements of a tort case that a lawyer be consulted immediately so that he can investigate the details of the accident and locate witnesses. The probability of proving liability wanes with the passage of time after the accident. The other element of the case, damage determination, does not so wane.

That many cases would drop out after economic losses are paid is demonstrated by the following example:

Suppose Joe Smith is in an automobile accident in which he is cut by broken glass, bumps his head against the windshield, and experiences discomfort from his wrenched back and shoulder. He is taken to the hospital where several stitches are taken, and his cuts and bruises are treated. His hospital and medical bills are paid. He is disabled to perform his job for a week so he is recompensed for this economic loss, and his car is repaired. If he does not seriously jeopardize his rights by not going to a lawyer immediately, he may wait for nearly two years to determine whether or not he has suffered any permanent disability. In most cases where there is really not any permanent disability, he will take no other steps to recover insurance or damages.

I submit that a system which will quickly pay economic losses will eliminate most of the cases in this way and that it is not necessary to provide for limitations on measurement of the extent of injuries that go beyond economic loss to eliminate court determination of the great bulk of the cases.

3. *The law should contain an incentive to the insurance company to pay for economic loss promptly.*—The provisions contained in the Senate and House bills penalizing delayed payments for economic loss should be retained.

Section 5(a)(3) provides that payments for net economic loss must be made as such loss is incurred; or else, if payments are delayed 30 days or more after receipt by the insurer of proof of loss and demand for payment, the insurer must pay interest at the rate of 2% per month on the unpaid items of economic loss.

Section 8 provides that the court may grant attorneys' fees and recovery of reasonable costs of suit in cases in which the insurer denies all or part of a claim for benefits under a first-party, no-fault policy.

These provisions, and the prompt settlements they induce are what makes it possible for an injured party to receive insurance aid quickly when he needs it. If he does get it at such time, he can avoid litigation and legal fees. It is my firm conviction that most persons are not malingerers or chiselers, but, if it is necessary for them to counter chiseling practices of insurance companies, they will do a little of this to "come out even." An elimination of this kind of fencing or "one-upmanship" would greatly relieve a substantial burden on the premium dollar.

4. *The law should leave intact traditional measures of damages.*—All of the no-fault plans submitted have tampered with long established common law methods of establishing the extent of injury. A good no-fault system does not need to change these methods of measurement; and, if it is to afford a fair method of recompense for injury, it should not do so.

The proposal made here is that the exact same method of measuring injury as that used in determining damages in tort suits should be available to the insured in a suit against his own insurer in case the insurer ultimately will not pay claimed items of injury or damage after the period of temporary total disability wherein the insured has paid for economic losses as they accrue.

It may be argued that such would occasion too heavy a load on insurance premium costs. But it should be remembered that the insurance premium cost envisaged here replaces all premium costs on other types of insurance, including collision and liability, and eliminates all adjustment and litigation costs involving the question of fault or negligence.

Though, as we have said, the permanent partial disability cases and their settlement cost have been identified in the testimony as a relatively small portion of the total, it is admitted that the plan suggested here would occasion some additional cost due to the allowance of the higher recoveries in serious cases. But, as was pointed out in the colloquy with witnesses before the House Committee, no system can be said to be humane and fair which considers a human being as a mere producing machine and recompenses him only with respect to his loss of his work production potential.

Though a man may be able to continue his job at the drafting table with undiminished proficiency after the accident, he may do so with unabated pain. He may never again be able to play golf, to sleep with his wife, or to wade in a trout stream. He is only part of the man that he was before the accident, and no law that does not recognize these facts and afford compensation for these impairments is acceptable.

It should be remembered that all of the proposals that have been advanced before the committees eliminate some area of tort liability; the Nationwide plan would remove tort liability altogether. Therefore, what is put in its place should be complete enough to supply these humane and equitable elements.

5. *Linkage with National Health Plan.*—Since the plan proposed here substitutes insurance which must be brought for some rights which may be enjoyed by an individual without *any* cost when a tort is committed against him, I believe it is not enough to afford to the individual, particularly the poor man, *only rights which he buys*, dollar for dollar. Therefore, I believe insurance premiums should be made reasonably cheap, cheaper than they would be in the ordinary commercial market. The only way that this can be accomplished under the standards that have been set out above is by either socializing insurance altogther or by some modified plan like financing medical and hospital elements of recovery through a tax-supported national health plan. Therefore, the proposal made here is conditioned upon the passage of such a plan concurrently with the passage of this legislation.

The testimony shows that about half of the pay-outs in automobile personal injury insurance are for hospital and medical costs. Therefore, a national health plan which would take care of these costs generally would substantially relieve the burden on insurance premium payments. It should do so, because the poor man who is driving an automobile or is walking on the street is entitled *today* to recover from a negligent driver who hits him. If this *free* right is to be replaced by paid-for insurance coverage, he should get something extra for his money. What he should get is a more complete and surer recompense, and he should pay for that recompense *only* to the extent that it *is* surer and more extensive.

But since the individual has given up something that he has as a matter of right—his claim against the tort-feasor—the law which takes away this right should give him a *right*, not just a purchased claim, in its stead. That is the right to get *his body repaired* under national health coverage. Whatever else he gets, he and other motorists have paid for through their insurance premiums.

Senator HART. Our next witness is the president of the Insurance Institute for Highway Safety and the first National Highway Safety Bureau Director, Dr. Haddon.

Doctor, the committee is delighted to see you back. If there is no objection, we will print in full in the record your statement, and we would encourage you to proceed as you deem most proper.

STATEMENT OF DR. WILLIAM HADDON, JR., PRESIDENT, INSURANCE INSTITUTE FOR HIGHWAY SAFETY

Dr. HADDON. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I am pleased to return today at your invitation to show the results of the remaining 1971 model low speed crash test series conducted by the Insurance Institute for Highway Safety.

Earlier in this hearing, on March 10, 1971, I showed you the filmed results of crash tests on 12 1971 model automobiles at 5 miles per hour, front and rear into a standard test barrier, and at 10 miles per hour

[illegible]

Mr. Hanson. The tests were conducted at a specially constructed [illegible] facility in Maryland. In each of the tests the car is travel[illegible] under its own power and is being controlled from a remote console.

[illegible] "Vehicle Protection—Passenger Cars."

Estimating of repair costs following each crash was done by a panel of three expert automobile damage appraisers. These results reflect the rising cost of automotive repair labor: in the crash tests of previous years we used the rate of $7 per hour for labor, conservative even then by national standards; this year, this has been raised to $8 an hour, still far below the rate charged in many parts of the country today.

For example, a fair average we are told, would be over $14 per hour in the State of California. So, as in all of our work, we have been conservative in assessing the magnitudes of damage.

In my March testimony I documented the increase in average damage cost estimates generated in the 1971 crash tests of four sedans when compared with similar tests of four 1970 sedans of the same makes and models. We have since adjusted the average costs, and I might say this was done because of questions appropriately asked the last time we were here, as to the extent this would influence the inflation—we have since adjusted the average cost for the 1970 model sedans upward to reflect the increased labor rate and provide a set of comparable figures so there can't be any question as to how much is related to the vehicle itself and to the cost of the replacement parts.

The 10- and 15-mile-per-hour barrier crashes of 1971 model sedans, even after adjusting the labor costs of comparable tests on 1970 models, still have registered impressive increases over their 1970 counterparts:

1. In the 10-mile-per-hour front-into-barrier crashes, estimated repair costs for the four 1970 models averaged $541.56 when computed at $7 per hour for labor, which we then used, and $564.84 when recomputed at this year's $8 an-hour labor rate. In comparison, the 1971 sedans averaged $735.69 in their 10-mile-per-hour barrier tests—an increase of 30 percent over the adjusted 1970 average.

2. In the 15-mile-per-hour front-into-barrier crashes, repairs on the four 1970 model sedans averaged $728.83 at the $7-per-hour labor rates, and would have averaged $753.33 at the $8 rate. This year's four tested sedans, in comparison, averaged $1,113.89—an increase of 48 percent over the adjusted average repair cost of the 1970 sedans.

Three of the four sedans this year registered more than $1,000 in repair cost estimates in the 15-mile-per-hour front-into-barrier crash tests.

I might note that not only in prior testimony, but also in the superb testimony you heard yesterday from exceptionally qualified people, which I was not present for, but which I listened to on tape, you had conclusive evidence that even at 15-miles-per-hour in crashes into a barrier there is no necessity, with proper engineering, for any damage whatsoever, let alone over $1,000, and similar figures.

Of the 12 models crash tested last year, only one—a so-called pony car, not a family sedan—surpassed the $1,000-damage-estimate plateau. In contrast, five of the 12 cars tested this year achieved that dubious distinction—two of the family sedans exceeding even $1,200 in estimated repair costs in these low-speed impacts.

As you will see clearly in the film, the damage done to these 1971 models, because of their unnecessary delicateness, far surpassed, on the whole, that which we grew accustomed to seeing in the 1969 and 1970 model tests at these jogging and sprinting speeds.

Gentlemen, the magnitude of increases in damage repair estimates cannot be accounted for by the increase in the cost of labor. Most of

[illegible] the increased costs of [illegible] and more significantly, to the increased [illegible] and [illegible] the cars we have tested—a [illegible] that has the potential for generating even larger crash [illegible] models.

I understand that this has been a model year in which auto advertisements have been paying increased attention to the issue of auto [illegible] safety. As I mentioned in my March appearance before [illegible] the advertisements and statements by automobile company officials have suggested that bumper protection is being provided this year in at least three of the models—Pontiac Firebird, Buick Skylark, and Plymouth Satellite—which you will see in the crash tests I am about to show, and which I note we showed in the testimony also in March.

Before we begin the film, I should note that the projector we have with us today is capable of being stopped and reversed, and if you would like to see, in any part of the films I am going to show you, a particular sequence for a second time, we would be only too happy to run it over again.

(The film follows:)

(Film: 1971 cars: Low-speed crash costs (man jogging) 10 m.p.h. front-end-barrier crash tests.)

Dr. HADDON. Gentlemen, a man can jog at 10 miles per hour. This is the speed with which we are dealing in this first series of tests, and you will see in each sequence a man doing just that.

(Film: 1971 Chevrolet Impala 4-door. Estimated repair cost, $828.50. Front damage, windshield damage views.)

Dr. HADDON. The first of the 12 models, the Chevrolet Impala. Massive damage, as you can see, $828. This manufacturer, incidentally, equips cars with two windshield mount brackets that, as you will also see in some others of these crashes, commonly shatters the windshield itself.

(Film: 1971 Ford Galaxie 500 4-door. Estimated repair cost, $781.50.)

Dr. HADDON. Next, the Ford Galaxie, still at trotting speed. And again, massive front end damage, $781—more than enough, by the way, for a 2-week theater tour for a New Yorker and his wife in Paris, London, and Amsterdam, including air fare.[5]

(Film: 1971 Plymouth Fury I 4-door. Estimated repair cost, $633.50.)

Dr. HADDON. The Plymouth Fury, another popular family sedan, $633. Notice how the bumper, designed to nestle up to the sheet metal, guarantees heavy damage.

(Film: 1971 AMC Ambassador DPL 4-door. Estimated repair cost, $699.25.)

Dr. HADDON. The last of the four family sedans, the American Motors Ambassador, equipped with so-called bumper guards. These helped roll, as we showed last March, the bumper out of position. The radiator was damaged, as was the case also in the 5-mile-per-hour

---

[2] "Pure Pontiac!" Pontiac Motor Division, General Motors Corp., Automotive News, Jan. 11, 1971.

[3] Buick 1971 model press conference, Sept. 23, 1970, transcript, p. 14.

[4] Motor Trend, September 1970, p. 69; 1971 Plymouth Satellite, "Road Runner GTX."

[5] Lufthansa German Airlines/Di Carlo Tours, obtained from Watergate Travel Agency, Washington, D.C.

barrier crash test you saw in March. What you can't see is the damage underneath the car—a broken drive-shaft collar.

(Film: 1971 Volkswagen Super Beetle 2-door. Estimated repair cost, $347.85.)

Dr. HADDON. Now the little cars. First the VW Super Beetle. Almost $350 in damage.

(Film: 1971 Chevrolet Vega 2-door. Estimated repair cost, $439.05. Closeup pan of front end.)

Dr. HADDON. The Chevy Vega. You can see how the design of this pointed front end assures massive sheet metal damage, $439. Here you can see that this largely cosmetic bumper even allowed the sheet metal under it to be ripped.

(Film: 1971 Ford Pinto 2-door. Estimated repair cost, $535.79. Closeups on hood, side, and front views.)

Dr. HADDON. The Ford Pinto, $535. Again, a pointed front end is mashed in on impact.

(Film: 1971 AMC Gremlin 2-door. Estimated repair cost, $576.92.)

Dr. HADDON. The American Motors Gremlin, also equipped with so-called bumper guards. Note again how they help to roll the bumper out of position and aggravate the damage. You also saw this on the American Motors cars in the lower speed crashes I showed you in March.

(Film: 1971 Pontiac Firebird two door. Close-up on bumper damage. Estimated repair cost, $915.25. Front end damage, windshield closeups.)

Dr. HADDON. Here is what Pontiac calls its "amazing" Endura bumper.[1] Amazing, indeed. Remember this is still at jogging speed. For this amount of money—and this was the highest repair estimate of all the 10-mile-per-hour tests this year—a Washington family of four could fly round trip to Morocco for an 8-day vacation at the Hotel Tangier, all expenses paid.[2] Again, the General Motors windshield brackets—and broken windshield.

(Film: 1971 Buick Skylark two door. Estimated repair cost, $880.80. Windshield damage closeup.)

Dr. HADDON. As I pointed out in March, Buick officials have claimed their bumpers this year can take "four times as much force" as those on 1970 models.[3] Despite this, as you can see, that pointed front end suffers massive damage, $880 worth. This time it wasn't the windshield bracket, but the inappropriate design of the sheet metal that caused the break.

(Film: 1971 Mercury Montego two door. Estimated repair cost, $752.49. Hood close-up.)

Dr. HADDON. You may remember my comments in March about the pedestrian-hostile design of the Mercury Montego's prow, seen here again, $752.

(Film: 1971 Plymouth Satellite two door. Estimated repair cost, $289.10. Close-up on radiator leakage.)

Dr. HADDON. And last, the Plymouth Satellite, equipped with what its advertisers call a "heavy-loop bumper."[4] While this is the lowest

[1] "Pure Pontiac!" Pontiac Motor Division, General Motors Corp.: Automotive News, Jan. 11, 1971.
[2] Overseas National Airways, obtained from Watergate Travel Agency, Washington, D.C.
[3] Buick 1971 model press conference, Sept. 23, 1970, transcript, p. 14.
[4] Motor Trend, September 1970, p. 69: "1971 Plymouth Satellite, 'Road Runner GTX'," p. 2.

of the 12 cars tested in the 15-mile-per-hour crash tests, damage—including damage to the radiator, see it only here—is still inexcusable in such tests at this low-speed.

(Film: 15-mph front-end barrier crash tests. Football scenes. 1971 Chevrolet Impala four door. Estimated repair cost, $1,170.50.)

Dr. HADDON. And now, the tests at 15-miles-per-hour, a speed at which football players regularly collide, usually without damage. On the Chevrolet Impala, massive damage as you can see, much more than we grew accustomed to seeing in the 1970 tests: $1,170, and again, the windshield bracket broke the windshield, which cost $143 to replace. I note if this windshield had been tinted and with a built-in antenna, it would have cost $[illegible] to replace.[3]

(Film: 1971 Ford Galaxie 500 four door. Estimated repair cost, $1,207.45. Front end, side, and windshield closeups.)

Dr. HADDON. This family Ford registered the highest repair cost estimate of all the 15-mile-per-hour crash tests—over $1,200—more than enough to fly two Washington couples round-trip to the French Riviera, all expenses paid, including 8 days and 7 nights at the Park Hotel in Nice. Here the cowl and firewall buckled and broke the windshield.

(Film: 1971 Plymouth Fury I four door. Estimated repair cost $870.65. Front end views, fastener lodged in barrier.)

Dr. HADDON. Again, the Fury. On the lower right of the screen, notice the big chunk of shrapnel—the fender extension—flying off. Separately, you may remember that in the 10-mile-per-hour front-to-side crash I showed you in March, a nail-like fastener was exposed and punctured the side of the impacted Fury, as it does pedestrians, we suspect. In this $870 crash, another fender fastener was exposed, and came loose. Imagine that imbedded in the leg of a bicyclist or in the head of a child pedestrian. This was an injury type and cause documented with photographs by me in the hearing before the Senate Commerce Committee on April 25, 1968,[3] and to which I referred in my March 10, 1971, testimony in this continuing hearing.

(Film: 1971 AMC Ambassador DPL four door. Estimated repair cost, $1,206.98. Side, front damage views.)

Dr. HADDON. Now the last of the sedans, the Ambassador. Again, radiator damage as in this model's earlier barrier crash tests. This came within 47 cents of tying the Ford Galaxie as the highest repair cost estimate. It dropped its drive shaft, as well as suffering front end damage, including one headlight punched out and another plucked out and left hanging, as you will see in a minute.

(Film: 1971 Volkswagen Super Beetle two-door. Estimated repair cost, $615.20.)

Dr. HADDON. And now the four little cars again. This Volkswagen had the lowest estimated repair cost of the 12 models tested in these 15-mile-per-hour low-speed collisions—$615—still an inexcusably high amount of damage. It should be zero.

(Film: 1971 Chevrolet Vega two-door. Estimated repair cost $785.60.)

---

[1] "Motor's Crash Estimating Guide," November 1970, vol. 2, No. 11, p. 278.
[2] Buick 1971 model press conference, Sept. 23, 1970, transcript, p. 14.
[3] Overseas National Airways, obtained from Watergate Travel Agency, Washington, D.C.

Dr. HADDON. Notice on this Vega not only the massive damage to the pointed nose, but, as you could see by that puff of escaping steam, radiator damage. Also, something you can't see, under the hood the fuel cannister in the emissions control unit split open, a possible fire hazard, even at this low speed of impact. Total damage, $785.

(Film: 1971 Ford Pinto two-door. Estimated repair cost, $816.34.)

Dr. HADDON. Needless massive damage again, guaranteed by the pointed lip on the front end. Total damage, $816.

(Film: 1971 AMC Gremlin two-door. Estimated repair cost, $830.06.)

Dr. HADDON. The last of the small cars, the Gremlin, and another broken radiator, $830—the highest repair cost estimate in the small car class.

(Film: 1971 Pontiac Firebird two door. Estimated repair cost, $1,142.45. Bumper, windshield, and roof closeups.)

Dr. HADDON. Again, the "amazing," so-called, Endura bumper.[1] Enough money to buy a Washington family of four a London holiday at the Royal Kensington Hotel for 8 days, including air fare.[2] "Amazing" damage to the bumper itself, to the windshield because of the windshield bracket again, and even damage as far back as the rear of the roof, believe it or not.

(Film: 1971 Buick Skylark, two door. Estimated repair cost, $1,025.80. Radiator leakage, broken support and frame closeups.)

Dr. HADDON. Again, the beaklike front end, another of those many designs that insure corresponding markets for crash parts, not to mention damage to pedestrians as we talked about in March. Over $1,000. More radiator damage. Note also the transmission support member which came loose, and here, the frame itself buckled.

(Film: 1971 Mercury Montego, two door. Estimated repair cost, $821.90. Front end closeups.)

Dr. HADDON. The Mercury Montego—notice the hood flying open, which would block a driver's view if he tried to maintain control and direction. Total damage, $821. And the snout is mashed beyond recognition—that needless snout.

(Film: 1971 Plymouth Satellite, two door. Estimated repair cost, $729.45.)

Dr. HADDON. And now the last of the 15-mile-per-hour crashes, with the Plymouth Satellite, and the so-called "heavy loop bumper" its maker boasts about, suffering radiator damage. You can see it there, dribbling under the car. Also, what you can't see as a result of this $729 crash, a broken transmission housing extension under the car. There is no reason why any of this damage had to occur. With properly designed energy managing front ends, all of the tests you have seen today could well have resulted in zero damage.

Dr. HADDON. As you know, the Department of Transportation recently issued an "exterior protection standard"[3] protecting a limited number of safety related items on passenger cars in only 5-mile-per-hour-front-end-barrier collisions and, even more remarkable, only 2.5-mile-per-hour-rear-end-barrier collisions beginning September 1, 1972—that is, with the 1973 model year.

---

[1] "*Pure Pontiac!*", Pontiac Motor Division, General Motors Corp.; Automotive News, January 11, 1971.

[2] Overseas National Airways, obtained from Watergate Travel Agency, Washington, D.C.

[3] FMVSS No. 215, "Exterior Protection—Passenger Cars."

of the repair estimates in the 10-mile-per-hour crash tests, damage—including damage to the radiator, seen dribbling here—is still inexcusable in such crashes at this low-jogging speed.

(Film: 15 m.p.h. front-end barrier crash tests. Football scenes. 1971 Chevrolet Impala four door. Estimated repair cost, $1,170.50.)

Dr. HADDON. And now, the tests at 15-miles-per-hour, a speed at which football players regularly collide, usually without damage. On the Chevrolet Impala, massive damage as you can see, much more than we grew accustomed to seeing in the 1970 tests; $1,170, and again, the windshield bracket broke the windshield, which cost $14[illegible] to replace. I note if this windshield had been tinted and with a built-in antenna, it would have cost $191.50 to replace.[1]

(Film: 1971 Ford Galaxie 500 four door. Estimated repair cost $1,207.45. Front end, side, and windshield closeups.)

Dr. HADDON. This family Ford registered the highest repair cost estimate of all the 15-mile-per-hour crash tests—over $1,200—more than enough to fly two Washington couples round-trip to the French Riviera, all expenses paid, including 8 days and 7 nights at the Park Hotel in Nice.[2] Here the cowl and firewall buckled and broke the windshield.

(Film: 1971 Plymouth Fury I four door. Estimated repair cost $870.65. Front end views, fastener lodged in barrier.)

Dr. HADDON. Again, the Fury. On the lower right of the screen, notice the big chunk of shrapnel—the fender extension—flying off. Separately, you may remember that in the 10-mile-per-hour front-to-side crash I showed you in March, a nail-like fastener was exposed and punctured the side of the impacted Fury, as it does pedestrians, we suspect. In this $870 crash, another fender fastener was exposed, and came loose. Imagine that imbedded in the leg of a bicyclist or in the head of a child pedestrian. This was an injury type and cause documented with photographs by me in the hearing before the Senate Commerce Committee on April 25, 1968,[3] and to which I referred in my March 10, 1971, testimony in this continuing hearing.

(Film: 1971 AMC Ambassador DPL four door. Estimated repair cost, $1,206.98. Side, front damage views.)

Dr. HADDON. Now the last of the sedans, the Ambassador. Again, radiator damage as in this model's earlier barrier crash tests. This came within 47 cents of tying the Ford Galaxie as the highest repair cost estimate. It dropped its drive shaft, as well as suffering front end damage, including one headlight punched out and another plucked out and left hanging, as you will see in a minute.

(Film: 1971 Volkswagen Super Beetle two-door. Estimated repair cost, $615.20.)

Dr. HADDON. And now the four little cars again. This Volkswagen had the lowest estimated repair cost of the 12 models tested in these 15-mile-per-hour low-speed collisions—$615—still an inexcusable high amount of damage. It should be zero.

(Film: 1971 Chevrolet Vega two-door. Estimated repair cost $785.60.)

---

[1] "Motor's Crash Estimating Guide," November 1970, vol. 2, No. 11, p. 278.
[2] Buick 1971 model press conference, Sept. 23, 1970, transcript, p. 14.
[3] Overseas National Airways, obtained from Watergate Travel Agency, Washington, D.C.

Dr. HADDON. Notice on this Vega not only the massive damage to the pointed nose, but, as you could see by that puff of escaping steam, radiator damage. Also, something you can't see, under the hood the fuel cannister in the emissions control unit split open, a possible fire hazard, even at this low speed of impact. Total damage, $785.

(Film: 1971 Ford Pinto two-door. Estimated repair cost, $816.34.)

Dr. HADDON. Needless massive damage again, guaranteed by the pointed lip on the front end. Total damage, $816.

(Film: 1971 AMC Gremlin two-door. Estimated repair cost, $830.06.)

Dr. HADDON. The last of the small cars, the Gremlin, and another broken radiator, $830—the highest repair cost estimate in the small car class.

(Film: 1971 Pontiac Firebird two door. Estimated repair cost, $1,142.45. Bumper, windshield, and roof closeups.)

Dr. HADDON. Again, the "amazing," so-called, Endura bumper.[1] Enough money to buy a Washington family of four a London holiday at the Royal Kensington Hotel for 8 days, including air fare.[2] "Amazing" damage to the bumper itself, to the windshield because of the windshield bracket again, and even damage as far back as the rear of the roof, believe it or not.

(Film: 1971 Buick Skylark, two door. Estimated repair cost, $1,025.80. Radiator leakage, broken support and frame closeups.)

Dr. HADDON. Again, the beaklike front end, another of those many designs that insure corresponding markets for crash parts, not to mention damage to pedestrians as we talked about in March. Over $1,000. More radiator damage. Note also the transmission support member which came loose, and here, the frame itself buckled.

(Film: 1971 Mercury Montego, two door. Estimated repair cost, $821.90. Front end closeups.)

Dr. HADDON. The Mercury Montego—notice the hood flying open, which would block a driver's view if he tried to maintain control and direction. Total damage, $821. And the snout is mashed beyond recognition—that needless snout.

(Film: 1971 Plymouth Satellite, two door. Estimated repair cost, $729.45.)

Dr. HADDON. And now the last of the 15-mile-per-hour crashes, with the Plymouth Satellite, and the so-called "heavy loop bumper" its maker boasts about, suffering radiator damage. You can see it there, dribbling under the car. Also, what you can't see as a result of this $729 crash, a broken transmission housing extension under the car. There is no reason why any of this damage had to occur. With properly designed energy managing front ends, all of the tests you have seen today could well have resulted in zero damage.

Dr. HADDON. As you know, the Department of Transportation recently issued an "exterior protection standard"[3] protecting a limited number of safety related items on passenger cars in only 5-mile-per-hour-front-end-barrier collisions and, even more remarkable, only 2.5-mile-per-hour-rear-end-barrier collisions beginning September 1, 1972—that is, with the 1973 model year.

---

[1] *"Pure Pontiac!"*, Pontiac Motor Division, General Motors Corp.; Automotive News, January 11, 1971.

[2] Overseas National Airways, obtained from Watergate Travel Agency, Washington, D.C.

[3] FMVSS No. 215, "Exterior Protection—Passenger Cars."

Beginning the succeeding year—on 1974 models—the standard requires that additional tests be conducted with a ridged-face pendulum weighing the same as the weight of the test vehicle—unloaded, which makes a much easier test—and the speed of the impacting pendulum in rear-end collisions is to be 4 miles per hour, which a standards engineer for the safety administration quite candidly stated is roughly equivalent to a barrier impact of 2.75 miles per hour.[1]

We analyzed the standard in considerable detail and published our analysis in the April 26 issue of our newsletter, Status Report,[2] which I have included as appendix A to this testimony.

When I appeared here 2 months ago, I addressed myself to claims by automobile manufacturer that about twice as many collisions involve front-end damage to automobiles as involve rear-end damage, and I demonstrated this claim is unfounded, based on an analysis of a representative sampling of both collision and liability insurance claim closures by one major insurance company. Therefore, that argument in favor of a weaker standard for rear bumpers, as you have well found to be the case with respect to all the other such arguments, is, in our view, specious on its face.

Now, in light of the standard issued by the Department of Transportation, we have sought to answer two additional questions:

1. Does the standard require any advance over the current sad state of manufacturing practice in the design and construction of automobile rear ends, or, are contemporary automobiles in fact generally already capable of meeting the standard?

2. Can the Department of Transportation standard be met in ways that continue to permit needless, wasteful levels of damage to automobiles in low speed collisions with the necessity for the American people to continue to pay for huge volumes of expensive crash parts the need for which is now designed into both old and new cars alike?

To answer these questions, we have now completed rear-into-barrier test crashes at 2.5-miles-per-hour for a selected group of 1971 model automobiles. The results of these tests at these incredibily low speeds is most interesting.

(The chart follows:)

---

[1] Caialuca, Alex, safety standards engineer, National Highway Traffic Safety Administration, Department of Transportation, in a press conference on issuance of Exterior Protection Standard No. 215, Apr. 14, 1971, Washington, D.C.

[2] Status Report, vol. No. 8, Apr. 26, 1971, Insurance Institute for Highway Safety.

1971 2.5 MPH CRASH TEST RESULTS
Insurance Institute for Highway Safety

1971 Models	Rear/Barrier
	Cost
Chevrolet Impala	$64.00
AMC Ambassador*	61.35
Mercedes 220	26.00
Ford Pinto	69.40
Dodge Colt	71.70

*1971 AMC Ambassador failed to meet the Department of Transportation's rear bumper standard for 1973 models because of a broken taillight lens.

Dr. HADDON. If we can have the film?

(The film followed:)

(Child toddling.)

Dr. HADDON. These 1971 cars were tested under the Department of Transportation 2.5-mile-per-hour rear end crash standard, which does not take effect until the 1973 model year.

All but one met the standard—and all suffered dollar damage.

(Film: 1971 Chevrolet Impala four door. Estimated repair cost, $64. Bumper corner close-up.)

Dr. HADDON. This car met the requirements of the 2.5-mile-per-hour rear bumper standard, which, I remind you, doesn't even go into effect until the 1973 model year. Still, $64 in damages. You can see how the bumper nestled into the cozily adjacent sheet metal to cause some of that damage.

(Film: 1971 AMC Ambassador DPL four door. Estimated repair cost, $61.35. Taillight close-up.)

Dr. HADDON. Now the American Motors Ambassador. This is the only car in these tests which failed to meet the standard because of a minor break on the left side of the red plastic lens of this taillight.

(Film: 1971 Mercedes 220. Estimated repair cost, $26.)

Dr. HADDON. This car did meet the standard for 1973 models. I think this clearly demonstrates that the state of the art is such that bumpers can easily protect cars from substantial damage at this toddler's speed.

(Film: 1971 Ford Pinto two door. Estimated repair cost, $69.40.)

Dr. HADDON. Another car that meets the 1973 standard already, the Ford Pinto. $69 in damage.

(Film: 1971 Dodge Colt two door. Estimated repair cost, $71.70.)

Dr. HADDON. And the last of the five tested at this toddler's pace, the new foreign-manufactured Dodge Colt. It, too, meets the 1973 standard. It is interesting to note that this bumper is made in three pieces, so only the $12 center section had to be replaced—at half the cost of the one-piece bumpers used on comparable domestic cars. Yet the choice of design by its manufacturer allowed $71 in damage.

Dr. HADDON. As you can see, the Department of Transportation has issued a standard for rear bumpers on 1973 model cars that is well within the State of auto manufacturing practice, and which thus may be expected to contribute little if anything to the objective of the legislation this committee is considering today; namely, to reduce the staggering, unnecessary property destruction levels we are witnessing daily in highway crashes because of poor automobile design—design which in related safety aspects is patently lacking in excellence in the interest of the American and, for that matter, other publics.

It has also occurred to us because of the extensive weakness of the standard that even had the standard specified a 5-mile-per-hour, rear-into-barrier crash, twice the speed of the new Federal standard, and which involves some physics four times the energy loads on the vehicle, many of the cars might have been able to meet its requirements, since it specifies only that the trunk latch remain—and I am quoting from the standard itself—"operable in the normal manner," that taillights not be cracked or have their visibility impaired, that fuel systems not have—and I am quoting again—"leaks or constricted fluid passages and that all sealing devices and caps . . . be operable in the normal manner," and that exhaust systems "have no constrictions or open joints." [1]

As you can see, enormous amounts of damage can be suffered by a car that still meets these specifications, and the same can hold for both pedestrians and occupants. For example, there is no requirement even that the car itself be capable of being driven away after its test crash.

To determine whether in fact cars already could meet the standard's requirements in 5-mile-per-hour, rear-into-barrier crashes, we examined some of the 1971 5-mile-per-hour barrier crash tests we showed you in March. We found a surprising number of cars which apparently do meet the standard, even at this doubled impact speed.

This next brief film shows you those 1971 cars which, in fact, could now meet a 5-mile-per-hour rear bumper standard, yet still incur needless, wasteful body damage.

(The film followed.)

Dr. HADDON. These are the six 1971 models which we found which met the standard even at 5-miles-per-hour, rear into barrier, and the estimated amounts of damage they sustained.

[1] FMVSS No. 215, "Exterior Protection—Passenger Cars."

1971 models:	Estimated repair cost
Plymouth Fury 1	$266.35
Plymouth Satellite	256.35
Pontiac Firebird	262.60
Buick Skylark	226.85
Mercury Montego	267.35
Mercedes 220	194.50

We then examined last year's 5-mile-per-hour, rear-into-barrier crash tests and found that even six of the 12 1970 model cars could have met a 5-mile-per-hour rear bumper standard, as written.

1970 models:	Estimated repair cost
Toyota Corona	$69.30
Ford Maverick	204.75
American Hornet	193.85
Ford Mustang	147.05
Plymouth Barracuda	197.10
American Javelin	132.40

All of these, again, meet the same requirements that would pass the 2.5-miles-per-hour standard for rear end into barrier in 1973, and meet the requirements at twice that speed.

We even found two of the four 1969 sedans we tested 2 years ago which apparently met the 1973 model year standard requirements even at a doubled speed of 5-miles-per-hour:

1969 models:	Estimated repair cost
Ford Galaxie 500	$173.70
Plymouth Fury 1	134.40

(End of film.)

Dr. HADDON. Gentlemen, the sad fact is, as these films show, that the requirements of the recently issued so-called rear bumper standard of the Department of Transportation—the barrier standard, that is, which won't even take effect until the 1973 model year—are so weak that damage prone cars with their eggshell exteriors have for some years been able not only to meet, but to far exceed the requirements. The standard is so unresponsive to the needs of the American public that it permits all of the dollar loss we have seen in these films of the cars that comply with it in 2.5-and even 5-mile-per-hour, rear-into-barrier tests.

The Federal rear-end barrier standard will not, even more than 2 years from now, protect the public's pocket from continuing to be picked by delicate cosmetic design and the resultant forced replacement parts purchases. The public should be warned that the rear-end low-speed crash damageability problem has not been effectively mitigated by the Department of Transportation's standard effective for 1973 model cars—although it perhaps has been swept under the rug—because the standard represents no real advance over current and past cars, and at least for some models actually would sanction a large step backward from their present crashworthiness capabilities.

It should come as no surprise since the Department of Transportation lacks the authority to set standards to reduce or eliminate such waste. We believe the legislative history of the National Traffic and Motor Vehicle Safety Act of 1966 is clear: It expressly forbids such standards.[1]

[1] Committee report on Traffic and Motor Vehicle Safety Act of 1966, Senate Committee on Commerce, Calendar No. 1271, Rept. No. 1301, June 23, 1966.

Dr. HADDON. This car did meet the standard for 1973 models. I think this clearly demonstrates that the state of the art is such that bumpers can easily protect cars from substantial damage at this toddler's speed.

(Film: 1971 Ford Pinto two door. Estimated repair cost, $69.40.)

Dr. HADDON. Another car that meets the 1973 standard already, the Ford Pinto. $69 in damage.

(Film: 1971 Dodge Colt two door. Estimated repair cost, $71.70.)

Dr. HADDON. And the last of the five tested at this toddler's pace, the new foreign-manufactured Dodge Colt. It, too, meets the 1973 standard. It is interesting to note that this bumper is made in three pieces, so only the $12 center section had to be replaced—at half the cost of the one-piece bumpers used on comparable domestic cars. Yet the choice of design by its manufacturer allowed $71 in damage.

Dr. HADDON. As you can see, the Department of Transportation has issued a standard for rear bumpers on 1973 model cars that is well within the State of auto manufacturing practice, and which thus may be expected to contribute little if anything to the objective of the legislation this committee is considering today; namely, to reduce the staggering, unnecessary property destruction levels we are witnessing daily in highway crashes because of poor automobile design—design which in related safety aspects is patently lacking in excellence in the interest of the American and, for that matter, other publics.

It has also occurred to us because of the extensive weakness of the standard that even had the standard specified a 5-mile-per-hour, rear-into-barrier crash, twice the speed of the new Federal standard, and which involves some physics four times the energy loads on the vehicle, many of the cars might have been able to meet its requirements, since it specifies only that the trunk latch remain—and I am quoting from the standard itself—"operable in the normal manner," that taillights not be cracked or have their visibility impaired, that fuel systems not have—and I am quoting again—"leaks or constricted fluid passages and that all sealing devices and caps . . . be operable in the normal manner," and that exhaust systems "have no constrictions or open joints." [1]

As you can see, enormous amounts of damage can be suffered by a car that still meets these specifications, and the same can hold for both pedestrians and occupants. For example, there is no requirement even that the car itself be capable of being driven away after its test crash.

To determine whether in fact cars already could meet the standard's requirements in 5-mile-per-hour, rear-into-barrier crashes, we examined some of the 1971 5-mile-per-hour barrier crash tests we showed you in March. We found a surprising number of cars which apparently do meet the standard, even at this doubled impact speed.

This next brief film shows you those 1971 cars which, in fact, could now meet a 5-mile-per-hour rear bumper standard, yet still incur needless, wasteful body damage.

(The film followed.)

Dr. HADDON. These are the six 1971 models which we found which met the standard even at 5-miles-per-hour, rear into barrier, and the estimated amounts of damage they sustained.

[1] FMVSS No. 215, "Exterior Protection—Passenger Cars."

1971 models:	Estimated repair cost
Plymouth Fury 1	$206.35
Plymouth Satellite	256.35
Pontiac Firebird	262.60
Buick Skylark	226.85
Mercury Montego	267.35
Mercedes 220	194.50

We then examined last year's 5-mile-per-hour, rear-into-barrier crash tests and found that even six of the 12 1970 model cars could have met a 5-mile-per-hour rear bumper standard, as written.

1970 models:	Estimated repair cost
Toyota Corona	$69.30
Ford Maverick	204.75
American Hornet	193.85
Ford Mustang	147.05
Plymouth Barracuda	197.10
American Javelin	132.40

All of these, again, meet the same requirements that would pass the 2.5-miles-per-hour standard for rear end into barrier in 1973, and meet the requirements at twice that speed.

We even found two of the four 1969 sedans we tested 2 years ago which apparently met the 1973 model year standard requirements even at a doubled speed of 5-miles-per-hour:

1969 models:	Estimated repair cost
Ford Galaxie 500	$173.70
Plymouth Fury 1	134.40

(End of film.)

Dr. HADDON. Gentlemen, the sad fact is, as these films show, that the requirements of the recently issued so-called rear bumper standard of the Department of Transportation—the barrier standard, that is, which won't even take effect until the 1973 model year—are so weak that damage prone cars with their eggshell exteriors have for some years been able not only to meet, but to far exceed the requirements. The standard is so unresponsive to the needs of the American public that it permits all of the dollar loss we have seen in these films of the cars that comply with it in 2.5-and even 5-mile-per-hour, rear-into-barrier tests.

The Federal rear-end barrier standard will not, even more than 2 years from now, protect the public's pocket from continuing to be picked by delicate cosmetic design and the resultant forced replacement parts purchases. The public should be warned that the rear-end low-speed crash damageability problem has not been effectively mitigated by the Department of Transportation's standard effective for 1973 model cars—although it perhaps has been swept under the rug—because the standard represents no real advance over current and past cars, and at least for some models actually would sanction a large step backward from their present crashworthiness capabilities.

It should come as no surprise since the Department of Transportation lacks the authority to set standards to reduce or eliminate such waste. We believe the legislative history of the National Traffic and Motor Vehicle Safety Act of 1966 is clear: It expressly forbids such standards.[1]

[1] Committee report on Traffic and Motor Vehicle Safety Act of 1966, Senate Committee on Commerce, Calendar No. 1271, Rept. No. 1301, June 23, 1966.

I will be happy to answer any questions.

Thank you.

Senator HART. Thank you, Doctor.

As always, you have increased the discussion level through your testimony and these films.

When we, in this committee, spent a lot of time a few years ago writing this automobile safety law and establishing the National Highway Safety Bureau with authority to promulgate standards, nobody pinned medals on us, but I assumed subconsciously that we thought we were entitled to some medals.

How did we blow it?

What happened?

Why do we still see this procession of horrors?

Incidentally, among others to whom Ralph Nader paid his respects, was you. You had a hand in all this. You were the first Administrator.

What is wrong?

Why don't we produce?

Dr. HADDON. The answers to that, of course, are many and complex and I think well known to both the committee here today and to many members of the audience. But I think that first of all, the most devastating effect on that program, particularly in its early years, was the lack of an effective constituency in Washington, despite all of the publicity which the legislation had appropriately had, despite the seriousness of the continuing problem, particularly with respect to damage to people in and out of the car, but also as we have seen here, with respect to the many, many billions of dollars of unnecessary, designed-in economic waste.

I remember, time after time, coming to the appropriations process with no one else there to help us get the funds which had been authorized. As the record shows very clearly, the funds which were received by the program, its personnel allocations, were completely lacking in reaching even near to those that were authorized.

Even more than that, a recent action of Congress actually, forbade by statute, I believe in a rider to one of the appropriation bills—forbade the Department of Transportation from spending more—and I think I am accurate in remembering this—from spending more than $100,000 toward the development of the test facility which is crucially needed, which had been authorized and described after intensive hearing considerations by this committee and the corresponding committee in the House to serve as the tool for the Department of Transportation to do its job.

I remember well, as has been mentioned on other occasions, toward the end of the Johnson administration the fact that we could only crash test some seven automobiles (with the funds that we had available to us and the resources we had available to us, using small, reasonably, competent, but not totally, private engineering firms. We had nowhere else to go, not within the huge Government with all of its military and other test facilities) in comparison that year with something in the vicinity of over 550 domestic and foreign make model combinations put on the road, for which we were given the responsibility for regulating and checking for compliance.

That is how far the facts have fallen short of the capacity, the wherewithal for performance.

I think in any consideration by this or any other committee or roup on the outside, it is absolutely imperative that this consumer rea, just like almost all the rest of them, for the first time in American istory, start getting the funding, and the support in and out of the ublic, by the Congress. It is absolutely essential, if the public interest s to be served in ways we already know how to do, but for which he country is not providing either the support or the wherewithal.

If I speak strongly on this issue, it is because as with this committee, have seen the process in operation, and it is not a pretty one.

Senator HART. For one, I am glad you did speak strongly. We seem chase around looking for villains in this act. Anybody in the Congress, before he sets off on that chase should recognize that he is probbly the No. 1 item on the list, then.

Yesterday we saw a film here that showed some of these popular—ne of these popular models crashing at 5-miles-an-hour and 7½-miles-n-hour headon with a bumper that had been put on by a father-son peration in Buffalo, and the crash produced no damage.

Later I rode in the vehicle at 5-miles-an-hour into a solid barrier, nd no damage.

Later in the day, the president of the National Automobile Dealers ssociation testified, and I asked him, I will have to paraphrase the uestion, I can't remember it—how many more cars would you sell if hey had had that bumper on it that we saw this morning, or would it elp and so on.

And his answer, which understandably was somewhat tentative, ould be interpreted as, I am not sure, but I don't think very many.

Now, what does that tell us about the problem when we talk about illains?

Dr. HADDON. Senator, it seems to me that we have enough problems in is area without looking for villains.

Senator HART. The tendency always is, and we fall into the trap in e framing or our questioning, I know.

All right, let's not suggest the buying public should be put on the list, hich clearly my question implied.

How do we get a level of outrage, if you will?

Dr. HADDON. My own view of that, Senator, is the process in which e are engaged here and which you are engaged throughout these hearigs as a committee and as a committee chairman, is one of the ways, nce no one else seems to be willing to give the facts to the American ublic.

I, personally, don't feel that the public has had a fair shake in any this, because who has told the public that their cars are just too elicate and by design, that they don't need to die even in high-speed ashes if they are properly packaged, as we know is scientifically posble and has been demonstrated now for 20 years by human volunteers n rocket sleds, and a variety of other situations in which they were ell packaged.

So, for myself, I think it is at least substantially sufficient to get the cts out in public and perhaps to counter the remarkable 50- or 70-ears-long propaganda barrage diverting from the actual issues of this eld coming both from the private sector and, in many cases, from govrnmental organizations.

I will be happy to answer any questions.

Thank you.

Senator HART. Thank you, Doctor.

As always, you have increased the discussion level through your testimony and these films.

When we, in this committee, spent a lot of time a few years ago writing this automobile safety law and establishing the National Highway Safety Bureau with authority to promulgate standards, nobody pinned medals on us, but I assumed subconsciously that we thought we were entitled to some medals.

How did we blow it?

What happened?

Why do we still see this procession of horrors?

Incidentally, among others to whom Ralph Nader paid his respects, was you. You had a hand in all this. You were the first Administrator.

What is wrong?

Why don't we produce?

Dr. HADDON. The answers to that, of course, are many and complex and I think well known to both the committee here today and to many members of the audience. But I think that first of all, the most devastating effect on that program, particularly in its early years, was the lack of an effective constituency in Washington, despite all of the publicity which the legislation had appropriately had, despite the seriousness of the continuing problem, particularly with respect to damage to people in and out of the car, but also as we have seen here, with respect to the many, many billions of dollars of unnecessary, designed-in economic waste.

I remember, time after time, coming to the appropriations process with no one else there to help us get the funds which had been authorized. As the record shows very clearly, the funds which were received by the program, its personnel allocations, were completely lacking in reaching even near to those that were authorized.

Even more than that, a recent action of Congress actually, forbade by statute, I believe in a rider to one of the appropriation bills—forbade the Department of Transportation from spending more—and I think I am accurate in remembering this—from spending more than $100,000 toward the development of the test facility which is crucially needed, which had been authorized and described after intensive hearing considerations by this committee and the corresponding committee in the House to serve as the tool for the Department of Transportation to do its job.

I remember well, as has been mentioned on other occasions, toward the end of the Johnson administration the fact that we could only crash test some seven automobiles (with the funds that we had available to us and the resources we had available to us, using small, reasonably, competent, but not totally, private engineering firms. We had nowhere else to go, not within the huge Government with all of its military and other test facilities) in comparison that year with something in the vicinity of over 550 domestic and foreign make model combinations put on the road, for which we were given the responsibility for regulating and checking for compliance.

That is how far the facts have fallen short of the capacity, the wherewithal for performance.

I think in any consideration by this or any other committee or group on the outside, it is absolutely imperative that this consumer area, just like almost all the rest of them, for the first time in American history, start getting the funding, and the support in and out of the public, by the Congress. It is absolutely essential, if the public interest is to be served in ways we already know how to do, but for which the country is not providing either the support or the wherewithal.

If I speak strongly on this issue, it is because as with this committee, I have seen the process in operation, and it is not a pretty one.

Senator HART. For one, I am glad you did speak strongly. We seem to chase around looking for villains in this act. Anybody in the Congress, before he sets off on that chase should recognize that he is probably the No. 1 item on the list, then.

Yesterday we saw a film here that showed some of these popular—one of these popular models crashing at 5-miles-an-hour and 7½-miles-an-hour headon with a bumper that had been put on by a father-son operation in Buffalo, and the crash produced no damage.

Later I rode in the vehicle at 5-miles-an-hour into a solid barrier, and no damage.

Later in the day, the president of the National Automobile Dealers Association testified, and I asked him, I will have to paraphrase the question, I can't remember it—how many more cars would you sell if they had had that bumper on it that we saw this morning, or would it help and so on.

And his answer, which understandably was somewhat tentative, could be interpreted as, I am not sure, but I don't think very many.

Now, what does that tell us about the problem when we talk about villains?

Dr. HADDON. Senator, it seems to me that we have enough problems in this area without looking for villains.

Senator HART. The tendency always is, and we fall into the trap in the framing or our questioning, I know.

All right, let's not suggest the buying public should be put on the list, which clearly my question implied.

How do we get a level of outrage, if you will?

Dr. HADDON. My own view of that, Senator, is the process in which we are engaged here and which you are engaged throughout these hearings as a committee and as a committee chairman, is one of the ways, since no one else seems to be willing to give the facts to the American public.

I, personally, don't feel that the public has had a fair shake in any of this, because who has told the public that their cars are just too delicate and by design, that they don't need to die even in high-speed crashes if they are properly packaged, as we know is scientifically possible and has been demonstrated now for 20 years by human volunteers on rocket sleds, and a variety of other situations in which they were well packaged.

So, for myself, I think it is at least substantially sufficient to get the facts out in public and perhaps to counter the remarkable 50- or 70-years-long propaganda barrage diverting from the actual issues of this field coming both from the private sector and, in many cases, from governmental organizations.

There has been a confusion, if I may, between the causes of crashes analogous to the causes of the Post Office Department dropping a teacup being shipped through, say, in Parcel Post on the one hand, and what you can do to reduce the losses, which is a very different matter, indeed.

In the case of the Post Office, putting a package around the teacup so that the anticipated abuse—dropping, inadvertency, whatever—prevents the loss to the maximum possible extent, which is what we do in everyday life when it comes to sending Aunt Minnie a package which we have not done for either people or property for now some 70 years in this burgeoning loss problem.

So, I think we have to talk concepts, I think we have to talk facts, and I believe that this committee, as I think you do also, and the other members, has an important role to play in seeing to it that there is an umpiring process which has some teeth in it and does what it is supposed to do, which is clearly not the case at present for a variety of reasons.

Senator HART. When you talk about contributing to an understanding and an awareness, you and the Institute and the film have probably done more than any other to dramatize it for us. Here you have demonstrated today, if I understand it correctly, that the bumper standards the Department's bumper standards that go into effect on the 197 model judged in light of its property loss reduction characteristics is abominable.

It apparently, and I would ask you to correct me if I am wrong it apparently designs out nothing in terms of the delicateness of the vehicle. And I know the argument is made that the law that we wrote does not bear on crash damage that is safety unrelated, but what kind of standard is it when you judge it purely as a safety standard

I ask that because yesterday we heard some suggestions that the standard could actually increase harm to the public because it sets no limit for the coefficient of restitution.

How do you evaluate that?

Dr. HADDON. Senator Hart, I would particularly like to emphasize as a preface to my response that, as I said earlier, I have no interest in identifying villains or in criticizing anyone in or out of Government as opposed to laying the facts on the line, and I am proud to say that there are in my old agency many superb, dedicated and exceptionally long working people, but who are laboring, as we discussed earlier, without adequate constituency and without adequate material resources.

But the facts are, in answer to your question, that that standard, at least in my opinion, and I think this is well supported by the hearing record, particularly from yesterday, that that standard is inept and potentially so dangerous that some of the approaches that may be used to meeting it would certainly increase human injury on a huge scale. Nor is this necessary, again as was clearly demonstrated yesterday.

The standard if properly written would in no way worsen the frequency or severity of human injury and applied to many present car configurations in my opinion could well contribute to reducing the injury burden. The submissions from the Taylors yesterday and the backup material which I read last night, the statement to the dock which they quoted by Professor Ezra, a professor of mechanical eng

neering, I think are eloquent statements that were on the record in the Federal docket long before that standard was issued and which, frankly in engineering terms, a freshman in a physics course could readily understand. It is that simple.

And yet these aspects of the problem in the issuing of a standard, remarkably justified as a safety standard, were totally ignored in the final document, and again I refer you to the record particularly from that of yesterday.

I think this is a tragic situation, it certainly doesn't speak to what this country should do in the face of any social problem, particularly one of this magnitude.

Senator HART. To make it very clear, that can be achieved if the will is there under the existing law?

Dr. HADDON. I would certainly think so, without any reference to property damage which I think all of us agree should take second place when necessary except as we have also commented it is not necessary in these low and moderate speed impacts.

Senator HART. I am glad in the presentation today you have added in the increased labor cost of 1971 models over 1970 models so as to remove any uncertainty that there has been, as far as repairability goes, an increase in the cost to the consumer for the front and rear end hit of the current model against the model showed us in the film a year ago.

I am not sure in your testimony you discussed the price of crash repair parts that are the follow-on items sold as a consequence of the repair. Have you any figures that would help us on this?

Dr. HADDON. Yes, as a matter of fact, a member of my staff handed me a note that happens to speak to this point which I didn't understand until I just reread it.

The overall average price increase for front and rear bumpers from 1970, at least for the four sedans tested that year, for 1970 moving to 1971 prices for those same parts, as of the moment, and I have no assurance that they won't continue to go up, is 11 percent. A large part of this increase is attributed to the cost increase of the Impala bumper, the front bumper. Dropping the Impala car, the average for the three remaining cars is 6 percent.

This is one of the reasons, among others, that we think a good deal of the staggering increases between the 2 years, with labor adjusted for (that I mentioned earlier in my prepared testimony) is due to increased delicateness rather than only to the also contributing inflation of crash part prices.

Senator HART. Senator Cook.

Senator COOK. Thank you, Mr. Chairman.

Dr. Haddon, do you look forward at the Institute to a program of testing front end barrier collisions at these speeds with the idea of safety of the passenger? In reading over the testimony from yesterday, Mr. Taylor, of Tayco Developments, testified that it is certainly possible for the manufacturers to comply with the DOT standards in regard to bumpers and still increase the possibility of death to the passengers in 10-mile-an-hour front-end collisions.

Dr. HADDON. That is completely correct.

Senator COOK. Would you expand on this really? Does your Institute intend to pursue this?

Dr. HADDON. We, as you know, have been in this business now for something under 2 years, concomitant with the restaffing and reorganization of the Institute which had been in existence for a decade earlier.

We are still getting off the ground, but from the earliest of my arrival 2 years ago, we have had very profound and primary interest in the question of reducing damage to people. I might say, and I don't mean to serve notice that we are watching nor to suggest that in the future product liability questions might hinge in a variety of arenas on this sort of question, but I think I should tell you that although we have not yet finished substantially analyzing our data, that particularly in this model year, in these crash tests, we have been instrumenting and recording the output from accelerometers within the passenger compartment, so that we will have base lines not only to compare between vehicles in this and future model years in terms of the extent to which the forces reaching the passenger compartment are decreased by appropriate excellence of design, and there are some indications, I gather, that there is a good deal of variation between models right now, but also so that should anyone be, in my opinion, so unresponsive to the public need and fundamentally unintelligent in the kind of world in which we operate as to put on bumpers and other aspects of design which, though meeting the DOT or any other standard, any other inappropriate standard, should allow those forces to increase as opposed to decrease under the same test conditions or real world conditions, there will be a clear record as to what that deterioration designed-in in fact is.

I hope this will be taken to heart—I don't mean to pun on the chairman's name—and will be acted on as people know how to do, because the sad fact is that there are past examples in car design and manufacturing practice of the wrong route being taken, so to speak to save a buck, and literally a buck.

Senator COOK. Aren't we in another aspect of this really only scratching the surface, because there is no law, for instance, and I think maybe this is a field that may well be considered, there is no law that says once an individual buys an automobile that he is compelled to leave that automobile the way it is. I make reference to many cars I see on the highway that have gone through a backyard design change, many of which have had bumpers removed, many of which have had the rear ends raised about another foot or so up in the air with new spring designs that are, I suspect, perfectly legal. We have seen on the road many Volkswagens that have had the frame taken off and new frames placed on them with no concept of the potential dangers that the individual has caused not only to himself but to the traveling public.

Do you think this is a field that has to be looked into very seriously, the field of whether an individual, once he buys a car, can totally and completely change that vehicle without any regard for safety standards?

Do you think this is something that the safety inspection facilities should require as a part of their rules and regulations?

Dr. HADDON. Your point, Mr. Cook, is an excellent one. I would myself think of it as insuring that we go at this whole problem with the larger questions of reducing highway losses of all varieties and

of smoothing the operation of this private transportation system, literally, as a system in the sense that that term is so widely used these days.

I think it is imperative that State requirements or from whatever source, requirements for the operation of vehicles be integrated with the requirements issued for the new vehicles.

If I may, I would like to give you a couple of quick examples. I recently was in the city of San Diego, I was spending a long night riding around with one of their patrolmen trained to detect, and he was very good at it, trained to detect drunken drivers.

In the course of the evening, he, of course, saw other things for which he stopped cars.

Several of these occasions involved cars with one headlight out. I asked him in passing, I said is there any law anywhere that you know of, including in this city, that requires a motorist to keep the side marker light, which is required by Federal standards—these lights that enable you to see a car on an unlighted road coming in from the side, required by standards that we issued several years ago, and preceded responsibly by some manufacturers at their own initiative—is there any requirement that people keep these functioning? He said no it had never occurred to him.

There was never such a law in California or there. I think we have to integrate this, and there is a good deal of information incidentally in a congressionally mandated document concerned with the safety of vehicles in use which was prepared some 3 years ago by the National Highway Safety Bureau and which I recommend to anyone here.

The second example it seems to me is closer to what you mentioned, namely, that for all practical purposes in most States even with inspection programs, and I am not addressing the question of whether or not there should be inspection programs, but if there is you would think they ought to operate in a way likely to produce the results. Yet many States, for example, don't even require in their inspections that the tires have tread.

At least one State I have in mind I believe has no such requirement. This makes no logical sense whatsoever. So, I agree with your point.

Senator COOK. It seems to me, relative to your dialog with the chairman, in particular the idea of who should be indicted and then your theory that we are really not looking for villains, that the buying public really looks at price and style, and this is what the industry has acclimated him to.

I can give you a very good example. I was riding with three students the other day from Duke University down at Raleigh, and it was very obvious there were sirens in the area, you could hear them everywhere. The ambulance came up to a major intersection, all four entrances into that intersection, it was tremendously wide, and I guess the ambulance got down to 5 or 6, maybe 10-miles-an-hour, because it had to go through a red light and make a right-hand turn, and a great big Cadillac with all windows up and probably a stereo playing away at the convenience of the driver, must have skidded I don't know how many feet one way and then another way, because he had no knowledge of this oncoming emergency vehicle.

I could see by the lips of the driver in the Cadillac that unbeknownst to the driver of the ambulance, he was getting one good cussing out.

It just seems to me that we sell convenience and we sell comfort, and we sell price, and we sell style, but we do not sell safety, and there has never been any effort to sell safety. Don't you agree with this?

Dr. HADDON. I think that is correct. I think we have had one of the many examples and evidence of this which, though they seem to pop out some years and then under pressure disappear for awhile, seem to always keep coming back.

So, one wonders just what view of the public interest is behind this. The example being as I look down the list of the cars, some of the cars we showed you today, we see nice, aggressive, hostile names, not to mention others such as the Fury and the Firebird and other things which are just readymade to indoctrinate the American public with the notion of expressing themselves violently on the highways.

Senator COOK. As a matter of fact, I heard an ad this morning that said there is a new small compact car out, it is great, and everybody loves it so much that they now pick up all the hitchhikers and every thing else, and another which says it goes so great, it zips on so well going through toll stations that the owner hasn't paid a toll in months.

I would suspect that the only item that is really being sold is speed. There is no idea of safety, and I don't think there has ever been any idea of safety.

I might relate to you another ad which irritated me lately from one of the major manufacturers. It is heard on radio, and says, "this is your national driver hearing test." It is national in respect to one division of General Motors, I suspect, but I don't think it is national to anybody else.

I think we all agree that this is totally and completely false advertising. Some of it is even advertising that actually encourages one to think that he might be able to violate the law if he gets a particular automobile.

I get back to the idea, and I think this deals with the other aspect of our hearings, that if the fellow who has the same manufacturer's automobile seven, eight, nine or 10 times, and who is totally and completely satisfied, and this doesn't mean that he hasn't had accidents, because he has. But his insurance company has paid for those, and he considered those totally and completely someone else's fault, and he did not at any time consider those to be a defect of the automobile. He continues to buy the same type of automobile every time, and every time he trades it in he goes back to the same dealer and buys the same type of car.

I think what we find is we have an industry that has convinced the buying public that it is satisfied with style, that it is satisfied with price, and it is satisfied with performance as long as those things that occur to the automobile are not its fault and that someone else pays for it.

Dr. HADDON. I couldn't agree more, and if I may, I would like to note that Mr. James Kemper, president of the Kemper Group of Insurance Co.'s, who I see is on your witness list shortly, has been responsible for what I think is an excellent move, as has at least one other insurance company, namely, petitioning or filing in the relevant docket of the Department of Transportation a statement urging that the top speeds of vehicles be designed downward to the maximum legal speed in the country, because there are huge discrepancies b

tween the braking capability and the night lighting capability and other aspects of vehicles as they are now being designed and their ability to go off scale on the speedometer, and the scale that by design—and there are air pollution implications here and many others, including terms of raw materials—is typically around 120- or 140-miles-an-hour for many cars.

I have never quite understood the peculiar perverted logic by which we permit this discrepancy on our roads, particularly a discrepancy in which the top speeds are such that we cannot with vehicles of any reasonable size safely package the people who inevitably by the tens of thousands each day crash on them.

If I may note quickly that recently the Washington Post commented in a superb editorial of a few weeks ago that recently in Detroit, an appropriate place but you could find an example in any city of the country and over most rural areas in a period of time, there was an accident, so-called, in which I believe someone going at an estimated speed of 108-miles-per-hour went right through and over a median divider—itself not properly designed and archaic—and landed on top of a car coming the other way and crushed the car roof, not being able to withstand this either, and why should it at 100 and many more miles an hour, crushed everybody in the car, I think killing them and the people in the original car.

Who is responsible for this kind of a "performance"? Again I am not interested in villains, but I think there should be some very fundamental soul searching around as to moral responsibility, not just on Sunday morning in church, for putting these missiles on the highway.

Senator COOK. What you are really saying is it is absolutely idiotic to have a speedometer on an automobile that reads 110, 120, or 140 miles an hour?

Dr. HADDON. And the car that can do it off the race track. I have no problem whatsoever with appropriately sanctioned and controlled off-street racing. If one wanted to do that, I think that you can make a good case for letting them.

To mix that with the concourse of affairs in a civilized country makes no sense whatsoever.

Senator COOK. I couldn't agree with you more.

Senator HART. I don't want to belabor it looking for villains either, but you cannot discuss this thing in a fashion that makes sense without an implication saying somebody should be honest enough to acknowledge—probably the speaker is the first one—someone isn't doing right.

Conversely, someone is doing wrong; the whole kit and caboodle of us are in that boat. The hard truth is automobiles and their use simply have to be compatible with the environment we now find ourselves in, just as the use of guns now has to be made compatible.

My God, we kill more people with cars than we do with guns. To the point of spotting the redesigned VW or the unsprung racer or whatever and all the other cars, the 1966 Federal legislation required the Department of Transportation to issue vehicle-in-use standards, and we still haven't got those standards, have we?

Dr. HADDON. Mr. Hart, although late, that was proceeding well, the last that I was personally closely involved in it—"proceeding well" is an overstatement; there was almost no staff available to work

on it, but at least it was moving. I cannot speak and I feel I should not speak as to its subsequent history when I am personally not familiar with them.

Senator COOK. Could I interject right now?

Senator HART. Yes.

Senator COOK. Have you been able to test far more automobiles in a private capacity than you were able to test when you were head of the agency of the Federal Government?

Dr. HADDON. Yes, by a multiple of several tens.

Senator COOK. I think we may have found one villain.

Dr. HADDON. On the other hand, I think it is fair to say that we are not covering as many aspects of the vehicle standards—and they run to hundreds of items—as the Federal standards require.

So, the two are not completely comparable. But one can at least look at key items with a relatively small budget, and I wish the Department of Transportation had the budget and the facility with which to do that—facility in both senses of the word.

Senator COOK. Is it true that even they cannot test all of the standards that they may have established?

Dr. HADDON. At least as of 2 or 3 years ago there in essence was no proper, no Federal facility available to the Federal Government for this process requiring, as I noted in passing earlier, that the Department has to go out and contract with people who have less than adequate resources to do the job.

This, of course, creates a huge imbalance between the manufacturers with their extensive testing facilities. I don't necessarily think the Federal Government should duplicate that, but it seems reasonable I think, that the balance should be somewhat redressed.

Senator COOK. In your statistics I notice that it might be conceivable that some automobile manufacturers look after their own but are not concerned about anybody else's. To enlighten you on that subject, the 1971 low-speed crash results, I notice that in the Pontiac Firebird 10-mile-per-hour front to rear and side, the damage to the Firebird is about, oh, five times less than the damage to the other automobile is that correct?

Dr. HADDON. Yes, it is; but I am quick to note there was considerable variation as that table shows and as we discussed in March for different kinds of cars in the distribution of the damage between the two vehicles.

Senator COOK. Also, in regard to the Mercury Montego, there is a tremendous discrepancy?

Dr. HADDON. That is correct.

Senator COOK. Thank you, Mr. Chairman.

Senator HART. I think as one of the keys to responding to some of the problems we have, we have the vehicle-in-use standards and the compulsory inspection program in S. 976 which will respond to some of the inadequacies that you have so vividly reminded us exist in this area.

Mr. Sutcliffe.

Mr. SUTCLIFFE. Dr. Haddon, you have mentioned the problem of funds for your compliance testing programs, for your testing to establish safety standards.

Dr. HADDON. You mean for the Government's program?

Mr. SUTCLIFFE. That is correct. For implementing the National Traffic and Motor Vehicle Safety Act of 1966. How much of the cost for those programs is involved in the purchasing of the vehicles to test? A sizable amount or an inconsequential amount?

Dr. HADDON. I don't think it would be inconsequential. I don't have any offhand guess or memory, if I ever knew. But if I gather the gist of what I think you are implying, it is an interesting angle.

Mr. SUTCLIFFE. I think we should pursue the interesting angle, because in hearings in 1969 addressed to the tire testing program, questions were posed about requiring manufacturers to supply these vehicles free of charge to the Government through a repayment procedure, the cost of the testing program then to be borne by the public which buys the automobiles and benefits from the testing.

This would be one way to assure the availability of vehicles to test, and it would increase the appropriations for the highway safety program. What is your reaction to that kind of a proposal?

Dr. HADDON. My reaction is that it seems unlikely that you would impose any financial burden to the manufacturers or in fact even add a penny or two if legitimately and fairly taken into the pricing of the vehicles, to the price to the consumer.

I would be very surprised if the American public would find reason to object to such provisions if in fact they were to be voted. It is personally an idea which I had never considered previously. I think our role in Government then, and for the people that are carrying that thankless burden now, would have been much eased in that area of the program if that had been the case.

Mr. SUTCLIFFE. Thank you.

Senator HART. Doctor, Senator Cook raised with you the question of cars that have speedometers that register 110- and 120-miles-per-hour, and you said yes, they can meet that speed. I can't recall the expression, but earlier in the hearings I asked a witness a somewhat similar question, and he explained that reserve power is a safety factor.

In other words, you get out of a jam by using speed instead of brakes. How do you respond to this?

Dr. HADDDON. Well, I respond as I think anyone that looks at these issues with a trace of humanity must, and with any familiarity with the issues, I think that it is quite easy to establish you should have no trouble in finding witnesses I think to establish this, that one does need reserve power, so-called, for certain kinds of situations, but at 140 miles an hour?

Senator HART. You mean you accept the argument that there is a need for reserve power, but it need not be twice the speed of the maximum road speed permitted?

Dr. HADDON. If someone is doing 80 miles an hour, why is he using reserve power to go to 140, or 90 as a matter of fact? In fact, the essence of reserve power at such speeds is contrary to the public interest and undoubtedly contributes to the same thing which I was describing from your own city of Detroit, with the car that went over the median divider.

Senator HART. So, if there was a uniform speed limit, given the variation in the topography of our country, I wouldn't argue that we prudently could fix it, but a percentage of speed above that could be regarded as appropriate reserve power.

Dr. HADDON. Or a speed limit set sufficiently below the maximum speed at which people should go such that when the reserve power was used they did not go above the maximum, which I think is a fairer way to do it.

Senator HART. I have a note here that comments on my reference to gun control. I am told that our mail runs overwhelmingly against any suggestion for speed controls.

Dr. HADDON. Mr. Hart, may I call your attention to the fact that the CBS, I believe it was, poll of about 4 years ago, which we would be happy to supply the results from for the record, showed that a slight majority of the public even at that time and even though the issue had been I believe calculatedly obfuscated in the public advertising media and elsewhere, were in favor, and it was a statistically representative polling of the sort we see in the Gallup and Harris polls, indicated a desire for precisely such speed control.

At the same time, there were vocal minorities who feel that they are some sort of supermen who should be allowed—and the Federal Bureau has files of such correspondence—they should be allowed on passing special tests to drive at any speed they want to or at any great speed.

I think that is asking for public privilege to create havoc that should not be given to anyone or for that matter to everyone.

Senator HART. Agreed.

Senator COOK. Doctor, hasn't there been a proposal that automobiles have a maximum speed—I may be all wrong about this—a maximum speed of 85, and that on reaching that speed the electrical system is triggered, and all of the lights on the automobile flash to indicate the maximum speed?

Dr. HADDON. Yes.

One wonders why the maximum speed can't be limited, period, as it can be done with entirely proper performance right up to within a mile or two or thereabouts of that speed. One does not need to have the old-fashioned spinning balls kind of governor which begins to affect it at much lower speeds.

Technology is many decades beyond that point.

Second of all, there is such a proposal out from what is now called by statute the National Highway Traffic Safety Administration calling for some such at 95 miles an hour, which as I noted earlier has been objected to by many including the Kemper Insurance Co., Nationwide, and I believe others, as well as other interests and the public.

I personally have trouble with the horn going off, because I recall that one has to look at modern ecological, modern environmental problems from many angles, including in terms of environmental noise levels, and I don't think that anyone that lives near or even within 2 or 3 miles of a highway that is used at high speeds at night or any other time of the day, when there are schools along these and what-have-you, should be subjected to the sound levels that that, in my opinion, wrong way to go would entail.

I don't think proper consideration has been given to this. As far as making the lights go, again, I think that may be desirable, but at a lower speed, but why let them go to that high speed on this gradualism basis that seems to be involved, in that they are talking about later lowering that down somewhat? Why not do what needs to be done and

get it done with and act like a mature civilized society instead of like one that is still fighting the frontier.

Senator COOK. It seems rather illogical to me to have imposed on all of us the fact that when we get out of the car without our keys a buzzer goes off, so we remove our keys so no one will steal our cars, yet we do nothing about speed to save our lives. Maybe we have looked at this the wrong way, from the standpoint of insurability.

It is far easier to see that my automobile isn't stolen than it is to see that I save my life. At the risk of being a demagog, and I hope I am not, I want to ask you in regard to this business of $100,000 for safety equipment, what would you estimate that it would cost for the Federal Government to establish a laboratory for the facilities required to adequately test automobiles?

Dr. HADDON. I believe that the original bill after very careful consideration authorized $3 million for the purpose of getting the planning done, the specifications, the general specifications drawn, and I would recommend to you the past records of this committee—this actual committee. I don't have an overall figure, but I do recall that when the report that was required by that same statute to be submitted to the Congress was in preparation, it got severely cut back at the several levels in Government which these things go through in competing in the same fish pail of public funds, a cutback by the Bureau of the Budget, and so forth.

I think the Congress and this committee should take a much closer look at this one and see what is entailed, and I think you should perhaps start by looking again at the legislative history and the report that was sent over, as weak as it was.

Senator COOK. I am afraid, Mr. Chairman, I must offer my demagogic comparison—if you saw "60 Minutes" last night, you saw a new torpedo that was designed to cost $75,000 apiece, which has now escalated to costing the Federal Government $600,000 apiece, and it is estimated that this program will not cost some $4 billion, and I think it is a rather meager comparison of $3 million to establish an adequate laboratory to test these programs.

Senator HART. Let's end on an encouraging note.

I am told that the Youth Advisory Council to the National Highway Traffic Safety Administration has recommended rigid speed limits; so, maybe we will be saved on this issue as in some others by the younger people.

Dr. HADDON. I understand in the discussions which led to that recommendation on the part of these I think responsible young men of the sort that we need more of in the country, in my opinion, and have quite a good supply already, that they gave a very hard time to the editor or some such of a prominent sportscar magazine and asked him, if I remember what was reported to me, and this could be checked, if his conscience didn't really bother him in pushing irresponsible behavior on our highways.

Senator HART. Doctor, as you sense, we would enjoy having you here for the balance of the day, but let me thank you for the time you have already given us and your associates as well.

My attention has been called to the fact that the Senate has put on a live quorum for which we must recess for 10 minutes.

Dr. HADDON. Thank you.

(Short recess.)

Senator HART. The committee will resume.

I would appreciate the next distinguished witness to be presented by our colleague from Kentucky.

Senator COOK. Thank you, Mr. Chairman.

I would like to present to the committee, Mr. Robert D. Preston, who is the commissioner of insurance for the Commonwealth. If you will come forward, Mr. Preston.

Mr. Preston is a graduate of the University of Kentucky Law School. He was an assistant attorney general under Bob Matthews who is a practicing attorney in Louisville now. He went from that position under Governor Breathitt to deputy commissioner of insurance, Mr. Chairman, and he became commissioner under a Democratic Governor in 1967 and was reappointed as insurance commissioner by a Republican Governor. So, I think that has to say a great deal for his qualifications. He is a member——

Senator HART. I was going to say that should be the subject for immediate inquiry by this committee.

Senator COOK. I think the inquiry would have to be based on qualifications, Mr. Chairman.

I would like to present to the committee the commissioner of insurance of the Commonwealth, Mr. Robert Preston.

Mr. Preston, it is nice to have you here.

Senator HART. Commissioner, it is nice to have you, and I am grateful to Senator Cook who made certain you were here.

STATEMENT OF HON. ROBERT D. PRESTON, COMMISSIONER OF INSURANCE, STATE OF KENTUCKY

Mr. PRESTON. Members of the committee and Senator, thank you for that introduction.

We do appreciate the opportunity to appear before you today on behalf of Kentucky, in order that you might be made aware of our problems and our desires insofar as proposed automobile insurance changes are concerned—I might say at this point insofar as federally mandated no-fault automobile insurance is concerned on an overall compulsory basis.

We hope you will be interested in our position. We feel Kentucky truly represents a cross section of this Nation. For years, our State has epitomized the extremes of gracious living and miserable existence. Depending upon your vantage point, you may think of Kentucky either as the julep cup on the front porch of the manor house or the Thermos of stale coffee in the black damp at the bottom of an Appalachian mine. The true picture of Kentucky lies somewhere between these extremes, with average people coping successfully with average problems.

As insurance commissioner, one must necessarily be observant of the entire spectrum. Most problems we deal with are average, yet we must be prepared for the exceptional. In our State we may very well be called upon to handle personal problems where one man needs as little as $1,000 insurance on his home while another needs $3½ million on his horse.

There may have been a day before the dawn of civilization when the inhabitants of this planet had a society that operated under a no-fault plan. There may have been a time when might made right and

no man was responsible for the wrongs that he did his fellow man. There may have been a time when every man was expected to be an island unto himself and to provide for his own security without thought of redress for the wrongs perpetrated against him by others; but if so, history does not record it. The recorded history of all societies demonstrates some degree of justice between individuals, no matter how limited or crude that justice may have been. I am sure that an eye for an eye and a tooth for a tooth was very unsatisfactory compensation to the victim who had been so wronged, but at least that law served notice to all members of society that each person was expected to be individually responsible for his actions.

Civilized man wants, needs, and demands a method of distributing the loss occasioned by personal catastrophe. He is not content to accept the "chance" distribution of loss imposed upon him by acts of other men. For that reason, our ancestors devised a distribution system called the common law.

This committee is well aware that the common law rests upon the principle that each individual member of society is responsible for his own acts. It shifts the cost of loss from the innocent primary victim to the person responsible for the loss. It depends upon a determination of fault which can be viewed as a matter of justice between individuals. The victim recovers as a matter of right, not because he is a case for public charity or part of a social problem stemming from sudden catastrophe. The common law requires full compensation or none at all, depending upon the question of fault.

In Kentucky our forefathers so reversed this principle of justice between individuals that they attempted to preserve it for posterity by providing in section 54 of our constitution: "The general assembly shall have no power to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property."

I might point out that the common law method of restitution for wrong is not limited to those committed upon the highway; it is applicable to torts committed by any person under any circumstance.

Because of the problems inherent in the unpredictability of daily life—because no man knows when, through momentary carelessness, he may wrong his neighbor—because it is impossible to determine in advance the monetary reparations one may be called upon to make when he does so, insurance came into being. The purpose of this business is to provide individual financial protection through the transfer and redistribution of risk. As a business, insurance must be prepared to provide this service either to those who are the primary victims of catastrophe, or to those upon whom the loss ultimately comes to rest in the event it is shifted according to the rules imposed by society.

Until the decade of the sixties, private insurance always responded in its proper framework as a support system to the administration of justice. Now, some say the concept of individual responsibility to one's fellow man is outmoded. Some believe we need a different system of justice for automobile accident victims; and some even advocate that justice itself between individuals be abolished, with each of us providing his own security. We are urged to abandon a system where insurance is a means to the end of justice, for one where insurance is the end of justice.

Senator HART. The committee will resume.

I would appreciate the next distinguished witness to be presented by our colleague from Kentucky.

Senator COOK. Thank you, Mr. Chairman.

I would like to present to the committee, Mr. Robert D. Preston, who is the commissioner of insurance for the Commonwealth. If you will come forward, Mr. Preston.

Mr. Preston is a graduate of the University of Kentucky Law School. He was an assistant attorney general under Bob Matthews who is a practicing attorney in Louisville now. He went from that position under Governor Breathitt to deputy commissioner of insurance, Mr. Chairman, and he became commissioner under a Democratic Governor in 1967 and was reappointed as insurance commissioner by a Republican Governor. So, I think that has to say a great deal for his qualifications. He is a member——

Senator HART. I was going to say that should be the subject for immediate inquiry by this committee.

Senator COOK. I think the inquiry would have to be based on qualifications, Mr. Chairman.

I would like to present to the committee the commissioner of insurance of the Commonwealth, Mr. Robert Preston.

Mr. Preston, it is nice to have you here.

Senator HART. Commissioner, it is nice to have you, and I am grateful to Senator Cook who made certain you were here.

STATEMENT OF HON. ROBERT D. PRESTON, COMMISSIONER OF INSURANCE, STATE OF KENTUCKY

Mr. PRESTON. Members of the committee and Senator, thank you for that introduction.

We do appreciate the opportunity to appear before you today on behalf of Kentucky, in order that you might be made aware of our problems and our desires insofar as proposed automobile insurance changes are concerned—I might say at this point insofar as federally mandated no-fault automobile insurance is concerned on an overall compulsory basis.

We hope you will be interested in our position. We feel Kentucky truly represents a cross section of this Nation. For years, our State has epitomized the extremes of gracious living and miserable existence. Depending upon your vantage point, you may think of Kentucky either as the julep cup on the front porch of the manor house or the Thermos of stale coffee in the black damp at the bottom of an Appalachian mine. The true picture of Kentucky lies somewhere between these extremes, with average people coping successfully with average problems.

As insurance commissioner, one must necessarily be observant of the entire spectrum. Most problems we deal with are average, yet we must be prepared for the exceptional. In our State we may very well be called upon to handle personal problems where one man needs as little as $1,000 insurance on his home while another needs $3½ million on his horse.

There may have been a day before the dawn of civilization when the inhabitants of this planet had a society that operated under a no-fault plan. There may have been a time when might made right and

no man was responsible for the wrongs that he did his fellow man. There may have been a time when every man was expected to be an island unto himself and to provide for his own security without thought of redress for the wrongs perpetrated against him by others; but if so, history does not record it. The recorded history of all societies demonstrates some degree of justice between individuals, no matter how limited or crude that justice may have been. I am sure that an eye for an eye and a tooth for a tooth was very unsatisfactory compensation to the victim who had been so wronged, but at least that law served notice to all members of society that each person was expected to be individually responsible for his actions.

Civilized man wants, needs, and demands a method of distributing the loss occasioned by personal catastrophe. He is not content to accept the "chance" distribution of loss imposed upon him by acts of other men. For that reason, our ancestors devised a distribution system called the common law.

This committee is well aware that the common law rests upon the principle that each individual member of society is responsible for his own acts. It shifts the cost of loss from the innocent primary victim to the person responsible for the loss. It depends upon a determination of fault which can be viewed as a matter of justice between individuals. The victim recovers as a matter of right, not because he is a case for public charity or part of a social problem stemming from sudden catastrophe. The common law requires full compensation or none at all, depending upon the question of fault.

In Kentucky our forefathers so reversed this principle of justice between individuals that they attempted to preserve it for posterity by providing in section 54 of our constitution: "The general assembly shall have no power to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property."

I might point out that the common law method of restitution for wrong is not limited to those committed upon the highway; it is applicable to torts committed by any person under any circumstance.

Because of the problems inherent in the unpredictability of daily life—because no man knows when, through momentary carelessness, he may wrong his neighbor—because it is impossible to determine in advance the monetary reparations one may be called upon to make when he does so, insurance came into being. The purpose of this business is to provide individual financial protection through the transfer and redistribution of risk. As a business, insurance must be prepared to provide this service either to those who are the primary victims of catastrophe, or to those upon whom the loss ultimately comes to rest in the event it is shifted according to the rules imposed by society.

Until the decade of the sixties, private insurance always responded in its proper framework as a support system to the administration of justice. Now, some say the concept of individual responsibility to one's fellow man is outmoded. Some believe we need a different system of justice for automobile accident victims; and some even advocate that justice itself between individuals be abolished, with each of us providing his own security. We are urged to abandon a system where insurance is a means to the end of justice, for one where insurance is the end of justice.

The fact that problems exist in the insurance industry, and particularly the automobile insurance industry, cannot be denied. We are also certain that improvements can be made, both as to substance and procedures, in the administration of justice. We doubt seriously that the tort system is responsible for the ills which beset either the insurance industry or the court system.

There are those who contend that change must be made because judicial determination of fault takes too long. We doubt that a seriously injured innocent accident victim prefers speedy injustice to slow justice. While we are willing to agree that delay is a valid complaint when made by members of the public, it is a spurious argument when advanced by those members of the insurance industry who have at their control the promptness with which their individual company will determine liability and pay its claims.

In Kentucky we conducted a survey of litigation during the year 1970. All but two of our 120 counties responded.

We have an exhibit of that response.

Automobile negligence litigation—insured and uninsured—comprised only 22.9 percent of the workload of our courts. The average time between filling an action and judicial determination is only 11 months.

That the insurance industry has problems is indicated by the fact that 62.3 percent of the agents in our State had difficulty in placing policies on one or more lines of insurance during 1970. Of those lines causing difficulty, private passenger automobile physical damage, one which would be absolutely essential coverage under the no-fault approach, led the list at 50.9 percent. Private passenger automobile liability coverage was a close second at 43.9 percent.

This exhibit is also attached.

That change in insurance, as an institution, will come, cannot be doubted. Changing automobile tort law, however, will not improve public acceptance. The first steps on the long road back must be taken by companies within the present framework. The average insured has neither time nor inclination to engage in our intramural contests. He doesn't understand, or, for that matter, care to understand, the intricacies of the insurance business. He does, however, want to be treated as a person and he wants to identify with a professional who has the time to protect his interests. This has been indicated by the fact that only 39.6 percent of all Kentuckians polled believed the insurance industry as a whole treats the public fairly. Yet, at the same time, 71.9 percent are completely satisfied with their own insurance representative.

I might say at this point it is reminiscent somewhat of the position in which our country's physicians found themselves a few years ago when the practice of medicine as an institution was being severely criticized and yet each person felt that he had the one ideal family doctor.

Nine out of every 10 Kentuckians believe every person who drives a car should be required to have insurance to protect others. Eighty-two and four-tenths percent want rates approved by the State in advance of sale; 84.4 percent believe benefits due should be guaranteed.

We made specific polls regarding questions which deal with the fault concept. Of those expressing any opinion on a yes or no basis, only

2.1 percent believed that they or their insurance company should have to pay their own damages when struck by a drunken driver.

Only 15 percent believed that their insurance company should pay damages to a person injured in an automobile accident which was not their fault.

Twenty-eight and three-tenths percent indicated they would be willing to relinquish their claim for pain and suffering in order to immediately collect medical expenses, lost wages, and other out-of-pocket expense.

Ninety-seven and one-tenth percent of this group believed that very driver should assume full responsibility for his or her operation of a motor vehicle. Yet, Kentuckians are charitable. Even after such an overwhelming vote against the no-fault concept, 49.8 percent believed that all persons should be compensated for medical expense, regardless of who caused the accident.

It may be of interest to the committee that of this group polled, 39.7 percent had at one time or another been injured in or received damages from an automobile accident. Of those who had been involved in such an accident, 56.4 percent subjectively believed they had been adequately compensated for their injuries, while 43.6 percent subjectively felt they had not. We consider this to be a good batting average for a system which in theory provides compensation only for those free from fault.

Complaints against insurers do occur. It has been said that insureds would have less difficulty if their insurance were on a first-party basis. The Kentucky Department of Insurance maintains a Consumer Protection Section. During 1970, this section received 4,654 complaints and recovered for Kentuckians a total of $445,218.38 in benefits which had been theretofore denied. Of the total complaints, 3,563 were first-party complaints by an insured against his own company. In other words, of all complaints received, 76.6 percent were first-party complaints, while only 23.4 percent were against an insurance carrier other than his own. Even in the automobile field—if that is taken separately—67 percent of the complaints filed were by policyholders against their own insurance company; 33 percent were against a company with which they did not contract.

Fault or no-fault—misunderstandings and disputes will occur. Although we believe common courtesy would solve many insurance problems, we recognize that courtesy stems from a personality trait which cannot be legislated.

If the insurance industry is to regain the trust and understanding of its policyholders, it must treat them as individual, valued clients. It must show the insuring public, individually and collectively, that it cares. It can expect sympathetic understanding only when it is willing to give it.

Enactment at the Federal level of any revision of the tort system or the insurance system is doomed to failure if public satisfaction is the goal.

We are hopeful, however, that a more acceptable solution can be found at the State level through the marriage of accident insurance and liability insurance covering all victims—voluntarily purchased by automobile owners through a negative election process. Such a plan can be based upon the broadening of medical coverage to include liqui-

dated special damage such as wage loss, or at least a reasonable percentage thereof, and extended to cover pedestrians struck by the vehicle as well as occupants of the car. We should increase the limits of the coverage to realistic amounts and require that the coverage be included as a part of every liability policy.

To reduce premium costs and prevent multiple recovery for the same items, a coordination of benefits clause might be considered. A liability offset and subrogation clause, if included, would reduce required premium even further. This would permit special damages to be paid as incurred on a first-party basis, while reserving to every accident victim his full legal rights of recovery for all pain and suffering, permanent disability, or other unliquidated damage.

It would not matter if the system were not uniformly enacted in every State. Because much tort litigation is induced by a need to pressure a third-party carrier into a one-shot settlement, this plan would reduce litigation. The urgent need to fill the economic loss void is relieved. The fact that the injured party has assurance of being made "whole" or nearly whole by his own carrier will decrease or eliminate intensity with which he pursues a doubtful third-party claim. We are pleased to say that some carriers are ahead of us on this project, and have already developed pilot endorsements. Only the development of a proper rate is needed to have a plan which could be implemented quickly in every State without major legislation.

Before public acceptance of any automobile insurance program will reach satisfactory levels, that industry must recognize two basic merchandising principles.

First of all, it must recognize the consumers' paycheck purchasing power.

We are members of a hand-to-mouth commercial society—we live off each other—each of us can pay for the services of others only as and in relation to the manner in which we ourselves are paid. The public resents paying a year in advance of the delivery of service, and insurance is the only major industry to require it. The public especially resents having to finance undelivered service in order to obtain an affordable payment structure. We wonder how many people would smoke, if the tobacco industry required its customers to pay for a year's supply of cigarettes in advance, while it delivered the product a pack each day?

It is not really the cost of liability insurance which concerns the public—in our State it is less than the cost of a pack of cigarettes each day—it is the fact that it must be paid totally in advance or financed at high rates of interest. Even the staid old life insurance business has learned to avoid consumer reaction by having its product priced on convenient payment plans. It is time the property and casualty business also learned of this lesson.

The second factor that must be recognized is that of product packaging power.

We must learn that proper packaging of basic coverage under identifiable trade names can lead to better consumer understanding at the time of sale and hence bring about greater customer satisfaction at the time of loss. Too many options simply confuse the public, increase cost to the industry, and reduce the credibility of available data for the regulator.

Neither of these basic factors requires Federal legislation. Our system of individual justice need not be disturbed. There is no compelling reason to step backward into our prehistoric past.

I am available for any questions that the committee may have.

Senator COOK. Thank you, Mr. Chairman.

Mr. Preston, let me go over some of this because I get the feeling that in the survey you took the statistics are extremely important. In your statement for instance:

> Nine out of every ten Kentuckians believe that every person who drives a car should be required to have insurance to protect others. Eighty-two and four-tenths percent want rates approved by the State in advance of sale; and 84.4 percent believe benefits due should be guaranteed.

Mr. PRESTON. Those are three different polled questions.

Senator COOK. Let's go to the 84.4 percent who think that benefits due should be guaranteed. We have had statistics out of the Department of Transportation study that estimate that in the lower categories—$1,000 or less in claims that have been filed quite frequently settlements are made by insurance companies that are greater than the actual amount of loss, and the real loss occurs in the categories of $25,000 or more, when in fact, a substantially lesser amount of money is recovered, than the benefits that are really due.

Do you think that a continuation of this system is justified?

Mr. PRESTON. The question, Senator, really doesn't deal with benefits being guaranteed on that basis. The poll question dealt with doing something about insolvent insurance companies.

Senator COOK. I see.

Mr. PRESTON. It really dealt with the guaranteeing of the benefits once the benefits had been determined according to whatever rules, either by a policy provision in the case of first-party or by a court of justice in the case of a third-party. Once the loss had been identified, the public felt that regardless of what happened to the insurance company, those benefits should be guaranteed.

I will apologize to the committee for writing this statement in such fashion that in trying to be as brief as possible I may have permitted you to fall into one of my bad habits, namely, getting most of our exercise from jumping to conclusions.

Senator COOK. Let's get to the next paragraph:

> We made specific polls regarding questions which deal with the fault concept. Of those expressing any opinion on a yes or no basis, only 2.1 percent believed that they or their insurance company should have to pay their own damages when struck by a drunken driver.

Let me add one addendum to that, because I think we should have said "as long as that driver had insurance."

Don't you think the driving public would feel that way? In other words, I think we have to add something to it. They don't feel that their company ought to pay for their damages, but I don't think they would quite feel that way in a poll if you put in there that the other driver had no insurance.

Mr. PRESTON. Of course, if you are speaking of the first-party insurance which they now have, Senator, naturally, they feel no qualms about collecting from their insurance company and assigning to the company their right of action against the other driver now. They have no qualms about collecting from those with whom they have contracted.

Senator COOK. I don't disagree with you, but I think on the first day we heard Mr. Austin, who was secretary of state for the State of Michigan. They have a pool up there, and I think the statistics were that 83,000 individuals were in the assigned risk pool last year, and 260,000 drivers in Michigan did not even attempt to get into the assigned risk pool, but elected to pay the $35 at the time they got their license so they were protected under the fund. He said it wasn't an insurance fund, but he did say that the amount of recovery made on the basis of subrogation was only about 10 to 12 percent.

Now, aren't we really saying that maybe we could do this under the present system, but one of the problems of the rate structure of the insurance industry is that in many of these instances they can't make any recovery and they have to build this factor into the rate structure?

Mr. PRESTON. Oh, the factor is built into the rate structure, no question, Senator, for the number of accidents in which uninsured vehicles are involved on the other side, and of course, the likelihood of the uninsured vehicle being responsible for the accident. I think possibly one of the problems in any poll of this type—I thought you were getting to it this morning when you were talking about we could sell price but we couldn't sell safety—is that everyone thinks that he is a good driver; he resents having anything against his driving record and as far as he is concerned an accident is never going to happen to him. That is one of the problems in selling safety. Each member of the public fails to recognize that he might be the one who is going to have an accident.

Senator COOK. They may not consciously believe this, but subconsciously by the poll that you took they may have expressed it in a different way.

You say:

> Even after such an overwhelming vote against the no-fault concept, 49.8 percent believed that all persons should be compensated for medical expense, regardless of who caused the accident.

It seems to me you can't have it both ways.

Mr. PRESTON. Let's face it, Senator, we ran this poll; we had seen so many polls that had been weighted to obtain the results on this feature that the particular pollster wanted that we loaded our poll both ways, and this is the way it came out. In other words, while they weren't willing to say that they wanted a no-fault concept as far as lost wages other items of special damage were concerned. On this one issue it did run to 48 percent.

Now, the highest it got in any other category was 28 percent. So, that is the public, Senator, and we have——

Senator COOK. I have a notion that they subconsciously may be saying what they don't like, but maybe the other way around they feel that everything ought to be guaranteed so that the cost is not borne by them. This is kind of parallel to the American trial lawyers, when Mr. Marcus said, we should leave the insurance industry the way it is, and that the real way to solve this problem is to have a national health insurance program and increase social security.

It seems to me he was saying we should put this burden on somebody else, but let's not put it in his field.

Mr. PRESTON. Of course, I believe at the present time, in most cases, most automobile liability policies do carry with them, or have at least

available to the insured, medical expense benefits. The public has over the past 10 or 15 years come to expect to collect on a voluntary basis—I mean after all, this is no-fault coverage in its purest form, the automobile medical expense—and they have come to expect it for medical items but they apparently are just not ready to go further than the medical expense.

Senator COOK. In other words, you think they are willing to take their chances in tort liability as far as pain and suffering is concerned, but not as far as physical injury is concerned?

Mr. PRESTON. I think they are willing to take their chances as far as physical injury is concerned on unliquidated damage—the damage that really is difficult to determine, where you can't look at a bill.

We can determine medical expense, we won't say whether all the items are proper or not, but at least we can look at a hospital bill or a medical bill and know exactly what the amount of damage is. Pain and suffering—who is to measure it? Is there a better system than 12 men on a jury? I honestly don't know, Senator.

Senator COOK. You use the phrase "negative election process." Give us your definition of what you mean by negative election process.

Mr. PRESTON. Senator, in several instances where a social problem is concerned and we have been faced with section 54 of the Kentucky constitution, we have used the negative election process. A typical example is workmen's compensation where when you go to work for an employer, you automatically receive the workmen's compensation benefits unless you file with him your election to operate under the common law system. That is permitted under the law.

In other words, you can reject what is available. What we are saying here is we would require every insurance company to provide this amount of no-fault insurance, if you want to call it that, in every insurance policy, but the individual buying the policy just as he now can on uninsured motorist coverage, could reject it for himself if he wanted to.

Senator COOK. We got into this discussion, Mr. Chairman, the first day with Mr. McGowan who is president of the National Association of Mutual Insurance Agents, and I asked him then if he was discussing something in the nature of an election such as the workmen's compensation system whereby you were covered and the benefits were established as a matter of law, and those benefits are periodically changed pursuant to the economic conditions of the country, and that you could take or you could elect not to take.

In other words, it would be an either/or situation, the no-fault would prevail, or the individual could elect under the terms of his policy to pursue a tort liability action. He pretty well indicated that he thought that this might be a system to impose.

Mr. PRESTON. The system which we are proposing in fact does not touch the tort system. It would leave that alone, your right to go to court even from the first dollar. We are not imposing what Massachusetts has or a $500 deductible, but even for the first dollar the right would be there. However, we are proposing that each coverage have that amount of no-fault coverage which you would receive voluntarily at the time of loss.

We think the fact that you get this would prevent a great deal of litigation in those doubtful cases; in other words, you would have

received your medical expense and your lost wages—your out-of-pocket expense, if you will. You will not have been compensated for pain and suffering. If you should go to court and if the court should find—let's say you receive $5,000 under the payments on the no-fault coverage, which is included in the policy by law, if then you go to court and you receive a judgment of $10,000, you could collect an additional $5,000.

Senator COOK. There is a section in this bill that provides that no State shall impose any legislation requiring the purchase of insurance over and above the standards or the limits prescribed by this act. Under your proposal that would be a very bad section of the bill, would it not?

Mr. PRESTON. Yes, it would.

Senator COOK. In other words, on the basis that a limited amount of no-fault would be authorized under a policy, then it would be required of either a Federal program or a respective State program, that additional coverage over and above that limited liability or that limited coverage would be available to the purchasing public?

Mr. PRESTON. Yes, of course I hope that I have made it clear here today that we would seek to do this at the State level rather than at the Federal level, Senator. Our reason for being here is to voice our opposition to a federally mandated program which would, in effect, usurp the authority of the State in this field.

Senator COOK. Let me ask one other question. In regard to even a limited no-fault under yours and my discussion, would it be mandatory, by your theories of such a program, that property damage be included in such a program?

Mr. PRESTON. Senator, as I pointed out, one of our big problems today is physical damage coverage. Now, of course, under a plan which does not include property damage in the basic policy, physical damage to the automobile is going to be essential, because let's face it, most automobiles are bought on a payment plan, and the fellow who holds the mortgage on the car is going to require insurance to see that it is paid for. I do not know what would happen if property damage liability suddenly went out the window and there were none. I suspect it would immensely drive up the rates on the other portion of the policy because I think people would then start looking for any way that they could collect additional payments under the bodily injury section to offset some of the economic loss they have sustained on the automobile.

Senator COOK. One last question, Mr. Chairman.

You talk about product packaging power, and I am wondering whether you would comment on the mass merchandising of automobile insurance, and whether there is a necessity for legislation in this field.

Mr. PRESTON. I am going to jump to conclusions here, Senator. I assume you mean group policies and the bill that is pending before this committee for consideration now.

Senator COOK. Yes.

Mr. PRESTON. Of course, actually I think we have a good mass merchandising system in the insurance business, very frankly. The American agency system has worked very well for many years in my opinion.

But the question of group policies, of course, in the collision field is the one about which there has been a great deal of controversy. There is quite a difference between the group in the health field and in the automobile field, because one of the very things that makes a young man who reaches his 18th birthday and is dropped from his father's group health policy desirable is his youth. He can go out and buy health coverage at rates probably lower than his father can buy health coverage. But that very thing, his youth, makes him an undesirable risk on the automobile side.

At the present time a good many of these young men are able to obtain any coverage at all simply because they are able to use their father's economic force, if you will, to obtain insurance for themselves. In other words, if he is cut loose from his father at age 18 he can buy life insurance, he can buy health insurance at advantageous rates, but let that same young man be cut loose from his father's economic power and he cannot buy automobile insurance at any rate probably, because that very thing that makes him acceptable on one side of the fence makes him unacceptable on the other side of the fence.

In our State, Senator, we have nothing in our law that prevents group automobile policies—true group automobile policies. We do have a law which prevents fictitious grouping of persons. But the true group policy can be written, except the insurance companies cannot put one together.

The real problem lies in the fact that they have so subdivided rate classifications that it is impossible to find a group of people that are homogeneous. In other words, we cannot find a group of people that are all 1–A risk or all 2–C risk or whatever the case may be.

It is just not possible to write a true group plan in my estimation and it certainly would not remain a true group very long if it were written on an employer basis. There is nothing in our law, however, that prevents payroll deduction plans, and we do not even have to go to a fictitious group to have these. The coverage can be sold individually through the family circle, individually rated, and yet if the employer is willing, the premium can be collected on a monthly basis and remitted to the insurance company.

I really see nothing in this bill which would be advantageous. If there are States—and I know of none—which prohibit true grouping or which would prohibit the collection of premiums on a system more advantageous to the public, then that should be handled, I think, on an individual basis, but I cannot see how that bill would assist any Kentuckian in any respect.

Senator COOK. One last question, Mr. Chairman.

Of all the insurance written in the Commonwealth of Kentucky, what percentage would you say acquired insurance through the assigned risk pool?

Mr. PRESTON. That is a little difficult, Senator. I can give you total vehicles; I can even give you numbers in the assigned risk plan. I can supply that information. Last year, and that is the year our statistics were based on, we had roughly 22,000 persons buying insurance through the assigned risk plan. That has gone up this last year, and bear in mind, Senator, we had to use an older date in order to make it match with the data available from the insurance industry, that has gone up in the past year to 27,000.

received your medical expense and your lost wages—your out-of-pocket expense, if you will. You will not have been compensated for pain and suffering. If you should go to court and if the court should find—let's say you receive $5,000 under the payments on the no-fault coverage, which is included in the policy by law, if then you go to court and you receive a judgment of $10,000, you could collect an additional $5,000.

Senator COOK. There is a section in this bill that provides that no State shall impose any legislation requiring the purchase of insurance over and above the standards or the limits prescribed by this act. Under your proposal that would be a very bad section of the bill, would it not?

Mr. PRESTON. Yes, it would.

Senator COOK. In other words, on the basis that a limited amount of no-fault would be authorized under a policy, then it would be required of either a Federal program or a respective State program, that additional coverage over and above that limited liability or that limited coverage would be available to the purchasing public?

Mr. PRESTON. Yes, of course I hope that I have made it clear here today that we would seek to do this at the State level rather than at the Federal level, Senator. Our reason for being here is to voice our opposition to a federally mandated program which would, in effect, usurp the authority of the State in this field.

Senator COOK. Let me ask one other question. In regard to even a limited no-fault under yours and my discussion, would it be mandatory, by your theories of such a program, that property damage be included in such a program?

Mr. PRESTON. Senator, as I pointed out, one of our big problems today is physical damage coverage. Now, of course, under a plan which does not include property damage in the basic policy, physical damage to the automobile is going to be essential, because let's face it, most automobiles are bought on a payment plan, and the fellow who holds the mortgage on the car is going to require insurance to see that it is paid for. I do not know what would happen if property damage liability suddenly went out the window and there were none. I suspect it would immensely drive up the rates on the other portion of the policy because I think people would then start looking for any way that they could collect additional payments under the bodily injury section to offset some of the economic loss they have sustained on the automobile.

Senator COOK. One last question, Mr. Chairman.

You talk about product packaging power, and I am wondering whether you would comment on the mass merchandising of automobile insurance, and whether there is a necessity for legislation in this field.

Mr. PRESTON. I am going to jump to conclusions here, Senator. I assume you mean group policies and the bill that is pending before this committee for consideration now.

Senator COOK. Yes.

Mr. PRESTON. Of course, actually I think we have a good mass merchandising system in the insurance business, very frankly. The American agency system has worked very well for many years in my opinion.

But the question of group policies, of course, in the collision field is the one about which there has been a great deal of controversy. There is quite a difference between the group in the health field and in the automobile field, because one of the very things that makes a young man who reaches his 18th birthday and is dropped from his father's group health policy desirable is his youth. He can go out and buy health coverage at rates probably lower than his father can buy health coverage. But that very thing, his youth, makes him an undesirable risk on the automobile side.

At the present time a good many of these young men are able to obtain any coverage at all simply because they are able to use their father's economic force, if you will, to obtain insurance for themselves. In other words, if he is cut loose from his father at age 18 he can buy life insurance, he can buy health insurance at advantageous rates, but let that same young man be cut loose from his father's economic power and he cannot buy automobile insurance at any rate probably, because that very thing that makes him acceptable on one side of the fence makes him unacceptable on the other side of the fence.

In our State, Senator, we have nothing in our law that prevents group automobile policies—true group automobile policies. We do have a law which prevents fictitious grouping of persons. But the true group policy can be written, except the insurance companies cannot put one together.

The real problem lies in the fact that they have so subdivided rate classifications that it is impossible to find a group of people that are homogeneous. In other words, we cannot find a group of people that are all 1–A risk or all 2–C risk or whatever the case may be.

It is just not possible to write a true group plan in my estimation and it certainly would not remain a true group very long if it were written on an employer basis. There is nothing in our law, however, that prevents payroll deduction plans, and we do not even have to go to a fictitious group to have these. The coverage can be sold individually through the family circle, individually rated, and yet if the employer is willing, the premium can be collected on a monthly basis and remitted to the insurance company.

I really see nothing in this bill which would be advantageous. If there are States—and I know of none—which prohibit true grouping or which would prohibit the collection of premiums on a system more advantageous to the public, then that should be handled, I think, on an individual basis, but I cannot see how that bill would assist any Kentuckian in any respect.

Senator COOK. One last question, Mr. Chairman.

Of all the insurance written in the Commonwealth of Kentucky, what percentage would you say acquired insurance through the assigned risk pool?

Mr. PRESTON. That is a little difficult, Senator. I can give you total vehicles; I can even give you numbers in the assigned risk plan. I can supply that information. Last year, and that is the year our statistics were based on, we had roughly 22,000 persons buying insurance through the assigned risk plan. That has gone up this last year, and bear in mind, Senator, we had to use an older date in order to make it match with the data available from the insurance industry, that has gone up in the past year to 27,000.

During the last year we licensed 100,000 new people. Right today we have 1,658,520 licensed drivers in the Commonwealth, and we have a total private passenger and farm truck combination—I can just give you private passenger automobiles. We have 1,369,204 private passenger cars. We had, as I say, in this survey 22,000 assigned risk policies which has during the last year worked its way up to 27,000.

One point I would like to inject here (it just ran around in my mind) if a Federal bill were passed, what are the problems inherent in the enforcement of it? Of course our financial responsibility law, in our State at least, is enforced by the State police. We have roughly 600 troopers assigned to this duty most of the time. Last year we revoked 1 percent of the drivers' licenses—16,000 drivers' licenses for violations of the present financial responsibility law.

Now, if insurance is federally mandated so that it becomes a crime to drive an automobile—a Federal crime to drive an automobile without that insurance, I wonder at what level and how we are going to enforce it. This was just one of the interesting points that was unresolved for me. I really could not anticipate that we were going to set the FBI to trying to enforce those drivers who operated illegally without the insurance required by Federal law.

Senator COOK. Thank you, Mr. Chairman.

Senator HART. I wish to thank you. I have followed with interest your discussion with Senator Cook. I am not going to ask you to comment on this, but you began your testimony by reminding us of certain historical evolutions in the common law which is about the way I would have written it, if I had not read the Department of Transportation study. Just one sentence out of the section discussing the history of the fault principle where they quote an academic this way might be appropriate:

> While the basing of liability on fault is no new thing, the concept of negligence as an independent ground of liability is quite modern and it succeeded a period in which liability for accidental harm was dominated by the trespass or strict liability principle.

Mr. PRESTON. If I may, I would even like to comment on that.

As I said, an eye for an eye and a tooth for a tooth was very meager compensation for the person who had suffered that injury, but at least it served notice on society that each person would be held responsible for his acts. Now, I grant you that the concept of tort liability between individuals, that is, individual justice is—in fact, I tried to do some research on it for this, but I really could not run it down, but I would judge 1500, 1600, in that neighborhood, and we might well conclude that that is fairly modern as far as history goes. But even before that time our society as a whole extracted a penalty for one who injured another.

In other words, it became a crime, and I think it is when we got to the point where we realized that the state, the sovereign, should not be deciding all of these individual rights between people that the tort liability system was born. Of course, as you well know, it has changed tremendously and continues to change from year to year.

Senator HART. I guess the point, then, we should make clear on the record is it was not the change that occurred when we dumped the law of the Medes and the Persians, it was a change we made in light of the experience of the industrial revolution.

Mr. PRESTON. I would guess.

Senator COOK. Mr. Chairman.

Senator HART. Yes.

Senator COOK. The one thing that bothers me about what you are saying, which in essence is that somebody is more careful because he knows he is responsible—I have the feeling the reason somebody is conceivably more careful is not out of the fear of tort liability, but the fear of insurance cancellation. What I really think we have done is not to enlarge the field of tort liability as such, but, in essence, to make the field of tort liability secondary to the field of insurability. I think you and I know as lawyers, that if someone comes in and says he has a whale of a good case, we are not the most enthusiastic lawyers in the world if he tells us that the person he wishes to file suit against has no insurance, owns nothing, maybe owns his automobile which is in hock to the bank, and we are not really enthusiastic advocates to pursue that case.

Mr. PRESTON. Well, of course, Senator, as I said, everyone feels that they are a good risk, that an accident is not going to occur to them. I think the effect that it has, it is not that it will make anyone a better driver because he necessarily knows he will be held responsible, but he knows that if he is held responsible he is going to have to pay and he is going to have to pay higher insurance premiums because of it.

Senator COOK. If he can get insured.

Mr. PRESTON. Yes: but now when we talk about the fault and the no-fault concept, if I am a bad driver, if I have a drinking habit or anything that makes me a bad risk, I can, if I will improve myself, become acceptable and I can reduce my rate thereby, but if we go to the other system where the rate is based not on my likelihood of causing an accident but on my simple likelihood of being in an accident, of sustaining damage from others, how on earth do I improve you? Do you see what I mean?

In other words, I can improve myself and reduce my rate under the liability system, but under a no-fault system where the only thing that affects me is my likelihood of being run into by others, how do I improve the others to reduce my rate?

Senator COOK. My only answer to that would seem to be that 16,000 people in the State of Kentucky last year found that if they were not willing to improve they had their licenses revoked and they were no longer on the highways. I do not think even a no-fault program or a partial no-fault program is going to eliminate the feasibility of 16,000 motorists losing their licenses because of their accident proneness as well as because of the fact of legal liability or legal responsibility.

Mr. PRESTON. No, Senator, the 16,000 were insurance violators, financial responsibility law violations.

Senator COOK. Oh, I do not disagree with that. But the point is that no program is going to be written that is going to say regardless of what you do or regardless of your actions, you are always going to be covered and you are always going to be a qualified driver, because I think we would have to admit there is no way in the world that such a system could prevail under those circumstances.

Mr. PRESTON. That is true. Of course, a good many plans for revamping the insurance business, if you will, suggest that everyone have

plain insurance so long as he has a valid driver's license. I can buy that principle if we tack to that a strict enforcement by the State of who is entitled to a valid driver's license.

Senator COOK. Thank you, Mr. Chairman.

Senator HART. Mr. Sutcliffe.

Mr. SUTCLIFFE. For the record, let me understand your hypothetical of the 18-year-old driver who is able to obtain at a rather reduced rate from his father medical coverage to take care of any accident or injury that befalls him but is unable to obtain, as I understand you, a medical benefits coverage in the automobile insurance market, was that the example that you gave?

Mr. PRESTON. No; what I was giving was, many employers in many States will have group plans—Blue Cross-Blue Shield insurance, if you will—they are family plans. The father carries his children on his policy until they reach in most States 18 years of age, at which time they have to become individually insured. In other words, the group plan just simply drops them off, because, in our state at least. age 18 is considered adult, he is on his own. When he is dropped off of his father's Blue Cross and Blue Shield plan he can go out and buy coverage at a rate more favorable than what his father has been paying.

Mr. SUTCLIFFE. In the health insurance field?

Mr. PRESTON. In the health insurance field, because he is younger, he falls into a classification that has the least likelihood to need medical services. The same thing that makes him an acceptable risk as an individual in the health field makes him unacceptable in the automobile field; namely; his youth.

Mr. SUTCLIFFE. How many youthful drivers in the Commonwealth of Kentucky are in assigned risk plans? Are quite a few of them put in assigned risk plans? I do need exact figures; is there a sizable number?

Mr. PRESTON. No; in fact, there will be fewer young people in the assigned risk plan in Kentucky than, say, older, what would normally be 1-A risks, in other words, people who are perhaps over 65 and so forth, because of the peculiarities of our system. The companies get a credit for taking a youthful driver on a voluntary basis. For every youthful driver they take, that is one assigned risk they do not have to take.

So this has motivated them to the point where really only those youthful drivers who are pretty rambunctious are in the assigned risk plan.

Mr. SUTCLIFFE. If they are in the assigned risk plan, in your State, are they eligible for first-party coverages or only eligible for liability coverages as in many States?

Mr. PRESTON. They are eligible for medical as a first-party coverage We do not have a physical damage assignment plan.

Mr. SUTCLIFFE. And they are eligible for medical on a first-party basis?

Mr. PRESTON. Yes; they are eligible for such first-party coverages as medical, uninsured motorists and related coverages that go hand in hand with liability coverages. The one thing they are not entitled to under our assignment plan is collision and comprehensive coverage.

Mr. SUTCLIFFE. Are many of these youthful drivers in high risk companies?

Mr. PRESTON. No; actually the 2–C rate has proven fairly adequate in our State. That is not where the imbalance is claimed to be. The imbalance is claimed to be on the 1–A risk. Now, this is something we have been checking into. We have had no real problem with the 2–C class as such since we went to the system where the company gets credit for assigned risk everytime it writes one of those. In other words, it can write it on a voluntary basis and that is one assigned risk it does not have to take.

Of course, we do have our examples of young men who pay terrible rates because perhaps they have a car which is financed—they can get their liability insurance at the regular standard rates, but they may have a financed automobile that they are required to carry physical damage coverage on. We do not have a plan for that yet, and some of those companies are rather high. Of course the mortgagee requires that they carry that kind of insurance.

Mr. SUTCLIFFE. Perhaps you could explain to the committee and to me why the young man for his medical coverage under a hospitalization plan is given a favorable rate and as to medical benefits coverage under his automobile insurance policy may be given a less favorable rate as compared to someone in a higher age bracket. Does that differentiation exist? And, if so, on what actuarial basis would it be founded?

Mr. PRESTON. I do not believe it exists; at least not to any great degree. Medical coverage, of course, is one of the few coverages in connection with automobiles that is so cheap that we never have any problems as far as complaints about the rate there. Of course, as I recall, the medical rates are made in our State overall. I mean the State rate level is reached for the group as a whole. Actually on most companies' statistical plans medical is not even an identifiable, separate coverage.

Mr. SUTCLIFFE. So the only reason that the rates are different is because of the potential liability of these classes of drivers?

Mr. PRESTON. The propensity for accident, for causing accidents, and of course medical is not based on the likelihood of causing an accident, it is based on the likelihood of being in an accident.

Mr. SUTCLIFFE. To cause an accident without being in an accident is a rather difficult thing.

Mr. PRESTON. It happens.

Mr. SUTCLIFFE. But there would be no liability attached usually in that situation; would there?

Well, I do not want to pursue that. I appreciate the information you have provided the committee.

Mr. PRESTON. I just honestly cannot answer you as to the difference between the cost of medical insurance in a given situation, a young man versus an older driver.

Senator HART. Commissioner, thank you again for your willingness to help the committee. We are indebted to both you and to Senator Cook.

Mr. PRESTON. I wish to thank the committee for giving us the opportunity to at least present our views and make them a part of the record. If we can be of any assistance to the committee at any time in furnishing any statistical data that you might need that we have within our possession, we would be most happy to cooperate in every way possible.

Senator HART. Thank you.

Senator COOK. Thank you, Commissioner, very much.

(The exhibits follow:)

EXHIBIT NO. 1

DEPARTMENT OF INSURANCE SURVEY OF CIRCUIT COURT LITIGATIONS IN THE COMMONWEALTH

County	Number of suits filed, 1970	Number of suits, auto liability	Average time filed to trial (months)
Adair	174	6	3
Allen	114	6	8
Anderson	88	25	12
Ballard	89	15	12
Barren	445	36	9
Bath	93	3	12
Bell	389	8	12
Boone	512	100	12
Bourbon	103	16	18
Boyd	728	100	18
Boyle	307	20	3
Bracken	49	3	2
Breathitt	152	20	24
Breckinridge	118	4	24
Bullitt	400	100	18
Butler	106	7	6
Caldwell	67	20	24
Calloway	234	45	12
Campbell	360	108	10
Carlisle	29	2	18
Carroll	155	5	12
Carter	196	35	12
Casey [1]			
Christian	484	40	12
Clark	350	15	3
Clay	233	70	18
Clinton	73	7	9
Crittenden	97	4	24
Cumberland	36	1	3
Daviess	1,156	200	18
Edmonson	84	20	12
Elliott	52	5	12
Estill	117	10	12
Fayette	2,897	500	24
Fleming	66	6	8
Floyd	567	40	9
Franklin	673	50	12
Fulton [2]	132	40	12
Gallatin	37	5	24
Garrard	104	10	12
Grant	110	27	6
Graves	350	75	30
Grayson	246	150	60
Green	114	46	9
Greenup	363	27	2
Hancock	98	25	3
Hardin [3]	907	0	6
Harlan	360	108	10
Harrison	137	9	7
Hart [3]	199	0	6
Henderson	650	20	18
Henry	140	7	10
Hickman	76	12	12
Hopkins	471	20	18
Jackson	65	8	7
Jefferson	13,053	6,103	12
Jessamine	188	20	12
Johnson	246	27	12
Kenton [3]	1,493	0	24
Knott	205	25	5
Knox	300	100	12
Larue	173	26	12
Laurel	357	23	18
Lawrence	108	3	6
Lee	67	4	3
Leslie	140	10	12
Letcher	220	28	6
Lewis	101	5	4
Lincoln	163	52	12
Livington	76	11	10
Logan	273	14	12
Lyon [1]			
McCracken	813	126	4
McCreary	162	2	6
McLean	117	12	20
Madison	476	96	12
Magoffin	172	35	9
Marion	134	10	12
Marshall	225	76	12
Martin	88	4	18
Mason	176	14	6
Meade	135	29	8
Menifee [3]	53	0	6
Mercer	223	33	5
Metcalfe	60	5	18
Monroe	208	22	6
Montgomery	21	1	6
Morgan	83	6	6
Muhlenberg	65	15	8
Nelson	207	69	12
Nicholas [3]	41	0	6
Ohio	258	10	6
Oldham	177	24	8
Owen	94	9	11
Owsley	106	4	12
Pendleton	70	2	6
Perry	317	26	6
Pike	923	84	6
Powell	129	2	5
Pulaski	323	33	6
Robertson	30	1	6
Rockcastle	148	15	7
Rowan	179	15	8
Russell	98	9	6
Scott	254	52	12
Shelby	233	21	6
Simpson	162	6	12
Spencer	29	4	16
Taylor	190	14	5
Todd	90	3	6
Trigg	59	11	6
Trimble	50	12	6
Union	203	28	6
Warren	930	120	6
Washington	86	7	11
Wayne	114	10	12
Webster	216	18	14
Whitley	263	31	8
Wolfe	98	5	12
Woodford	181	21	9
Total (117 out of 120 counties reporting)	42,852	9,804	[4] 11

[1] Information unavailable at time of survey.
[2] Information received after percentage calculated, figures not included in total.
[3] Circuit clerk unable to furnish auto figure.
[4] Average.

Exhibit No. 2

SURVEY OF AGENCIES HAVING PROBLEMS IN PLACING PROPERTY AND CASUALTY COVERAGES

Of those surveyed in Kentucky, 62.3% had some problem; 37.7% had no problem.

Of those agents who had some difficulty with one or more lines of insurance, their problems were distributed as follows:

	Percent
Private passenger auto liability	43.9
Commercial auto liability	19.3
Private passenger auto physical damage	50.9
Commercial auto physical damage	12.3
General liability	11.4
Burglary	32.5
Homeowners	15.8
Fire insurance	35.1
Extended coverage	10.5
Commercial multiperil	9.6

Senator HART. Earlier today, Dr. Haddon several times mentioned a distinguished figure in the field of insurance in this country, Mr. James S. Kemper, Jr. I hope he heard the comment.

In any event, I will repeat it for the record as I welcome him as our next witness.

STATEMENT OF JAMES S. KEMPER, JR., PRESIDENT, KEMPER INSURANCE GROUP, CHICAGO, ILL.

Mr. KEMPER. Thank you, Senator.

I would like to first express my appreciation to the chairman for moving me up on the list of witnesses today.

I am particularly happy I was able to hear Dr. Haddon this morning. I have heard him before talking about the results of his research, and I would like to take this chance to say that I am proud of the fact that the organization that he heads is the Insurance Institute for Highway Safety.

There was some discussion after his testimony about the problem of funding Government research in this field, and I believe the members of this committee know that all of the research, the crash tests and the other activities of that institution are funded by the insurance companies writing automobile insurance in the United States.

I believe the current budget is $2½ million a year that is being spent for this and other purposes. Based on what has happened in the last couple of years, I am sure we are all going to be asked to approve a substantial budget increase next year when the time comes.

Senator HART. Maybe you will come down here and join us when we go to the Appropriations Committee to see if we can't as a Federal Government at least match what your industry apparently is trying to do.

Mr. KEMPER. I would be delighted to, and since you said that, Senator, I would digress a minute more.

EXHIBIT NO. 1

DEPARTMENT OF INSURANCE SURVEY OF CIRCUIT COURT LITIGATIONS IN THE COMMONWEALTH

County	Number of suits filed, 1970	Number of suits, auto liability	Average time filed to trial (months)
Adair	174	6	3
Allen	114	6	8
Anderson	88	25	12
Ballard	89	15	12
Barren	445	36	9
Bath	93	3	12
Bell	389	8	12
Boone	512	100	12
Bourbon	103	16	18
Boyd	728	100	18
Boyle	307	20	3
Bracken	49	3	2
Breathitt	152	20	24
Breckinridge	118	4	24
Bullitt	400	100	18
Butler	106	7	6
Caldwell	67	20	24
Calloway	234	45	12
Campbell	360	108	10
Carlisle	29	2	18
Carroll	155	5	12
Carter	196	35	12
Casey [1]			
Christian	484	40	12
Clark	350	15	3
Clay	233	70	18
Clinton	73	7	9
Crittenden	97	4	24
Cumberland	36	1	3
Daviess	1,156	200	18
Edmonson	84	20	12
Elliott	52	5	12
Estill	117	10	12
Fayette	2,897	500	24
Fleming	66	6	8
Floyd	567	40	9
Franklin	673	50	12
Fulton [2]	132	40	12
Gallatin	37	5	24
Garrard	104	10	12
Grant	110	27	6
Graves	350	75	30
Grayson	246	150	60
Green	114	46	9
Greenup	363	27	2
Hancock	98	25	3
Hardin [3]	907	0	6
Harlan	360	108	10
Harrison	137	9	7
Hart [3]	199	0	6
Henderson	650	20	18
Henry	140	7	10
Hickman	76	12	12
Hopkins	471	20	18
Jackson	65	8	7
Jefferson	13,053	6,103	12
Jessamine	188	20	12
Johnson	246	27	12
Kenton [3]	1,493	0	24
Knott	205	25	5
Knox	300	100	12
Larue	173	26	12
Laurel	357	23	18
Lawrence	108	3	6
Lee	67	4	3
Leslie	140	10	12
Letcher	220	28	6
Lewis	101	5	4
Lincoln	163	52	12
Livingston	76	11	18
Logan	273	14	12
Lyon [1]			
McCracken	813	126	4
McCreary	162	2	6
McLean	117	12	20
Madison	476	96	12
Magoffin	172	35	9
Marion	134	10	12
Marshall	225	76	12
Martin	88	4	18
Mason	176	14	6
Meade	135	29	8
Menifee [3]	53	0	6
Mercer	223	33	5
Metcalfe	60	5	18
Monroe	208	22	6
Montgomery	21	1	6
Morgan	83	6	6
Muhlenberg	65	15	8
Nelson	207	69	12
Nicholas [3]	41	0	6
Ohio	258	10	6
Oldham	177	24	8
Owen	94	9	11
Owsley	106	4	12
Pendleton	70	2	6
Perry	317	26	6
Pike	923	84	6
Powell	129	2	5
Pulaski	323	33	6
Robertson	30	1	6
Rockcastle	148	15	7
Rowan	179	15	8
Russell	98	9	6
Scott	254	52	12
Shelby	233	21	6
Simpson	162	6	12
Spencer	29	4	16
Taylor	190	14	5
Todd	90	3	6
Trigg	59	11	6
Trimble	50	12	6
Union	203	28	6
Warren	930	120	6
Washington	86	7	11
Wayne	114	10	12
Webster	216	18	14
Whitley	263	31	8
Wolfe	98	5	12
Woodford	181	21	9
Total (117 out of 120 counties reporting)	42,852	9,804	[4] 11

[1] Information unavailable at time of survey.
[2] Information received after percentage calculated, figures not included in total.
[3] Circuit clerk unable to furnish auto figure.
[4] Average.

Exhibit No. 2

SURVEY OF AGENCIES HAVING PROBLEMS IN PLACING PROPERTY AND CASUALTY COVERAGES

Of those surveyed in Kentucky, 62.3% had some problem; 37.7% had no problem.

Of those agents who had some difficulty with one or more lines of insurance, their problems were distributed as follows:

	Percent
Private passenger auto liability	43.9
Commercial auto liability	19.3
Private passenger auto physical damage	50.9
Commercial auto physical damage	12.3
General liability	11.4
Burglary	32.5
Homeowners	15.8
Fire insurance	35.1
Extended coverage	10.5
Commercial multiperil	9.6

Senator HART. Earlier today, Dr. Haddon several times mentioned a distinguished figure in the field of insurance in this country, Mr. James S. Kemper, Jr. I hope he heard the comment.

In any event, I will repeat it for the record as I welcome him as our next witness.

STATEMENT OF JAMES S. KEMPER, JR., PRESIDENT, KEMPER INSURANCE GROUP, CHICAGO, ILL.

Mr. KEMPER. Thank you, Senator.

I would like to first express my appreciation to the chairman for moving me up on the list of witnesses today.

I am particularly happy I was able to hear Dr. Haddon this morning. I have heard him before talking about the results of his research, and I would like to take this chance to say that I am proud of the fact that the organization that he heads is the Insurance Institute for Highway Safety.

There was some discussion after his testimony about the problem of funding Government research in this field, and I believe the members of this committee know that all of the research, the crash tests and the other activities of that institution are funded by the insurance companies writing automobile insurance in the United States.

I believe the current budget is $2½ million a year that is being spent for this and other purposes. Based on what has happened in the last couple of years, I am sure we are all going to be asked to approve a substantial budget increase next year when the time comes.

Senator HART. Maybe you will come down here and join us when we go to the Appropriations Committee to see if we can't as a Federal Government at least match what your industry apparently is trying to do.

Mr. KEMPER. I would be delighted to, and since you said that, Senator, I would digress a minute more.

There is another area here where unfortunately the Federal standards have not been very successful, and that is in the other part of the legislation that was enacted in 1966 that set up traffic safety standards for the States where we have improving but incomplete compliance, and I recall at that time that both you and Senator Magnuson hoped to get more clout into that situation instead of simply the 10 percent of highway funds that the States would sacrifice.

I am sure that had something to do with the problem, although we are getting progressively better standards at the State level.

I thought in view of time considerations, if it is agreeable to the committee, I would summarize my written testimony which you have. I will just read certain portions of it, and then at other portions take off a little bit extemporaneously to comment in part, in fact, largely on testimony I heard sitting here today.

Senator HART. We would be glad to have you do it, and we will print the prepared statement in full.

Mr. KEMPER. I thought at the outset I ought to identify myself as the chief executive officer of our group, and also to identify myself as a lawyer because I am going to have some things later on to say about a certain portion of the legal profession which are not exactly complimentary, and it would seem to me fair to say first that I am a member of that profession.

I served with the Antitrust Division in the Department of Justice and spent a number of years in private practice before I became involved in the insurance business.

Before taking up the so-called no-fault bill, S. 965, I would like to talk a minute about S. 976 which deals with the auto damageability problem.

I think whenever we talk about the cost of automobile insurance, we should all bear in the back of our minds that two-thirds of the cost has to do with these eggshell automobiles that we have to pay the damages for. Roughly two-thirds of the amount of money that every driver pays for automobile insurance premium eventually is targeted against physical damage to the car.

As an example of, and I would have included this in my testimony, but I just thought of it last night, how this has affected rate levels in some key States as compared to rates that we are charging for bodily injury liability, the most recent rate increases compiled by the Mutual Insurance Rating Bureau to which we belong: In Illinois, for example—I will give you six States—in Illinois the latest advisory rates involved no increase in the bodily injury rate but an almost 14 percent in the rate for property damage liability; in Idaho—I have taken a cross-section—the filing called for a 17-percent decrease in bodily injury liability rates, but almost a 20-percent increase in property damage; in Nebraska it was up 2.3 percent for bodily injury rate but up 32½ percent for property damage rate; New Jersey, 0.1 of a 1-percent decrease in bodily injury rate but a 23.6-percent increase in the property damage rate; South Carolina up 3.5 percent bodily injury, up 34.7 percent property damage; Maine, up 4.1 percent bodily injury and up 32.9 percent for property damage.

I think this illustrates what is happening. We are getting some leveling off in bodily injury costs from a number of factors. For some of these we can thank the Congress of the United States.

In the areas, however, that have to do with the vehicle itself, rates and costs are still going up.

There was some discussion about villains during Dr. Haddon's testimony. I think it is very hard to say that the public is responsible for the kind of automobiles that are being sold today, even assuming in a relatively affluent society people want something more than they absolutely have to have and even assuming that people want style and performance, because I don't think they have ever really been offered a choice. Up to today, I am afraid for sometime in the future, the buyer of a car is not offered a credible choice between: Do you want a car that looks real sharp and has high performance or do you want a car that has these safety features against damageability, demonstrated safety features against damageability.

I think it is rater unfair to blame the public for the kind of cars that we have. You might say that Government, both Congress and the administration, shares some responsibility for this, but in view of the funds involved, I think that is a pretty hard point to make. I think there have been some mistakes made in allocation of funds as has been brought out earlier today.

I don't know whether it is fair to call Detroit the villain, and I don't like to use that word, but I certainly think the ball is on their side of the court, and it is up to them to return it. I think that is where the responsibility rests at least as of today.

For this reason, among others, we very strongly support S. 976. I think the only criticism I would have about it is, as a nonengineer and a non-automobile-manufacturer, that it doesn't quite come clear to me why this can't be done before 1975.

Now, I rely on Dr. Haddon for this. I have talked with him about this whole situation, and I am persuaded that he thinks that the 1975 date could be moved a little bit closer if it were the desire of the Congress to do so.

Senator HART. On that, Mr. Kemper, you talk about the ball is in Detroit's court and they at least ought to return it.

An oversimplified acceptable return would be a film of next year's model from Dr. Haddon of the institute showing cars with substantially less crash damage; and it is hard to figure out who is the chicken and the egg here. But it is not wholly sound for us to jump Detroit if it continues to meet society's agent; namely, the administration's standards model year by model year.

I am not arguing as to which is the chicken and which is the egg, but if, based on Dr. Haddon's studies, the testimony yesterday, and other studies, the production of a car with greater protection from injury and less damaging crash is within the technology, then, the first fellow to put the ball into the court should be the Administrator to say so.

Mr. KEMPER. I agree. I was very disappointed when the administration came out with this 2.5 mile-an-hour standard for rear end collisions, for example. I was very much disappointed. I would have wished the Department of Transportation would have been a little tougher, assuming that the technology would permit it. Here I don't know. You see, this is not my business. I rely on Dr. Haddon who is an expert in this field.

Assuming that he is right about this, then. I think the administration should have had stiffer standards. There is no question about it.

Senator HART. We had somebody here yesterday. He wasn't from Detroit, but he appeared to have an answer to the question of whether the technology is here or not.

Mr. KEMPER. I would like to take just a minute to refer to a bill, the part of the total auto insurance package that is not before this committee but before the Senate Finance Committee since it does relate to auto insurance, and that has to do with the provisions in S. 947 which are designed to promote a mass market.

This provision in essence provides that under a group plan, as defined in that bill, if an employer contributes to auto insurance premiums for an employee under such a group plan, an employee may deduct the amount of that premium to the extent that it appears in his gross income for Federal income tax purposes.

I would like to suggest that if this legislation is going to be enacted that it might be very desirable to give the same type or an equivalent tax break to the individual auto owner who would never have a chance to qualify. I am not up to date on the latest figures on union membership in this country, but I believe it is under 20 million.

Senator COOK. You did indicate that conceivably as many as four-fifths of the driving public would be excluded?

Mr. KEMPER. Yes, sir; I was assuming a hundred million people who buy auto insurance and about a fifth of them that might have any chance of being involved in a collective bargaining agreement which would include such a program.

Now, we have a precedent for this because in the present tax law the individual can deduct one-half of the premium he pays for health insurance. So, this is not an entirely new idea.

It seems to me to make this real consumer legislation that it would be desirable if the first part of it is enacted to include some form of the second part. Since the National Association of Mutual Insurance Agents proposed this idea, we have had some people in our actuarial department work on some different approaches. The one in my testimony is just an idea to get the thing going.

It may be that it would be fair to say that the person may deduct up to one-half of his automobile insurance premium but put a ceiling of $100 on it so there wouldn't be too great a drain on the Federal revenue.

On the subject of S. 945, as you read my testimony, I have talked largely in generalities, because the statement that was filed on behalf of our trade association, the American Mutual Insurance Alliance, is very complete, very specific, and very detailed, and it has been made available to this committee in a form somewhat expanded over the form before the House committee.

I would just like to talk to a couple of points.

Part of this I have to admit is perhaps sensitivity, but it upsets me a little bit to read in the press that the insurance industry has been doing nothing about this problem of the automobile insurance system. Perhaps we have been too slow. Perhaps if we had been smart, we would have started working on this 20 years ago instead of just getting the first steps underway 10 years ago. I would not argue that point.

But this work has accelerated. Our trade association with some other companies ran what we called a guaranteed benefits experiments in Illinois and New York State about 4 years ago where we offered the kind of thing that was referred to by Mr. Preston, an option to people. They could get a certain level of first-party no-fault benefits which were offered—these were actual cases, not theory—or they could pursue the tort liability system.

Less than a fourth of them agreed to take the guaranteed benefits which had a potential ceiling up to $12,500. I don't say that militates against further efforts to try out different no-fault approachs. I make the point simply to show—and admittedly somewhat defensively—that we have not been asleep at the switch and we have been trying to find some systems improvements that would make this a better consumer product than it is, reduce the number of complaints we get and improve the claim settlements. We have done a great deal of work on this subject in our own companies and have encouraged this kind of research.

Now, what kind of no-fault approach should we have? In my written testimony I have lumped no-fault attitudes in three general categories. Certainly the weight of the insurance industry—and we have to deal with this; we are going to have to administer whatever kind of a system is developed—is that we should take a progressive experimental approach and this, in general, with certain exceptions, is what the administration is recommending.

We have a problem and the problem is called the American Trial Lawyers Association in considering the speed with which we can get action at the State level to introduce no-fault plans. And I think that the American Trial Lawyers Association, the plaintiff bar in general, is just exactly what I have said in my testimony. They don't want anything changed, and they have the dubious distinction of standing alone. Their position is blind, selfish, impractical, and doomed to defeat.

You had a gentleman here last week who testified—perhaps I should say blew the whistle—on some of the plans that are apparently in existence by the American Trial Lawyers Association to obstruct legislative activity at the State level, and it certainly has some indication of linking some kind of a national conspiracy on their part to do so.

The question, is: Is this group, which stands alone as really the only group with any power that wants no change toward no-fault, powerful enough to block action in the State legislatures?

I can only state a personal opinion and it is a matter of judgment. I think that for many reasons, including the disclosures made last week, that a great deal of this power has been eroded.

Massachusetts in this respect was sort of like the Battle of the Bulge. This was the showdown, because the plaintiffs' bar is stronger in the Massachusetts Legislature, we believe, than anywhere else in the country. They have great power, they have great influence, and they lost the battle in the Massachusetts Legislature.

Now, without trying to be too specific, I am willing to go on the line as predicting that by the time limited by the administration's proposed joint resolution of about 2 years from now that we will have had in State legislatures writing a majority of the auto insurance business some form of no-fault plan enacted.

It would only take eight States, the eight largest States in terms of automobile premium volume to go up to 52 percent of the total volume written in this country. If you add another eight States you get up to just about three-fourths of the total volume of auto insurance business written in the country.

You are going to have the entire insurance industry, I think, without exception, working for this kind of legislation. In that connection, the tables that are made up which show the number of lawyers and the number of insurance people in State legislatures as indicating how hard it is going to be to pass this legislation should eliminate the insurance people.

Most of the insurance-oriented legislators are agents, and they all belong to the agents' association. The two principal agents' associations have already declared their position in favor of experimentation with so-called modified no-fault. So, I don't think the legislative job is going to be anywhere near as bad as many of the predictions that have been made.

On the matter of regulation, our technical people tell me—and I have to rely to a considerable extent on them—that there are some other provisions in S. 945 which would add a great deal to the expense of administering the system and inevitably would lead to the point where it would be reasonable and logical to have Federal regulation of the industry.

I happen to be oriented philosophically, I guess I should say, toward leaving the jurisdiction closest to where the action is until there is a firm demonstration that it is not going to work.

This is the last great industry under which regulation continues at the State level. I do not feel that a showing has been made that we need to have Federal regulation. I think that the velocity that has developed at the State level in other areas under some prodding, some prodding from Washington, has indicated that we can get the same kind of velocity here.

I cite as an example the insolvency protection situation. I think 5 years ago there were three States that had any kind of an insolvency bill. About 2 years ago the heat was on because of the Federal insolvency bill which was then undergoing hearings. Today there are 35 States that have insolvency protection, the last one being the State of Washington which passed a bill Monday, and our legal people tell me there will be 43 by the end of this year.

I think it is good progress. It is certainly good progress when you compare it with what has happened with the automobile since the auto manufacturers were told 5 years ago that they had to comply with certain standards.

So, my feeling is, and this is the point I would like to make as to S. 945 from a regulatory standpoint, that we ought to let this velocity continue to increase rather than take the regulation of this industry away from the States, and this is the appeal I would make to the members of this committee.

That concludes the formal presentation of testimony, and I would be very happy to answer questions.

Senator HART. Thank you, Mr. Kemper, for your testimony and for your skill in summarizing it.

While you have not been present, I am sure you have been following the days and days of hearings and those that preceded them in the House. Nothing you have heard is new and none of the questions we would ask you are going to be new either, I am sure.

For example, on the question of administrative overhead, the committee earlier this week or sometime last week had testimony from the administrator, I think he is called, of the Puerto Rican plan—a no-fault plan. He said that the administration costs for the plan were 12 cents of the premium dollar, and since it is in its first year, presumably there are some start-off costs involved in that 12 cents.

Now, in your testimony you say that the only way to achieve a perceptible reduction in costs by a system change is to reduce benefits.

If we could substantially reduce the administrative cost which, in the case of the Kemper Group for auto insurance, run about 38 cents a premium dollar, isn't that a way to achieve perceptible reduction?

Mr. KEMPER. If you could get a substantial reduction in administrative costs, of course, it would be, Senator. I think there are some differences. For one thing, there are no sales costs, as I understand it, in the Puerto Rican plan.

Unless we are to eliminate the wholesale and marketing side of our business and the competition we have, and in effect make it something that doesn't have to be sold, you are going to have—well, for most companies, 15 to 20 percent is going to go to sales cost other than administrative.

I do think that reducing the number of claims that are litigated is going to reduce loss adjustment expense. Now, this is a relatively minor portion. For us on auto insurance it runs around 8 or 9 cents on the premium dollar. You will get some small reduction, in this part of the expense, we hope. We are not sure of this.

Again, frankly, it will depend on the ingenuity of the plaintiff's bar as to what elements of the part of the action that is left to them they will find it possible to litigate, and we expect we will get some litigation and controversy.

For example, the 70-percent disability provision that is in S. 945 is something that may well be the subject of litigation.

I would agree, and this is one of the reasons we support a partial no-fault approach, that we should get some administrative savings, but I think it would be a mistake to count on too much.

Senator HART. On a second point that often is made and which is raised in part by your statement in the prepared testimony, while you are quoting the National Association of Insurance Commissioner's president testimony over on the House side a few weeks ago, that:

> Inflation has been the prime cause in rate increases. Thus the basic responsibility for the problem generated rests in Washington.

And then you said:

> Since two-thirds of such costs are generated by physical damage to the car, the other part of the responsibility rests squarely in Detroit.

I take it that the such costs that you are talking about are the costs of obtaining automobile insurance and the premiums required.

Mr. KEMPER. Yes, sir, and the claims paid, the amount of money it costs to settle the claim.

Senator HART. But not the loss?

Mr. KEMPER. It is mainly loss.

Senator HART. Here is the way we would frame the question for you to make comment. In your group, Lumbermen's Mutual and American Motors, premiums for property damage liability and physical damage insurance were 50 percent of total auto insurance premiums. I am told that the source of that is the National Underwriters' 1970 Auto Insurance Review. How does that jibe with the two-thirds of the cost being property damage?

Mr. KEMPER. I am sorry, I do not understand the relationship. What that means is that our mix of business is 50 percent liability and 50 percent physical damage. We do not always write both coverages at the same time on a car. But where we do provide both coverages, our actual payout of losses plus the cost of adjusting losses, a ratio of about 2 to 1 physical damage versus bodily injury liability.

Senator HART. Is that reflected in terms of the premiums?

Mr. KEMPER. Except to this extent, that at the present time the rate inadequacy for physical damage insurance is far more substantial than it is for bodily injury insurance in most areas.

Senator HART. Let us move on to the next point. Let us have for the record the precise figures for the two companies in the area that we have just discussed.

Mr. KEMPER. If I may, Senator, I would be glad to get those figures and submit them along with whatever explanatory text is necessary. We will do that.

(The following information was subsequently received for the record:)

PHYSICAL DAMAGE VS. BODILY INJURY LOSSES

As Mr. Kemper explained, we do not provide vehicle damage coverage for each automobile on which liability insurance is afforded. Therefore, the split between liability and physical damage premiums is not a good measure of the relative outgo for losses, particularly on the current generation of automobiles which are so easy to damage and so expensive to repair.

Our loss outgo for bodily injury compared with that for vehicle damage in any given year is not the best measure either because it is distorted by:

(a) The substantial number of automobiles insured for liability and not for physical damage, and

(b) the large number of older, less damageable automobiles for which the lower vehicle damage losses are included in the aggregate.

The best indicator for our companies, as well as for the industry, is a premium comparison for current model automobiles. Such a comparison was provided by Exhibit 1 included in the May 6th statement of the American Mutual Insurance Alliance. A copy of this exhibit is attached.

Senator HART. On the question of group policies, am I correct that you do sell group accident and health through Lumbermen's Mutual Casualty and that there, according to our information, your administrative cost runs between 18 and 20 cents less than the cost of such coverage for auto insurance?

Mr. KEMPER. Yes, in total expenses.

Senator HART. You gave us a projection or an estimate as to how fast State legislatures would move in adopting so-called no-fault. How do you anticipate overcoming the 35 States laws or the rules in 35 States that prohibit the marketing of group auto insurance assuming that it would be desirable to get to automobile insurance consumers the cost savings that can be reflected in group policies and are reflected in group accident and health?

Mr. KEMPER. Senator, before I answer that, if I may go back to our previous comment about our lower administrative expense in group accident and health, this lower expense is due more to lower sales cost than it is the fact that these are first-party coverages.

Senator HART. But that would be true——

Mr. KEMPER. Definitely true with respect to mass merchandising. Our experience up to now has indicated with some of the mass marketing auto insurance programs that we have that the sales cost is lower, the administrative cost is not neressarily lower and possibly a little bit higher, but obviously the producer of this business is entitled to a much lower commission where the business is coming in on a mass basis, and this is where the savings really can be achieved.

I did not know, frankly, that there were 35 States——

Senator HART. There are not 35 States laws, but I am told there are 35 laws or regulations. What percentage is "law" and the percentage is "regulation," I do not know. I am told it is evenly divided.

Mr. KEMPER. Senator, I would have no objection to a law which forbade the States to prohibit any form of mass merchandising. I think what has happened in New York may be a pretty good example. In New York the Insurance Department has retained the authority to issue regulations governing the selling of group insurance, and I think that is a smart thing to do. But personally, I do not think that the States should outlaw completely any form of mass merchandising or group insurance. I would like to see it subject to some reasonable regulation at the State level.

Senator HART. We would hope that through S. 946 that we might in fact eliminate such bars as there are.

Mr. KEMPER. Perhaps the best comment I can make on that is we are prepared to write this kind of business and we are tooling up to write it.

Senator HART. And this question I would anticipate would require you furnishing the material for the record, not to expect that you would have it available at hand.

In your annual report for 1970 for Lumbermen's Mutual Casualty Co. there are two graphs at the bottom of page 1. The second provides data showing losses paid since organization and dividends paid policyholders since organization. Let us have, if you will, a graph that shows the premiums collected since organization and expenses paid since organization.

Mr. KEMPER. Very easy to do. We will be glad to provide it.

(The following information was subsequently received for the record:)

PREMIUMS COLLECTED AND EXPENSES PAID

Attached, marked Exhibit 2, is a graph showing premiums written by Lumbermens Mutual Casualty Company since its formation and loss adjustment and underwriting expenses paid for the same period. So that the income-outgo picture will be complete, we have added to this graph losses incurred and dividends paid plus a total of all outgo, which is the "x" line. The reason for showing losses incurred, of course, is that the losses paid as shown on Page 1 of our 1970 Annual Report do not include losses still outstanding at the end of the year.

As you can see, total outgo was $4.012 billion dollars vs. total premium income of $4.167 billion dollars. The latter figure has not been adjusted for $119 million dollars of reserve for unearned premium at the end of 1970.

65-345 O - 71 - pt. 4 -- 5

Mr. KEMPER. It is mainly loss.

Senator HART. Here is the way we would frame the question for you to make comment. In your group, Lumbermen's Mutual and American Motors, premiums for property damage liability and physical damage insurance were 50 percent of total auto insurance premiums. I am told that the source of that is the National Underwriters' 1970 Auto Insurance Review. How does that jibe with the two-thirds of the cost being property damage?

Mr. KEMPER. I am sorry, I do not understand the relationship. What that means is that our mix of business is 50 percent liability and 50 percent physical damage. We do not always write both coverages at the same time on a car. But where we do provide both coverages, our actual payout of losses plus the cost of adjusting losses, a ratio of about 2 to 1 physical damage versus bodily injury liability.

Senator HART. Is that reflected in terms of the premiums?

Mr. KEMPER. Except to this extent, that at the present time the rate inadequacy for physical damage insurance is far more substantial than it is for bodily injury insurance in most areas.

Senator HART. Let us move on to the next point. Let us have for the record the precise figures for the two companies in the area that we have just discussed.

Mr. KEMPER. If I may, Senator, I would be glad to get those figures and submit them along with whatever explanatory text is necessary. We will do that.

(The following information was subsequently received for the record:)

PHYSICAL DAMAGE VS. BODILY INJURY LOSSES

As Mr. Kemper explained, we do not provide vehicle damage coverage for each automobile on which liability insurance is afforded. Therefore, the split between liability and physical damage premiums is not a good measure of the relative outgo for losses, particularly on the current generation of automobiles which are so easy to damage and so expensive to repair.

Our loss outgo for bodily injury compared with that for vehicle damage in any given year is not the best measure either because it is distorted by:

(a) The substantial number of automobiles insured for liability and not for physical damage, and

(b) the large number of older, less damageable automobiles for which the lower vehicle damage losses are included in the aggregate.

The best indicator for our companies, as well as for the industry, is a premium comparison for current model automobiles. Such a comparison was provided by Exhibit 1 included in the May 6th statement of the American Mutual Insurance Alliance. A copy of this exhibit is attached.

Senator HART. On the question of group policies, am I correct that you do sell group accident and health through Lumbermen's Mutual Casualty and that there, according to our information, your administrative cost runs between 18 and 20 cents less than the cost of such coverage for auto insurance?

Mr. KEMPER. Yes, in total expenses.

Senator HART. You gave us a projection or an estimate as to how fast State legislatures would move in adopting so-called no-fault. How do you anticipate overcoming the 35 States laws or the rules in 35 States that prohibit the marketing of group auto insurance assuming that it would be desirable to get to automobile insurance consumers the cost savings that can be reflected in group policies and are reflected in group accident and health?

Mr. KEMPER. Senator, before I answer that, if I may go back to our previous comment about our lower administrative expense in group accident and health, this lower expense is due more to lower sales cost than it is the fact that these are first-party coverages.

Senator HART. But that would be true——

Mr. KEMPER. Definitely true with respect to mass merchandising. Our experience up to now has indicated with some of the mass marketing auto insurance programs that we have that the sales cost is lower, the administrative cost is not neressarily lower and possibly a little bit higher, but obviously the producer of this business is entitled to a much lower commission where the business is coming in on a mass basis, and this is where the savings really can be achieved.

I did not know, frankly, that there were 35 States——

Senator HART. There are not 35 States laws, but I am told there are 35 laws or regulations. What percentage is "law" and the percentage is "regulation," I do not know. I am told it is evenly divided.

Mr. KEMPER. Senator, I would have no objection to a law which forbade the States to prohibit any form of mass merchandising. I think what has happened in New York may be a pretty good example. In New York the Insurance Department has retained the authority to issue regulations governing the selling of group insurance, and I think that is a smart thing to do. But personally, I do not think that the States should outlaw completely any form of mass merchandising or group insurance. I would like to see it subject to some reasonable regulation at the State level.

Senator HART. We would hope that through S. 946 that we might in fact eliminate such bars as there are.

Mr. KEMPER. Perhaps the best comment I can make on that is we are prepared to write this kind of business and we are tooling up to write it.

Senator HART. And this question I would anticipate would require you furnishing the material for the record, not to expect that you would have it available at hand.

In your annual report for 1970 for Lumbermen's Mutual Casualty Co. there are two graphs at the bottom of page 1. The second provides data showing losses paid since organization and dividends paid policyholders since organization. Let us have, if you will, a graph that shows the premiums collected since organization and expenses paid since organization.

Mr. KEMPER. Very easy to do. We will be glad to provide it.

(The following information was subsequently received for the record:)

PREMIUMS COLLECTED AND EXPENSES PAID

Attached, marked Exhibit 2, is a graph showing premiums written by Lumbermens Mutual Casualty Company since its formation and loss adjustment and underwriting expenses paid for the same period. So that the income-outgo picture will be complete, we have added to this graph losses incurred and dividends paid plus a total of all outgo, which is the "x" line. The reason for showing losses incurred, of course, is that the losses paid as shown on Page 1 of our 1970 Annual Report do not include losses still outstanding at the end of the year.

As you can see, total outgo was $4.012 billion dollars vs. total premium income of $4.167 billion dollars. The latter figure has not been adjusted for $119 million dollars of reserve for unearned premium at the end of 1970.

65-345 O - 71 - pt. 4 -- 5

Senator HART. Now, one last question from me. The Ogilvie plan for which you indicate support—how does that preserve this individual accountability if liability insurance is still going to be available for the guilty person, the guilty driver who would not have to account personally out of his own pocket for damage?

Mr. KEMPER. This type of approach, Senator, which includes the right for the insurance company that pays the no-fault benefits to subrogate against the other fellow's insurance company if the other man is at fault, enables us to preserve some part of our rating plan which puts a rate penalty against the person who causes an accident as against a person who simply collects claims.

One of the difficulties we see with a total no-fault system is it is going to change the whole rating system. The people who are most likely to cause accidents may well end up as the people who pay the lowest premium if they are not also the people most likely to collect the most money.

On the other hand, you have the typical family man, middle or lower income, who has a large family and maybe a station wagon and a sedan who is a very careful driver. If he gets hit by somebody else that is not his fault, the amount of money that has to be paid to that man and his family under the no-fault benefits is going to affect the premium rate.

Under a total abolition of liability you just cannot afford to write careful drivers who are likely to produce large amounts of claims at the kind of rates that their driving performance will entitle them to.

Under this proposed Illinois plan, the claimant gets paid right away, the consumer is taken care of on a first-party basis, so he doesn't have to worry about settling this question of fault. Then the two insurance companies involved get together and arbitrate, as they do today on property damage cases. Who finally ends up paying the bill seems to us serves a double purpose of taking care of the consumer's problem and at the same time enabling us to preserve a rating structure that will recognize driving responsibility. This is the theory.

Senator HART. Isn't it true that even under the Ogilvie Plan, the party who recovered for his losses under no-fault, could proceed in tort against the other person involved, if there was negligence?

Mr. KEMPER. For the amount above what is collected. He can't proceed against the other party for the purpose of getting double recovery.

For example, take an illustration: Suppose that a policyholder of ours is hit by a policyholder of All State, and naturally it is the All State policyholder's fault. Our policyholder, let's assume, collects $5,000 in first party benefits from us. Then he goes under the tort system—if he wishes to do so and that is a big "if" at this point—for the possibility of collecting for himself the amount above the $5,000 for excess economic loss and pain and suffering. He still has this option if he wishes to do it.

Meantime, the All State and Kemper Insurance arbitrate between themselves, who is responsible for that $5,000 and in the case mentioned, it is a case of All State paying us.

The consumer doesn't have to wait. He gets his payment in the beginning.

Senator COOK. Let me ask you one question in that regard, Mr. Kemper. In regard to the subrogated claims, what is the requirement of the insured?

We discussed this the other day in regard to no-fault, and whether the insured would have to subject himself to an appearance on behalf of the insurance company.

Mr. KEMPER. Theoretically so, but in practice it seldom happens. Most of these are settled on the basis of the accident report.

In practice you have a knock-for-knock system under which these are offset. There really is not a great deal of money that changes hands because we have three or four where we think we should collect from the other company, and they have three or four to collect from us, and it has been a successful administrative procedure.

We don't think—in fact, on the basis of past experience, this isn't going to be a new sanction to the driver.

Senator COOK. There was some discussion earlier in the hearings relative to this very matter, and one of the witnesses, I think it was Mr. McGowen, said that under the Massachusetts plan there was no requirement whatsoever for the insured to subject himself to any further problems or any involvement in the subrogation claim as between the two companies.

Mr. KEMPER. I did not know that.

Senator COOK. I think that it was.

Mr. SUTCLIFFE. Yes.

Senator COOK. Thank you.

Senator HART. Mr. Sutcliffe?

Senator COOK. Oh, I want to inject at that point——

Senator HART. Continue.

Senator COOK (continuing). And I would like to have you expound on it, that people in the Kemper Co., after analyzing S. 945, assert it will not produce cost savings, but will increase cost levels because of items in the bill.

I wish you would expound on what your organization did, what they analyzed in the bill, and what they may have come up with even as to increased cost structures.

Because, the next statement you have is that you cannot increase the benefits without increasing the premium.

Mr. KEMPER. Senator, we have the studies done on this, and I would be happy to have these filed with the committee.

Senator HART. We will receive them.

(The following information was subsequently received for the record:)

COSTING OF S. 945

The reference by Mr. Kemper to the probable cost of S. 945 was based on some preliminary work done by one of our actuaries. This actuary will be working with the American Mutual Insurance Alliance Committee which has undertaken to estimate the cost of various reparations proposals. At this point we do not have the Committee's conclusions. As Mr. Kemper indicated, they will come to you either from the Alliance or us, or both.

Mr. KEMPER. I thought some were filed. Perhaps it was the Alliance.

Mr. SUTCLIFFE. We asked the Alliance to furnish that, but they have not yet.

Mr. KEMPER. Our people work with them through the subcommittees we have to develop this information. It will either come in through the Alliance, or through us, or both.

Senator COOK. Two broad questions just to comment on, the proponents of no-fault say these are at least two of the essential elements,

and I will give them both to you, and, Mr. Chairman, that will be the extent of my questioning.

First, the need for a national program to insure uniformity of coverage, and thereby avoid jurisdictional problems with the State-by-State approach.

Secondly, the allegation that a State-by-State system would be more costly than a national approach.

Now, would you kind of comment on them collectively?

Mr. KEMPER. On the first point, we don't think that there are any problems involved in somewhat different approaches to no-fault that can't be solved by a simple endorsement on the policy. I don't think this is a problem.

We are accustomed to doing this type of thing anyway. Essentially the insured, let's say, in Illinois, would have an endorsement on his policy which provides that in any case where he has an accident in a jurisdiction that has a different rule, that we cover for that jurisdiction. I think this would be done. I have oversimplified this, but I think this would be done for the whole industry.

Senator COOK. You feel it is an easy contractual obligation for the insurance company to comply with?

Mr. KEMPER. Yes; that is right.

This is a hard one, the other one, because the other question really raises the basic point of, "Do we have State regulations?" Or, "Do we have dual regulations?"

It is my opinion that none of the approaches suggested yet by anybody would avoid dual regulation. I think that we are not going to have either a total Federal or State system, but a combination of the two.

I don't see how that saves money. I think we would get an industry redundantly regulated, and with the extra expense that comes with this type of regulation. I would be very doubtful that we would get a saving.

To be frank with you, Senator, I don't think, and I have been on the stump about this for a long while, that enough money is spent on regulation today. In Illinois, for example, we worked, finally successfully with other companies, to get the insurance department's budget increased by 50 percent—so that they could hire more qualified people, is what it boiled down to.

And the industry is working in other States to the same end. If we continue to get improved quality of State regulation and add on top of that, what we think is the really tremendous amount of Federal people that will be needed to take a national approach and regulate it, I think the costs will go up.

It is guesswork. But my best guess is that you will get dual regulation and that is inherently more expensive.

Senator COOK. That is all, Mr. Chairman.

Senator HART. Mr. Sutcliffe?

Mr. SUTCLIFFE. Thank you.

Mr. Kemper, to clarify the record, I would like to ask you a series of questions. Are you firmly on record in favor of Secretary Volpe's no-fault proposal as embodied in the administration's concurrent resolution?

Mr. KEMPER. We endorsed the proposal. We are in favor of it.

I feel that while the language in some places is susceptible of different interpretations that some of the thrust of the level of no-fault benefits is higher than would be advisable at this time without more experimentation. But the general philosophy behind it and the approach, we do endorse, yes.

Mr. SUTCLIFFE. At the present time there are a number of no-fault plans.

I would like to read a statement from the Department of Transportation report, to see if you subscribe to their definition of what a no-fault plan must have within it to be entitled to be a no-fault plan.

This is page 136 of DOT final report:

> The goal of the system should be that no recovery for any loss of a type covered by the applicable required coverage would be permitted in a private action for damages. The existing right to sue for damages resulting from neglect in car crashes might be continued for intangible losses, and if so, would be subject to one limitation.

And they then describe the limitations as to where you draw the line.

Now, they suggest, let me read the language to you again——

Mr. KEMPER. I think I got the language.

Mr. SUTCLIFFE. Any action for damages would be prohibited where you have a no-fault plan.

Let me juxtapose the Massachusetts plan with the other plan. The Massachusetts plan does not permit private action for damages for those coverages taken care of by the mandatory first party policy mandated by law.

Mr. KEMPER. In other words, if you collect the $2,000 provided, you have no private action yourself for damages for that $2,000?

Mr. SUTCLIFFE. Correct. No private action for that $2,000 or to the extent that your medical losses are paid, you cannot go into court unless you meet other certain minimum levels. There is a cutoff point in the Massachusetts law.

Under the Ogilvie plan, apparently, as has been presented to us, you are allowed to collect your damages, but still may be sued even for your covered tangible losses. There is no point for intangible losses. You are still subject to suits.

If that is the case and we take the definition given by the DOT study, how is the Ogilvie plan considered to be a no-fault plan, given the definition in the DOT report?

Mr. KEMPER. There are five or six questions inherent in that one question, Mr. Sutcliffe. Let me take a stab at this.

First, under the Illinois plan, you cannot collect double. You cannot collect on a first-party basis and then collect any part of that same amount again by a suit in tort.

I think that should be made clear. In your description, I got the feeling you were talking about double recovery.

In the Massachusetts plan the same thing is true. If you collect the $2,000 ceiling, which is much lower than Illinois, you can't collect for any part of that again.

Now, Massachusetts introduced one thing that is not in the Illinois plan. Maybe that is what you are after. You cannot go for pain and suffering at all unless your medical bills reach the threshold of $500. They don't have that threshold in the Illinois plan.

I don't consider that a significant difference. To me, as I understand it, the two big differences between the plans are, on the one side, in Massachusetts, you have to pass a $500 threshold in medical before you can go for any pain and suffering recoveries.

In Illinois, you don't have that threshold, but you have a higher level of first-party benefits payable. In Illinois, it is $7,800 or possibly $14,000 or $15,000, depending on how you look at it.

Whereas, in Massachusetts, your mandatory first-party benefits are cut off at $2,000.

This is one of the things we ought to look into. What plan works best? This is why we supported the Massachusetts plan, but we also supported Illinois when the benefits increased. We must learn how they affect cost and the number of claims that come in and how they affect the number of claims that ripen, if I can use that word, in the liability area.

I think you will get, in a short time, a good, useful experience.

If I understand what you read from the DOT statement as meaning that the only kind of tort recovery that you should ever be able to have, is for intangibles, that is not right.

Mr. SUTCLIFFE. No; I think the DOT study went to the fact there should be no recovery in private action for those things covered on a mandatory first-party basis.

Mr. KEMPER. I would agree; there should be no double recovery.

Mr. SUTCLIFFE. You feel the Ogilvie plan and Massachusetts plan satisfy that requirement?

Mr. KEMPER. Exactly.

Mr. SUTCLIFFE. Because of the offset in one plan and interinsurer subrogation with the $500 medical in the other plan?

Mr. KEMPER. The DOT did not take a position on this subrogation question, I don't think. They left that open.

Mr. SUTCLIFFE. I suppose the words, "Any private action for damages" would clarify the fact they did leave that open.

Mr. KEMPER. I would think so. Yes.

Mr. SUTCLIFFE. Thank you.

In light of this, let me read you a statement from the leading authority on no-fault. He has commented on the Ogilvie plan in this language:

> In essence, the Governor—meaning Governor Ogilvie—proposes to add on no-fault insurance to the present fault system, thereby preserving much of the waste, and inefficiency and corruption of the fault system, and yet it is the inadequacies of the fault system which lead to the needs of no-fault insurance in the first place.

Now, this was from Prof. Jeffrey O'Connell, and I would like you to respond to his apparent indictment of the Ogilvie plan, and his conception of no-fault versus the other forms being proposed.

Mr. KEMPER. That sounds like Jeff O'Connell. I spent many hours with this man. I love him and admire him, and he has a fine mind.

I think his mind, however, is rather in fixed directions. I think he is wrong in saying, or implying, that—and I am sure this is what he is thinking of—that by preserving the subrogation aspect of this, we haven't done anything.

I just think he is wrong. And when we retained Jeff O'Connell and Bob Keaton, about 5 years ago, to work with us for 6 months, on their

plan and plans of others, we went around with them over and over again, and he is back at it this way, and I am back at it my way, and we don't agree.

It is my feeling that the whole point of no-fault is to find something that produces payments to the consumer. I don't think the accident victim could care less whether All State and Kemper Insurance will go back in a room to determine where the liability is.

Mr. SUTCLIFFE. Unless it added to the cost of the premium.

Mr. KEMPER. Unless it costs a lot of money and all our experience indicates that the cost would be de minimis.

I think the accident victim—the ones who want no-fault—they want to get their money. They can't care less if we are having a subrogation arrangement of our insurance companies as to where the ultimate cost lies. I don't think it makes any difference to them.

I don't understand Professor O'Connell's vehemence and his point in this context.

Mr. SUTCLIFFE. Thank you. I hope this exchange will clarify for this committee various definitions of no-fault.

In your exchange with Senator Cook, I did not note that you justified preserving the subrogation system, or the tort suit with offset as a means of maintaining personal responsibility.

I noted that you felt that was essential in order to preserve the present rating system.

Are we really then not in a quarrel as to responsibility versus irresponsibility, but really talking about preserving the present rating system, which has built into it strictures against those people whose driving records are worse than other peoples'?

Mr. KEMPER. I don't know whether we have a quarrel on this or not. This is, of course, a subject that has been debated and debated, and you have experts on both sides of it.

The argument on one side is that since practically everybody is insured, and knows he is insured under the liability system, the only reason he wants to drive carefully is not to get all cut up or killed.

You know, it is not a question of a feeling of moral responsibility to drive safely. The public opinion polls,—and I am even more confused after Commissioner Preston's policy, which has a new set of figures—the public opinion polls go all over the lot. But generally speaking, I think they indicate the consumer—he is the fellow we are interested in—does believe that the liability system preserves some elements of personal responsibility and if they believe it, then that is what counts, because they are the people driving the cars.

I don't know. I can just guess. There are arguments on all sides of this.

Mr. SUTCLIFFE. But at least now your recognition in the dual protection plan, which will cover 90 percent of the losses, would markedly limit any alleged deterrent effect which might be available through the liability system.

Mr. KEMPER. We have a tradeoff, as we always do in any situation. This involves economics and social problems and legislation and so forth.

It is our feeling that the tradeoff is about the right level in the Illinois plan.

Frankly, we think Massachusetts didn't go far enough. I better not say we, because some of my friends in the industry don't agree. But I would like to see the Massachusetts level a little higher on first party benefits.

I think Illinois—not just because I come from there—but I think when its bill passes, and it is going to pass, lawyers to the contrary notwithstanding, benefits will be at a level where we will have good experience.

We will learn the cost of the subrogation, which we are convinced will be minimal; we will find out how this affects the payments at these relatively high levels, as well as its effects on people who say. "I have gotten paid, I will not go for the jackpot."

We will get a test in Massachusetts. But, I think we will get a better one in Illinois.

And we are encouraged—we have had our fingers crossed. But we are happy with what our claim people reported from Massachusetts. even though we were told a lot of lawyers are waiting in ambush, and we will hear from them later.

There are still some indications that even at a low level, it is likely to justify the 15-percent rate decrease, and perhaps more.

Mr. SUTCLIFFE. Now you mentioned in your prepared statement the guaranteed benefits experiments that had been conducted by your company and other members of the alliance.

That program was explained to this committee as being one whereby the guaranteed benefits were offered to claimants in a third party liability court context, not in a first party operation.

In other words, the benefits were in lieu of a tort action against your company. They were in a third party situation. So that the information you would have from that experiment may not provide information of acceptability first party benefits. In other words is the situation analogous?

Mr. KEMPER. It is not, it is indicative only and this is the reason we support a no-fault approach on a first party basis.

We don't take the position that that says the whole thing won't work. I should say, however, that the instructions to the claim adjusters that handled that program was that you are to do this not just in clear liability cases, but in any cases where there is any indication of liability.

Mr. SUTCLIFFE. That is an important point, because the committee was informed that it was otherwise to the extent that he was only to settle if there was clear liability or questionable liability.

Mr. KEMPER. Questionable liability. Now we get into the gray area. For example, to give an extreme example, this wasn't only done where a car rear-ended someone else. It was done where there might be a question of liability, where there was doubt or even where there was some fair indication of liability.

But you are right in your main point, this was not a side-by-side test of what we are talking about now in the case of no-fault, first party.

Mr. SUTCLIFFE. For the record, you mentioned the "Battle of the Bulge" situation in Massachusetts. I would simply refer you—not to dispute that—but refer you to the testimony of Mr. Joost that one of

the reasons the Massachusetts plan was successful was the ineffectiveness of the trial bar in that State.

I simply put that in the record at this point.

Mr. KEMPER. I don't think he was even working for them at the time. I am not sure.

How long has that fellow been there?

Mr. SUTCLIFFE. He had been with *Trial* magazine since 1967. So he had been involved in the entire fight.

Mr. KEMPER. I don't know if he was involved in the legislative part of it.

All right. That is what he says.

Our people down there have always felt that—in Massachusetts, where we have a big stake in the automoble business—they have always maintained that the people were more organized.

If Mr. Joost feels they didn't do it very well, that is his opinion.

Mr. SUTCLIFFE. Now, in fairness to the American Trial Lawyers' Association, and in response to a request by Mr. Markus in his statement before the committee after Mr. Joost testified, you have, as you mentioned in your statement, said that in your opinion the position of the Trial Lawyers' Association is blind, selfish, impractical, and doomed to defeat.

Mr. Markus suggested to us, if we are going to discuss the role of American Trial Lawyers' Association in opposition to no-fault, that we should query those companies that appear before us as to their role in promoting no-fault.

So, for the record, and in fairness to the American Trial Lawyers, I would ask you to furnish for the record, information related to your annual expenditures at the State and Federal levels, and in what areas they have been concentrated, if you have that information.

Mr. KEMPER. Legislative expenditures now?

Mr. SUTCLIFFE. These are expenditures to either influence the passage of no-fault, or efforts to discourage the passage of a no-fault program which I think, in your prepared testimony you referred to as radical. One, in your opinion, at this time and at this stage, would go too far.

Mr. KEMPER. Well, the main thing legislatively that we have, is having to do with no-fault.

Mr. SUTCLIFFE. I am trying to create a parity between the Trial Lawyers' information—but we have no information as to a particular group that we could use.

You have a trade association, which might parallel ATLA's LIFT. Perhaps that and I assume the mechanism is the place to start.

Mr. KEMPER. I can't furnish that on behalf of the trade association.

Mr. SUTCLIFFE. As to your company then.

Mr. KEMPER. All right.

Mr. SUTCLIFFE. We can solicit the trade associations before the close of these hearings.

(The following information was subsequently received for the record:)

EXPENDITURES ON REPARATIONS LEGISLATION

A very rough estimate of our organization's expenditures last year on proposed legislation affecting the reparations system would be $9,000. This outgo would include the cost of analyzing such proposals.

Mr. SUTCLIFFE. As to your point about the cost to repair automobiles and their relation to the total premiums, I think that it should be pointed out that one of the reasons for the two-thirds/one-third distribution is the way in which our present system covers automobile damage and bodily injury damage.

Let me present to you, and ask you to comment on, if you wish, the 1970 figures which show that total premiums collected were $14.4 billion. Of that amount, $6.5 billion were collected for bodily injury coverages and $7.9 billion for property damage coverages. So you have not quite the two-thirds/one-third, but close to that for 1971.

The net benefits paid for bodily injury claims amounted to $2.8 billion and Nationwide told us yesterday, 60 percent of that was for intangible loss.

But, assuming the $2.8 billion were for compensation of economic loss, you then have 43 percent of the compensable economic loss in the bodily injury area being paid. Whereas, we are doing a much better job of covering the losses that occur in the property damage area: $4.8 billion benefits paid; $5.5 billion compensable economic loss; for a total coverage of 83 percent of the loss.

This may explain under the present system why we collect two-thirds for property damage and one-third for bodily injury.

This is not to minimize the need to reduce property damage, but only to possibly explain why rates in one area will be going up for compensating the loss whereas in the bodily injury they are remaining constant, or going down.

Do you care to comment?

Mr. KEMPER. I would rather submit that later on, because you lost me halfway through.

This will be in the record, and I know what your point is. I have a feeling there is an answer, and I have one in mind, but I would rather wait until I have some figures. I think this calls for some arithmetic.

Mr. SUTCLIFFE. We will appreciate those comments.

Mr. KEMPER. Be glad to.

(The following information was subsequently received for the record:)

BODILY INJURY VS. PROPERTY DAMAGE PAYMENTS

The question raised here was clarified and amplified by your May 26 letter, a copy of which is attached.

We have not verified the source of your percentages of total economic loss paid by the automobile system for "people" damage and vehicle damage respectively. However, taking these percentages as cited, we believe there is a simple explanation of the difference. It is that automobile insurance is almost exclusively the source of payment for vehicle damage while, of course, there are a number of sources of payment for bodily injury. It is to be expected, therefore, that the

automobile system would pay for a considerably higher percentage of the total economic loss in the case of property damage than in the case of "people" damage.

If the automobile insurance system appears to be relatively less efficient in the payment of economic loss resulting from injury than from vehicle damage, it is in part because of the payment for intangible or non-economic loss commonly called "pain and suffering." We are very much interested in seeing that a larger part of the bodily injury loss dollar goes for economic loss and a smaller part for intangible loss. We have been urging that this be accomplished by making broadened first party benefits a mandatory part of automobile insurance and offsetting the cost of this by limiting the payment for "pain and suffering" in the minor cases. In effect this would bring about a better distribution between economic and noneconomic loss in bodily injury payments. This can and should be accomplished without otherwise disturbing the tort system and the premium allocations which it produces.

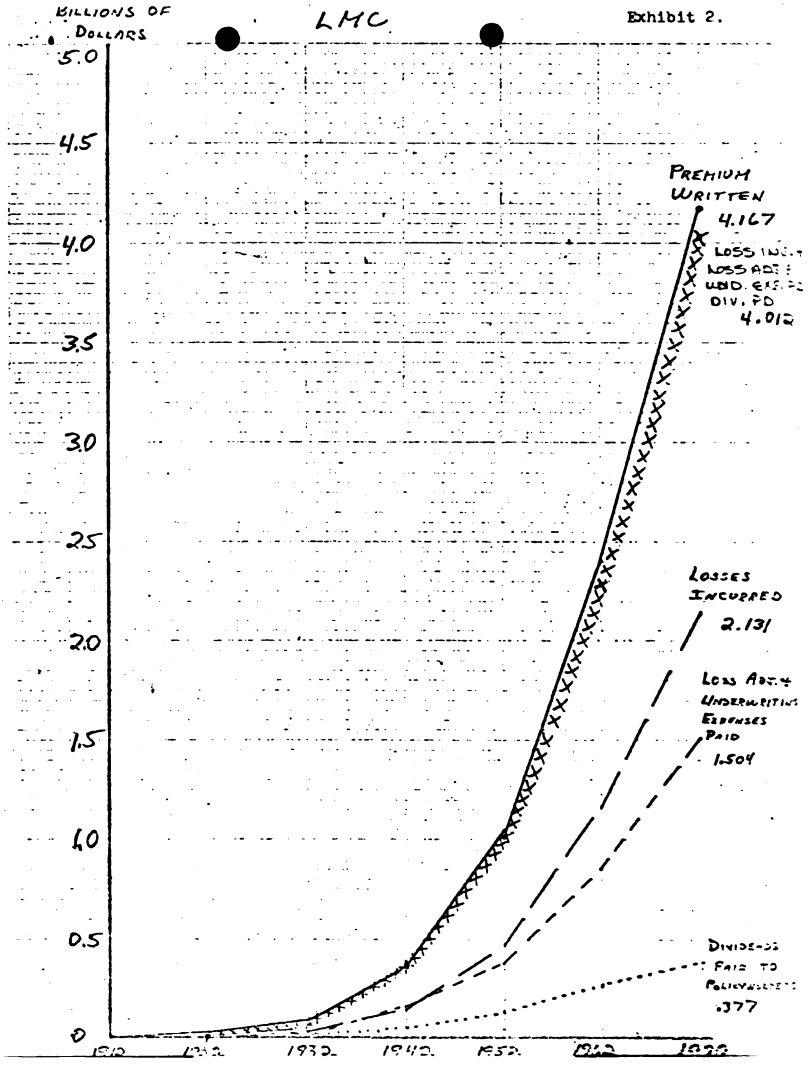
EXHIBIT 1

⅔ OF YOUR AUTO INSURANCE PREMIUM GOES FOR VEHICLE DAMAGE COVERAGES

	Total premium	Cost of vehicle damage coverages	Vehicle damage percent of total premium
[illegible]ksonville, Fla	$208	$131	63
[illegible] York (Queens)	506	366	72
[illegible], N.J	228	152	67
[illegible]delphia, Pa	501	346	69
[illegible] Francisco, Calif	479	346	72
[illegible]napolis, Minn	261	175	67
[illegible]ago, Ill	479	351	73
[illegible]roit (semisuburban)	260	180	69
[illegible]umbus, Ohio	226	155	69
[illegible], Wash	221	138	62
[illegible], N.C	167	117	70
[illegible]napolis, Ind	314	249	79
[illegible]nd, Oreg	278	188	68
[illegible]uukee, Wis	246	145	59
[illegible], Hawaii	236	152	64
[illegible], Alaska	310	257	83
[illegible]rd, Conn	370	241	64
[illegible]ington, Del	250	196	78
[illegible]hester, N.H	227	155	68
[illegible]idence, R.I	293	201	69
[illegible], Tex	263	203	77

Note: Vehicle damage coverage includes property damage liability limits of $5,000 per accident, $50 deductible collision and full coverage fire, theft, and comprehensive physical damage insurance. Total premium includes the above physical damage coverages plus bodily injury liability coverages of $25,000 per person and $50,000 per accident, plus uninsured motorist insurance and $1,000 per person medical insurance. Rates shown are for an adult driver with a medium-priced car of the current model year. It is assumed he has a good driving record and does not drive his car to work.

Source: Mutual Insurance Rating Bureau.



Mr. SUTCLIFFE. One other point, you have mentioned the lack of money available for State insurance regulatory authorities. This is a point that has come to this committee strictly in these areas.

How would you propose that the one billion a year collected by the States, ostensibly for regulation of insurance companies doing business in their States, and the expenditures for regulation of only $46 million, or 5 percent of the total amount collected—how would you propose to have a greater equity of expense distribution?

Mr. KEMPER. People differ on the numbers, but I believe 10 cents out of every premium tax dollar ought to go for regulation.

Even in New York, which is supposed to have superb regulation, it is between 7 and 8 cents.

I think we ought to contemplate, I should say at least in the major States, up to 10 cents on the dollar for regulation. We moved it up in Illinois, and we have worked with other companies to move it up in other States, and I think this is a target, and an important target.

The percentage varies according to State. I don't think you have to spend much on regulations in Idaho or North Dakota or South Dakota. It probably is in States like Michigan, Pennsylvania, other States that have a larger proportion of insurance problems for the department to deal with, but not enough money to do it.

I would agree with the part of the criticism of State regulation that so many people have been making, and I have been making it myself. I think we need to add more muscle. I think progress has been made. If you compared today with 5 years ago, it is a new ball game, completely, in State regulation.

Five years ago, you had maybe two or three States where I would be willing to say the quality of regulation is good to excellent.

Today, I think it is 30 to 40 States. I think we are moving rapidly in that direction.

So I am an optimist on this subject, and I think the progress of the last 5 years has demonstrated it, and again, part of it results from prodding from Washington.

Mr. SUTCLIFFE. You would recommend that we proceed to executive consideration of Federal no-fault programs?

Mr. KEMPER. I recommend you proceed with whatever you wish to proceed with, Mr. Sutcliffe, and I think motivation certainly was needed on the insolvency bill.

I made a speech once on this and thanked Senator Magnuson and Senator Hart for motivating our State insurance commissioners and legislature to pass these bills. I think motivation from any source is welcome.

Mr. SUTCLIFFE. Thank you, Mr. Kemper. I have no further questions.

Senator HART. We will receive the several items that we have left hanging for the record, when you get them to us.

Mr. KEMPER. Fine.

Sentaor HART. Thank you very much, Mr. Kemper.

Mr. KEMPER. Thank you.

(The statement follows:)

STATEMENT OF JAMES S. KEMPER, JR., PRESIDENT, KEMPER INSURANCE GROUP

My name is James S. Kemper, Jr. I am President and chief executive officer of the principal companies of the Kemper Insurance Group.

Prior to World War II, I served as a Special Attorney and as a Special Assistant to the Attorney General in the Antitrust Division of the Department of Justice. After the war, I was in private law practice until 1960, when I joined the Kemper Insurance Group in a management position.

The Kemper Insurance Group contains mutual and stock insurance companies writing all lines of insurance, together with other corporations engaged primarily in providing a variety of financial services to the public.

Our principal business engagement is insurance itself, and our largest line is automobile insurance which represents nearly one-half of the sales volume in our group of companies. We have been writing automobile insurance for 58 years, since 1913, and we rank number 11 in automobile premium volume among all groups in the United States.

My testimony today will be concerned primarily with a discussion of the relative merits of the Administration proposal for automobile insurance system changes as compared with S. 945, otherwise known as the Uniform Motor Vehicle Insurance Act. First, however, I would like to comment briefly on S. 976, the

Motor Vehicle Information and Cost Savings Act, and S. 947, which are presently before the Senate Finance Committee.

In all of our consideration of the auto insurance legal system it should never be forgotten that the system itself did not produce the worst problems. I agree with the position of the National Association of Insurance Commissioners, as expressed by its President, Lorne R. Worthington, in his testimony before the House Subcommittee on Commerce and Finance last April 28, that ". . . inflation has been the prime cause in rate increases. Thus the basic responsibility for the problem generated rests in Washington". I would only add (since two-thirds of such costs are generated by physical damage to the car) that the other part of the responsibility rests squarely in Detroit.

For this reason I heartily endorse S. 976, which is designed to give us a car that can withstand crashes which now cost hundreds of dollars and should cost nothing. This is enlightened legislation. I would suggest, however, that the effective date should be earlier than 1975. This legislation should never have been necessary, and it would not have been necessary, if the auto manufacturers had shown the same interest in the welfare of the consumer which has been shown by the insurance industry in seeking solutions to the auto insurance problem.

I should also like briefly to refer to S. 947, which is before the Senate Finance Committee, and deals in part with a proposed tax subsidy for group auto insurance. In essence this bill would permit employees to deduct for income tax purposes any contribution to auto insurance premiums paid by an employer under a so-called group plan. The purpose, of course, is to encourage this particular type of mass marketing and to make it a probable collective bargaining issue in union contract negotiations with employers as an additional fringe benefit. We take no position on so-called mass merchandising legislation, and my own feeling is that if there is a need for this type of group insurance, marketing pressures will inevitably make it available.

However, If there is to be a tax deduction of the type proposed in S. 947, then I would hope the sponsors of that bill, which is considered to be a consumer bill, would amend it to benefit the 70 million or 80 million automobile owners whose insurance will probably never be subsidized in this manner by an employer. Is it fair to enable members of unions who have collective bargaining power to get a deduction through a tax break, while denying an equivalent privilege to the vast majority who will never qualify for such a program? I think not.

The National Association of Mutual Insurance Agents has recently proposed that some form of tax deduction be allowed to the individual who buys auto insurance. I think this is a very cogent idea and one that might have been considered when S. 947 was being drafted—if in fact we are all interested in the welfare of consumers as a whole. The exact form of such a tax deduction needs careful study, but as one example: it might be desirable to permit an individual to deduct one-half of his automobile insurance premium (but not to exceed $100 per year) from his gross income in computing his federal income tax. This would produce a benefit for all automobile-owning taxpayers who are not eligible to come under a group plan. It would place a ceiling limiting the loss of tax income to the federal government, and at the same time provide financial assistance to the lowest income automobile owner. It would benefit the four-fifths of our auto owners who (according to our estimates) will never qualify for the group tax deduction.

Turning now to S. 945: in order to avoid unnecessary repetition of comments already made on the Uniform Motor Vehicle Insurance Act, I should like the privilege of incorporating by reference in my testimony the entire statement of our trade association, the American Mutual Insurance Alliance, which was presented to the House Subcommittee on Commerce and Finance on April 28, 1971. The Kemper companies endorse all of the comments and analyses contained in the Alliance statement.

In addition, I should like to refer again to the statement by Lorne R. Worthington made before the same House Subcommittee on behalf of the National Association of Insurance Commissioners. While Mr. Worthington's statement is developed from the regulatory point of view, I endorse his penetrating analysis of the reasons favoring experimentation with a variety of no-fault programs and the reasons why it would be undesirable from the standpoint of auto insurance consumers to place this segment of the insurance business under exclusive federal or dual regulation.

I believe some points already made in one form or another by witnesses before this Committee and the House Committee deserve amplification.

Our critics in Washington, in the press and in other quarters have created the impression that the insurance industry has been asleep at the switch and has failed to seek creative solutions to automobile insurance problems. We have been depicted as "stand-patters", as stodgy and unimaginative, and as more interested in preserving our franchise than in meeting the demand of our customers. In my judgment this is a complete misconception.

Speaking for the Kemper companies, in cooperation with our trade association, the American Mutual Insurance Alliance, we have been working intensively to find ways of improving the system under which claimants are paid for injuries and property damage. Approximately four years ago, after intensive research and study, the Alliance, together with a cross-section of major auto insurance writers not belonging to the Alliance, conducted the Guaranteed Benefits Experiment in New York and Illinois to determine injured claimants' reaction to an optional choice between accepting substantial first party, no-fault personal injury benefits and proceeding under the existing tort liability system. These experiments demonstrated that less than 25% of all claimants included in the experiment were willing to forego their rights under the tort liability system in order to get definite payments on a first-party basis. This result does not militate against experiments with no-fault, but it does suggest tha i would be imprudent to take irrevocable steps in the absence of additional experience.

Speaking for the Kemper companies, we have for some five years been directly involved in our own study of the possibiilties offered by some form of no-fault insurance. It will be recalled by the members of this Committee that this whole subject began to achieve first rank importance after Professors Keeton and O'Connell announced their so-called Keeton-O'Connell Plan in the fall of 1965. In August of 1966 the Kemper Insurance Group retained Professors Keeton and O'Connell as independent consultants to conduct a six-month series of workshops for our key people around the country on the subject of their plan, plus other variations of no-fault automobile insurance that had been proopsed. against experiments with no-fault ,but it does suggest that it would be imprudent results, at the end of which time, in October 1967, we publicly announced our opposition to the Keeton-O'Connell Plan. However, at that time we emphasized that we felt some form of change involving broader first-party benefits plus other improvement was desirable.

As a further indication of our own involvement in no-fault proposals, long before any legislation was conceived of by the present or prior Administration or by members of Congress, I suggested in a public speech in June 1966 that the insurance industry should take the leadership in encouraging proposals for changes in the automobile reparations system, and that "we should be the first to offer our full support and cooperation in bringing these proposals to the point where they are susceptible of technical evaluation." I should like to emphasize that our involvement represents only a small part of the hard work that has been done by the whole industry to seek solutions to the problems. This hard work resulted in cohesive industry action in development and promotion of the Massachusetts plan. As the fourth largest writer of automobile insurance there we played an affirmative part in that constructive effort.

I have reviewed this history because I felt it was time that somebody in our industry went on record as rejecting the charge that the insurance industry has failed to devote itself to an all-out effort to improve what needs to be improved in the present automobile insurance legal system.

Today practically everybody has some kind of no-fault plan. I think it is logical to put the many approaches into three general categories. First, there are the real stand-patters who seem to wish nothing to be changed, and in this category the American Trial Lawyers Association has the dubious distinction of standing alone. In my judgment their position is blind, selfish, impractical and doomed to defeat. In this connection, I was pleased to see that testimony last week before this Committee exposed as apparent national conspiracy by members of that lawyers' organization to obstruct no-fault bills in the state legislatures. The exposure will be of great help to the rest of us in getting positive action to pass no-fault legislation at the state level.

At the other extreme are those who would junk the entire liability system as respects automobile insurance, or such a large portion of it that the effect would be the same. In this category I place the original plan proposed by the American Insurance Assocation, the Rockefeller Plan proposed in New York State, and S. 945 which is before this Committee for consideration.

The vast majority of those working toward improvement fall into a middle ground and take a progressive, moderate and experimental stance. In this category I place the Administration, the National Association of Insurance Commissioners, the American Mutual Insurance Alliance, the National Association of Independent Insurers (which is the association whose members write the largest volume of auto insurance), the National Association of Mutual Insurance Agents, the National Association of Insurance Agents, the Defense Research Institute, a variety of academic and research people, the sponsors of most of the plans which have now been introduced in state legislatures, and, in particular, Governor Ogilvie of my own home state of Illinois, who has recently announced a no-fault plan for that state which we support.

The Alliance statement to which I have previously referred contains a great deal of material which will serve to illustrate the differences in points of view among these three general categories of interested groups. It seems to me that no case had been made anywhere for a federal plan which will virtually eliminate the tort liability system. It seems to me that a very strong case has been made by Secretary Volpe for an approach which would permit the further development of state plans, with varying benefit levels and approaches, so that we can find out over a period of time what works best and what the public really wants. If S945 or anything like it is enacted, this means that all decisions which might be based upon actual experience will have been irreversibly preempted. We will have gone over the cliff with no way to climb back up again if we find out we have made a mistake. On the other hand, if the states are permitted within a reasonable period of time to develop their own plans, there will be an opportunity to find out what the consumer really needs and wants in the way of change in the reparations system. In a period, which I would estimate to be no more than two years, the states, having learned from the Massachusetts and other plans, will have been able to design essentially compatible systems which meet the needs of their citizens.

It is clear that nobody today has any idea of what form of no-fault insurance the consumer wants, or whether he wants it at all. A recent Gallup Poll indicates that 81% of those surveyed either were completely uninformed as to what was meant by no-fault insurance or, being informed, had no opinion about it one way or another. Only half of those surveyed could even describe no-fault insurance.

I am perplexed that the sponsors of S. 945 refer to it as consumer legislation when neither they nor the Department of Transportation nor Mr. Gallup nor anyone else can find out what the consumers wish to have. Would it not under these circumstances be rash to enact any preemptive federal legislation before there is an opportunity through actual experience to answer this now unanswered question?

I have great concern that enactment of S. 945 would inevitably produce a result exactly opposite to that which motivated its sponsors to introduce this legislation. The purpose of S. 945, as I understand it, is to improve the auto insurance reparations system and to do so within the private insurance system. In my judgment, S. 945 would produce consumer confusion, would create a regulatory monstrosity, and would result in the disenchantment of consumers who have been led to believe that it is a panacea for all auto insurance problems.

Many people have been misled to think that no-fault insurance in and of itself is the medicine that will cure all of the ills in the auto insurance system. The biggest complaints according to all surveys are about the availability and the cost of auto insurance.

As to availability, a recent survey by the Insurance Information Institute in Florida, where there has been much criticism about auto insurance in the press, disclosed that only 8.5% of auto owners had any kind of complaint. Of these, about half said they had difficulties in getting or keeping insurance—a problem which no-fault insurance will not solve. Only 1.4% cited claims problems, which represent the area of consumer complaint most likely to be helped by some form of no-fault insurance.

As to cost, people in the Kemper companies, after analyzing S. 945, believe it will definitely not produce cost savings, and may actually increase premiums because of the benefit levels and other features in the bill. The hard fact is that you cannot increase the payout without increasing the income. Any auto insurance system has to be self-supporting, unless the idea is to introduce a federal subsidy. The only way to achieve a perceptible reduction in costs by a system change is to reduce benefits. There is as yet no credible evidence that any sub-

stantial segment of the public which understands the issue would be willing to lower benefit payments in return for hypothetical lower premiums.

Somewhere along the line I hope that one of the sponsors of S. 945 will make a clear public statement as to exactly what may be achieved and what cannot be achieved by no-fault insurance.

Referring for a moment to the desirability of state experimentation, the members of this Committee are aware that Massachusetts has enacted, with the support of the insurance industry, a modified no-fault bill which provides a rather low level of first-party benefits with a ceiling of $2,000. Governor Ogilvie of Illinois has proposed a plan which is in many respects similar to the Massachusetts law, but which would permit a far higher level of first-party no-fault benefits. Announcements of the details of this plan met with virtually unanimous applause by the information media in Illinois.

At the present time, at least 28 states have some form of no-fault legislation pending in their legislatures and several others have established study commissions. I think it is safe to predict that within the next two years states in which a substantial majority of all automobile insurance is written will have enacted some form of no-fault legislation. The motivation provided by the Administration proposal for a joint Congressional resolution, together with the active involvement of the National Association of Insurance Commissioners and others, will inevitably expedite state action in this important area. We have seen a good illustration of this in the fact that 34 states have already enacted insolvency bills with the same general kind of motivation in the background, and we believe the count will be at least 43 by the end of this year.

There are provisions in S. 945, other than those dealing with no-fault, which bear no relationship to any discernible consumer interest or complaint, and in fact may work aversely to the interests of consumers. All of these provisions would create terrible problems in administration. Some of them appear punitive, not remedial, as if the architects of the legislation wished to punish the insurance industry for problems created primarily by inflation and unsafe and damage-prone cars. Some of them seem designed to change or even to destroy the private auto insurance business, by legislative fiat. I am sure none of this was intended by any sponsor of S. 945. The subject of provisions other than those dealing with no-fault has also been dealt with at length in the Alliance statement to which I have referred.

In conclusion, I urge upon the members of this Committee that the Administration's recommendation for preserving state regulation of our business and permitting experimentation in no-fault plans for a reasonable period of time at the state level should be supported on a bi-partisan basis by the Congress. If future events demonstrate that federal action to improve the auto reparations system be needed, such action can be taken and the Kemper companies will be among the first to support it. On the other hand, if the efforts of the states and the industry itself provide acceptable solutions to problems in the reparations systems, then we will have avoided what might well prove to be an irrevocable and tragic mistake.

Appendix A

INSURANCE INSTITUTE,
FOR HIGHWAY SAFETY,
April 26, 1971.

DOT'S DOUBLE STANDARD FOR BUMPERS

The Department of Transportation has issued an exterior protection standard that essentially meets auto industry demands. It will provide protection against damage to a limited range of "safety related equipment" in five mile per hour crashes of the front ends of vehicles, beginning with 1973 model year production (effective Sept. 1, 1972), but only in 2.5 mile per hour crashes of the rear ends.

The DOT's National Highway Traffic Safety Administration also delayed until the start of the 1974 model year (Sept. 1, 1973) additional requirements for pendulum impact tests—at five miles per hour for front bumpers and four miles per hour for rear bumpers—which, it contends, will tend to reduce bumper override and underride.

At a press conference announcing the new standard (FMVSS 215), NHTSA Administrator Douglas Toms offered his agency's rationale for requiring front and rear end protection systems of different strengths on the same car: "The front end is the more vulnerable end of the vehicle, and so obviously, on a cost benefit sense, we want to try to put our money where there is a better payoff. . . . There are fewer hits on the rear."

GM CLAIMS

Newsmen asked Toms whether or not his agency had based its decision on contentions by General Motors on the freqency of front and rear end collision damage or had also examined conflicting data recently presented to Congress by the Insurance Institute for Highway Safety. Toms answered, "We think the evidence that we reviewed in the docket and the work that we have done suggests that the back bumpers do not have to be as strong as the front bumpers."

General Motors contended that statistics from its wholly-owned insurance company "indicate" that bumpers capable of withstanding 2.5 mile per hour rear end crashes "will offer the consumer more potential savings than a system that would have to meet more stringent performance requirements." The company has said this is so because "front end collisions occur two and a half times as frequently as rear end collisions."

In testimony before the Senate Commerce Committee on March 10, the text of which was filed with the safety administration, William Haddon, Jr., M.D., president of the Insurance Institute for Highway Safety, pointed out that GM's data, based "on collision coverage only, are limited almost entirely to damage to cars that struck something else." and therefore do not reflect an accurate picture of the frequency of rear end damage suffered by struck vehicles.

Haddon, citing claims from "one of the country's largest insurance companies," showed that crashes involving rear end damage may occur almost as frequently as crashes involving front end damage—a ratio of 1:1.26.

COST BENEFITS

Toms told the press conference his agency has estimated that the average cost of providing the 1973 model required protection could be about $40. He said auto makers had told the safety administration it would cost about $100 per car, but "we don't think that's true."

The average motorist who has two or three minor parking lot-type collisions a year "could probably save himself in the vicinity of $40 or $50 or more" in repair bills as a result of the two-level standard, Toms told the press.

"If you start talking about stronger (test) hits on the rear," Toms said, "they got very weak structures on the rear, so you are talking about quite a substantial change in the vehicle, which is an added cost." Earlier in the press conference, however, Toms said he had no way of estimating how much it would cost auto makers to meet the standard's requirements.

Attorney Ralph Nadar later asked Toms to provide "factual substantiation" for his estimate, which Nader called "a presumption against the consumer." In a letter to Toms, Nader asked whether Toms had sought and evaluated cost information on bumpers from auto makers. Nader also said, "It would be more appropriate for (the safety administration) to estimate production cost to the manufacturers and leave the markups to the different companies."

PROTECTION REQUIREMENTS

The standard requires that after the prescribed crash tests "each lamp or reflective device shall be free of cracks" and be adjustable to the point of compliance with the safety administration's standard on lamps and reflective devices (FMVSS 108); hood, trunk and door latches will have to be "operable in the normal manner;" fuel systems, cooling systems and sealing devices will have to be free of "leaks or constricted fluid passages," and the exhaust system will have to be free of "constrictions or open joints."

The wording of the standard does not prohibit other holes in the exhaust system, and damage to doors, trunks and hoods that prevent them from opening even though latches operate "in the normal manner."

The standard also lacks provisions forbidding front and rear end designs that could prove hazardous to pedestrians; nor does it prohibit designs—such as rigid, non energy-absorbing bumper systems—which, though they may pass the very low speed tests, may at the same time greatly increase damage at higher speeds.

ANTI-MISMATCH TESTS

In the second stage of the standard, effective on 1974 model cars, front and rear ends of cars are to be impacted by a test pendulum traveling at four miles per hour, the equivalent of a barrier test at about 2.75 miles per hour, according to the NHTSA.

The test pendulum is to weigh the same as the empty car being tested. The car is to be in neutral and free to roll when impacted, thereby lessening the force actually experienced by the car.

The test is aimed at reducing "the frequency of override or underride in higher speed collisions," the NHTSA said. However, it contains no specific provisions dealing with override or underride in low speed crashes.

BUMPER WIDTHS

An earlier proposal (see *Status Report*, Vol. 5, No. 21, Dec. 1, 1970) would have required, in effect, that all bumper faces be at least six inches wide and of uniform height above the ground since the bumper would have been tested with pendulum impacts at heights between 14 and 20 inches above the ground. The final rule requires that the pendulum impacts be between 16 and 20 inches above the ground, thereby allowing bumpers only slightly more than four inches wide—considerably less than is commonly found on present vehicles.

The standard also fails to address specifically the problem of "nose dive" that occurs during braking and contributes to bumper override in a crash.

The 1974-model year standard requires that the bumpers be impacted with the pendulum 16 times (eight front and eight rear impacts). Four of the 16 pendulum impacts are to be at a 30 degree angle—one at each corner of the car. An earlier proposal would have required 45 degree corner impacts.

DOT RULE'S IMPACT ON STATES: DISPUTE BREWING

DOT has run into sharp disagreement with a state legislative leader and an insurance association over its claim that the new safety standard for bumpers might preempt existing and future state laws that regulate the adequacy of front and rear end car design from a property loss standpoint.

The federal agency contends that, once its standard takes effect, the state laws will become null. At the press conference announcing the standard, DOT attorney Richard Dyson said that although "we haven't studied intensively the state laws . . . it is our understanding that they do cover essentially the same aspects of performance of the vehicle. . . ." He added that, "of course, nothing is preempted until the federal standard goes into effect."

DOT is working from an in-house legal opinion saying that individual state "safety" standards affected by the federal preemptive provision—Section 103 (d) of the National Traffic and Motor Vehicle Safety Act of 1966—"should be considered to be any state laws or regulations that have an effect on the safety of the vehicle regardless of what their stated purpose might be, or in other words, any state laws or regulations that concern the same aspects of vehicle performance as a federal standard."

The opinion does not mention the legislative history of the act, which discourages DOT from setting vehicle performance standards to reduce property damage. Nor does it make reference to a 1969 court decision holding that states are not prohibited by section 103(d) from setting laws or rules governing aspects of vehicle safety other than those specifically covered in federal standards. (See *Status Reports*, Vol. 5, No. 1, Jan. 15, 1970; Vol. 5, No. 21, Dec. 1, 1970, and Vol. 5, No. 22, Dec. 15, 1970.)

IN MARYLAND: "NOT PREEMPTED"

An immediate reaction to DOT's position came from Maryland State Sen. Margaret Schweinhaut, author of Maryland's recently passed law requiring that cars made on or after Jan. 1, 1974, and sold in Maryland be able to withstand a five mile per hour barrier crash, rear as well as front, without damage of any kind.

In a letter to Maryland's attorney general, Sen. Schweinhaut noted that the governor has not yet signed the bill (SB 59). Despite DOT's preemption claim, she said, he should do so right away. "I deliberately included legislative intent in SB 59 speaking to property damage since the federal law concerns itself only with safety features. So as to property damage we are not preempted," she said.

"Maryland," she added, "refused to capitulate to Detroit" by downgrading the rear-end requirement to 2.5 miles per hour. "The federal government has capitulated and in a cynical and tricky fashion, seeming to act on behalf of the public welfare when, in fact, the automobile manufacturers were taking the action they announce and would even if the DOT people did nothing. I cannot

help but wonder whether we have returned to the position that 'what is good for General Motors is good for this country'."

Florida passed a law similar to Maryland's last year, and many other states are considering such legislation.

AMIA WARNING: AUTO LOBBY

Stating that the DOT standard does "not go far enough in reducing auto repair bills and insurance costs," a national insurance trade association has warned that auto makers will use it "in their strenuous lobbying campaign to defeat the more realistic and effective bumper legislation already enacted in Florida and Maryland" and now pending in many other states.

In a press statement, the American Mutual Insurance Alliance pointed out that "nothing" in the standard "requires manufacturers to produce bumpers that will protect delicate grilles, fenders and the bumpers themselves from expensive damage in minor crashes—and these low-speed crashes are now the major contributor to rising auto insurance rates.

"The alliance is strongly supporting legislation now pending in Congress which would give the DOT a mandate to issue standards protecting both the car and its occupants," but meanwhile, "the states will have to do the job that the DOT cannot now do under present (statutory) limitations."

Senator HART. I will enter a general apology to the witnesses that remain. We are almost halfway through.

Next, we will receive testimony from the spokesmen from the Automotive Tank Command in Detroit. I believe this will be given by Mr. Fred Pradko.

STATEMENT OF FRED PRADKO, U.S. ARMY TANK AUTOMOTIVE COMMAND, PROPULSION SYSTEMS LABORATORY, DIAGNOSTIC EQUIPMENT BRANCH; ACCOMPANIED BY DR. ERNEST N. PETRICK, CHIEF SCIENTIST, TANK AUTO COMMAND; RAY BRACHMAN, FRANKFORD ARSENAL, PA.; MARV SLEVIN, DYNA SCIENCES, CALIFORNIA; DON SARNA; AND MR. HANDLER

Mr. PRADKO. May we have a moment to set up the screen that was taken down?

Senator HART. Yes. (Pause.)

Why don't you proceed as you would like, sir.

Mr. PRADKO. Senator Hart, gentlemen, my name is Fred Pradko, and I head up the diagnostic equipment activity at the Army Tank Automotive Command, Warren, Mich.

I want to thank you for the opportunity and privilege of discussing our equipment program here today. With me is Dr. Petrick, chief scientist, Mr. Sarna of my staff, and Mr. Brachman from Frankford Arsenal, Philadelphia, Pa.

We will be glad to answer any questions about our program now or later, but I will confine my remarks to the prepared statement, and it will cover equipment being developed for the maintenance of Army vehicles.

(Slides follow:)

Mr. PRADKO. This equipment will enable a mechanic to hook up to a vehicle and in very short order, find out why it isn't running right and what repairs are needed.

U.S.ARMY
TANK-AUTOMOTIVE COMMAND

diagnostic equipment

FOR
AUTOMOTIVE
INTERNAL COMBUSTION ENGINE
POWERED MATERIEL

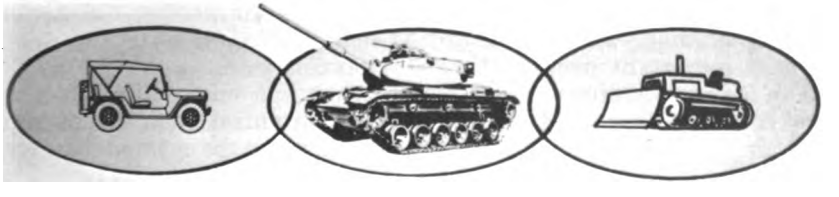


FIGURE 1

The purpose of this equipment is not only to detect faults, but also to diagnose and indicate whether the maintenance required is adjustment, repair, or replacement of components.

PURPOSE

TELL THE MECHANIC WHAT TO:

1. ADJUST
2. REPAIR
3. REPLACE

FIGURE 2

At the present time, the Army mechanic is responsible for maintaining the Army's vehicle fleet of over one-third million vehicles.

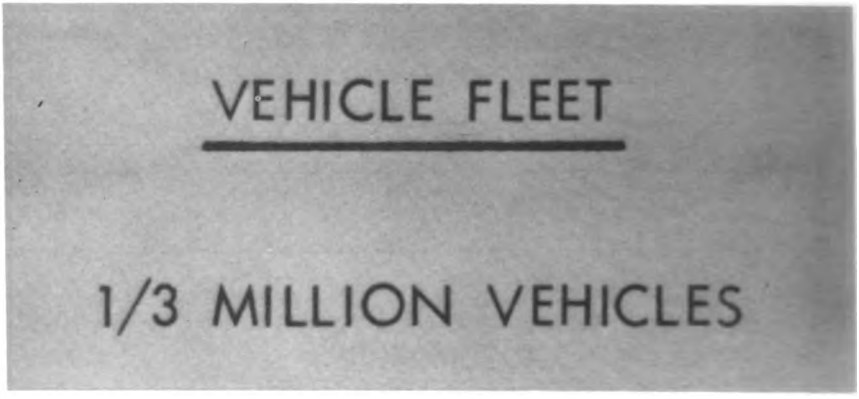


FIGURE 3

The responsibility for development of automatic test equipment for this fleet has been assigned to the Army Tank-Automotive Command in Warren, Mich., with Frankford Arsenal of Philadelphia, Pa., serving as an important member of the development team.

The Army maintenance system which keeps our vehicle fleet in good repair, consists of these four levels (organizational, direct support, general support, and depot) and they can be related to commercial practice as shown here.

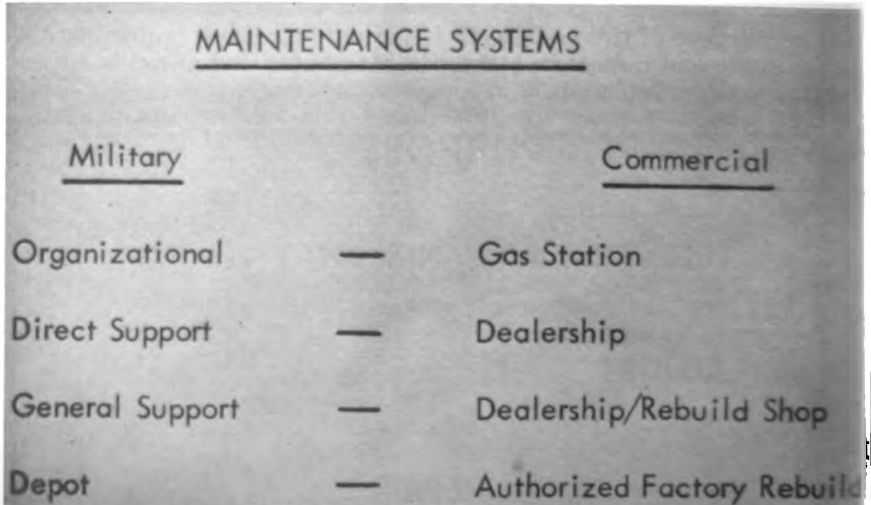


FIGURE 4

ORGANIZATIONAL MAINTENANCE

PERFORMS

MINOR REPAIRS

FIGURE 5

The organizational maintenance level is similar to the kind of service provided for our passenger cars by a local gas station. It is normally limited to field repair and preventive maintenance. Typical work would be repair by replacement of parts such as spark plugs, carburetors, generators, or regulators. The emphasis is placed on keeping the vehicle running.

DIRECT SUPPORT MAINTENANCE

PERFORMS

TESTING, ADJUSTMENT AND COMPONENT REPLACEMENT

FIGURE 6

The direct support maintenance level is similar to a local automobile dealership. Effort is concentrated on testing and repair by adjustment, straightening, tightening, and parts replacement. Generally replaced defective parts are sent to general support maintenance units for repair.

GENERAL SUPPORT MAINTENANCE

PERFORMS

MAJOR REPAIRS

FIGURE 7

The general support maintenance unit is similar to a large dealership or rebuild shop. The distinction between direct and general support maintenance is largely one of more time and more extensive facilities. General support units remain in one location for longer periods; they stock a greater variety of parts and utilize more elaborate test equipment.

DEPOT MAINTENANCE

PERFORMS

OVERHAUL AND REBUILD

FIGURE 8

Depot maintenance work consists of major overhaul and is equivalent to an authorized factory rebuild shop. The facilities, personnel, and capabilities of the depot are at the highest level in the Army maintenance system.

MAINTENANCE PERSONNEL

- Organizational Mechanic
- General Vehicle Repairman
- Engine & Power Train Mechanic
- Fuel & Electrical Systems Repairman
- Turret & Fire Control Repairman

FIGURE 9

Army personnel who currently perform vehicle maintenance and who will use the new diagnostic equipment being developed are trained and classified as organizational mechanics, general vehicle repairmen, engine and power train mechanics, fuel and electrical repairmen, and turret and fire-control repairmen.

Training courses in each category vary from 7 to 15 weeks and on-the-job experience ranges from 1 to 20 years.

Diagnostic equipment is being developed for each level of Army maintenance and we have outlined the development of this equipment in three steps or generations.

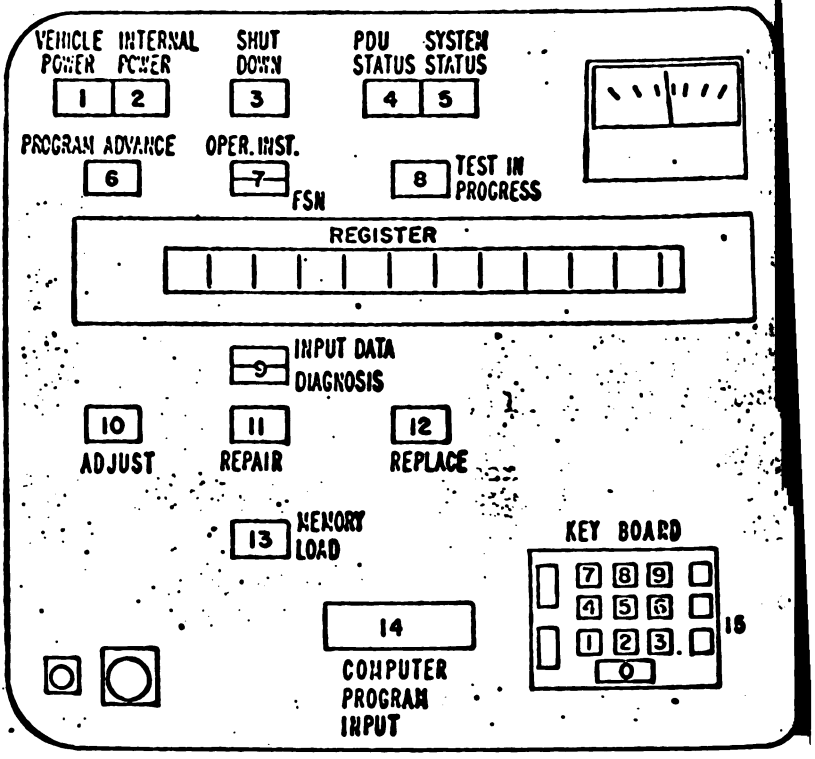


FIGURE 10

The first generation shown is a family of automatic test equipmen which will provide a capability to automatically diagnose a complet vehicle. This will be accomplished by installing a transducer kit o the vehicle to supply information to a computer which, in turn, wi perform the diagnosis.

The second generation, the transducer kit will not be a separ item, but will be incorporated into the vehicles with provision f rapid connection to the computer.

The third generation will be self-diagnosing equipment which w indicate a go-no-go condition for major vehicle components—no e ternal test equipment will be required.

I will now briefly expand on each of these areas mentioned.

ORGANIZATIONAL SET

DEVELOPMENT	1971
TEST	1971
PRODUCTION	1973

FIGURE 11

Under our first generation effort we have four programs which relate to our four maintenance levels. The first provides for the development of a militarized diagnostic unit for use at the organizational or service station level. This is where the Army's most serious need for automated diagnostic sets exists. This will be the first set in a family of equipment that will ultimately include sets for the direct support and general support maintenance.

The fourth program provides for depot or factory rebuild diagnostic equipment.

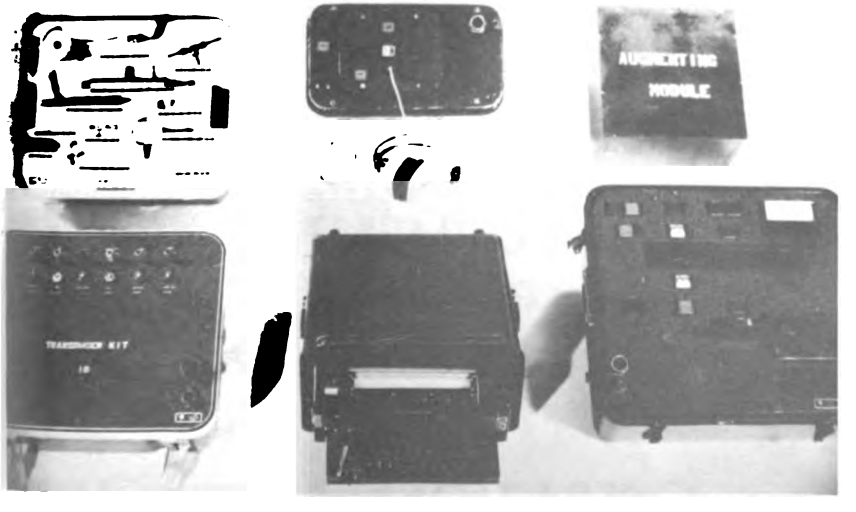


FIGURE 12

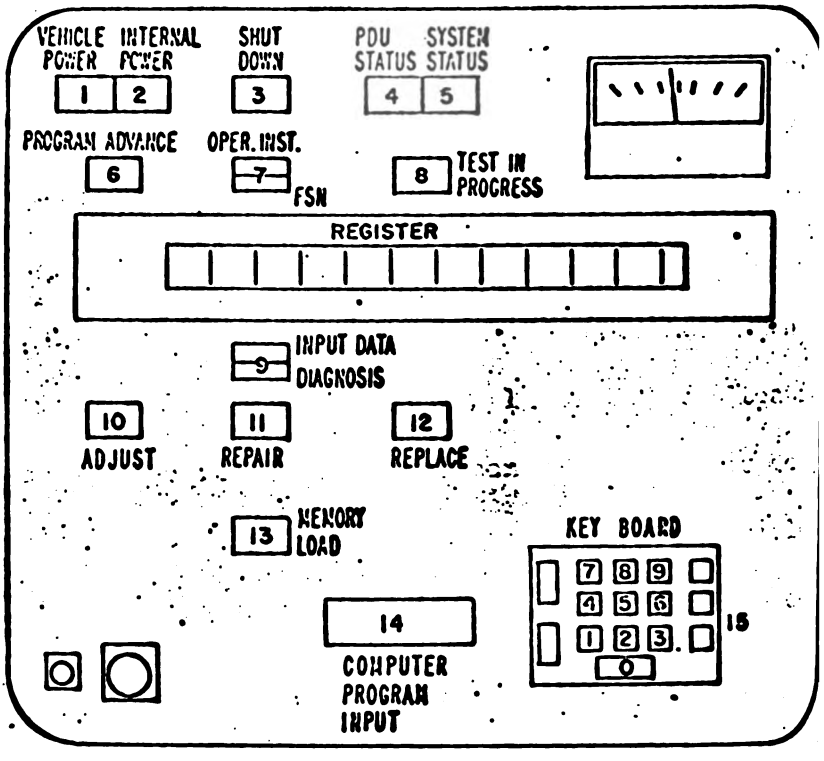


FIGURE 10

The first generation shown is a family of automatic test equipmen which will provide a capability to automatically diagnose a complet vehicle. This will be accomplished by installing a transducer kit o the vehicle to supply information to a computer which, in turn, w perform the diagnosis.

The second generation, the transducer kit will not be a separ item, but will be incorporated into the vehicles with provision f rapid connection to the computer.

The third generation will be self-diagnosing equipment which w indicate a go-no-go condition for major vehicle components—no e ternal test equipment will be required.

I will now briefly expand on each of these areas mentioned.

ORGANIZATIONAL SET

- DEVELOPMENT 1971
- TEST 1971
- PRODUCTION 1973

FIGURE 11

Under our first generation effort we have four programs which relate to our four maintenance levels. The first provides for the development of a militarized diagnostic unit for use at the organizational or service station level. This is where the Army's most serious need for automated diagnostic sets exists. This will be the first set in a family of equipment that will ultimately include sets for the direct support and general support maintenance.

The fourth program provides for depot or factory rebuild diagnostic equipment.

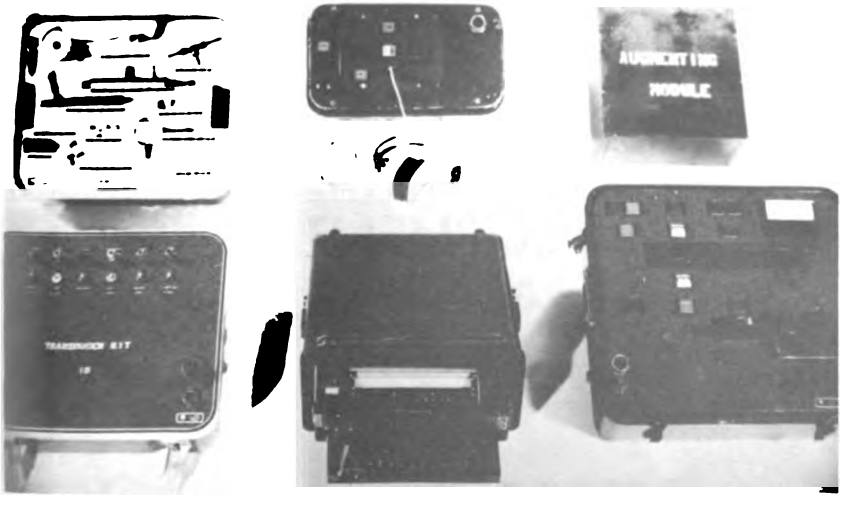


FIGURE 12

I will now discuss the gasoline station set which is currently in the engineering development phase.

Our contractor is the Dynasciences Corp., Chatsworth, Calif. The contract is being administered by Frankford Arsenal.

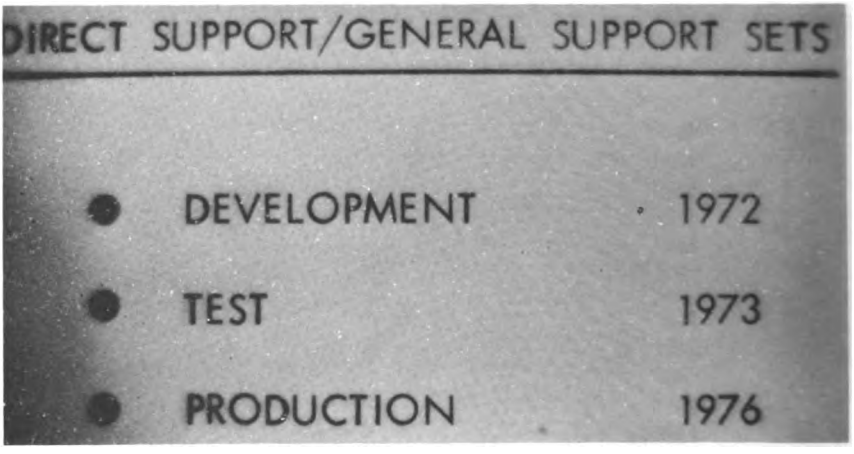


FIGURE 13

What you see on the screen is a mockup. It is made up of the two packages. A transducer kit and a diagnostic unit. The transducer kit contains all the cables and instruments needed to be placed on the vehicle to collect the information necessary for automatic diagnosis.

The unit on the right is the diagnostic unit. It essentially is a small computer. It performs all the necessary diagnosis and communicates to the mechanic what is wrong with the vehicle.

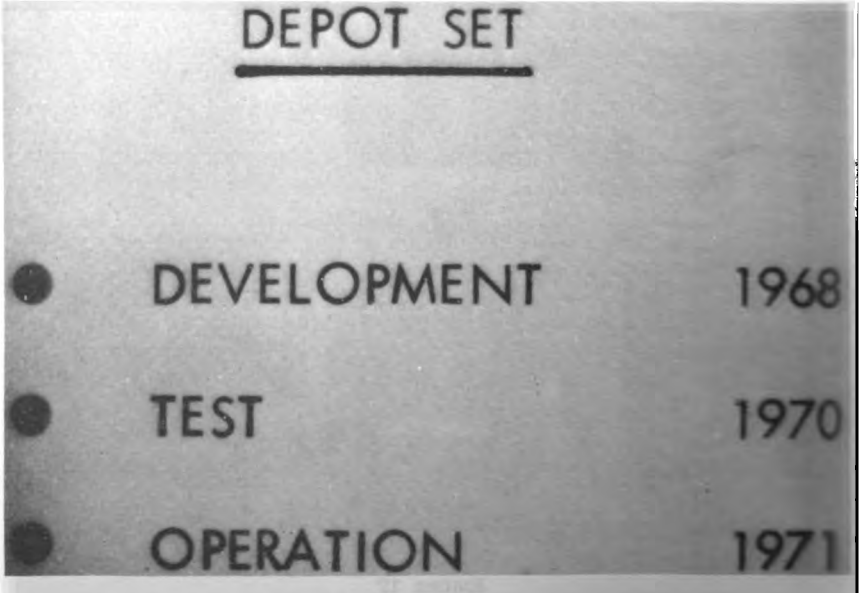


FIGURE 14

These are the measurements that will be collected on truck-type vehicles as well as combat vehicles. However, the mechanic will not have to be concerned with all of this information pouring into him. This data will be processed by the computer, and the diagnosis performed. Maintenance information then will be given to the mechanics as to what repair action he should take.

ADDITIONAL

DEVELOPMENT ACTIVITIES

FIGURE 15

The Army currently has approximately 73 different type vehicles in the field that are classified as current issue or standard "A" type. For these different vehicles, we have 16 different transducer kits, and one master diagnostic unit.

BUILT-IN TEST EQUIPMENT (BITE)

SELF DIAGNOSING

DIAGNOSTIC OR TEST DEVICES PERMANENTLY INSTALLED IN AUTOMOTIVE COMPONENTS FOR THE PURPOSE OF INDICATING OPERATING CONDITION OR REQUIRED MAINTENANCE ACTION...

FIGURE 16

This is the mockup. The diagnostic unit is next to the driver or the mechanic, and the transducer kit is on the fender in the background.

This is the face of the diagnostic unit. So that you may appreciate the automatic feature of this device and how it would operate, Mr. Brachman, from Frankford Arsenal, will go through a quick demonstration of it.

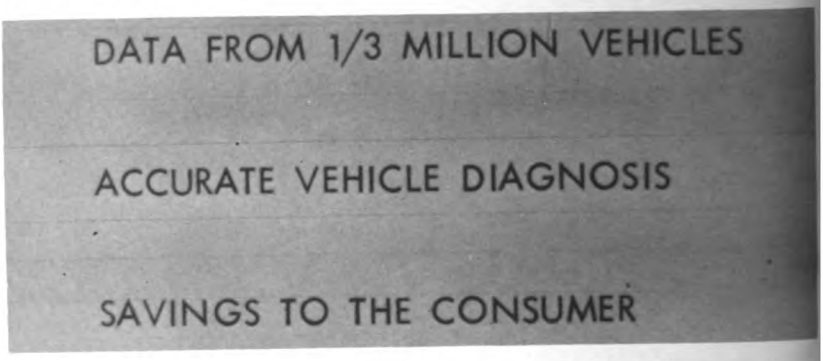


FIGURE 17

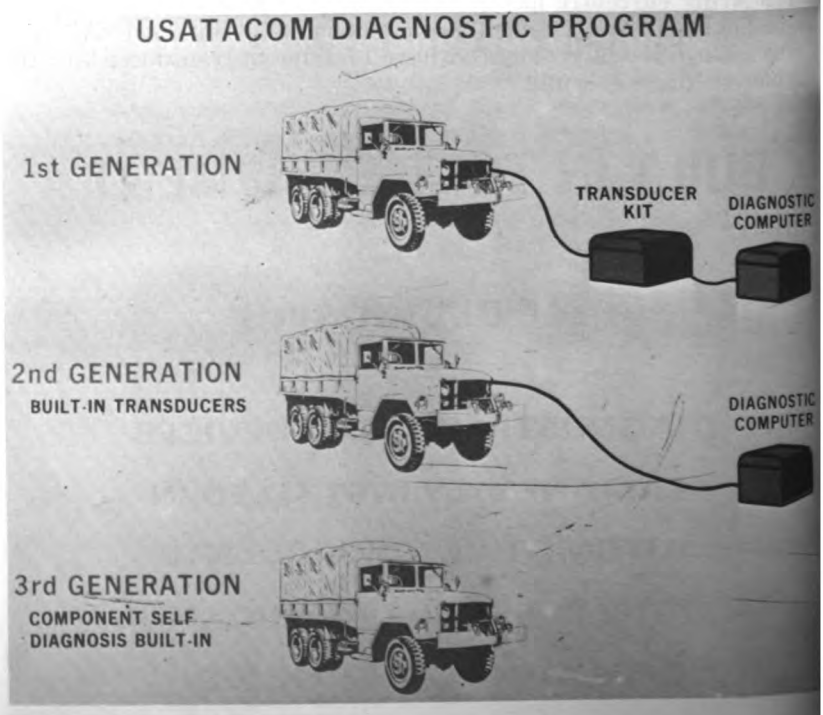


FIGURE 18

TEST EQUIPMENT FOR INTERNAL

COMBUSTION ENGINE POWERED MATERIEL

(ATE/ICEPM)

Military	Commercial
Organizational Set	Gas Station
Direct Support Set	Dealership
General Support Set	Dealership, Rebuild Shop
Depot Set	Authorized Factory Rebuild Shop

FIGURE 19

AUTOMATIC TEST EQUIPMENT FOR INTERNAL

COMBUSTION ENGINE POWERED MATERIEL

(ATE/ICEPM)

Military	Commercial
[redacted] Set	Gas Station
[redacted] Set	Dealership
[redacted] Set	Dealership/Rebuild Shop
[redacted]	Authorized Factory Rebuild Shop

FIGURE 20

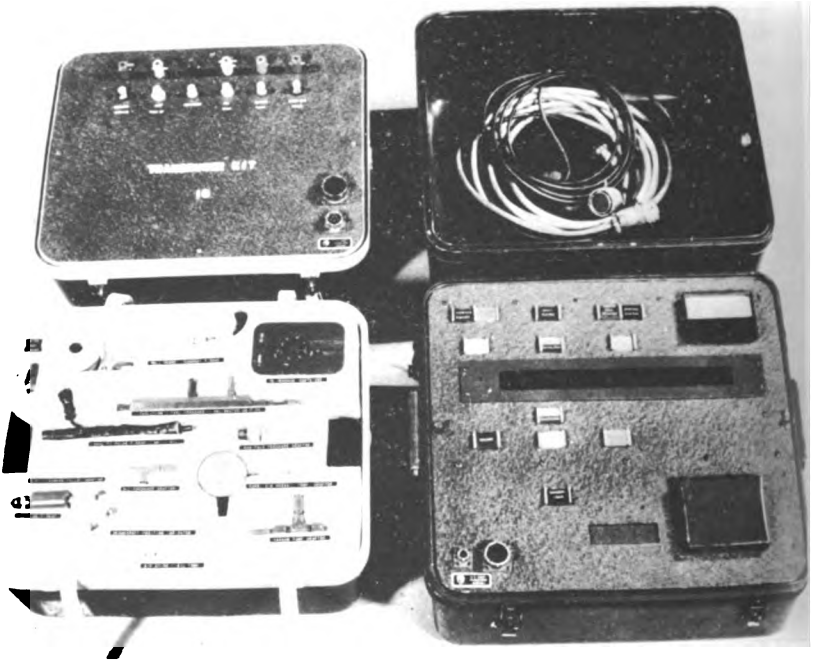


FIGURE 21

TYPICAL MEASUREMENTS

INTAKE MANIFOLD PRESSURE	OIL TEMPERATURE
ENGINE SPEED	STARTER CURRENT
FUEL RATE	BATTERY VOLTAGE
IGNITION WAVEFORM	BATTERY CURRENT
AIRFLOW	CRANKSHAFT POSITION
EXHAUST ANALYSIS	FUEL PRESSURE
INJECTOR PUMP PRESSURE	FUEL TEMPERATURE
EXHAUST BLOWBY	THROTTLE POSITION
CYL POWER DROP	CYLINDER HEAD VIBRATION
OIL PRESSURE	WATER TEMPERATURE

FIGURE 22

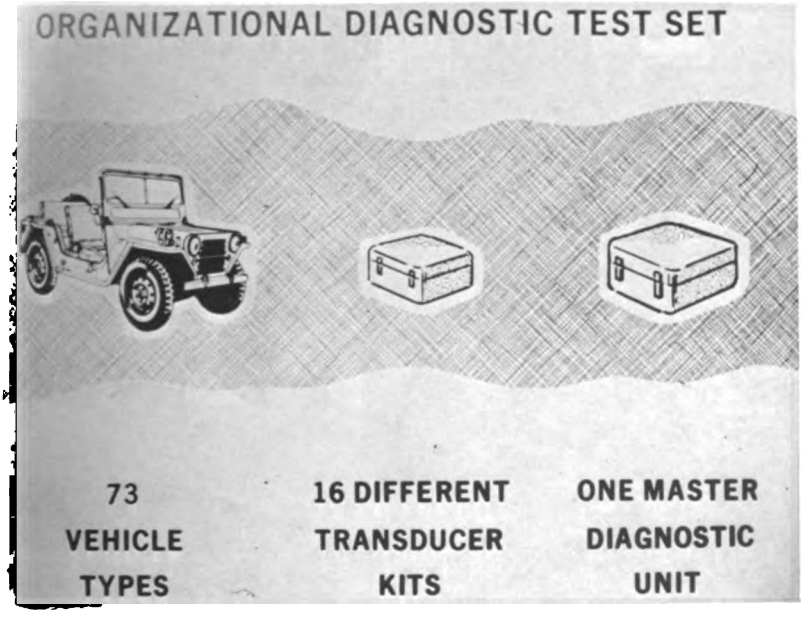


FIGURE 23

FIGURE 24

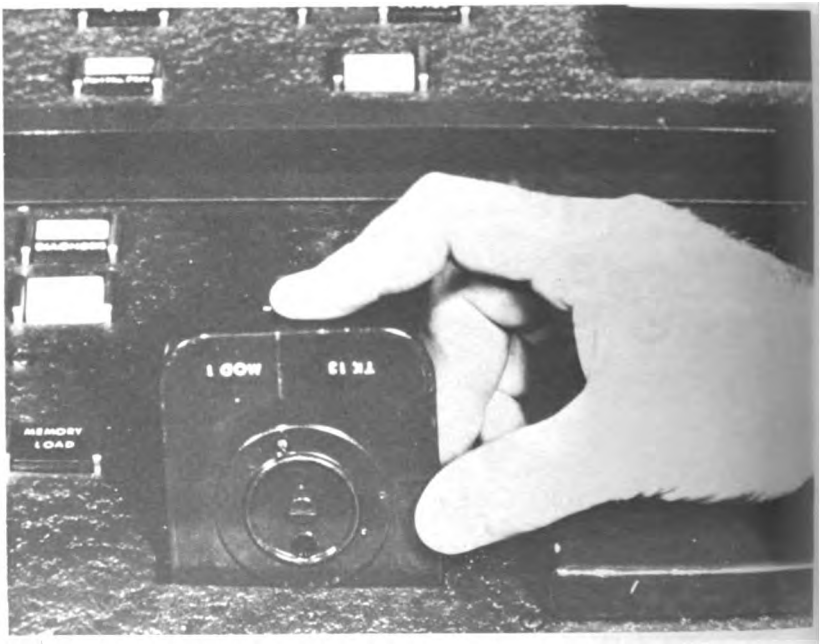


FIGURE 25

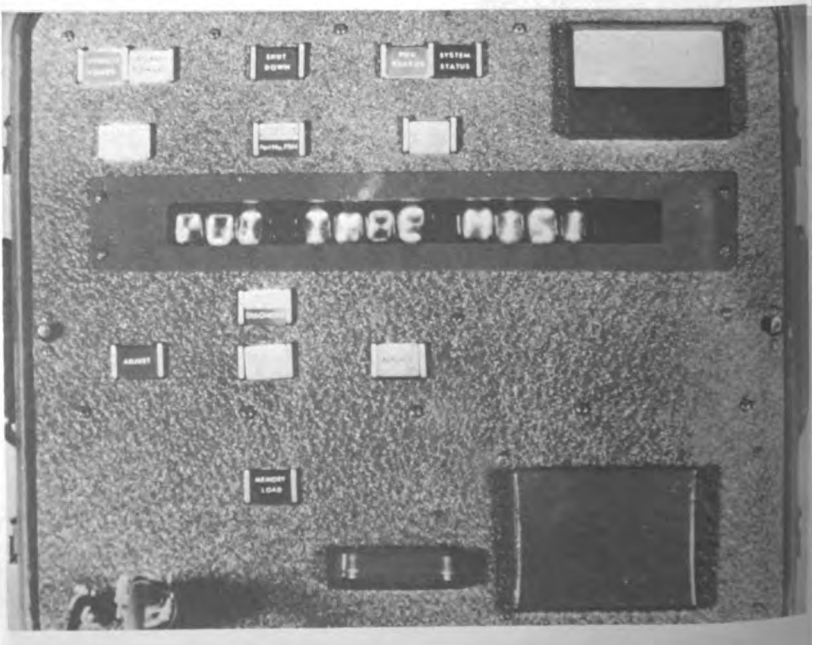


FIGURE 26

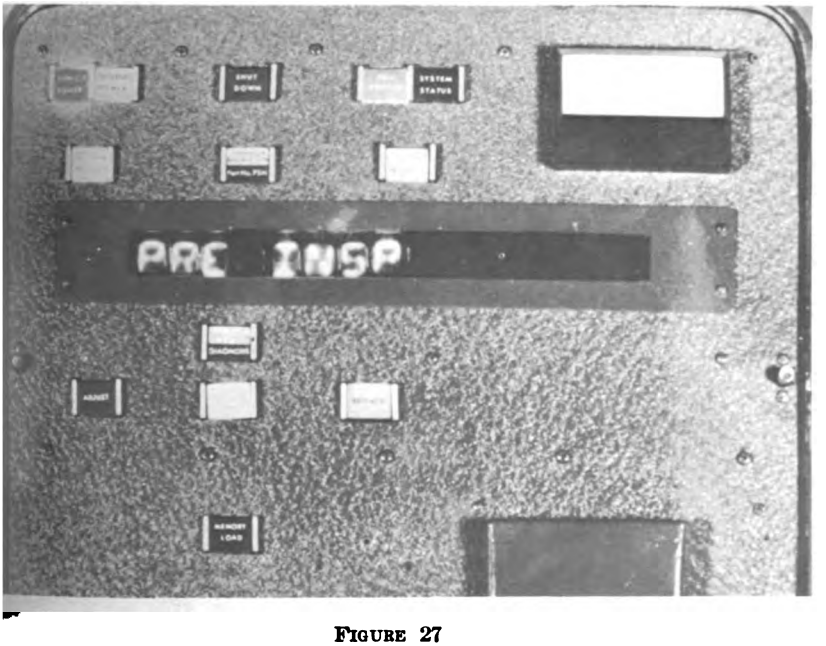


FIGURE 27

Mr. BRACHMAN. The program containing the instructions and procedures is on a program tape or cartridge. The operator receives his equipment and turns it on, inserts the program tape and causes the program to be filed into the computer. Again he does not know what is inside.

The first display identifies the vehicle he is testing and corresponds to the kit. He has to be sure he has the right one. This display—pre-inspection—is a reminder to conduct his physical inspection such as fan belt, windshield wiper hoses and they get entered into the computer. From here we proceed in an automatic diagnostic mode. (Warm engine.)

Here he is instructed to warm up the engine so the data represents true operating conditions and we do not get false readings. If he has to abort the test or stop the engine before it warms up, the computer will not change position, so he has to go back and make sure it stabilizes. When it has stabilized he is reminded both audibly and visually to stop the engine. Next step is to crank the engine, the computer then takes in certain data, for measurement of cylinder compression, battery charge characteristics, and so on.

Now he is told to idle and more data is taken in. He is being told to get the speeds. All he does is watch the needle and when it gets between the two points here he knows he has the right speed. When he gets to this level then he just proceeds to the next step. Next step is full throttle as fast as he can depress the accelerator to the floor and release it. He then returns to the idle for safety conditions to get it back to a normal speed and he is finished. (Test is complete.)

Now he interrogates the system to see if he has any malfunctions, and there is a diagnosis—replace the water pump. He is told the Fed-

eral stock number is this number for ordering the part. If there is additional malfunctions it is indicated. Here it shows No. 4 spark plug. Diagnosis: replace. Likewise the stock number for the spark plug. And if there are no further outputs, he receives an "end of message."

The actual operation time is about 1 minute to 90 seconds.

Senator HART. Do you have any idea how long procedures that are compressed into the 1 minute would take in the normal time? By that I mean an acceptable time.

Mr. BRACHMAN. I think you have to consider the total picture. It takes 10 minutes to instrument the vehicle and conduct the test. Those 10 minutes are equal to 45 minutes to an hour as presently set up. (Commercial diagnostic centers.) The thing about this is that the man operating this equipment is not a skilled technician on automobiles or a mechanic.

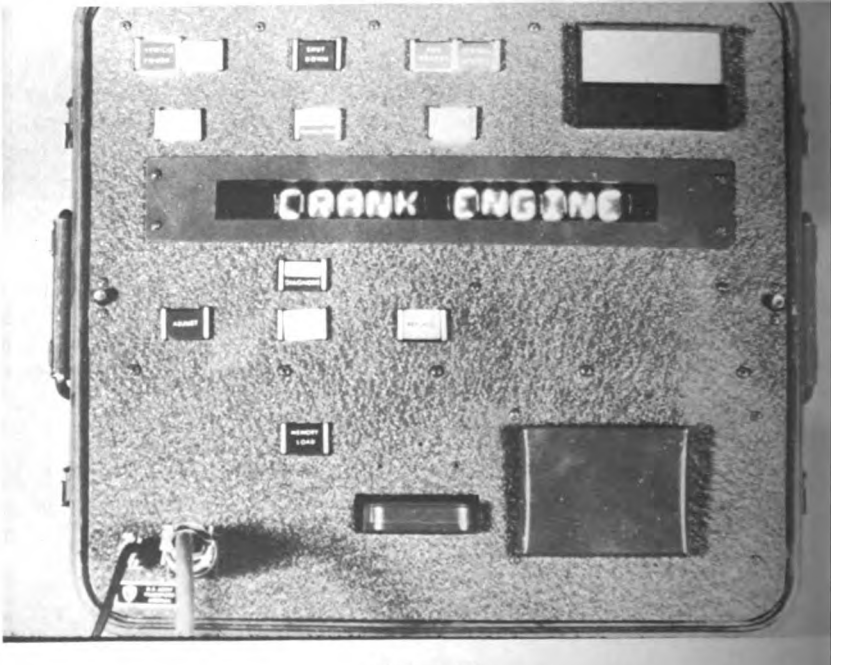


FIGURE 28

Mr. PRADKO. These items represent our highest capability. This hardware is currently in development and a contract was awarded for its development in December 1970. Testing will begin on this unit late this fall at Aberdeen Proving Ground and production is scheduled for 1973.

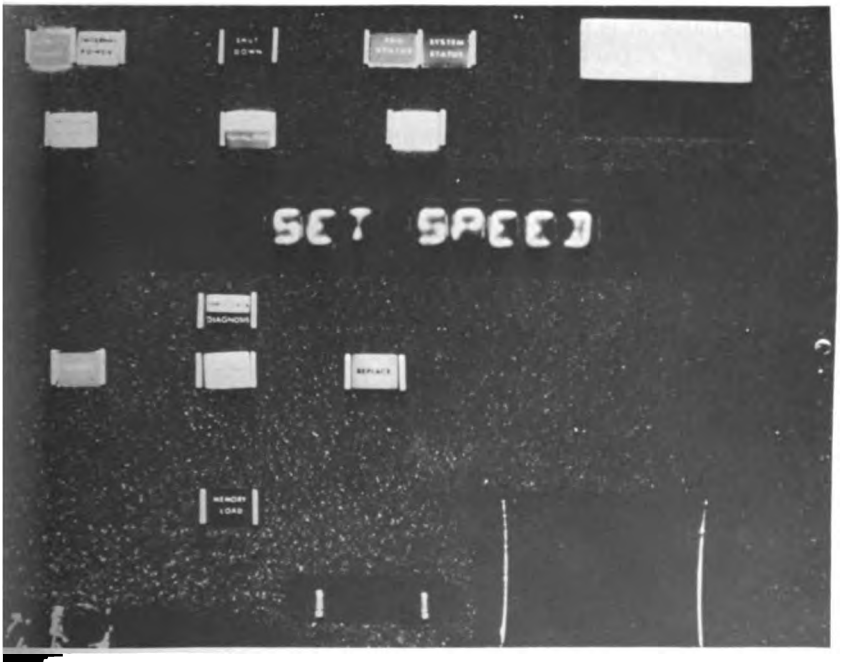


FIGURE 29

will discuss our remaining sets in our diagnostic equipment family h are basically the expansion of the set that you just saw monstrated.

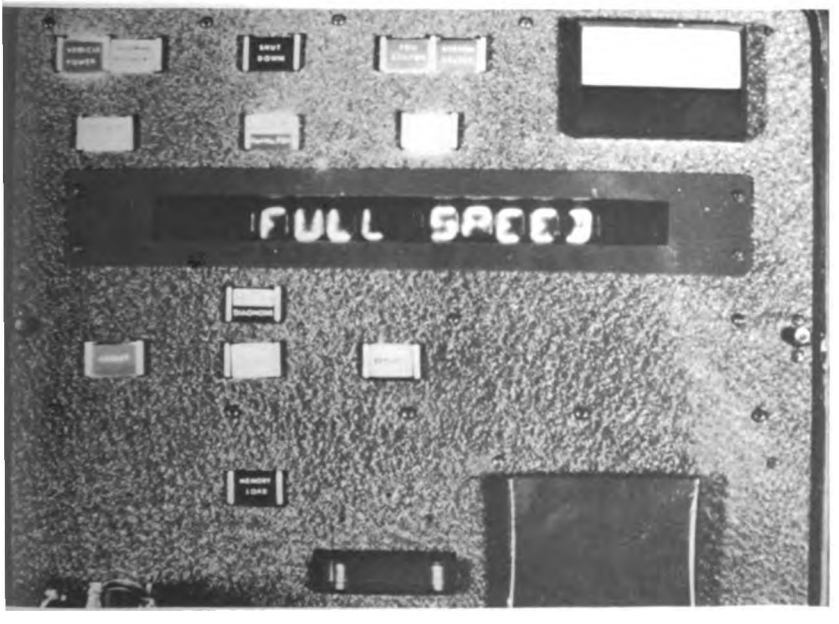


FIGURE 30

The expansion is primarily in the computer area where we increase the computer capacity by adding an augmenting module providing a data controller shown in the middle which communicates with the mechanic as well as a printer for hard copy output of any diagnostic information and for permanent records.

The transducer kit is essentially the same. However, we have increased the capacity of it for collecting information from the vehicle.

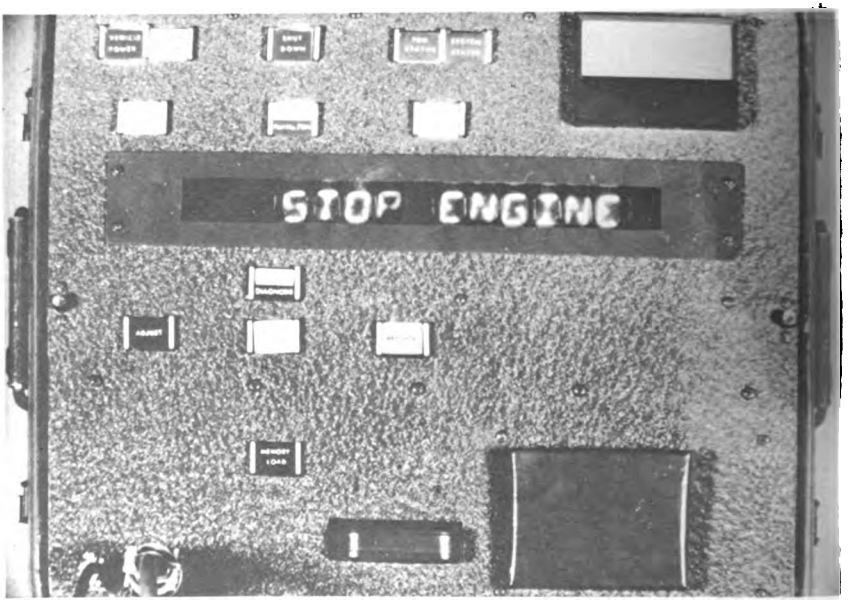


FIGURE 31

The direct support unit would be used in a similar fashion as the organizational sets. First it would be hooked up to the vehicle and any information collected would be shown on the printer.

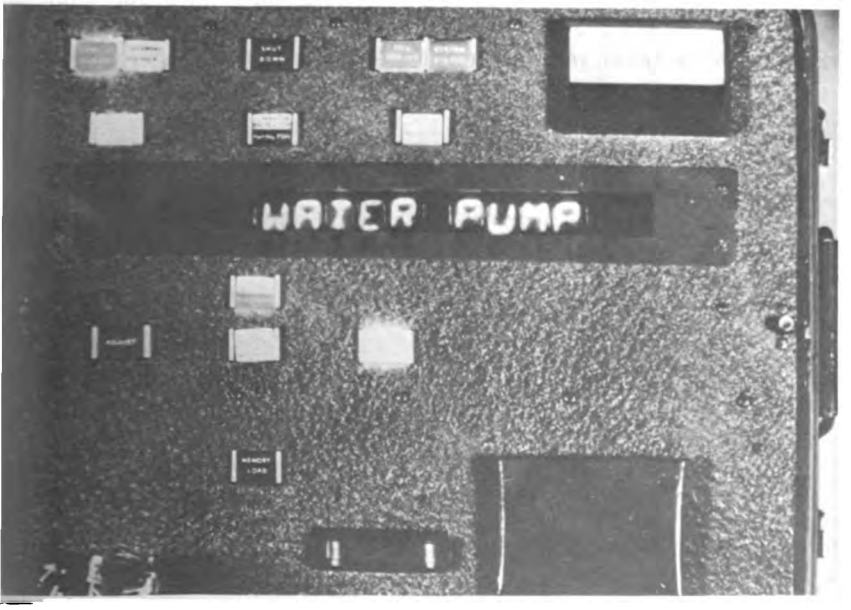


FIGURE 32

If a static were not adequate to find the fault that exists, then the diagnostic computer would instruct the data controller to perform additional diagnosis under road tests.

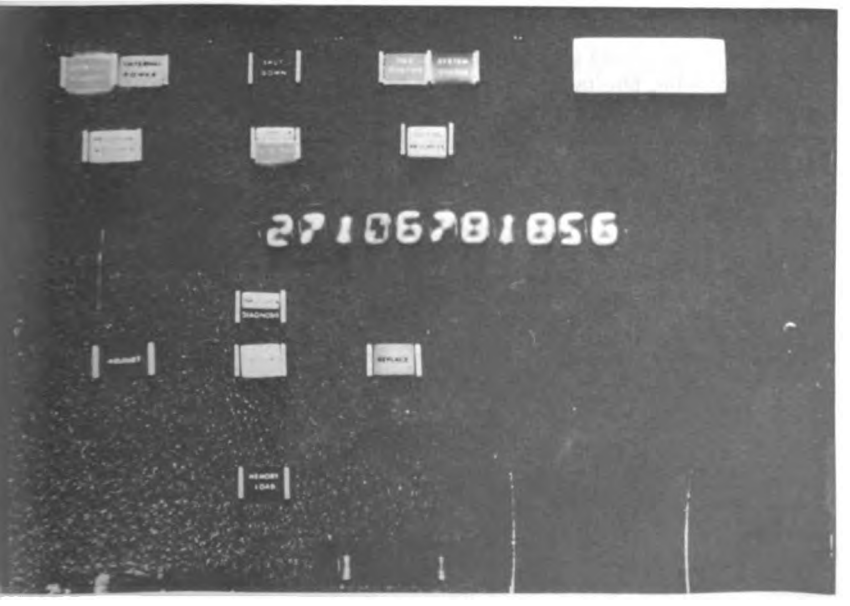


FIGURE 33

The data controller would be placed inside the vehicle and hooked up to the transducer kit very similar to the organizational set. The truck would be taken out on the road for a dynamic test.

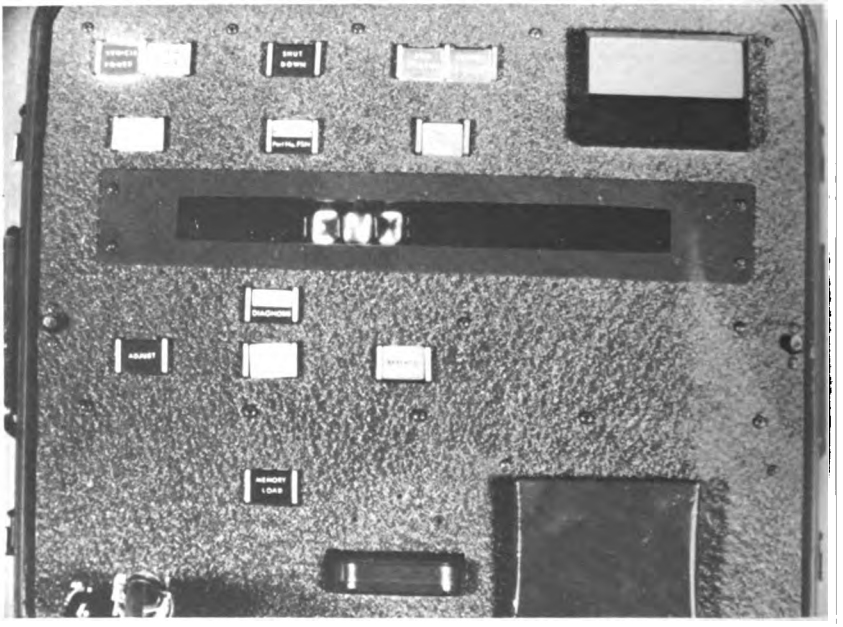


FIGURE 34

The controller instructs the driver through a set of earphones by audio communication what it would like to have done, what the vehicle speed should be, the gear he should be in, and how he should be handling the vehicle. When the driver achieves that condition he merely presses a button on the face of that controller saying that he is in that position and the data will be collected. The machine tells him what to do and when to do it.

AUTOMATIC TEST EQUIPMENT FOR INTERNAL COMBUSTION ENGINE POWERED MATERIEL (ATE/ICEPM)

Military	Commercial
Organizational Set	Gas Station
Direct Support Set	Dealership
General Support Set	Dealership/Rebuild Shop
Depot Set	Authorized Factory Rebuild Shop

FIGURE 35

After the data is collected the controller is taken back to the shop area and it reads all the information back into the computer and the diagnosis is performed—this is off-vehicle—the printer prints out the information as to what was wrong with the vehicle and what maintenance needs to be done.

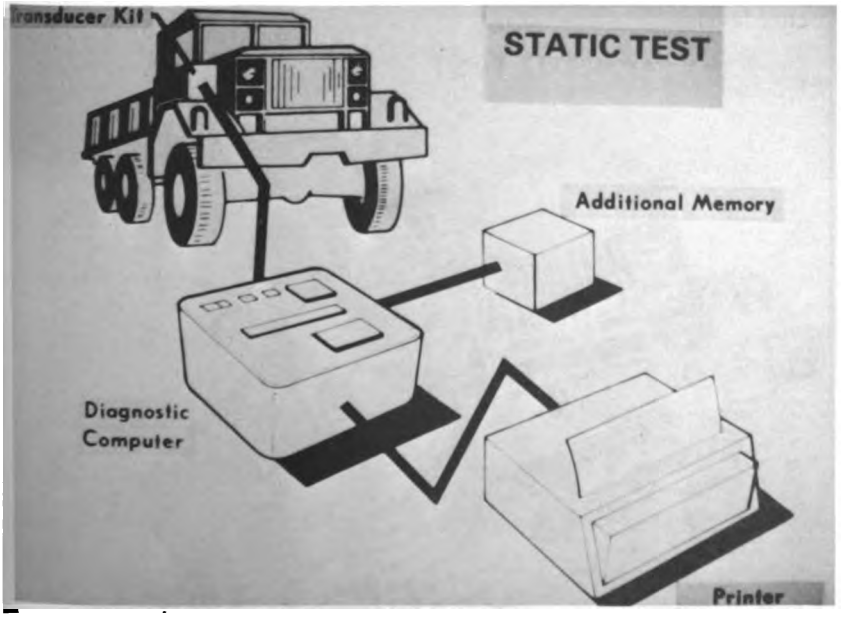


FIGURE 36

The general support set is being developed simultaneously with the direct support set.

LOADING DATA CONTROLLER

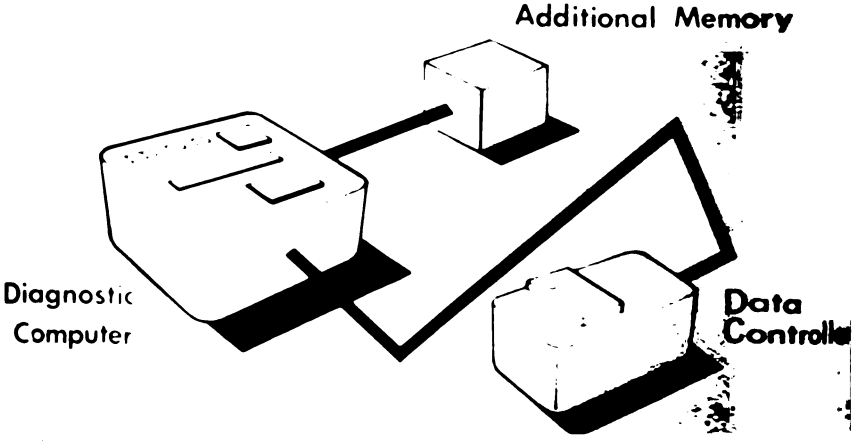


FIGURE 37

It is primarily a direct support set with a chassis dynamometer which will allow static tests but under dynamic conditions. We also have increased the capacity of the computer.

I might add all of these boxes or schematics that you see on the screen are man-portable. This is a completely portable system for all maintenance levels.

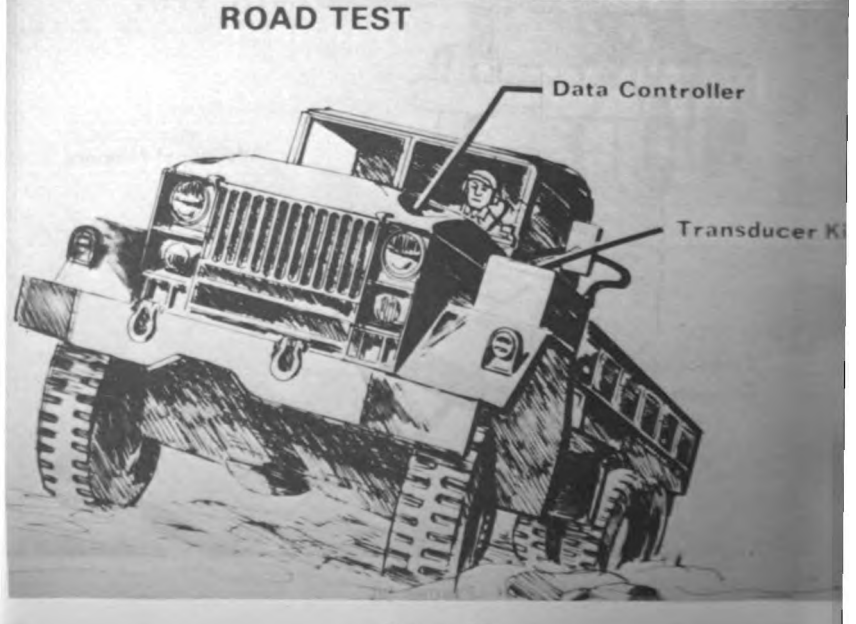


FIGURE 38

We have authority to proceed with the engineering development of the Direct Support and General Support Sets in the next fiscal year, 1972. We are on schedule and testing should begin in 1973 with production in 1976.

FIGURE 39

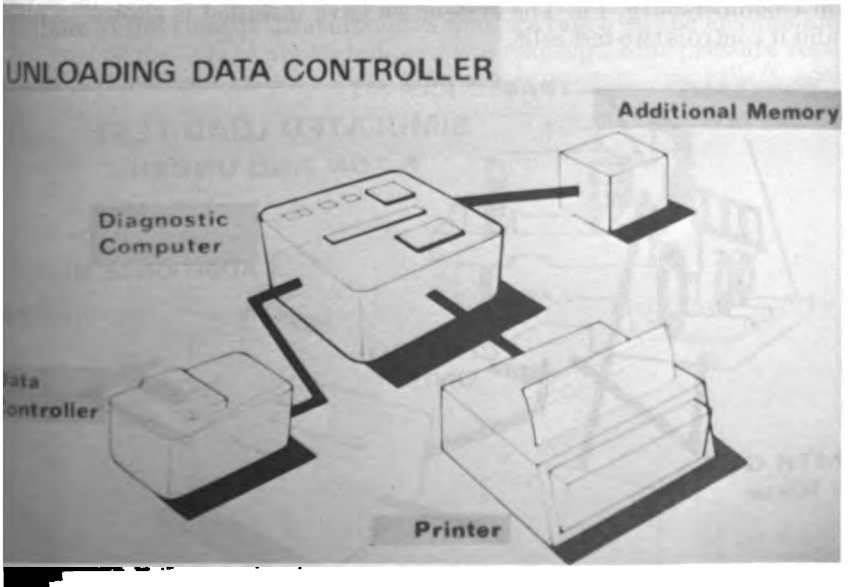


FIGURE 40

For the Depot Diagnostic equipment, our contractor is Hamilton Standard, located in Windsor Locks, Conn. This equipment is referred to as the Multipurpose Automatic Inspection Diagnostic System. This is primarily for large tank engines and transmissions.

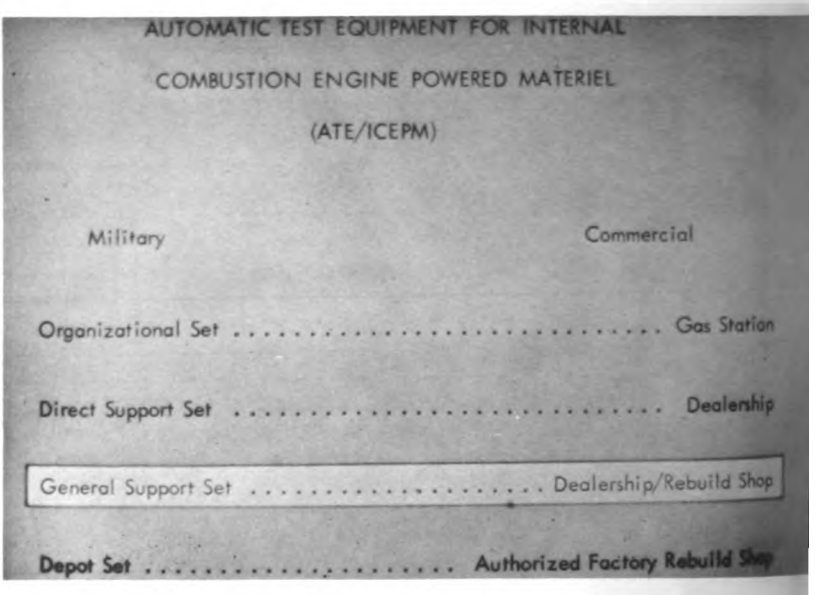
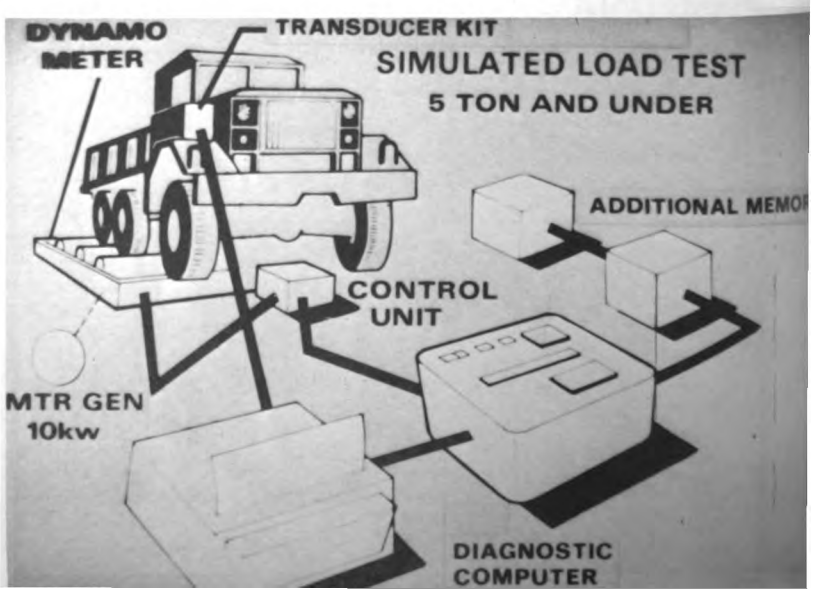


FIGURE 41

The system has been completed and it is installed in the Army depot in Chambersburg, Pa. The system we have installed is shown in blue and it controls two test cells.



Essentially this is a computer-controlled system. The computer is a 16-K memory. It has the capability of self-checking the whole system for accuracy and online diagnostic capability.

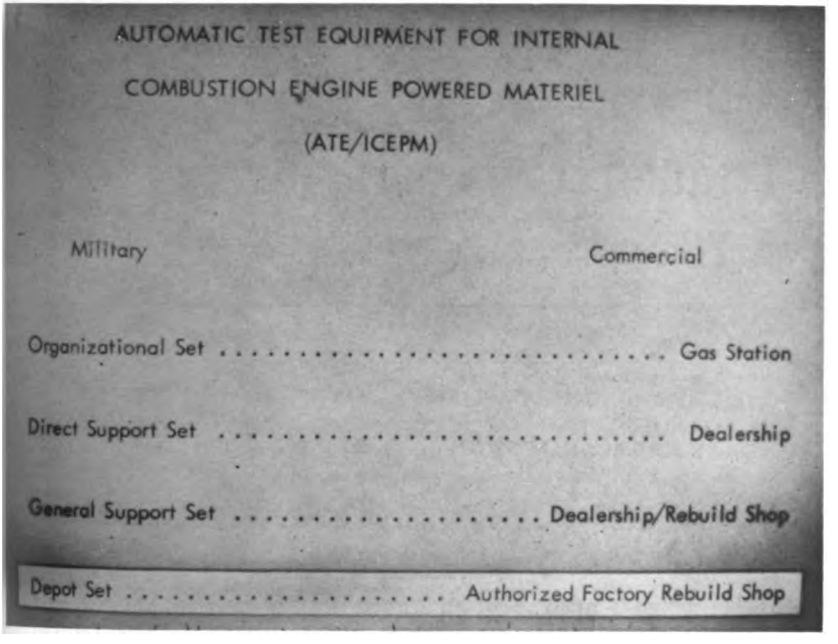


FIGURE 43

This is the type of measurements that are taken on the engines and transmissions—there are 25 temperature readings, nine pressure readings, 18 vibration ratings, seven flow measurements, crankshaft positions, torque, throttle positions, and voltages.

MULTIPURPOSE AUTOMATIC INSPECTION DIAGNOSTIC SYSTEM

AUTOMATIC DIAGNOSTIC SYSTEM
FOR RECIPROCATING
ENGINES AND TRANSMISSIONS

FIGURE 44

The use of this kind of system in our depots required a change to our current rebuild procedure. Currently when the engine or transmission is found to not be performing satisfactorily it is removed, packaged. and returned to depot for overhaul. When it is received at the depot it is completely torn down and inspected. This naturally then requires complete overhaul. After rebuild it is then reassembled and checked on the dynamometer and reissued.

With the diagnostic system, our new system, the engine is received from the field. It is placed into the test cell and we perform a series of diagnostic checks such as shown here: the starter, the injection system, exhaust, vibration readings, and so forth. We process this data to determine what is wrong with the engine and to indicate why it is not performing up to standard.

Then we make only those repairs necessary and place it back into the test cell, rerun it, certify it is up to standard and reissue it.

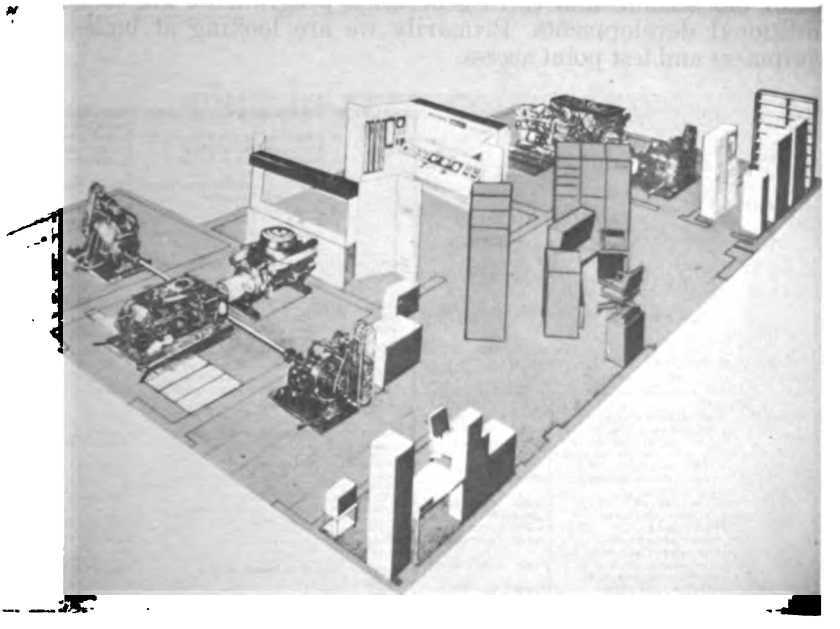


FIGURE 45

Development of this system began in 1968, tests were successfully completed in 1970 and it is now in operation. It went into operation last March.

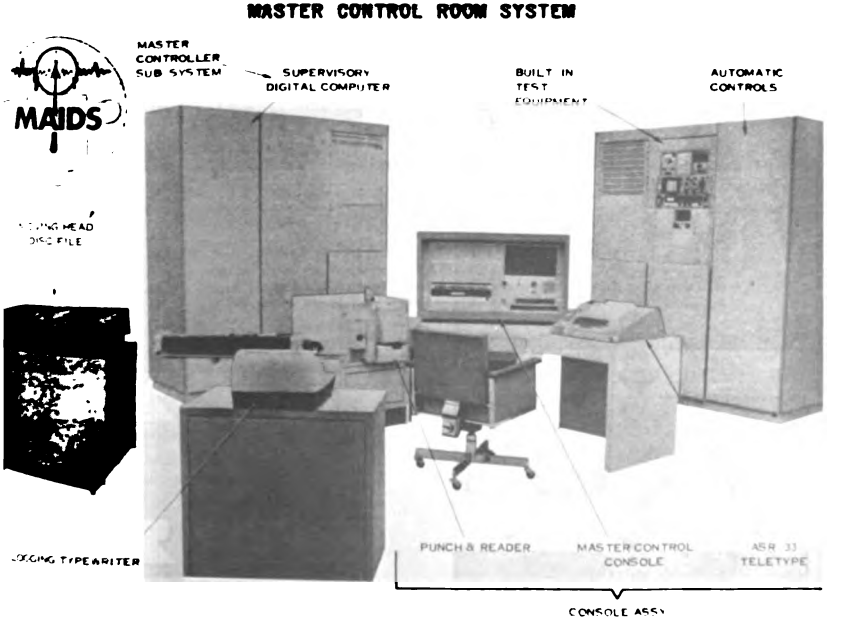


FIGURE 46

For our second- and third-generation program we are conducting additional developments. Primarily we are looking at built-in test equipment and test point access.

TYPICAL DIESEL ENGINE MEASUREMENTS

MEASUREMENT	SENSOR LOCATION	ENGINE SYSTEM ANALYSIS
TEMPERATURE (25 POINTS)	(12) EXHAUST PORTS (PIPE PLUG)	POWER & INJECTORS
	(1) OIL BEFORE ENGINE OIL GALLERY (OUT OF COOLERS INTO ENGINE)	LUBRICATION AND SAFETY MONITOR
	(2) OIL COOLING LINE (OUT OF ENGINE INTO OIL COOLERS)	LUBRICATION
	(1) FUEL SUPPLY LINE (SERVICE SUPPORT SYSTEM)	CORRECTION FACTOR
	(1) FUEL RETURN LINE	CORRECTION FACTOR
	(2) OIL RETURN LINE (TURBO SUPERCHARGER)	LUBRICATION & TURBO-SUPERCHARGER
	(2) EXHAUST OUTLET (TURBO SUPERCHARGER DIAGNOSIS)	TURBO-SUPERCHARGER
	(2) INTAKE MANIFOLD (TURBO SUPERCHARGER DIAGNOSIS)	TURBO-SUPERCHARGER
	(2) INTAKE AIR FLOW (TURBO SUPERCHARGER INLET)	CORRECTION FACTOR
	(1) AMBIENT	CORRECTION FACTOR
PRESSURE (9 POINTS)	(2) INTAKE MANIFOLD (AFTER TURBO)	TURBO-SUPERCHARGER AND INTAKE SYSTEM
	(1) ENGINE OIL GALLERYS (PLUG LEFT SIDE OF CRANKCASE REAR)	LUBRICATION AND SAFETY MONITOR
	(1) ENGINE OIL (OUT OF ENGINE INTO COOLERS)	LUBRICATION
	(2) AMBIENT PRESSURE (AT INTAKE TO TURBO SUPERCHARGER)	CORRECTION FACTOR
	(2) INJECTION PUMP	INJECTION PUMP, INJECTOR S., TIMING
	(1) FUEL PUMP (AT INJECTION PUMP INLET)	FUEL
VIBRATION (18 POINTS)	(12) ROCKER BOX (VALVE) COVER (ACCELEROMETER)	VALVE, INTAKE & EXHAUST ADJUSTMENT & TIMING
	(1) ENGINE BLOCK VIBRATION (BLOCK ACCELEROMETER)	INTERNAL MALFUNCTIONS BEARINGS, ETC. ISOLATION
FLOWS (7 POINTS)	(1) FUEL SUPPLY LINE (DIESEL SUPPLY LINE IN SERVICE SUPPORT SYSTEM)	INTAKE & FUEL
	(1) FUEL RETURN LINE (DIESEL RETURN LINE IN SERVICE SUPPORT SYSTEM)	INTAKE & FUEL
	(1) BLOW BY (BREATHING SYSTEM)	ENGINE WEAR
	(2) ENGINE OIL (OUT OF ENGINE INTO COOLERS)	LUBRICATION
	(2) AIR-INTAKE (SUPERCHARGER)	INTAKE
CURRENT (1 POINT)	STARTER (SERVICE SUPPORT SYSTEM)	STARTER & ENGINE COMPRESSION
POSITION (1 POINT)	CRANKSHAFT	TIME BASE
SPEED (3 POINTS)	(2) ENGINE COOLING FAN (CRITICAL MALFUNCTION)	COOLING SYSTEM
	(1) ENGINE UNDER TEST	BASIC CONTROL
TORQUE (1 POINT)	(1) DYNO (TEST CELL 2)	BASIC CONTROL
THROTTLE POSITION (1 POINT)	(1) ENGINE UNDER TEST	BASIC CONTROL
VOLTAGE (1 POINT)	MAGNETO PRIMARY STARTER	IGNITION IGNITION

FIGURE 47

We are looking at providing multiple built-in test connectors for hookup to our manual and automatic equipment.

DEPOT OVERHAUL COMPARISON

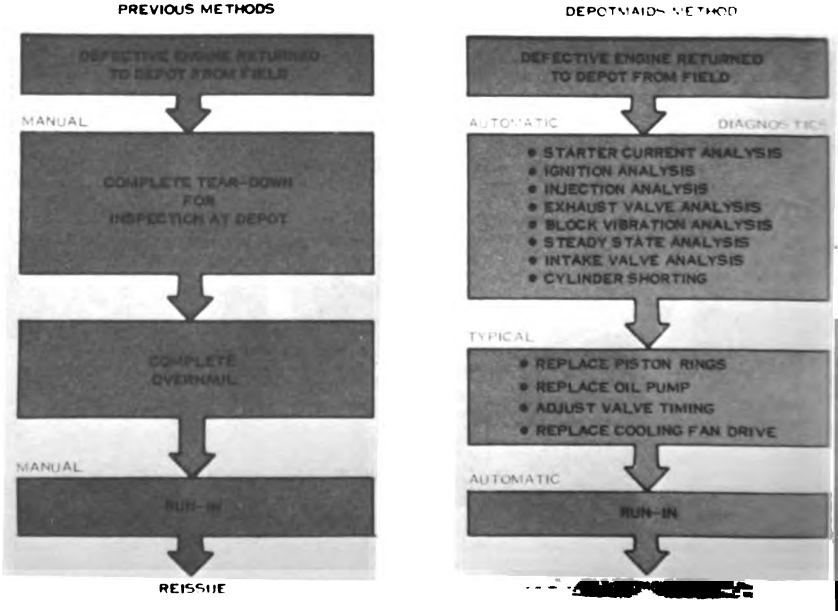


FIGURE 48

When we say built-in test equipment we mean primarily this type of system.

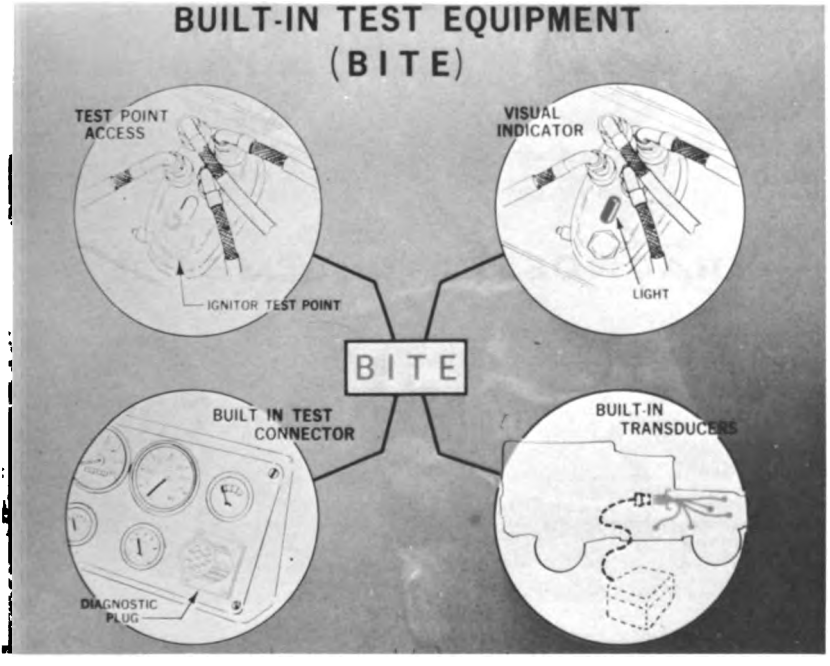


FIGURE 49

This is a picture of our voltmeter which is part of the instrument panel of our jeep. If the system is operating correctly the indicator or the needle should be in the green zone on the tick mark. If there is something wrong with the generator or the regulator it will indicate in the yellow zone, but we will not know which component is at fault. So we have installed a simple switch which bypasses the regulator, and now when the switch is depressed if the needle goes into the red zone we know that the regulator has failed. If we depress the switch and the needle stays in the yellow we know that the generator has failed. So the driver or mechanic knows then what components to replace.

65-345 O - 71 - pt. 4 -- 8

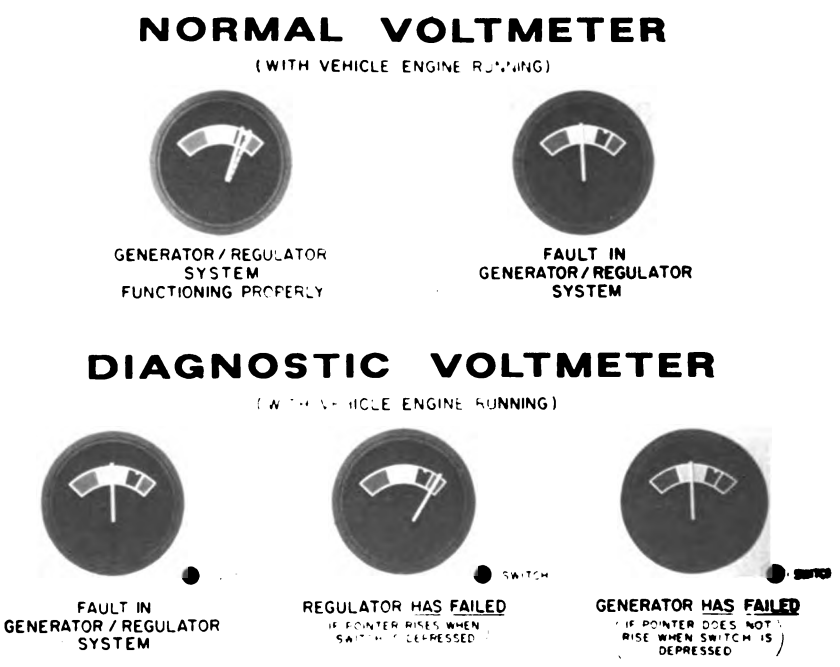


Figure 50

We have installed a sensor on the air cleaner so that the critical operation of keeping clean air coming into the engine can be monitored visually at all times. If the system is operating correctly there is a yellow band showing a satisfactory condition of the air cleaner system. If the air cleaner is clogged or plugged, then a red band is displaced indicating that service of the air cleaner is required.

After service of the air cleaner is performed the button at the end of the sensor is reset to the original condition.

AIR CLEANER SENSOR

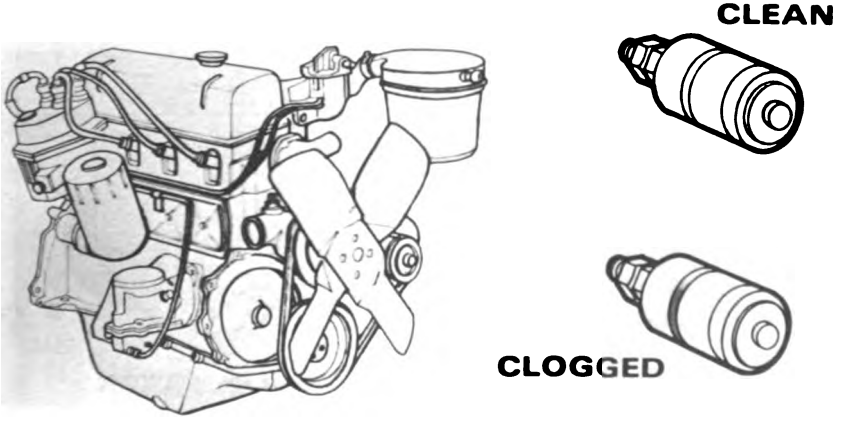


FIGURE 51

We are also looking at visual indication of the fuel filter condition. The reason for this development is that plugged fuel filters can cause loss of vehicle power. In some instances engines have been inadvertently removed from vehicles for service when only the fuel filter required attention.

FUEL FILTER SENSOR

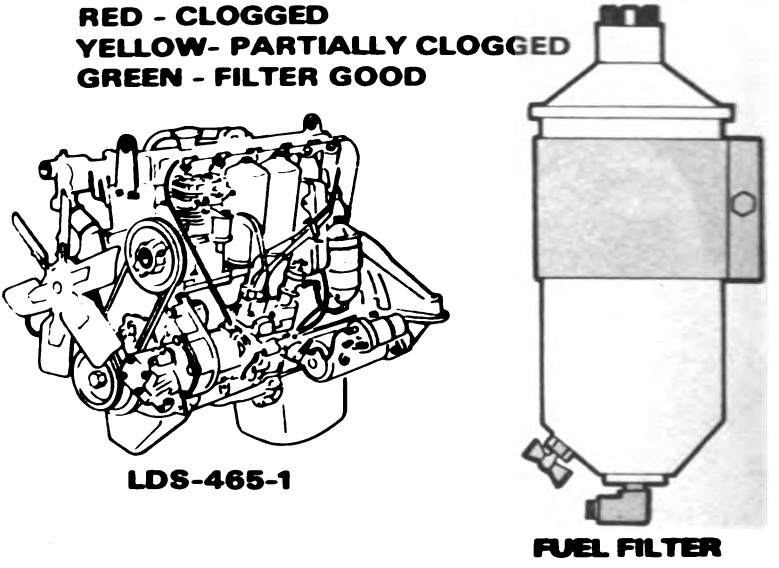


FIGURE 52

We also are looking at visual indication of engine oil level and oil condition. When the indicator shows red it would indicate to us that oil should be added to the engine. If it shows yellow then we should change the oil and if it shows green then the oil conditions is satisfactory.

OIL LEVEL SENSOR

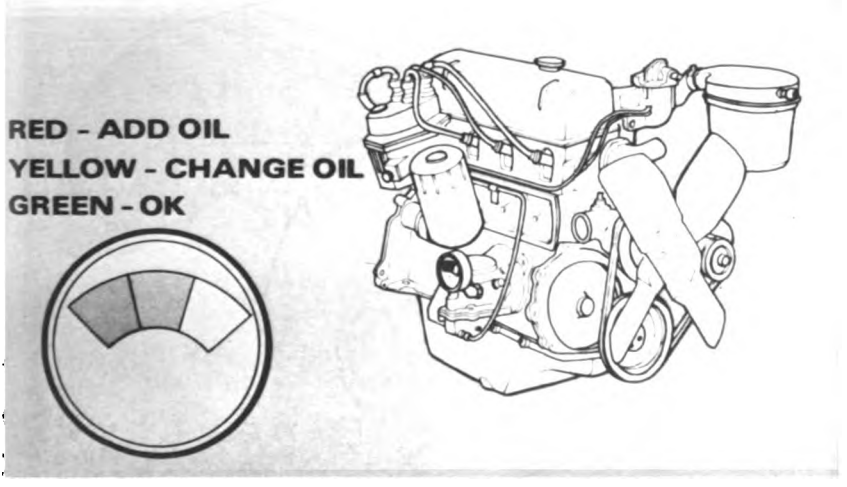


FIGURE 53

We are also looking at a means of communicating to the driver the condition of his vehicle. There are three lights to be used. Green for satisfactory operation of the vehicle and yellow or red when something is not correct. By using the index switch the mechanic can rotate through and check the various components of the vehicle. When he receives a red or yellow signal this will confirm which component is faulty and which one needs service.

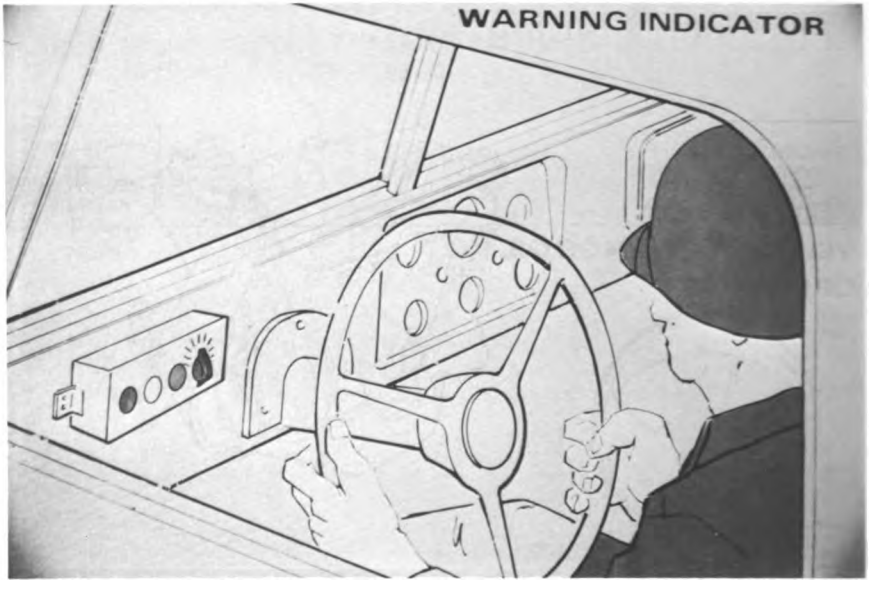


FIGURE 54

In our diagnostic equipment program we will be collecting data from approximately one-third million vehicles powered by both gasoline and diesel-powered engines. This data will enable us to develop improved diagnostic equipment and to improve both hardware and software capability.

We feel that this diagnostic equipment will be a saving to our consumer and it will provide data that may be helpful to the commercial consumer as well.

Senator Cook, would you like us to run briefly through the hardware demonstration for you?

Senator COOK. I really think I would like that.

Mr. PRADKO. Very well. Mr. Brachman, from Frankford arsenal. will do that for us.

(Equipment demonstration.)

Senator COOK. You had finished your slides?

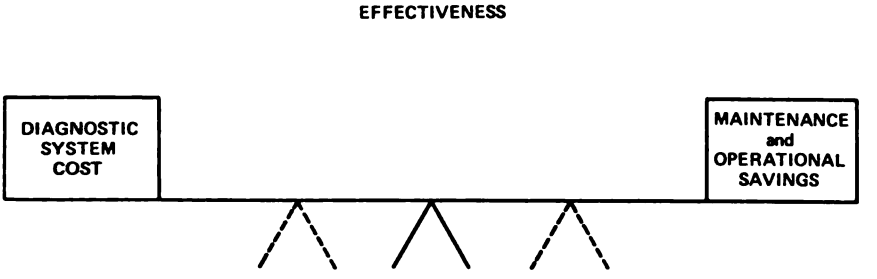
Mr. PRADKO. Yes. I would be glad to entertain any further questions.

Senator COOK. Why don't you start your questions?

Mr. SUTCLIFFE. Mr. Pradko, perhaps for the record, although we have discussed while examining the equipment some of the commercial potential applications, perhaps you could highlight for the record the way in which this information, this technology, could be applied to existing vehicles to help solve the auto repair problems of the consuming public and how it might facilitate diagnostic programs in rural areas.

Mr. PRADKO. Mr. Brachman will cover that point.

Mr. BRACHMAN. Actually, both the military and civilian user of vehicles have to worry about costs, but our cost factors are somewhat different.



COST EFFECTIVENESS BALANCE POINT DEPENDS ON:

- SAFETY REQUIREMENTS
- PAYBACK RATIO REQUIRED
- OTHER

FIGURE 55

Possibly a few terms might be helpful. Just to show that for whatever your needs are, your requirements, you have to draw some balance in your system design and capability.

In our case we are worried about availability of vehicles, training problems, and so on. In a case of commercial use the diagnostic center wants to make a profit. The basic problem, we are faced with and one in the commercial market is how to locate the fault.

LOCATE FAULT

KNOWLEDGE

Dominant

FIGURE 56

The key factor here is knowledge, knowledge of what it takes the systems to analyze the fault or to do a diagnosis. Our mechanics in the Army last 2 years in general and they are decreasing rapidly.

Further, the civilian manpower pool for mechanics is dwindling, so the ability to train people and provide knowledge on a long-term basis is decreasing rapidly.

RECTIFY FAULT

SKILL

Dominant

FIGURE 57

FIGURE 58

The important thing to keep in mind is that a diagnostic system has to result in a diagnostic decision. The decision is something to do and to instruct the operator in.

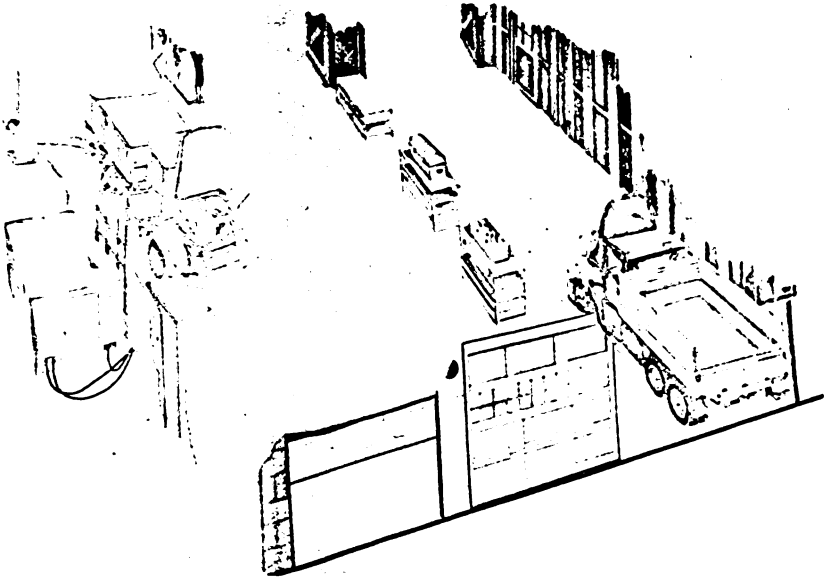


FIGURE 59.—MAIDS MK II System—Fort Bragg.

Here you see an installation at Fort Bragg where you see three lanes. The lane on the left has a dynamometer and an instrument truck on it. The truck in the far right is being instrumented, getting ready to move into the test area (left lane). This is a way of speeding up the process and reducing the time spent in testing vehicles.

During the test program 27 men were used and only six had been formerly trained for a 2-week period. The rest were trained on the job. They obtained an accuracy of 97 percent, compared to civilian mechanics with 14 years' experience.

FIGURE 60.—MAIDS MK II System—Vehicles instrumentation.

However, the other side of the coin is to rectify the fault and in this case it is a manual skill. We can take and teach people to do this physically and herein lies part of the solution. If we can provide a substitute for knowledge, then we can solve a big part of our maintenance and repair problem in the field.

Here we see them working on it. These are the junction boxes in connection with this multifield engine.

FIGURE 61

This device is used for the ¼-ton and 2½-ton and 5-ton version.

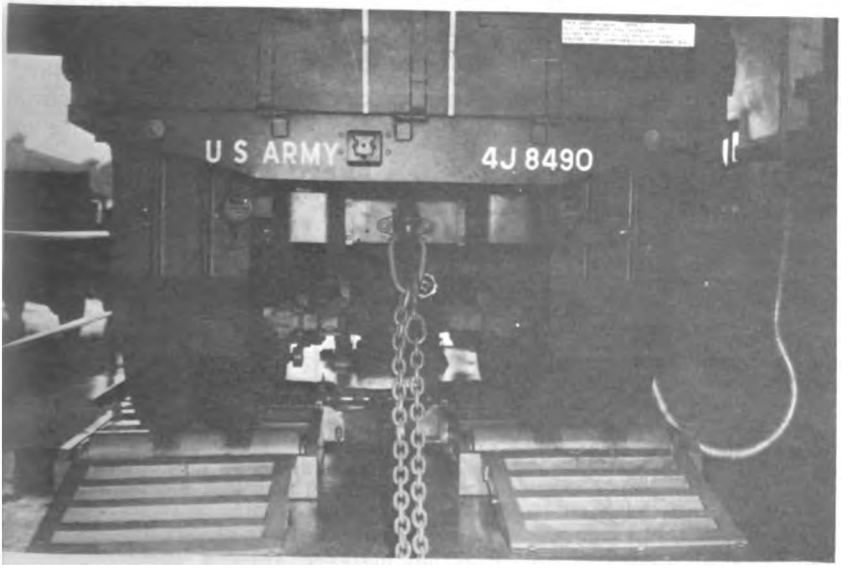


FIGURE 62

This is our dynamometer which is "portable" that weighs 4,000 pounds.

Senator COOK. Let me ask you: Isn't the end result of this that you will try to move into standardized systems for analyzing various engines?

Mr. BRACHMAN. Yes, sir. In addition, we do not know the tactical requirements which establish the policies for buying, or the vehicle characteristics.

Senator COOK. You are right. All you are talking about is the ability to have the equipment placed with the manufacturer and the ability to have the tape commensurate with the type of engine you utilize.

Mr. PRADKO. We would like to standardize the test point.

Mr. BRACHMAN. The size of the holes and thread size could be standardized quickly and easily.

FIGURE 63.—MAIDS MK III System—Transport mode.

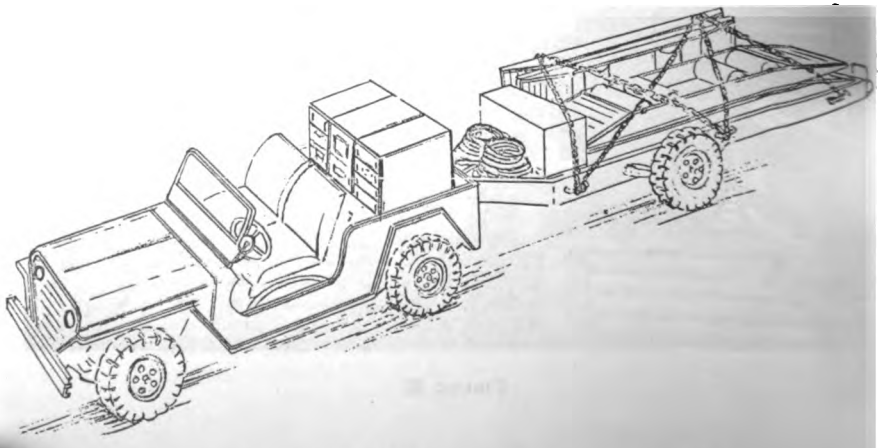


FIGURE 64.—READYMAIDS (WA)—Transport mode.

This is the way we propose to develop it so a small truck such as the quarter ton hauls it around. You can see it can be set up almost any place to test a vehicle.

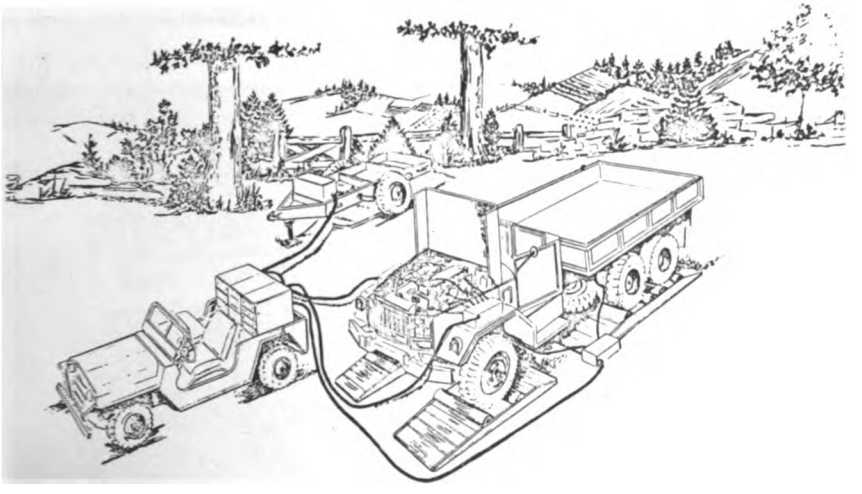


FIGURE 65.—Concept of tactical approach—Automotive.

FIGURE 66.—READYMAIDS MK II—Operation mode.

The Readymaids MK II is an improved and repackaged version of the earlier Readymaids breadboard system. In this packaging approach, a completely self-contained inspection and diagnostic system, capable of operating as a contact team or in remote locations is demonstrated. For this Laboratory Evaluation Model a commercial camper trailer has been selected merely to economically portray the concept. In this version, protection is provided to the operator and crew for inclement weather operation and, if desired, sleeping accommodations for up to six men are available. Shown in this illustration is the system in the operating mode testing a truck, utility ¼ ton 4x4, M151.

This is our camper-mounted version suitable for a remote area where you could take the test, the system to the areas of the vehicles. It is a fairly simple system. You can see the computer on the right. This happens to be an old artillery computer. As I mentioned before, the control data corps 469 is the actual one to be used in the current equipment.

The printer is here and those panels contain electronics and that is all it takes.

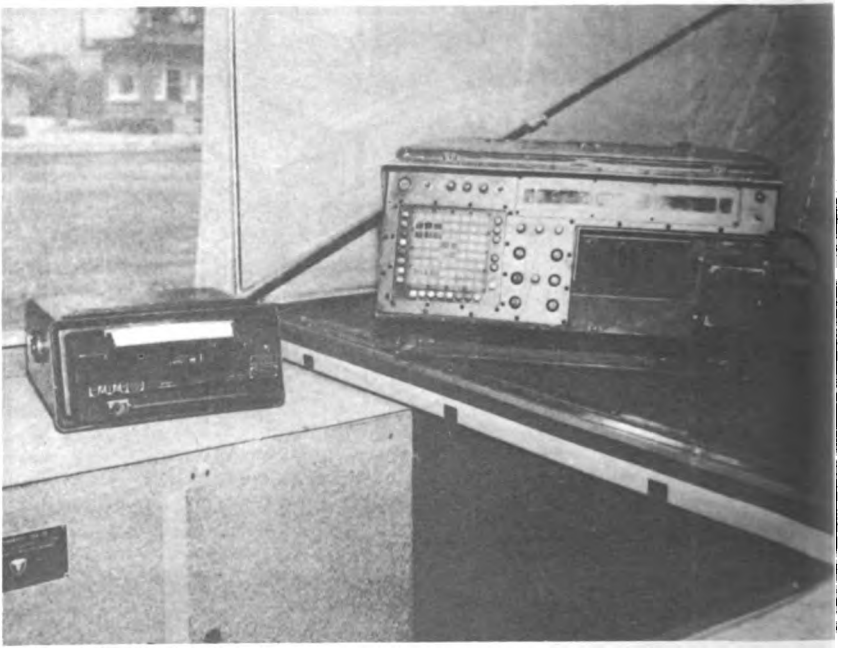


FIGURE 67.—READYMAIDS MK II—Operator's position close-up.

Shown here is a close-up of the position used by the READYMAIDS MK II Operator. The complete test is under control of the Computer, Gun Direction M18 (FADAC). The test results are printed on the AN/TCG14 (MITE) teletype unit (left). The engineering matrix seen in the center of the photograph provides a direct English to machine translation for the operator such that training becomes negligible.

FIGURE 68.—Truck, utility ¼ ton M151.

In this picture a Truck, Utility, ¼ ton M151 is in test position on the field portable chassis dynamometer. Transducers attached to the engine and power train of the vehicle translate the various temperatures, pressures, speeds and torques into electrical signals for transmission to the computer-controller. Then they are analyzed and a diagnosis is made. The results are printed out in clear English text in the form of malfunction/part members required for repair/number of parts required and a TM reference for the repair instructions. The small console alongside the vehicle allows the operator to input visual inspection data for recording on the printout.

This is another type installation where we program. The sequence of operations for the mechanic, are shown in the windows you can see on the console, the lights call out windshield wiper, tires, brake lights, and so forth. The computer lights these up and the operator pushes red or green as he goes around the vehicle. The computer takes this and processes it and comes out with a clear text, printout.

It is not too different from the present set we plan for this development item of the ATC, automatic test equipment.

FIGURE 69

Here you see the driver receiving instructions from the data acquisition controller. It is a means of providing verbal communications to the driver, and taking data on the test.

The same device can be used to instruct the inspector or test operator or whatever you want to call him to have him move through the test procedure without any formal knowledge of the actual mechanics of the testing.

Briefly, the data acquisition controller contains a program tape which instructs the operation in the procedure for running a road test to simulate loading of the vehicle.

(Demonstration of equipment.)

Mr. BRACHMAN. This device commercially could be applied in several areas. As I said earlier, it could be used to provide low skilled individuals on how to proceed through a diagnostic test program using the control data acquisition equipment.

Another application that could be used in rural areas or areas where the workload is not sufficient to justify a larger cost installation would be to have this device not only to instruct the operator in the procedure but, when coupled to the transducer kit, take performance data on the vehicle and then he could have the option of playing this through a playback device into a data set coupler or phone coupler.

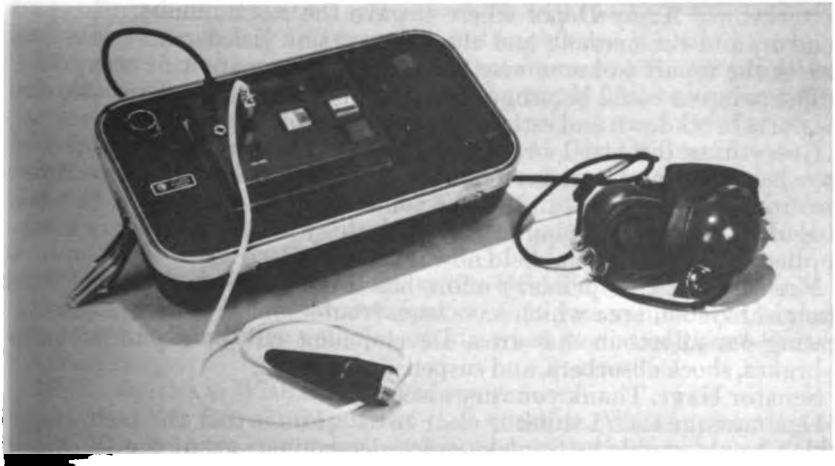


FIGURE 70

This, coupled to a central or local computer, could return the data analyzed and diagnosed for that vehicle, and it could be returned to him by the time he removes the instrumentation. The method of operation depends on the size of the installation and the workload, of course.

Sample Output Format of Required Repairs

Malfunction	Code	Ord Stock No.	Fed. Stock No.	Man Part No.	Ord Part No.	Quan	Repair Ref.
Main/Con Rod Bearings Worn		G244-7744597 G244-7744598 G244-7767524	2805-774-4597 2805-774-4598 2805-776-7524	CO-301750 CO-302409 CO-301943	7744597 7744598 7767524	12 2 24	TM9-7009-1 Section VIII Par 103c, 104c pp. 190, 192
Con Rod #_____ Bent				CO-515453	8357878	12	TM9-7009-1 Section VIII Par 103c p. 190
Broken or Stripped Cooling Fan Drive		G262-8344515		CO-525255	8344515	2	TM9-7009-1 Section X Par. 112 p. 199
Pistons/Rings and Cylinder Walls Worn		G251-7346610	2805-734-6610	CO-515212 CO-518090	7403133 7346610	12 12	TM9-7009-1 Section V Par. 87 p. 163
Slipping Cooling Fan Clutch		G262-8344515		CO-525255	8344515	2	TM9-7009-1 Section IX Par. 108 p. 199
Defective Oil Pump		G244-7744620	2805-774-4620	CO-515652	7744620	1	TM9-7009-1 Section III Par 68 p. 132
Defective Oil Pressure Regulator		G244-7521-774	2805-752-1774	CO-516446	7521774	1	TM9-7009-1 Section III Par. 78 p. 151

FIGURE 71.—Sample output format of required repairs.

The output looks something like this. This one we were using at the Letterkenney Army Depot where it gave the stock number, the part number, and the manual, and the later version listed man-hours and cost to the repair to know whether you should repair it or scrap it.

The printout could be programed so you could get the diagnosis and the parts breakdown and estimated cost of repair.

Everything discussed here is not really blue sky. All these things have been done and have been done over several years. The only difference in our application and in the commercial application is the end goal of which you are using it. The technology is identical and could be applied to the commercial field now if someone desired.

Mr. PRADKO. Our primary effort has been in the engine, fuel, and electrical system area which have been troublesome. So we are concentrating our efforts in that area. Development will be expanded later to brakes, shock absorbers, and suspension systems.

Senator HART. Thank you very much.

One message that I think is clear to all of us is that the technology which would enable us to make quick determinations of the faults, if any, in a vehicle is around the corner. It would require ideally at least the vehicle to be designed so as to make readily usable these technological advances if it is not in fact made a part of the vehicle.

Let me push you a little with a question in view of the hour and the problem that the commissioner from Maryland has on his time. Let me push you hard with a question. Do you believe it possible by 5 years from now to have new automobiles, passenger vehicles, coming off the line with some test systems a part of the vehicle but in any event a vehicle designed so that the testing data equipment, such as you have described to us, is readily applied to that vehicle and there could be across the country facilities to make such tests and have such programs?

I ask that because that is the objective of our bill here.

Mr. BRACHMAN. From a technology standpoint there is no problem. The question is if you build devices into a vehicle it gets more difficult. For whatever we think about internal combustion engines, it works hard and does things much longer than almost anything else. Cycles have no meaning in an automotive engine life. The transducers added on are no problem to build in. They must have life in billions of cycles. There are transducers that we have found that the life is in excess of a billion cycles.

The Army has an XM705, one and a quarter ton utility vehicle, which will have a harness in it and some 18 measurements are made by that one connection to the harness. I think the cost of this item for the vehicle is $12.50.

Senator COOK. Cost of the equipment?

Mr. BRACHMAN. Yes, harness and the tooling to install it.

If you talk of electrical measurements, there are no problems in the time frame. If you talk of other things you have this interaction of component reliability. There is no technical problem. You have to get a $2 transducer and that is where it gets difficult.

Mr. PRADKO. Transducer reliability is of deep concern. Primarily, to preclude the situation that the transducer does not become a problem itself.

Mr. BRACHMAN. Dyna Sciences has a contract with Ford for transducers for emission control systems which will be about $5. So, again, with a big enough buy and pressure and knowledge it could be done.

The fact that this computer could come down to a $5,000 price is an indication of what would be done if you apply technology and production to some of these areas.

Senator COOK. I don't mean to interrupt you, Mr. Chairman——

Senator HART. That is all right.

Senator COOK. When he talks of 5 years, what is the estimated number of vehicles that the military has now that this equipment may be used on?

Mr. PRADKO. About 330,000 are under USATACOM's cognizance.

Senator COOK. It is your anticipation that you will be able to make this test on all military vehicles within what period of time? Give us the time range.

Mr. BRACHMAN. With this kind of equipment?

Dr. PETRICK. Let me respond to that question. We are planning for about 1976 to have our vehicles equipped with these types of transducers and associated equipment. But this would be for new production only since many of our vehicles are long lived, of course.

Senator COOK. Sure.

Dr. PETRICK. We are talking about coming into new production on the order of 1976.

Senator COOK. In 1976 not many of the vehicles you have today are going to be around.

Dr. PETRICK. Actually they live about 10 years.

Senator COOK. The only ones I know that you have are the passenger cars.

Dr. PETRICK. Our military vehicles normally are 10 or 12 years old before replacement.

Mr. BRACHMAN. With the organizational level, it will be 3 years from now. The larger system is the 1976 time frame. That has the total capability?

Senator HART. Which one is within 3 years?

Mr. BRACHMAN. The organizational type of device.

Mr. PRADKO. Service station type of equipment.

Senator HART. I think we would want to state for thousands of us who have—this is Pentagon spending that seems to have a high social value.

Dr. PETRICK. Thank you, Senator.

I might make a comment, if I may, that we do have a rather large facility. We are the major automotive type facility in the Government. I understand you will be in the Detroit area. If so, we would welcome your visit. You have seen the enthusiasm generated for this type of equipment and we have a number of parallel projects, so if you are in the area we will welcome your visit.

Senator HART. Let's get Senator Cook to come up and see that.

Senator COOK. Love to.

Senator HART. What will we see in the way of bumpers?

Dr. PETRICK. In addition to this electronic type of equipment we have large engine test cells. We are working on a low-pollution engine. We have some large shaking facilities wherein we shake complete trucks. In other words, we go out into the field and take the data you

see here, then we feed it back into the test equipment so that the vehicle sustains essentially its field usage.

Our thrust has not been necessarily in the direction of safety per se because we have been worried about the durability, life, with the heavy equipment that we have. But I think from looking at the facilities and type of equipment which is modern and is sort of a, say, an application of aerospace technology to a rather mundane subject, you can gather from that how we could apply that to bumpers, for example. So I think you might get some ideas on bumpers, Senator.

Senator HART. Gentlemen, thank you very much.

Senator COOK. Thank you.

Senator HART. Next we have the commissioner of motor vehicles for Maryland, Ejner J. Johnson. We will hear testimony from the vehicle equipment safety commission.

STATEMENT OF EJNER J. JOHNSON, COMMISSIONER OF MOTOR VEHICLES, DEPARTMENT OF MOTOR VEHICLES, STATE OF MARYLAND; ACCOMPANIED BY KENNETH A. ROBERTS, LEGISLATIVE AND LIAISON OFFICER, VEHICLE EQUIPMENT SAFETY COMMISSION; AND HARRY BRAINERD, EXECUTIVE DIRECTOR

Mr. JOHNSON. Thank you very much, Mr. Chairman. I appreciate your taking me out of order. I do have an awards banquet to go to for highway safety and I think one of the reasons it is being held is that because we were successful in achieving bumper legislation, five and five. Judging from what I have seen on television here it seems like a more significant accomplishment than I had thought, but in any event I am grateful for your giving me the opportunity to be here.

Senator COOK. You should have seen those movies on 10 and 10.

Mr. JOHNSON. We had the same motion pictures in the Maryland General Assembly. I might add that Governor Mandel did hold a hearing at the request of the automobile industry on Friday of last week, Thursday rather, to determine whether or not the bill should be vetoed. And at the hearing the industry withdrew its request for veto and said that it reserved the right to come back next year in order to perhaps modify the legislation to five in the front and two and a half in the rear.

I expect they will be back. But there is one sort of ironic situation, although we have the five and five that you are proposing in your legislation, Senator, and we agree with it. It is possible because of the National Highway Safety Act of 1966 that we could be in danger of losing it because of the preemption provision here. And, of course, we have come and railed against this provision. It does grate against us.

It goes back to the days when people suspected the State officials were in the pocket of industry and I personally resent that allegation. However, it may have been true in the past. I think we can do a good job, and I think the fact we have five and five in Maryland and in Florida indicates that in many instances you will find aggressive States—California, Maryland, and other places—moving a step ahead of the Federal Government in the area of setting standards, and I think we have something to contribute.

In any event, my name is Ejner Johnson, representing the State of Maryland Motor Vehicle Department, and I am appearing today in that capacity, and also as a representative of the Vehicle Equipment Safety Commission, an organization established pursuant to a congressional resolution and representing most of the States in the Union. Its responsibility is to establish uniform minimum safety standards for automotive equipment. I also serve on Governor Mandel's representative on the Governors Conference Committee on Transportation, Commerce, and Technology, which develops the policy statements for the Nation's Governors on highway safety matters.

That was a controversial panel, by the way, and, Senator, you may recall I had the privilege of appearing before this committee a year ago.

While I am interested in all the provisions of S. 976, I am here today essentially to comment on title 5 of the proposed legislation.

Section 501 of title 5 amends Highway Safety Program Standard No. 1 promulgated by the National Highway Traffic Safety Administration to require that motor vehicles shall be inspected whenever title to the vehicle is transferred for purposes other than resale.

I presume that this proposed requirement is in addition to the existing standard and in no way would alter the present requirement that every vehicle registered in a State be inspected "either at the time of initial registration and at least annually thereafter . . ."

Senator HART. Your presumption is right.

Mr. JOHNSON. First of all let me say I am a strong supporter of your bill. I think it is a good bill and the gist of my testimony is merely to suggest modifications, because I deal at the nuts and bolts level, that is why I am really here today.

Senator HART. That is what we are here trying to do, improve and correct.

Mr. JOHNSON. Obviously, unless modified, these requirements together could, and probably would, make a system of periodic motor vehicle inspection unacceptable to the public and enactment by State legislatures would be doubtful, whatever the congressional prod.

Conceivably under the proposal an individual could elect to dispose of his vehicle through private sale shortly after the vehicle had successfully passed its annual periodic inspection. Before the certificate of title could be assigned the individual would have to resubmit the vehicle to inspection and secure a certificate of safe operating condition in order to effect the transfer.

I am sure you can appreciate the irritation that such a requirement would produce among motor vehicle owners and the impression conceivably could be created that the proposal was not intended to promote public safety but, rather, to generate profits for auto repair shops or independent auto diagnostic stations, if ever such begin to appear in substantial numbers.

I am somewhat familiar with a system that requires assigned certificates of title to be accompanied by inspection certificates because Maryland, lacking a periodic motor vehicle inspection system, has this in effect.

I submit, however, that the system, our system in Maryland, is somewhat unnecessary when a State has in effect an abuse-free—and that is the critical word—system of periodic motor vehicle inspection that

requires at least one fairly comprehensive inspection per year. As an added protection, during the course of the year between inspections. the law enforcement agencies of the States can be empowered to issue citations to those observed operating unsafe vehicles; for example, with headlights or tail lights out, or with tires lacking sufficient tread depth: requiring that the specific defects be corrected within a specified period of time or the vehicle's registration be automatically suspended pending compliance. This system is in effect in Maryland and other States and is relatively effective and easy to administer.

That is not a major deviation from what you suggest. What I am suggesting is designed to make PMVI more acceptable to the public without endangering the safety areas.

Title 5 also specified that whenever a motor vehicle sustains damage to any safety-related mechanism or functional nonoperational part as defined by the Secretary it shall be subject to inspection.

This proposal is excellent and I think everyone can agree with its intent. None of us should be unaware of the administrative difficulties that the proposal presents, however. I presume that the intent here is to insure that all vehicles that sustain such damages in accidents should be subject to inspection prior to being permitted to operate again.

It should be remembered that a substantial number of accidents that occur on the highways of this Nation are not investigated by the police and, therefore, a substantial number of vehicles with damage to safety components would not be detected.

Administration could be accomplished through the financial responsibility laws of a State which normally require that accidents involving $100 or $200 in property damage be reported to the State department of motor vehicles. However, if two motorists involved in a two-car collision knew that reporting the accident would result in a requirement that both vehicles be inspected, the result might be a substantial decline in the number of accidents reported, much to the dismay of individuals involved in accidents with uninsured motorists.

Senator COOK. Wouldn't you under those circumstances have to put the responsibility on somebody who makes the inspection or who does the repairs?

Mr. JOHNSON. How would he know that a vehicle might have been involved in an accident?

Senator COOK. Well, you are making a determination that there has been damage to a vital function of an automobile.

Mr. JOHNSON. I do not disagree with what you are saying. What you are suggesting is eliminating an inspection after the accident prior to the vehicle going on the road.

Senator COOK. No; what we are talking about is reinspection under certain circumstances. The car has been inspected and there is an accident and the requirement is that it be reinspected before it goes on the road.

Mr. JOHNSON. Right.

Senator COOK. Say there is an accident; there are two cars involved, and no police report. They go home. But if the car continues on the highway, the police may stop it for damage to the front, or the fact that the hood is roped down, the policeman will stop that car and give them a citation and require that the automobile be inspected,

so you take care of it from there. I wonder if you could not take care of it from the other aspect; namely, that when a man takes it into a garage and the repairs are $100 or more, that the garageman has to say:

Now I am perfectly willing to do these repairs, but I want you to understand that this car has to be reinspected as soon as I am finished.

The same as you do in cases of a doctor who has to report a shooting. He is compelled by law to report it.

Now the policeman does not take him to the hospital. But someone who comes to the doctor with a bullet wound, obviously the law requires that the doctor assume the responsibility as part of doing business, that he makes a report to a governmental agency. Now, can't we pick up this ball by requiring that the garageman says:

Now, my repairs are so much money, and therefore I have to fill out the short slip that says, very simply, "I have repaired vehicle so and so, motor such and such, address of the owner, license so and so" and give notice to the authorities that this has to be inspected.

Mr. JOHNSON. Yes; but the bill itself recognizes that there are those in garages who have friends and they will not do that, and that is why it calls for independent diagnostic services, inspection and diagnostic service separated from repair.

Senator COOK. I agree.

Mr. JOHNSON. Your proposal would call for licensing of private garages, but if—how do you eliminate the abuse when the private garagemen knows the person who brings the vehicle in and just does not report it if there is no licensing of that garage? Doctors do not report alcoholics to the motor vehicle department either.

Yes, it can be done, but from the practical standpoint it cannot be done; it cannot be accomplished. The same reason the private doctors will not report alcoholics is why that system will not succeed if you depend on the private garages to report their clients to my department. They will not do it.

Senator COOK. I think we are talking about two altogether different things. All I am saying is I know you are not going to get a hundred percent of all the vehicles that have been damaged to the extent that they ought to be reinspected because a vital part as authorized by this bill has somehow or other been damaged.

My whole point is the driver may drive away for the next 6 months with that vital part damaged, he may have a very unsafe vehicle on the highway, and he still isn't going to take it into an inspection station.

The point I am trying to make is, I am not about to disagree with the basic theory of how inspections ought to be handled. My State doesn't handle it this way. I am concerned about the rural parts of the State in relation to the cost of having State authorized inspection stations. I hope that it can be overcome. But I still say to you that there has to be an additional system whereby you cover the majority of needed inspections.

I am also saying a State inspection system is not going to get most of it, if the owner doesn't want to take his car in.

Mr. JOHNSON. You have three procedures apart from a private garage. Again this is my opinion, that it won't work because inherent-

ly you have a conflict of interest. You have a private garage individual dealing with his client and you are asking him to turn him in, and he is not going to do it. I know this, because in 1927 Maryland started the whole business.

Senator COOK. I made the remark the other day that maybe we should have some authorization whereby whoever inspects cannot repair, but then I was told that in reverse I was saying that everybody who inspects is not honest.

Mr. JOHNSON. This is what the bill provides. There are three ways that may be fairly effective. One is the administration of the motor vehicle financial responsibility laws. He reports the accident to the motor vehicle department where an evaluator reviews the damage description. He says, you're okay pending an inspection for a certificate of safe operating condition.

The only suggestion I make, and this is a minor consideration, is it might encourage two people to enter into a collusive arrangement whereby they do not report the accident because they don't want to go through this business of getting a certificate of inspection. If that occurs, and this is a minor point, if one of those individuals is an uninsured motorist, then the individual who is insured and involved in that type of a situation may suffer financial reverse that will be irreparable because he hasn't reported the accident.

Senator COOK. You still have the situation where two guys have an accident and don't want to report anything, and who go to a hot garage and get their cars fixed.

Mr. JOHNSON. We will escape that. We will go back to your other proposal whereby all the law enforcement agents in a particular State, as in Maryland, are authorized to issue safety equipment repair orders. If they see a vehicle operating in an unsafe condition down the highway, whatever the defect, if that officer issues a safety equipment repair order in my State the individual vehicle must be inspected and a certificate of compliance received by my department within 30 days of the issuance of that report. If not, I suspend his tag. That is a second category.

Senator COOK. I think we have something similar to that.

Mr. JOHNSON. The third catch for an unsafe vehicle would of course be the periodic system. You could go to more than one inspection a year which would probably do it, but I think you are getting into a situation which is somewhat untenable and I don't think the benefits derived are worth it really at this particular juncture.

Senator COOK. I didn't really mean to interrupt you, but I think it is kind of important to clear up the point as we go along.

Mr. JOHNSON. I think I could do it through the financial responsibility laws, because I think most of the people are going to report accidents. They may be a little subjective in the manner they report it, but that is an evaluator's job, to determine whether or not the accident is sufficiently severe to require an inspection prior to his going back on the road.

Senator COOK. You raise a very interesting point. Small accidents. I am not talking about the hundred dollars, I am talking about the $40's, $50's, $30's, whatever you want to call them. I bet you find that more and more people are not reporting these accidents because they have made enough claims with their insurance companies that they

live in mortal fear of having either their premiums increased or their insurance cancelled.

Mr. JOHNSON. I have heard the testimony on automobile insurance. As a matter of fact, I am working on a task force in Maryland right now where we are going beyond the Massachusetts proposal and seriously getting into a situation where we are going to set up a State—possible consideration is being given to setting up a state insurance agency where the State would provide a minimum coverage of 15–30–5. Anything over that would be written by private industry. This is because of the number of arbitrary cancellations—the person is black or a person lives in a bad neighborhood or a person has gotten old. I think this is where we are going.

Senator COOK. I think that is one of the bases for all of these hearings.

Mr. JOHNSON. I get 300 letters a day, as you can well imagine, from people disagreeing with some decisions I might make, but a number of those are from people who might have worked all their lives, 65 and 70 years old, lived perhaps in a small community on the eastern shore, 5 or 6 miles from town where they drive in maybe two or three times a week to do their shopping, they don't have much but they have a small retirement and a little farm, and they lose their insurance and every time they get into that vehicle they run the risk of having a judgment against them.

These cancellations are arbitrary. I think it can be tied in with the Massachusetts plan. Providing for no-fault medical payment, I think that can be done. I think it can be done through the States.

I am not one of those people who feel that private industry can do the job better. I think we can do the job cheaper. I think if the insurance rating bureaus continue to go before State insurance commissions and say we need an increase because this is an unprofitable business, maybe we ought to relieve them of the burden.

Anyway, we are exploring that and I will be happy to let you know what happens. It is quite a distinct possibility in our State.

Permit me to address myself now to that portion of subsection (2) of section 501(a) of title 5 that specifies that the person performing the inspection shall be certified by the State in accordance with provisions established by the secretary and, further, that no motor vehicle inspector may be certified if he owns or receives any benefit in or from a business or enterprise engaged in the repair or sale of motor vehicles, automotive repair parts or accessories, except in sparsely populated areas.

This has long been a principal concern of mine. I have always advocated separating these because of the inherent conflict of interest.

The intent here is laudable and designed to eliminate the abuse that is inherent in all private garage-type systems of periodic motor vehicle inspection. It is to correct this abuse that States with private garage-type systems have included a provision that the owner of the vehicle could have the defect corrected at a repair shop of his choosing.

As a practical matter, however, the repairs are made in the inspecting station and the State frequently finds itself an unwilling coconspirator in the fleecing of motorists.

It is for this reason that I, speaking now as Commissioner of Motor Vehicles in Maryland, because some of my colleagues in other States

may not agree with me, object vehemently to the private garage-type system of periodic motor vehicle inspection.

To a very large degree, the blame for this unfortunate condition can be traced to Federal action.

The existing highway safety program Standard One—generally referred to as 301—requiring the establishment of a system of periodic motor vehicle inspection within the States does not specify that the system be State operated or accomplished by private garages licensed by the State. The tendency among States, therefore, is to comply with the standard at the minimum possible cost. And minimum is the correct word because there is precious little Federal funding available to finance programs to bring States into compliance with Federal highway safety standards.

If a State refused to comply or veered away from complying with the standard, 301, as did Kentucky and Oklahoma, it is faced with the dismal prospect now of being penalized an amount equal to 10 percent of its Federal highway construction allocation.

Now, if S. 976 is enacted, the private garage system of periodic motor vehicle inspection would be prohibited and I doubt seriously whether there would be a significant number of diagnostic stations established as independent operations to meet the needs of a system of periodic motor vehicle inspection within a State.

The only viable alternative is a State owned and operated inspection system similar to those now in effect in Delaware, New Jersey, and the District of Columbia. This means in effect the disassembly of those inspection systems now in effect in States that rely on private garages licensed and regulated by the States since those garages would hardly surrender their repair business for the privilege of being an inspection station. The only reason that most of them consented to become inspection stations in the first instance is because it generates business for their major activity which is repairing automobiles.

I think a reasonable man would conclude that the States have a legitimate gripe here. They now face being required to disassemble an inspection system that they were required to set up in the first instance to avoid the imposition of a penalty equal to the loss of millions of dollars in highway construction moneys. If they do not disassemble the system—and this is no easy task since many officials in Government will have a vested interest in maintaining the status quo—and reestablish it as required by S. 976, they face again a 10-percent penalty imposition. Is it any wonder why some States are reluctant to move promptly to comply with Federal highway safety requirements? Frankly, we in Maryland recognized that the private garage system of periodic motor vehicle inspection had inherent defects and, therefore, we did not move to comply with Highway Safety Program Standard 1. As a result, we are in much better shape to comply with the requirements of S. 976 than our sister jurisdictions that did move to comply.

There is a bitter lesson here for the States that could seriously imperil the national highway safety effort in the future. And States are not going to comply with changing, unrealistic, and ineffective highway safety standards merely by the imposition of the 10-percent penalty. State legislatures simply are not going to respond to threats. One of the best ways to get highway safety legislation killed in any

State is to say that it is part of the Federal highway safety requirement, that we must do it, that you don't respond to your constituents, that you respond to Doug Toms. Legislators are not going to buy that. I don't think you gentlemen would if you were in the State legislature. They feel very strongly toward their constituents. That is their guiding responsibility.

When we plead and beg and cry to get these bills through, we never mention that it is part of the Federal highway safety standards. It is a sure way to kill the bill.

Senator COOK. An example of that is when the Federal Government told the State of Virginia what to do and it adjourned sine die and said you figure it out.

Mr. JOHNSON. I know it is awfully tough when you go down—when I go down to Annapolis——

Senator COOK. Were you in the State legislature?

Senator HART. I was associated with it as the presiding officer of one house.

Mr. JOHNSON. It is awfully difficult. I have an added problem here. This past session in addition to bumpers we were concerned with reexamination of drivers, and we go down and if we mention this is a requirement, which it is, in Federal highway safety standards, and I face a bevy of senior citizens from every county in the State, including my mother and father, it makes getting these bills through the legislature awfully tough. You have to sell them. They are composed of hardheaded professionals and businessmen.

For example, going to the legislature in one session taking a 287-page bill, rewriting the State's entire motor vehicle code, and getting through in one shot, you don't do that by explaining it is a requirement of the Federal Government. You go there and explain provision by provision, that this bill is good and it should be enacted because it will benefit your constituents.

As long as you are penalizing States, particularly those States who need extra money to comply, we are going to be infinitely handicapped as State officials going down to our legislators. They just respond angrily. It is just a real bitter thing.

The billboard penalty is a classic example. Any time we come here and say this, or at least this is my feeling, any time we come before the Department of Transportation and say this, you get the impression almost that you are trying to weasel out of something, an obligation that you have to keep. It isn't that. It just isn't the way to sell the program, at least that is my feeling.

With all due respect to the talent that abounds in Washington—whether on the staff of the congressional committees or within the confines of the National Highway Administration—the people who are familiar with the nuts and bolts of motor vehicle administration and highway safety programs, such as motor vehicle inspection, labor in the State vineyards.

I am asked to go to Guyana to set up their vehicle registration program, but I am never asked to come over here to the Highway Safety Bureau or its successor agency about the administration of these programs.

The committees that are set up to advise the Secretary of Transportation are fine, but I submit that the president of the MMM Co.

doesn't know as much about motor vehicle programs as I do or other people do.

We have to have a contact, a dialog like we are having now, because we want to do the job.

Mr. SUTCLIFFE. On that point, would you endorse the new partnership in safety conferences?

Mr. JOHNSON. Yes.

Mr. SUTCLIFFE. I know one was held in January with the Southern States, and now I think they are going to try to do that in other areas of the country.

Mr. JOHNSON. So long as the administrators who know the intricacies of these types of programs we are talking about are present, so long as it isn't just a meeting and—I speak in all frankness, so long as the person who represents a particular State or represents the Federal Government isn't just serving on a committee and his primary interest is insurance or something else.

What I am trying to say is let's get the people who administer the program together in a dialog so that what we develop is something we can enforce in a common approach, I suppose. I mean after all you can set standards over here, you can set bumper standards over here and do it very well and fine. That is perfectly all right with me. I have no objection to your setting the standards over here. But somebody can come into Maryland and take that bumper off and there isn't anything you can do about that. I have to take the action against the individual, and will. But I am not going to take the action as firmly and forcefully as I might if I felt truly what we envisioned in 1966 came about, that is, a national approach and not a Federal approach. This is what I am working against constantly.

We have a lot to contribute out there.

Mr. SUTCLIFFE. We do have then a dual regulatory mechanism for highway safety and motor vehicle safety, and what you are saying is the Federal partner has been ignoring the State partner?

Mr. JOHNSON. Yes, I suppose that is a common gripe. I would say that is true, yes. I feel that anyway. I feel that when there is a dialog, the dialog doesn't occur—except for recent meetings, the dialog has not been occurring between the people who know what the programs are all about, who come in and say if you go ahead and adopt a certificate of inspection to accompany a certificate of title it may create some gripes among the people in your home State because they may have two vehicle inspections in a week.

To a large degree we are becoming more and more professional now. It isn't a question that the Commissioner turns over every 2 years. My predecessor was there for 10 years and left only for a better job. I look for me to be there for quite some time unless there is a better offer.

Senator COOK. To get things straight, when the Federal Government or the Department does not extend this hand of cooperation, the legislation that puts this into operation in the first place and prescribes the penalties that you are talking about, originates with the legislative branch of Government, doesn't it?

Mr. JOHNSON. That is right.

Senator COOK. It doesn't originate as a matter of operation and control in the Federal Government itself.

Mr. JOHNSON. Yes. I certainly do not object—the 10 percent penalty clause I do violently object to as contained in the legislation. I am not here to criticize DOT. I know many of the people there. Doug Toms was former commissioner in Washington State. He does a fine job. Dr. Haddon, who was his predecessor, also does a fine job. I am not being necessarily critical of what they are doing. All I am doing is pressing the point that the proper people in the States and the proper people at the Federal level should get together and develop a national approach here.

This type of input that I hopefully am offering today can be of benefit. For example, the lack of conversation, the lack of communication now in States like Kentucky, for example, who have established a private garage system that was under considerable fire, now under your bill, which is an excellent bill if it is enacted, Kentucky has to strip down everything that they have and restart the whole program all over. This could have been avoided if we had sat down and discussed it in the first instance.

Mr. SUTCLIFFE. But that was at the regulatory level.

Mr. JOHNSON. Right, but they said you have to have a periodic motor vehicle inspection.

Senator COOK. It comes as a direct result of legislation.

Senator HART. But the legislation was open-ended. It was the decision of the Department.

Mr. JOHNSON. The Kentucky Legislature enacted a repeal of its private garage system because of its abuses. It was told a penalty would be imposed if Kentucky did not repeal it. So they are stuck with a system that if S. 976 is enacted they have to disassemble. A State official is going to get awfully weary saying we did this to avoid the penalty clause and now we have to turn 180 degrees to avoid the penalty clause this way.

Senator COOK. Having had the penalty already imposed on them, it may be subject to doubling up.

Mr. JOHNSON. You know, the curious thing about it, suppose a penalty is imposed on a State, now with revenue-sharing coming about, possibly coming about, with States moving to establish departments of transportation, suppose we do get revenue-sharing in a couple of years, the very States that are going to be penalized if the penalty is imposed are those States that need more money, not less money.

Let me illustrate a point. S. 976 is a frank recognition that the States must move toward a system of periodic motor vehicle inspection that eliminates abuses by divorcing the repair and inspection facility: in section 128—and I think this is one of the most important provisions in the bill—it says it clearly recognizes that vehicle design to facilitate a prompt inspection is essential to minimize cost without compromising safety. That is really far more important than the bumper provision.

Before I get to the next point, I think the demonstration on diagnostic services that was offered prior to my testimony is a clear illustration of the importance of speed in performing inspection and diagnostic activities. The slower it takes, the more expensive the system. The more expensive the system, the less acceptable it is to the public. So we have got to speed it up. That is why vehicle design must precede everything else.

You have got the authority over here, let's require them to design vehicles such as those jeeps that you can hook electrodes to and say your water pump is out. That is what we have to do. We are talking about developing steam calliopes that start making horns go off and bells ring at 85 miles per hour. I think it is childish to do that kind of stuff when we really should be getting into vehicle design.

Senator HART. Having talked about the Department and Congress and State officials, the element of the bill you have just discussed was described to us by some Detroit witnesses as the most objectionable because they didn't want a standard vehicle design approach because some element of consumer choice is being denied the public.

Mr. JOHNSON. I frequently march to a different drumbeat than Detroit. It is not unusual. In this instance, the same could be said about bumpers. Bumpers don't provide any effective "bump" I suppose. I mean it doesn't give you any protection.

Senator COOK. All I saw in these movies is that the front of the automobile hit the barrier before the bumper.

Mr. JOHNSON. It is not an energy absorbing device. It became a cosmetic device. One particular vehicle came into Maryland without a bumper at all. I threw it off the highway. That didn't please Detroit either.

Whether you are attempting to develop a cosmetic or a safety vehicle, I think in the scheme of things the order of priorities rests with developing a safe vehicle. I think Detroit has to work within that framework. A lot of people are getting killed and we can help.

In any event, the rapidity of vehicle inspection will determine to a large degree the cost of the service. If you divorce inspection from repairs, as it properly should be, and require an inspection that is somewhat lengthy, the cost of service will be unacceptable to the public and the program simply will not be enacted by the States.

This point was illustrated, I believe, at a technical conference on S. 976, in this city on April 22 when representatives of private firms testified that the costs for diagnostic services alone approached $16 per vehicle and, obviously, the only reason for the service is to generate repairs. Eliminate the repair business and then imagine the cost. Hopefully the Army is going to resolve this problem.

If you give a service station a choice between providing diagnostic services and providing repairs, an individual entrepreneur is going to select making repairs and we won't have any inspection system under diagnostic services.

Even if the Army develops its system that they talked about here and introduced it commercially, you are asking a service station owner, if you will, to make an economic choice. You can select being a diagnostician or you can select being a repair man.

All right, even if he can make a dollar or $2 off diagnostics, he can make a heck of a lot more from repairs. So from an economic standpoint he is going to select repairs. And I am going to be there with an inspection law and no inspectors unless I go State. That is the only viable alternative.

Yet I agree that we ought to clearly separate—and this is the important item in your bill—clearly separate diagnostic and inspection from repairs. It has to be if the system is going to work.

In Maryland—I would like to suggest, and I know every Commissioner of Motor Vehicles in every State of the Union rightly believes that whatever system he develops is the best. I do not present this as the best. I present it as a conscientious attempt in order to solve a problem, to share our experience with you for whatever you consider it worth.

In Maryland, we have under active consideration a system of Periodic Motor Vehicle Inspection that will not only provide that the safety components of a vehicle meet certain minimum standards, but also that the inspection lanes will include tests to determine that the vehicle's exhaust emissions do not include toxic materials beyond a prescribed tolerance by the State department of health. We also anticipate the inclusion of inspection stops that will provide the diagnostic services envisioned by S. 976 and so appropriately demonstrated by the Army in testimony prior to mine.

Thus, we anticipate all the benefits envisioned in S. 976 and one might properly say that instead of paying the private entrepreneur the diognostic and inspection fee, the motorist would be paying the State in the form of a more modest inspection fee—something that would be acceptable, but there would have to be a corresponding increase in taxes to avoid any deficit.

But there's an opportunity here for the State to provide a great many additional services rather than simply inspection, automobile exhausts checks and diagnostic services. We have been looking only at Standard 301, which is inspection.

Let's examine Highway Safety Program No. 2, which requires that States adopt a vehicle registration system which requires a rapid entry and retrieval of data, while S. 976 requires all States to adopt uniform titling laws—and I agree with that; we were the first to have it in 1920, only a few others do not have title laws now—requiring the processing of documents.

Highway Safety Program Standard No. 5 requires periodic reexamination of drivers in addition to initial examination at least once every 4 years, which is certain going to require a number of facilities.

Highway Safety Program Standard No. 7 envisions a uniform system of traffic courts with adequate facilities that are reasonably available to alleged traffic offender.

We just abolished completely our courts of limited jurisdictions and established a statewide district court which is now searching for facilities.

If States are going to move into land acquisition programs for periodic motor vehicle inspection, it is not unreasonable to consider broadening the scope of inspection stations so that they are, in fact, full multiple-use highways safety centers that provide a full range of services, thus spreading the costs over many programs and making the diagnostic services contemplated in S. 976 more acceptable.

Certainly the revenues generated from inspection fees, fines and costs, registration fees, titling taxes, and fees, that are normally collected by motor vehicle departments would be more than ample to cover sinking fund requirements and operating costs. One, rather than several land acquisitions would be required if we continue to look at this in a fragmented fashion, we are going to buy lands for our courts, we are going to buy land for Johnson so he can examine, we

are going to buy land for the State police in Maryland; right there we got three. We need some more land for Johnson so he can provide titling service, and everybody is going to have their own computer. I think one rather than several land acquisitions would be beneficial.

The maintenance costs, purchasing costs and other administrative costs can be reduced by a centralization of activities and data processing costs can be minimized through maximum utilization of software and hardware for funtionally related programs.

In Baltimore City if you are picked up for speeding and you go to the traffic court in Baltimore City and they subsequently find you guilty, quite frequently the judge will say, "Do you have a driving record?" The answer will be "No, sir, I don't." And the man might have one that is three pages.

Now he has a television screen right next to his desk. He turns around and he punches in the driver's license number and incidentally in a matter of minutes that complete driving record flashes up on that television screen. He can make a determination right there as to what sentence to hand out. There are functionally related activities.

If we don't, we will never be able to regain the opportunity which we now have.

If inspection is located right there and a vehicle goes through inspection and say it is brake linings—say it is tires, it doesn't have a tread depth of 2/32 of an inch, so you have a terminal right there to put it, and instantaneously that vehicle registration of the Department of Motor Vehicles is available and updated, instantaneously.

We can integrate all these systems and do it very easily. This is what we are doing in our State. I am suggesting that maybe we ought to do it nationwide.

If the provision of S. 976 remains requiring inspection prior to title transfer, think how much easier it would be if the Vehicle Title and Registration Service and the inspection station were housed at one location, and also how much easier it would be to promptly record title transfer information.

The program has the added benefit of providing additional funds for State highway and transportation programs once the capital costs are amortized. Historically, we are dealing here at the State and at the Federal level with motor vehicle revenue funds that historically highway users have taken a proprietary interest in. They have said this revenue is mine. Don't touch it. I recognize that. Maybe we can say, using their own arguments, if I can develop an inspection fee in Maryland that generates additional revenues through this program, I can gain their support very frankly, because once we amortize the bond issue for these multiple use centers, the revenue from fines and costs continue, so, therefore, my Highway Department which is in the Department of Transportation, can then take this revenue that is generated and use it to build a third Bay Bridge if it wants to because the revenue is there.

In other words, we are trying to utilize all the arguments we possibly can in Maryland.

To you, Mr. Highway User, we have additional bonding revenue. Hold out the prospect of additional bonding revenue. We are not diverting your revenue from building highways to highway safety. It is easier for us in Maryland because we do have flexible funding. In

other States it is going to be a little bit difficult. At least it holds out this opportunity.

The committee should not lose sight of the trend at both the national and State levels. Revenue sharing is being actively discussed at the national level and possibly $2.6 billion in special transportation moneys may become available to spend, not on an earmarked, model basis, but as the States determine their priorities. It is not inconceivable to me that States might seize the opportunity to expend a portion of these moneys on multiple-use highway safety centers to guard against a loss of highway construction funds. We have to do this anyway otherwise we are going to louse up our money through the 10-percent penalty. So someday, eventually, that penalty is going to be imposed. At least it hangs over us so we have to reduce that prospect.

We can provide the maximum return on the highway safety, we can enhance the bonding capacity in the long run by providing additional revenues. That is the fines and the costs I alluded to and the inspections fees, and so forth, for capital expenditures in highway and other transportation modes.

And finally, and very frankly, we can improve the Nation's highway safety posture, which is what it is all about in the first instance.

At the State level, departments of transportation are being established; some, as in the case of Maryland, with the ability to expend funds, not on an earmarked basis, but on a priority basis among transportation modes, including highway safety, which, for some reason, is considered to be a transportation mode.

Thus, the imposing costs, and I think, Senator Hart, this is what you were alluding to, that formerly hindered the development of State-owned and operated inspection systems aren't so formidable any longer because the funding is becoming available at the State and Federal level and the opportunity has arrived to permit the spreading of costs.

Heretofore, costs for motor vehicle inspection on a State-operated basis were applied to one program, that particular program, inspection alone, and this resulted in the high cost figures that were offered by private entrepreneurs at the technical meeting on April 22. In the future, such costs can be applied to many programs.

That is essentially my testimony, gentlemen. It was a little longer than I thought, but I would be happy to answer any questions that you might have.

Senator HART. I don't know what the award is. I would have every reason to assume after that testimony is a well-deserved award.

Mr. JOHNSON. I appreciate that very much.

Senator HART. Senator Cook?

Senator COOK. I interjected questions as we went along. One thing we did talk about prior to your testimony was that maybe there should be some type of substation in some of these inspection stations, particularly where you have a tremendously rural complex under rather rigid standards.

Would you go that far in waiving it?

Mr. JOHNSON. I think one of the answers to solving the problems of establishing—what you are saying in effect is if you put an inspection station in a rural area, the number of vehicles that go through that inspection station during the course of a week, a day or a month will be

relatively few and therefore the cost per unit will be very large, which is quite true.

Senator COOK. No, I am not talking about that, because I think you would have a pretty constant flow. What I am talking about is some of the areas, let's say eastern Kentucky, where even though you may live in *x* county, if you live on the periphery of one part of it that is sparsely populated, you sometimes find yourself in the road system going through two other counties to get back into the main county and the county seat. What I am really alluding to is the availability of inspection centers, and the question of just exactly what does one consider as a reasonable distance that someone should be compelled to travel to have his automobile inspected. This is all I am talking about, because I think we are going into an increased cost factor.

I think it can pay for itself, but I am just wondering—well, in some instances along the Virginia and West Virginia borders in Kentucky, to get to the county seat in the county where you live requires a trip of 40 to 50 miles.

Mr. JOHNSON. I think I can address myself to that point, but let me say this: We had the same situation——

Senator COOK. Would you believe in State mobile inspection units?

Mr. JOHNSON. Right off the top of my head, unless it was an extremely sparsely populated area, I would say no, and here is why. It is why I suggested that we not only perform at a multiuse center the inspection and diagnostic services, and so forth, but it is why I suggested we perform the other services.

Senator COOK. Would you believe that in my State we have some counties where the entire county has a population of less than 10,000 people, an entire county?

Mr. JOHNSON. Certainly I would, because Calvert County in Maryland and Worcester County in Maryland are not significantly greater in population than that. The county seat for Worcester, Md., is Snow Hill. Its population is 2,500. It dropped 2 percent in the last 10 years.

Let me make this particular point. In Maryland we have 2 million drivers right now. Now, ordinarily, we would examine about 225,000 applicants for new licenses a year. If we have to move to comply as we are attempting to do, with reexamination, we then are going to have to examine not only these 225,000 each year, but we are going to have to take that driver population of 2 million and break it down into 500,000 once every 4 years, assuming reexamination is once every 4 years.

So, we will then be examining not 225,000 but we will be examining somewhere in the neighborhood of 750,000, I suppose.

Now you are providing other services that would probably, in those rural areas of Kentucky or Maryland or whatever, would justify setting up a multiuse facility in that county linked to a central records at Frankfurt or Lexington or wherever it is located, where all the input could go directly from that remote station where all the records would be updated and sent in.

What I am saying is if you provide in a particular county enough services, then you will justify it on a cost basis or you will come close to justifying it. If you were looking at it only from inspection, I would say no, you would have to do it on a mobile station. But if you are looking at it in terms of transferring titles, if you are looking at it in

terms of reexamining people, if you are looking at it in terms of inspection, if you are looking at it in trying to obtain copies of driving records, the whole host of services that can be offered, accident record processing, all those things, then I would say no county in this country that I can think of would be of such insignificant population except in the Far West that it should be denied a particular facility. I think it can be justified to do it that way.

I would hold firm to the principle that you shouldn't mix repair and diagnostic and inspection services. I think that is important. I think that is the key.

Senator COOK. I appreciate your remarks. I am not disagreeing with you but I do have to tell you when it comes to titles and when it comes to licensing, if you have to get anything like that through on a State basis, and get the State to appropriate the money for it, and you are going to take that degree of business away from the county court clerks in the 120 counties in my State, you aren't going to get it done. They will try their best to comply with the Federal standards, but when you start taking away from the county clerk his right to license the individual and take away from the circuit court clerk his authority to sell licenses, which is the only revenue any of these counties really depend upon, you are really going to be in trouble.

Mr. JOHNSON. Well, I think the Federal standards probably preclude that anyway.

Senator COOK. I am not sure it would, not on a State basis. After all, this is a State licensing procedure and this is a State authorization. I don't think we could ever get to the point where the Federal Government will be able to establish what rate should be on the purchase of license plates.

Mr. JOHNSON. I agree with that. I don't think anyone should interfere with that.

In answer to your question, obviously there are going to be political problems in every State because of the manner in which they issue licenses. I think cognizance has to be given to that. You know 10 percent of the bills that come into the Maryland General Assembly have to go to highway safety and motor vehicles. Everybody knows the commissioner of motor vehicles' job better than the commissioner, but I think you can do this in Kentucky and elsewhere where particular problems do exist by modified programs.

I think the program ought to be subject to modification.

Senator COOK. All right. Thank you very much.

Mr. ROBERTS. I would like to mention that we had hoped to have Commissioner Frick from the State of Illinois, but he is unable to be here.

We have our director, Mr. Harry Brainerd, who is the former commissioner of motor vehicles in Pennsylvania. He is also available for questions.

Mr. BRAINERD. To try to answer Senator Cook's question, how far will somebody go. We did a little work on that when I was in Pennsylvania, and we found if we expected anybody to go more than 15 miles, and that was the outside, we got public resistance. This is one of the reasons that in our inspection system, which we had had for some 40 years up there—private garages—why it blossomed and we have so many inspection stations because we probably went overboard

to service the people so they would go around the corner, so somewhere in the middle we felt there was a place to try to bring it back down, and we found if we considered anything over 15 miles for travel for it, we were going to be in trouble.

When I left there, they were discussing cutting back on the number of stations for obvious reasons, administration and enforcement, and so forth.

Senator COOK. I couldn't agree with you more, and this presents a serious problem. It is obviously not an insurmountable problem, but a serious problem in many communities in my State where you have one or two or three spots that you would really call urban areas, and the rest are completely rural.

Mr. JOHNSON. The study that we have underway in Maryland now I should add is being funded by a $55,000 Federal grant. So, insofar as taking a look at multiple use centers, certainly the Department of Transportation and Doug Toms have been more than responsive, and there may be even a greater involvement here on the part of DOT in this activity.

I think the communication we have been talking about earlier certainly is coming along, and Doug Toms, a former Commissioner in Washington, is sort of a nuts and bolts man.

Senator COOK. You know, as you move on further in this evaluation of the program in the State of Maryland, I think it would be interesting to know just exactly how many stations you would envision to begin with, and I think it would be interesting, and I am going to find out from my own department of motor transportation, just how many inspection facilities we have in the State.

I would be interested in knowing how many you have in Pennsylvania.

Mr. JOHNSON. Thirteen thousand in Pennsylvania, with 70 or 80 officers to run it, which makes it awfully difficult.

Senator COOK. If you are accommodating the general public and you have 13,000, would the State and would the State legislature by any stretch of the imagination consider the establishment of 13,000 State operated centers throughout the State of Pennsylvania?

Mr. BRAINERD. They will not, sir.

Senator COOK. Not by the farthest stretch of your imagination.

Mr. JOHNSON. I agree with you.

Senator COOK. In some States in the Union, as a matter of fact, it would probably double the State's employment.

Mr. BRAINERD. You would have the same situation; I think you will find in States such as New York, Texas, Michigan, many of the—well, they call it the "Big Eight States," you would have this problem. But I do think this is a happy medium, Senator, if they put their minds to it or are given the motivation that it can be done. I don't disagree with the picture of the future that Commissioner Johnson had tried to present, because I am also one to believe that we have fragmented the old highway or traffic safety problem into inspection, titling, driving licensing, reexamination, financial responsibility, and so forth, and I think centers can be developed that would be fine. You may have to have a branch for accommodating the rural in addition to it.

But I think it can be done. Long pull, though.

Senator COOK. I think the only alternative that you could almost add to that from the point of practical experience, from yours and yours, is the adaptation of some type of system in the State highway garage system.

Mr. BRAINERD. Could be.

Mr. JOHNSON. That is what we are looking at.

One problem with the State highway garage is they generally—well, a State highway department and a State department of motor vehicles or its counterpart generally service two separate and distinctly different types. The State highway garage holds vehicles in decentralized locations, and they are out in the country usually.

Senator COOK. Everybody in the county knows where the highway garage is.

Mr. JOHNSON. I think so. Generally speaking because many people in the county work there.

Senator COOK. Maybe that is true, but you are just adding more to it, I might suggest.

Mr. JOHNSON. I would suggest generally speaking—well, let me say this, if you go into a county like Worcester, I would say if you had an office, a multiple use highway safety facility or service facility, you would probably put it in either Berlin, Pocomoke City, or Snow Hill, but you probably wouldn't put it in a garage in Snow Hill but on the road somewhere between Snow Hill and Pocomoke.

In other words, you want to get it out of the public's way, it doesn't serve people. Whereas what we are talking about does serve people, so you have to put it in a population center.

Senator COOK. I think it is very interesting that in the State of Pennsylvania there are 13,000 inspection centers, and these were established for the purpose of providing a service and a convenience to the driving public.

Mr. JOHNSON. It illustrates the magnitude of the problem, because you are coming out to Pennsylvania now and saying listen, your 13,000 inspection stations can no longer perform repair services. If you have a choice, everybody is going to opt for repair.

Senator COOK. I think a good analysis of cost factors in this would be tremendously important.

Mr. JOHNSON. Whatever we develop we will certainly make available to the committee.

Senator COOK. Thank you very much.

Mr. SUTCLIFFE. Perhaps one question for the record.

In S. 976 there is a provision that offers incentives for States to comply with any standards that the Federal Government sets. Is that a better approach? Is there an advantage to offering incentives of financial help for complying with the Federal standards?

Mr. JOHNSON. In my own case, yes. I don't argue the point that it is important to keep the States fairly close to the fire as far as moving toward compliance with national highway safety standards. I think the incentive approach is good.

I always exhaust all my Federal dollars insofar as compliance with National Highway Safety Administration requirements are concerned. They are so easy to exhaust.

My budget in Maryland is $15.5 million for fiscal 1972. The department of motor vehicles is affected, well, we have 16 standards, soon to

to service the people so they would go around the corner, so somewhere in the middle we felt there was a place to try to bring it back down, and we found if we considered anything over 15 miles for travel for it, we were going to be in trouble.

When I left there, they were discussing cutting back on the number of stations for obvious reasons, administration and enforcement, and so forth.

Senator COOK. I couldn't agree with you more, and this presents a serious problem. It is obviously not an insurmountable problem, but a serious problem in many communities in my State where you have one or two or three spots that you would really call urban areas, and the rest are completely rural.

Mr. JOHNSON. The study that we have underway in Maryland now I should add is being funded by a $55,000 Federal grant. So, insofar as taking a look at multiple use centers, certainly the Department of Transportation and Doug Toms have been more than responsive, and there may be even a greater involvement here on the part of DOT in this activity.

I think the communication we have been talking about earlier certainly is coming along, and Doug Toms, a former Commissioner in Washington, is sort of a nuts and bolts man.

Senator COOK. You know, as you move on further in this evaluation of the program in the State of Maryland, I think it would be interesting to know just exactly how many stations you would envision to begin with, and I think it would be interesting, and I am going to find out from my own department of motor transportation, just how many inspection facilities we have in the State.

I would be interested in knowing how many you have in Pennsylvania.

Mr. JOHNSON. Thirteen thousand in Pennsylvania, with 70 or 80 officers to run it, which makes it awfully difficult.

Senator COOK. If you are accommodating the general public and you have 13,000, would the State and would the State legislature by any stretch of the imagination consider the establishment of 13,000 State operated centers throughout the State of Pennsylvania?

Mr. BRAINERD. They will not, sir.

Senator COOK. Not by the farthest stretch of your imagination.

Mr. JOHNSON. I agree with you.

Senator COOK. In some States in the Union, as a matter of fact, it would probably double the State's employment.

Mr. BRAINERD. You would have the same situation; I think you will find in States such as New York, Texas, Michigan, many of the—well, they call it the "Big Eight States," you would have this problem. But I do think this is a happy medium, Senator, if they put their minds to it or are given the motivation that it can be done. I don't disagree with the picture of the future that Commissioner Johnson had tried to present, because I am also one to believe that we have fragmented the old highway or traffic safety problem into inspection, titling, driving licensing, reexamination, financial responsibility, and so forth, and I think centers can be developed that would be fine. You may have to have a branch for accommodating the rural in addition to it.

But I think it can be done. Long pull, though.

Senator COOK. I think the only alternative that you could almost add to that from the point of practical experience, from yours and yours, is the adaptation of some type of system in the State highway garage system.

Mr. BRAINERD. Could be.

Mr. JOHNSON. That is what we are looking at.

One problem with the State highway garage is they generally—well, a State highway department and a State department of motor vehicles or its counterpart generally service two separate and distinctly different types. The State highway garage holds vehicles in decentralized locations, and they are out in the country usually.

Senator COOK. Everybody in the county knows where the highway garage is.

Mr. JOHNSON. I think so. Generally speaking because many people in the county work there.

Senator COOK. Maybe that is true, but you are just adding more to it, I might suggest.

Mr. JOHNSON. I would suggest generally speaking—well, let me say this, if you go into a county like Worcester, I would say if you had an office, a multiple use highway safety facility or service facility, you would probably put it in either Berlin, Pocomoke City, or Snow Hill, but you probably wouldn't put it in a garage in Snow Hill but on the road somewhere between Snow Hill and Pocomoke.

In other words, you want to get it out of the public's way, it doesn't serve people. Whereas what we are talking about does serve people, so you have to put it in a population center.

Senator COOK. I think it is very interesting that in the State of Pennsylvania there are 13,000 inspection centers, and these were established for the purpose of providing a service and a convenience to the driving public.

Mr. JOHNSON. It illustrates the magnitude of the problem, because you are coming out to Pennsylvania now and saying listen, your 13,000 inspection stations can no longer perform repair services. If you have a choice, everybody is going to opt for repair.

Senator COOK. I think a good analysis of cost factors in this would be tremendously important.

Mr. JOHNSON. Whatever we develop we will certainly make available to the committee.

Senator COOK. Thank you very much.

Mr. SUTCLIFFE. Perhaps one question for the record.

In S. 976 there is a provision that offers incentives for States to comply with any standards that the Federal Government sets. Is that a better approach? Is there an advantage to offering incentives of financial help for complying with the Federal standards?

Mr. JOHNSON. In my own case, yes. I don't argue the point that it is important to keep the States fairly close to the fire as far as moving toward compliance with national highway safety standards. I think the incentive approach is good.

I always exhaust all my Federal dollars insofar as compliance with National Highway Safety Administration requirements are concerned. They are so easy to exhaust.

My budget in Maryland is $15.5 million for fiscal 1972. The department of motor vehicles is affected, well, we have 16 standards, soon to

be 17. Of those 17 standards, nine of them directly relate to my activities. That is right off the top of my head.

The one under consideration, 17, is schoolbus. That relates to me, too. because I establish those standards. If I manage to get a half million dollars out of Maryland's, say, $2-million allocation, I would consider myself rather fortunate. To the extent that the Federal moneys are available and with the auditing procedures that you have to go through, a number of the administrators, suspicious again as some States are of Federal interference in their departments' operations—my predecessor was, for example, he wouldn't participate in Federal programs because the money wasn't sufficient to induce him and there is a distinct lack of cooperation. Add to that the penalty clause in effect saying you must do this, and there is absolute down right bitterness.

So, the answer is yes, increasing the Federal highway safety dollar would be a great benefit. I think we have a coequal obligation to learn how to spend it better, and I wouldn't say entirely that we ought to just say turn over x number of dollars to the States to move toward compliance. If the States actively participate in setting the standards, then there ought to be some hammer, if you will, to bring them into compliance.

But generally speaking I think you will have to recognize that the States want it to improve their own highway safety postures. I think the penalty clause is a bit severe.

It imputes bad faith on the part of a motor vehicle administrator in the State. They won't discharge their responsibilities unless they are prodded to do so. I think there is a natural resentment there. I resent it. I think everyone ought to.

Senator COOK. The legislature thinks it is a club?

Mr. JOHNSON. That is correct. They resent it because they feel that you who are here in Washington feel we won't discharge our responsibilities honestly and competently unless you hold a gun to our heads.

Mr. SUTCLIFFE. What do you do about the situation which resulted in the partnership in auto safety conference that was held in Florida where the administrators believe the vehicle has nothing to do with the highway safety program or saving lives?

Mr. JOHNSON. To a large degree—I hate to presume something. but in the last few years motor vehicle inspection has not received very much attention at the national level, and there are a lot of people. a lot of my colleagues who feel that when you are talking about 16 standards with which we must comply, that you have to establish an order of priorities, and very frankly in my own mind, and in the mind I think of the National Highway Traffic Safety Administration. motor vehicle inspection in the order of priorities is not the highest.

I would say controlling the drinking driver is substantially more important and substantially more important to get through the legislature—implied consent and expressed consent.

So our effort has been channeled in that area.

Driver reexamination I think is infinitely more important than periodic motor vehicle inspection.

Mr. SUTCLIFFE. If it was only for the safety aspect, but as testimony has disclosed, there is a potential economic benefit. You talk about your multiple use centers and the potential savings in terms of checking repair cost. So, you have an additional advantage that I am not sure people are even aware of yet.

Mr. JOHNSON. From my own standpoint, if we can develop bumpers, if the industry can develop bumpers that will prevent any damage from occurring in 5- and 10-mile an hour impacts, think how many fewer accident reports my department is going to have to process. Just from my own selfish standpoint alone, it is a significant thing. You are talking about property damage in S. 976. Suppose, for example, that the National Highway Traffic Safety Administration, in addition to adopting safety standards, was empowered to adopt property damage control standards. I assume then the States would be preempted from doing so, and certainly the Maryland law which was just enacted and the Florida law which came on the books a year ago, would be clearly preempted.

Mr. SUTCLIFFE. We had a very interesting discussion about that preemption problem. Of course, the industry is very much in favor of preemption, the automobile industry. We discussed a procedure whereby a State could come in and apply for a waiver to go above the Federal standard with some justification for it.

Mr. JOHNSON. I am not too concerned with preemption right at the moment. I think industry is going to make a corporate decision not to press preemption. I don't think they will challenge the Maryland bumper standard because right now they are attempting to develop images as people who are concerned with safety.

If you look at the ads that are appearing on television now, they advertise "Isn't it wonderful how we equipped your vehicle with the collapsible steering column?"

The only reason they did it is because the Federal Government told them, and they wouldn't have done it otherwise I don't think. I think they run a distinct risk now of challenging a State standard in this area.

The National Highway Traffic Safety Administration can come out and say if a State law is adopted that it affects a piece of equipment and it is not identical to what they establish as a rule and regulation that the States preempt it. But that is only an administrative determination.

In the State of Maryland it doesn't affect me at all. I still require that the bumpers meet five and five. The only way they can stop me from doing that is for, say, the "Big Three" to take me to court and challenge the Maryland statute in the court and say I am preempted. I don't think they are going to do it because they can't on the one hand gear an advertising program and say they are interested in safety and then challenge a reasonable safety standard in the courts. It is foolish.

As a matter of fact, if those of you who live in Maryland will look on tires that are equipped on your vehicle, you will see that the 1965 tire standard which was developed by the Vehicle Equipment Safety Commission, which is the toughest standard in the country now, that the designation that your car meets the V-1 standard is on that tire. No one has challenged me since 1966 and I am going to keep it there. It is tougher than the Federal standard.

Mr. SUTCLIFFE. It is identical, isn't it?

Mr. JOHNSON. It is not identical.

Mr. SUTCLIFFE. It was the SAE standard that was adopted?

Mr. JOHNSON. No, ours is tougher than the standard that was adopted by the National Highway Safety Bureau, which is now the National Highway Traffic Safety Administration.

There has been a continuous argument here. Perhaps it is more of a jurisdictional battle. But you see we required in our tire standard. the State required two tests that the National Highway Safety Bureau did not require. Therefore our standard technically speaking is not identical to the Federal standard. Therefore, under terms of the Federal statute we are preempted.

No one has challenged me on it. The Rubber Manufacturers Association hasn't challenged me. I have continued to insist that the V–1 designation be on the tire because as commissioner of motor vehicles I have the responsibility of developing the best safety standards for the people of Maryland.

The court is going to have to do it, not the National Highway Traffic Administration and not the R.M.A. So long as no one challenges me, that standard stays in effect. So, it is in effect. So, the standard that applies which the Federal Government adopted for the tires is in effect but so is ours, and ours is a little tougher. And the R.M.A. to avoid any conflict, they certify that it meets both standards.

Mr. SUTCLIFFE. For your information the chairman of the Senate Commerce Committee and Senator Hart both communicated their views to Governor Mandel supporting you in the type of position you are advocating here in terms if there is a decision as to preemption it should be handled in court.

Mr. JOHNSON. That will be our case. It creates a bit of a sticky situation. I honestly don't have time for jurisdictional disputes. I have more important things to do.

Mr. SUTCLIFFE. Thank you very much.

Senator COOK. Our next witness is Mr. John Noettl, the Automobile Club of Missouri. He is director of road services of the Automobile Club of Missouri, and has a great deal of patience.

STATEMENT OF JOHN NOETTL, DIRECTOR, ROAD SERVICES, AUTO CLUB OF MISSOURI

Mr. NOETTL. Thank you, Senator.

I want to thank the committee on behalf of the Automobile Club of Missouri for the invitation to give testimony on our experience in operating our diagnostic clinic.

The Auto Club of Missouri is a not-for-profit organization affiliated with the American Automobile Association. The club has a present membership of 325,000 and its territory includes Missouri and parts of Illinois and Kansas.

In October 1967, the club opened an automobile diagnostic clinic. I have a picture here of the clinic just to give you some idea of the size. I believe it is the largest in the United States that doesn't do repair work.

Senator COOK. Where is it located?

Mr. NOETTL. In St. Louis. The total square footage there is 10,000 square feet.

Senator COOK. Do you have any idea how much it cost you to build it?

Mr. NOETTL. Yes, sir.

The building's original cost was $217,000. There was initial equipment cost of around $96,000. The installation cost of the equipment

I don't have, but I think the total came up to somewhere around $350,000.

The purpose was to make available to the club members and other motorists, an unbiased assessment of the condition of their automobiles and the quality of the repairs carried out.

In order to remove a possibility of bias and conflict of interest, the clinic carries out no repairs, makes no estimate of repair costs, and offers no recommendations as to choice of repairer.

The charge for a complete inspection is $15 to members, and $20 to nonmembers. A recheck on repairs costs $1.

While there are many other indications of the value of the clinic's services, one of the best is that the clinic has shown a steady increase—approximately 18 percent a year—in its volume of inspections. The repeat business now runs approximately 30 percent a month, which is to say that 30 percent of the people coming in each month have previously used the clinic's facilities.

With an annual inspection volume between 8,000 and 9,000 cars, the clinic has been a valuable source of data on the condition of new and used cars, and on the quality of repair work performed by garages, dealerships, specialized shops, et cetera.

A recent report was made to the Subcommittee on Antitrust and Monopoly on the results of our inspections. We reported on defects found in inspections of some 8,000 cars and on the quality of repairs made on about 2,000 cars. This report received nationwide publicity and was described as valuable to its work by the chairman of the subcommittee.

Our data has also been used by the Department of Transportation in a 2-year program of study on new and used car defects.

The clinic and a related garage facility also make up State safety inspection centers. In Missouri, vehicles must pass a State inspection before a license is issued. We are the only authorized inspection station in the State that does not do repair work or sell parts. The authorized fee for these inspections is $2.50, of which the inspecting station forwards 50 cents to the State highway department.

Data obtained from the approximately 12,000 inspections we make annually is published in our magazine and is made available to the State highway department. It is the only data on State inspections available from an unbiased source, and, as such, provides a basis for comparison with data obtained from commercial garages that have qualified as inspection stations.

I want to say at this time that there was much debate and discussion among the staff of the club when we were deciding on whether or not to open a State inspection facility. Our initial thoughts were that for $2.50, where the person would have to get his car inspected and go elsewhere to get, for example, a taillight put in, and then come back, he would have to come back to the same inspection station, or else pay the initial fee, that this would be too much trouble and inconvenience on the part of the normal citizen, the motorist. But, we have found through actual experience, just the opposite is the case. There are many days when we can't handle all our requests for State inspections. This may probably indicate a general distrust of inspection centers that have repair facilities also.

Senator COOK. While you are digressing, I think there are a few things that we ought to get into the record, or they are going to be

misunderstood by those who will read this record. When you talk about a complete diagnostic inspection costing between $15 and $20, you are not saying that you do that same thing in regard to the $2.50 State inspection?

Mr. NOETTL. That is correct.

In the clinic's main lane inspection we inspect over 500 different individual items.

In the State inspection facility, it is mainly a safety inspection, primarily tires, steering components, and exhaust systems. That is all.

Senator COOK. Do you consider that your organization is either breaking even, or making a degree of profit for the operation of the facility at the $2 figure which you receive for State inspections?

Mr. NOETTL. No.

For the $2.50—the 50 cents which goes to the State—we do not break even on that.

Senator COOK. You do not?

Mr. NOETTL. We do not.

Senator COOK. Have you figured out some cost that you have either recommended to the State government, or that you have recommended to the department, in regard to your vehicle inspection for safety purposes, that you feel a vehicle can be inspected for on a safety basis only, not a diagnostic basis?

Mr. NOETTL. We haven't; no. We haven't done that.

I have my own opinions on this.

Senator COOK. Why don't you express your opinions in this regard, because I think, for instance, we are looking at the problem of your presenting to us a tremendously innovative program of complete diagnostic service, but we are looking from the standpoint of safety inspection, for a reasonable rate that the driving public can afford, and that the driving public will have their automobile inspected and accede to.

Mr. NOETTL. Yes, I understand.

For $2, for example, it takes us approximately 20 minutes to do a State inspection on the items we now inspect.

Now, ideally, if you did three of those an hour, just receiving $2, you could conceivably break even on that, just doing what we do right now, if you had three every hour. That is $6 income, and your inspector's wage is under that in St. Louis.

The inspector's wages vary throughout the State. However, variations in demand that create idle time in your inspection staff has to be considered in any inspection facility. That is one factor

The other factor is the amount of items that you inspect, naturally, and the time it takes to do the inspection. That jacks up the price.

And I would say that you could inspect the items that we presently inspect under the Missouri State Inspection Law and break even at approximately $4 an inspection. This is my own opinion.

Senator COOK. If you have an inspection at the $4 rate, are you talking about the entire $4 accruing to the benefit of the inspection station, and no part of it being paid to the State for administration?

Mr. NOETTL. I would say that. It would have to go up to $4.50 if you had to pay the State 50 cents.

Senator COOK. You don't, by the farthest stretch of the imagination, feel if you are going to double his fee, the State is going to stay at 50 cents, do you?

Mr. NOETTL. Probably not.

Senator COOK. That was an aside, obviously.

Mr. NOETTL. Yes.

Senator COOK. But I would like, if you have any data in your center at all, a realistic price, whether it turns out to be $4 or whether it turns out to be some other figure. In all of this we have to make a distinction between your diagnostic procedure that takes a full 50 minutes, and the time required for the required State inspection.

Obviously, if we were to do this on a national level, to inspect all the automobiles in the United States, if we had all the convenient stations everywhere, would take a multitude of time.

Mr. NOETTL. Yes.

Your goal on the inspection stations, naturally, is safety. However, it is my own experience that people are convinced more of the economic value of inspections or are easier to convince, I should say, of the economic value of inspections than the safety value for some reason.

It sounds funny, but I am starting a program that would result in a formula of some type that would help explain to the potential customer, that it is more economical to know the condition of your automobile before getting it repaired. It is much more economical.

The other side of the argument is, well, I could have applied, whether it is $5, $10, $15, or $20 to my repairs, and thus, instead of having a $35 repair bill, I would only have a $25 repair bill, for example.

But we also are getting comments, and many of them in letters, also, of people who say, boy, you have saved me a bundle of money by this inspection, and therefore I am sold completely on the clinic.

And once they realize this, it almost becomes a habit for them to come in periodically for their inspection.

Senator COOK. Letters of credibility represent hindsight and not foresight. I think this is commendable.

I think the problem that bothers me, though, is if we, by enactment of this particular type of legislation, make them State inspection stations, then the real hue and cry is not going to be what you are talking about, but the hue and cry is going to be that I have to pay my government another $15 or $20. I think this is where it is going to be.

Mr. NOETTL. Yes, sir.

Senator COOK. Let me ask you one more question. You said that your unit cost approximately $350,000, and it is 10,000 square feet?

Mr. NOETTL. Yes.

Senator COOK. How much of that unit, how much of that 10,000 square feet, would you consider is a minimum amount, or essential for nothing but State inspections?

Mr. NOETTL. I would say——

Senator COOK. Along with the equipment that is necessary?

Mr. NOETTL. Right.

Well, you could do State inspections in a bay area—two bays. That would be 30 by 15, which would be 750 square feet.

It would definitely be a thousand square feet or under, probably right around a thousand square feet. You would have to have a place to collect the fee and make out the ticket, and so forth.

In our own case, we have a State inspection facility in our diagnostic clinic and also one, two blocks away that does nothing but State inspections.

The clinic offers a main lane inspection that examines over 500 individual items on the automobile. It also offers component inspections of individual automobile items or systems. Upon arrival, the customer fills out an inspection slip authorizing the clinic to inspect his car, records data identifying his automobile, and any specific problems he may have encountered.

The technician enters specifications on the inspection slip necessary to perform the main lane inspection. Each item is inspected, is rated by the technician as A, B, or C, according to its mechanical condition. (A) All right, no problem; (B) borderline, will require attention in the near future; and (C) critical, the customer should have it repaired immediately.

The inspection process from start to finish takes a minimum of 50 minutes and a maximum of 65 minutes with an average of 5 to 10 minutes extra for counseling.

Delays due to a run of older cars, foreign makes, and breakdowns can increase this inspection time for any individual customer.

Upon completion of the main lane inspection, the customer is given a copy of the original inspection form and two copies of typed repair instructions; if he wishes, he may receive detailed counseling on each item inspected.

After getting his car repaired, the customer may return to the clinic and for $1 get a reinspection on the item for which he has repair receipts.

The same general procedure is followed on component inspections.

During the first 2 years the clinic operated at a financial loss. In order to continue to meet the clinic's objectives without raising fees, the following goals were established:

(1) To financially break even without the support of any contract revenues; (2) To maintain or increase the clinic's inspection capacity without reducing the quantity of items or the quality of the inspection; and (3) To install a quality control program for measuring the quality of the inspections with the costs of the program absorbed by the clinic revenues.

I have a diagram here that may help me explain the innovations we have made, and I think give you some understanding of our original errors in design and the lessons we have learned along the way.

The original clinic design called for a very long, single lane with inspection pits.

This is the main lane right here, shown by the arrows.

The cars would enter here and go through a series of seven stations. The front end check was the first station, for example, then engine analysis and so on down the line.

This lane had pits in it, where technicians would be underneath the car. There would be no racks.

The major problems encountered utilizing this lane were:

A. Difficult supervision—when there was a technician down in the pit and he had a problem, or there was a unique automobile component that he had never seen before, it was hard for him to communicate to the supervisor about the problem and for the supervisor to answer, without backing the car over, or in some way getting down in the pit, and,

B. The lengthy tieups due to breakdowns on the dynamometers When you have a long lane like this, you tie up everything that is in back of it. If you can't go around it, you have essentially got a real production problem on your hands.

So, as hindsight, I would not recommend any long lanes on any new clinic. I would not recommend any long lanes, and definitely not any pits.

Approximately half of the inspection process was transferred from sequential inspection in the lane to parallel inspection on the lifts in the bay area.

Now, we have made innovations and modified the clinic, while at the same time trying to keep our construction costs minimum, and this is why this is not ideal. But, it is much better than the old system. We paralleled half of the inspection process on lifts, so that any breakdown of a car running through it would only have a 50-percent chance of holding up the rest of the cars.

The use of two lifts doubled the amount of items that could be inspected at any given time for half of the inspection cycle. Thus, the inspection capacity of the crew was increased by approximately 25 percent.

Further changes such as modifying the lifts so that wheel balance, front end, suspension, and steering component checks, could be checked in the bay area and combining the two-lane stations of engine analysis and brake testing into one resulted in another 25-percent increase in crew inspection capacity.

These were minor modifications.

We mounted wheel balances onto lifts and the new diagnostic lots have this—a lot of them do, and this is a tremendous saving in time.

With these modifications it also became noticeably easier for the clinic supervision and technicians to converse on specific inspection problems as they occurred, thus reducing random delays.

The above changes in the inspection process enabled the clinic staff to be reduced by 50 percent with no loss in inspection capacity or quality.

The counseling procedure was modified by having all repair instructions typed instead of handwritten, as they previously had been done, and arranging the counseling area so that one counselor could do what previously required two.

An intensive training program was initiated that required each inspector to attend school during the low-volume periods and to be tested periodically throughout the year.

A random sample of cars inspected at the clinic is selected periodically for reinspection in order to measure quality of the inspection process.

As a result of the above modifications to the clinic inspection process and staff, it was found that the amount of floor space required to do the same number of inspections was reduced by approximately 60 percent. So this diagonal line area here is available space. We have actually cut our clinic in half without reducing capacity.

It was also found that a further building modification of removing the wall between the dynamometer shop—this is the old dynamometer shop here which wasn't used--and the short leg of the main lane

The clinic offers a main lane inspection that examines over 500 individual items on the automobile. It also offers component inspections of individual automobile items or systems. Upon arrival, the customer fills out an inspection slip authorizing the clinic to inspect his car, records data identifying his automobile, and any specific problems he may have encountered.

The technician enters specifications on the inspection slip necessary to perform the main lane inspection. Each item is inspected, is rated by the technician as A, B, or C, according to its mechanical condition. (A) All right, no problem; (B) borderline, will require attention in the near future; and (C) critical, the customer should have it repaired immediately.

The inspection process from start to finish takes a minimum of 50 minutes and a maximum of 65 minutes with an average of 5 to 10 minutes extra for counseling.

Delays due to a run of older cars, foreign makes, and breakdowns can increase this inspection time for any individual customer.

Upon completion of the main lane inspection, the customer is given a copy of the original inspection form and two copies of typed repair instructions; if he wishes, he may receive detailed counseling on each item inspected.

After getting his car repaired, the customer may return to the clinic and for $1 get a reinspection on the item for which he has repair receipts.

The same general procedure is followed on component inspections.

During the first 2 years the clinic operated at a financial loss. In order to continue to meet the clinic's objectives without raising fees, the following goals were established:

(1) To financially break even without the support of any contract revenues; (2) To maintain or increase the clinic's inspection capacity without reducing the quantity of items or the quality of the inspection; and (3) To install a quality control program for measuring the quality of the inspections with the costs of the program absorbed by the clinic revenues.

I have a diagram here that may help me explain the innovations we have made, and I think give you some understanding of our original errors in design and the lessons we have learned along the way.

The original clinic design called for a very long, single lane with inspection pits.

This is the main lane right here, shown by the arrows.

The cars would enter here and go through a series of seven stations. The front end check was the first station, for example, then engine analysis and so on down the line.

This lane had pits in it, where technicians would be underneath the car. There would be no racks.

The major problems encountered utilizing this lane were:

A. Difficult supervision—when there was a technician down in the pit and he had a problem, or there was a unique automobile component that he had never seen before, it was hard for him to communicate to the supervisor about the problem and for the supervisor to answer, without backing the car over, or in some way getting down in the pit, and,

B. The lengthy tieups due to breakdowns on the dynamometers When you have a long lane like this, you tie up everything that is in back of it. If you can't go around it, you have essentially got a real production problem on your hands.

So, as hindsight, I would not recommend any long lanes on any new clinic. I would not recommend any long lanes, and definitely not any pits.

Approximately half of the inspection process was transferred from sequential inspection in the lane to parallel inspection on the lifts in the bay area.

Now, we have made innovations and modified the clinic, while at the same time trying to keep our construction costs minimum, and this is why this is not ideal. But, it is much better than the old system. We paralleled half of the inspection process on lifts, so that any breakdown of a car running through it would only have a 50-percent chance of holding up the rest of the cars.

The use of two lifts doubled the amount of items that could be inspected at any given time for half of the inspection cycle. Thus, the inspection capacity of the crew was increased by approximately 25 percent.

Further changes such as modifying the lifts so that wheel balance, front end, suspension, and steering component checks, could be checked in the bay area and combining the two-lane stations of engine analysis and brake testing into one resulted in another 25-percent increase in crew inspection capacity.

These were minor modifications.

We mounted wheel balances onto lifts and the new diagnostic lots have this—a lot of them do, and this is a tremendous saving in time.

With these modifications it also became noticeably easier for the clinic supervision and technicians to converse on specific inspection problems as they occurred, thus reducing random delays.

The above changes in the inspection process enabled the clinic staff to be reduced by 50 percent with no loss in inspection capacity or quality.

The counseling procedure was modified by having all repair instructions typed instead of handwritten, as they previously had been done, and arranging the counseling area so that one counselor could do what previously required two.

An intensive training program was initiated that required each inspector to attend school during the low-volume periods and to be tested periodically throughout the year.

A random sample of cars inspected at the clinic is selected periodically for reinspection in order to measure quality of the inspection process.

As a result of the above modifications to the clinic inspection process and staff, it was found that the amount of floor space required to do the same number of inspections was reduced by approximately 60 percent. So this diagonal line area here is available space. We have actually cut our clinic in half without reducing capacity.

It was also found that a further building modification of removing the wall between the dynamometer shop—this is the old dynamometer shop here which wasn't used--and the short leg of the main lane

with a 15-foot extension would increase the clinic inspection capacity by an estimated 25 percent.

The whole point in showing this is in setting up clinics anywhere, a very thorough analysis of the type of inspections and the methods and procedures of the inspection, should be done before going ahead and building it.

The existence and value of the clinic and its services has been made known through news items in our magazine and the news media, through radio advertising that consists of one radio spot a week on a St. Louis station, and by occasional direct mail reminders to our members in selected postal zones.

The clinic experiences seasonal fluctuation in demand for inspections. During the first year of operation, the busy season started around April 1 and extended through August, and started to decline during the month of September.

However, the high-demand season now begins around the first of March and lasts through the end of November. December, January, and February are now the low-volume months, and it is during this time that clinic technicians take part in an extensive training program.

The management of the Automobile Club of Missouri is convinced of the need to expand its inspection capacity. We are now evaluating the advantages and disadvantages of permanent installation versus mobile units in meeting the demands of the motoring public elsewhere in our territory.

The lessons learned in the design and inspection procedures of its present clinic will be valuable in planning for installing new inspection facilities, especially in the Kansas City area.

I have one closing comment to make. It just recently occurred to me, and I therefore want to pose it more as a question than a well thought-out statement of fact. We have statistical methods for predicting election results with only 2 or 3 percent of the vote cast. There are also statistical methods and programs for determining what program should remain on television.

It seems to me that there ought to be a method, if there isn't one in existence, to gain data from the many inspection facilities throughout the United States that would give reliable information on the safety malfunction of an automobile. It seems to me that ought to be done on a continuing basis.

I think this would benefit both the industry and the consumer alike.

Ford now gathers complaints from car rental agencies, and it is my opinion that clinic data—and there are a lot of clinics spread out throughout the United States, some of them, as we, don't do repairs, most of them do repairs—but it seems to me that this data would be much more reliable, and it would assist the manufacturers in their recall programs and provide them with an instant feedback, almost on possible malfunctions.

I don't think a statistical program like this is beyond being designed very quickly, and being put into effect.

I again want to thank the committee on behalf of the club for hearing our testimony.

Senator COOK. Mr. Noettl, let me try to get some combined figures.

First of all, you stated that your inspection volume is between 8,000 and 9,000 cars.

That is a first inspection on a complete diagnostic basis?

Mr. NOETTL. That is correct.

Senator COOK. Then you inspect approximately 12,000 automobiles under the State inspection program?

Mr. NOETTL. That is correct.

Senator COOK. Do you have a figure on how many cars you inspect on a dollar basis—reinspection, really?

Mr. NOETTL. I don't know if I understood that completely. You mean on reinspection?

Senator COOK. Well, you state you have a complete inspection for $15 for members, and $20 for nonmembers, and a recheck on repairs for a dollar.

Now, the recheck at a dollar is not included in the 8,000 or 9,000 vehicle figure?

Mr. NOETTL. That is correct.

Senator COOK. The recheck is not included on the 12,000 automobiles for State purposes?

Mr. NOETTL. That is correct.

Senator COOK. How many vehicles should we add to this so that we can see the capacity of the diagnostic clinic that you would recheck at the dollar amount?

Mr. NOETTL. I would say around 3,500. I was basing that on an estimate that around 30 percent of our original inspected cars come back for the dollar recheck.

Senator COOK. Then, you inspect, at one level or another, approximately 25,000 cars a year?

Mr. NOETTL. There is one part missing, and that is component inspections. That would increase it just slightly, because I think, if I remember right, some of the component inspections were included in the 9,000 number. But these were the ones that took some time, like 15 or 20 minutes. But there are other component inspections where they just want us to look at their tires or check wheel balances or only the front end, which only takes a very few minutes, and that wasn't included in there.

I would estimate another 2,000 on top of this.

Senator COOK. Let's say 26,000 or 27,000 vehicles a year.

What capacity do you feel your facility is running at in relation to this 26,000 or 27,000?

Mr. NOETTL. There are two capacities you have to consider. Right now, during our busy season, which, as I say, starts in April (the beginning of the travel season), we process main lane inspections at an average of 32 to 34 a day.

Our present crew capacity is around 40 inspections per day. That is the absolute crew capacity.

Senator COOK. Then you are really below capacity right now, but you are getting close?

Mr. NOETTL. Right.

We have some days where we do have 40. The equipment capacity of the clinic is in the neighborhood of 55 to 60 cars per day, but in order to get the clinic to break even, and this was really our big problem at the beginning, we were not able to ride out the lean months if we staffed crewwise, to the clinic, equipment capacity.

Senator COOK. December through May?

Mr. NOETTL. That is right. It was a little bit longer at the beginning. So we cut down on the crew and established a break-even point which we could live with considering the variations in demand.

There are about four main reasons why people bring a car in to the clinic, if I can reiterate on that. It would be: one, a brand new car, they want to see if they got what they paid for. This is brand new; only a few miles are on it.

The other reason is when the new car is about to be run out of its warrantee. They will bring it in and check this out.

A third reason on used cars especially, before purchasing a used car, some of the dealerships in the area, and this is a little surprising to me, have recommended that they bring them over to us, and will pay for the inspection if they don't buy the car, and the customer pays for it if he does buy it. It is something like that.

It may be the opposite. I don't know.

Senator COOK. I have got a notion it is going to be the opposite. I don't know.

Mr. NOETTL. At any rate, this is only among some used car dealers.

The fourth main reason why people bring their cars in, is to get an appraisal on whether or not they should keep the car or sell it.

We have a very heavy increase in inspection volume right before the vacation season. People want to be assured of no breakdowns on the road.

I don't know at this time whether that is being safety minded, or just being economical, because without exception, practically everyone tells us, if you break down on the highways, you are vulnerable for a very high repair bill whether you actually need it or not.

Senator COOK. How many other inspection stations, if you know, are there in St. Louis?

Mr. NOETTL. I don't know the number.

I thought about that during the other testimony. I should have checked it, but I don't have that figure right now. I can find out very easily.

Senator COOK. We would appreciate it if you could.

Mr. NOETTL. OK.

(The following information was subsequently received for the record:)

	Number
Diagnostic centers (diagnosis only; no repairs):	
Automobile Club of Missouri	1
Diagnostic centers (diagnosis and repair work)	7
Missouri vehicle safety inspection stations class B (B class covers all passenger cars, and all trucks up through ¾-ton rating) (approximate)	950
Total number of Missouri vehicle safety inspection stations (all classifications including A, B, C, and D)	1,245

Senator COOK. I think that is about it.

Do you have anything?

Mr. SUTCLIFFE. No questions.

Senator COOK. I was vitally interested in the portable equipment that was here.

What do you think its potential is in regard to a situation like yours?

Mr. NOETTL. I think it is great, because one of the major costs in operating a clinic is the labor cost, training, getting qualified people. The system presented takes much of that burden away.

I do think that the reliability of that system should be very clearly established before it is put into effect, because like the sensors that Volkswagen is installing in their automobiles to plug in to give them certain readings, if the system reliability, that is, the sensor, umbilical cord, and computer interface are less than what the reliability of the automobile component or system would be, you are going to be actually getting erroneous data.

So, I think that has to be well established. Any time you deal with systems like that, you have to know the reliability; otherwise you are in effect burying your head in the sand.

Senator COOK. Let me ask you a question which might be difficult to answer. Do you believe that any inspection done within a program of highway safety, that is presented to the automobile-owning public with a cost factor somewhere in the range of $4 and under, at best has to constitute a very minimum inspection program?

Mr. NOETTL. Yes—are you asking me if that is——

Senator COOK. I am asking you, in other words, if what we are really looking at in this or any other program is the start of truly minimum standards. Otherwise, you would not have set up a system whereby the costs to the motorist for a member is $15 and to a nonmember is $20.

You feel that this constitutes an adequate inspection, don't you?

Mr. NOETTL. Yes; we do.

Senator COOK. And do you feel that the $2.50 inspection is merely an effort to abide by State law, which says you will check thus and so, and here and there, and that is it?

Mr. NOETTL. No; my opinion on that is, I am glad to see any inspection system put in.

Senator COOK. I agree.

Mr. NOETTL. The main things that can kill you on the highway, naturally, are brake systems, tires, and to some extent, front-end components. So, if a National-State inspection program hits these items, it is going to accomplish a lot. I believe the effect of the State program in Missouri has resulted in some reduction in accidents.

Senator COOK. Then do you feel the State inspection programs that are now in existence reach the basic essentials?

Mr. NOETTL. I think they reach the basic essentials; yes.

Senator COOK. And that the distinction between those basic essentials and yours are what you consider offering a complete and absolute service to your membership?

Mr. NOETTL. That is correct.

With one caution on the basic essentials. The procedure on how you inspect—the brake system, for example—is vital in any State or National program.

In other words, just to say we inspected the brakes and forget how we do it and not detail the procedure and make sure that the procedure is followed, I think is bad. In fact, it can lead to just the opposite effect that you want.

Senator COOK. Then, from your own knowledge, can you give me a description of how brakes are tested, and brake bands are tested in regard to your 45- or 50-minute inspection, and how they are tested and inspected in relation to the $2.50 inspection pursuant to State law?

65-345 O - 71 - pt. 4 -- 11

Mr. NOETTL. Yes; I can give you a fairly good idea.

Our clinic manager could detail it much more and we would be glad to make the procedure available to the committee, and we would be glad to do that.

Senator COOK. Why don't we do it on that basis.

What I am trying to do is to see the adequacy of the inspection in regard to State inspection laws, and conceivably ultimately Federal inspection laws, and what you consider to be an adequate inspection for the benefit of your membership.

I want to know how far off we are, if we are far off at all.

Mr. NOETTL. Yes; I understand.

Again, the procedures are important. You take each system, for example, the exhaust system itself, now, I happen to feel, and it is my own personal opinion again, that it is very critical to test for carbon monoxide inside automobiles, inside the cab.

Until recently there was very little done in this area. Exhaust systems were looked at for holes, but there is no way to test it.

Well, there is a way, but none were employed that I know of, and we did quite a large literature search on that and found that very little measurements were made of carbon monoxide inside automobiles. Nobody ever bothered with this.

In my opinion, this should be checked, because you send someone on a trip and he is driving 8 hours, and the exposure that he has to undergo may be enough to just make him drowsy and can cause an accident.

I do not think you can just itemize the items to be inspected. You have to, in a fair amount of detail, define the procedure. This is what makes the inspection system effective.

Senator COOK. I think it would be very good for this record to have an analysis from your chief inspector as to the inspection that takes place on your main lane inspection, and what happens in compliance with the State inspection law.

Mr. NOETTL. Yes.

Senator COOK. Thank you very much.

Thank you, Mr. Noettl. I am sorry that we have kept you so long.

These hearings will be in recess until tomorrow at 10 o'clock.

(Whereupon, at 5:45 p.m., the hearing was adjourned, to reconvene at 10 a.m., Thursday, May 13, 1971.)

(The material referred to above follows:)

Since the state of Missouri coordinated with the Automobile Club of Missouri in developing Missouri's state inspection regulations, the Automobile Club of Missouri's Diagnostic Clinic uses *all* procedures and methods as defined by the Missouri Vehicle Safety Inspection Regulations as a standard *starting point* on all diagnostic tests. The following Exhibits (A, B, and C) are performed in the clinic in *addition* to the Missouri State procedures and methods.

Exhibit A

AUTOMOBILE CLUB OF MISSOURI'S DIAGNOSTIC CLINIC PROCEDURE ON STEERING MECHANISMS; BINDING-STEERING WHEEL PLAY

PROCEDURE

1. The interview with the owner/driver will determine special complaints the owner/driver has of the automobile.

2. The steering system is inspected visually, manually, audibly to determine if excessive wear, interference, insecurity of components, maladjustments, physical impact damage, shoddy workmanship, exist in the steering linkage and/or steering gear.

3. The following visual and audible tests are done while inside the car (the engine must be running on power steering vehicles).

3.1 Steering wheel spokes are visually inspected for centered horizontal appearance, with front tires straight ahead. Visual appearance warns inspector that toe has been reset improperly, that some components are bent, that steering wheel has been improperly re-installed after removal, and other possible defects.

3.2 Steering wheel is turned fully left and right, while feeling for unequal or excessive resistance to turning effort, and listening for the engine idle speed change that sounds excessive on power steering vehicles, improper belt tension squeal on power steering vehicles, or excessive friction-rubber bushing noise on manual or power systems.

3.3 Position of steering wheel spokes is visually noted on full left turn, and total number of revolutions are counted from left stop back to right stop.

3.4 Steering wheel free play is visually observed (and if play appears excessive, it is measured with a 6 inch machinist pocket scale) with the car's own weight on its front wheels and on a dry surface (front wheels straight ahead). Steering wheel is gently turned left and right to a distance at which the slightest movement can be noticed at the front tire side-wall.

REJECTION

a. If steering wheel is over ½ turn from a centered horizontal appearance with front wheels straight ahead.

b. If steering wheel stops turning or effort greatly increases at any point other than at the wheel stops.

c. If free play measured at rim of steering wheel on manual steering types exceeds 1½ inches on steering wheels up to and including 16 inches in diameter.

d. If free play measured at rim of steering wheel on power steering types exceeds 2 inches on steering wheels up to and including 16 inches in diameter.

e. If free play measured at rim of steering wheel on power steering types exceeds 3 inches on steering wheels up to and including 18 inches in diameter.

f. If free play measured at rim of steering wheel on either manual or power types exceeds 4 inches on steering wheels at or over 19 inches in diameter.

g. If an excessively loud mechanical or hydraulic "clunk" is heard when turning steering wheel gently left and right, on the above free-play test.

h. If total number of revolutions steering wheel revolves is one revolution over or one under that specified by car manufacturer.

PROCEDURE

4. The following visible and audible tests are done while outside the car (the engine must be running on power steering vehicles).

4.1 Hood is opened and mast jacket (under-hood section) bushing is inspected, steering shaft and its coupling to gear box, gear box-to-mounting security.

4.2 Leakage of gear box lubricant, or fluid leakage on power systems is inspected.

4.3 Pressure and return hoses are inspected on power systems for improper routing, interference, chafing, kinks, leakage of fluid at any point including pump, gear box, or cylinder and control valve on linkage-type power systems.

4.4 Pump cap is removed and fluid level, aeration of fluid is checked.

4.5 Pump mounting security, belt condition and tension, security and mounting of power cylinder (linkage-type), and any missing or loose mounting/attaching bolts and/or parts are visually inspected.

4.6 High point (mid-point) reference marks are inspected on steering gear shaft and box to see if they align with one another (on models so marked by the car manufacturer).

(Note: with two inspectors, Procedure 3 is done at the same time as Procedure 4.)

REJECTION

a. If steering gear shaft to box centering marks (when so marked and visible) are more than ¼ turn from one another 90°).

Mr. NOETTL. Yes; I can give you a fairly good idea.

Our clinic manager could detail it much more and we would be glad to make the procedure available to the committee, and we would be glad to do that.

Senator COOK. Why don't we do it on that basis.

What I am trying to do is to see the adequacy of the inspection in regard to State inspection laws, and conceivably ultimately Federal inspection laws, and what you consider to be an adequate inspection for the benefit of your membership.

I want to know how far off we are, if we are far off at all.

Mr. NOETTL. Yes; I understand.

Again, the procedures are important. You take each system, for example, the exhaust system itself, now, I happen to feel, and it is my own personal opinion again, that it is very critical to test for carbon monoxide inside automobiles, inside the cab.

Until recently there was very little done in this area. Exhaust systems were looked at for holes, but there is no way to test it.

Well, there is a way, but none were employed that I know of, and we did quite a large literature search on that and found that very little measurements were made of carbon monoxide inside automobiles. Nobody ever bothered with this.

In my opinion, this should be checked, because you send someone on a trip and he is driving 8 hours, and the exposure that he has to undergo may be enough to just make him drowsy and can cause an accident.

I do not think you can just itemize the items to be inspected. You have to, in a fair amount of detail, define the procedure. This is what makes the inspection system effective.

Senator COOK. I think it would be very good for this record to have an analysis from your chief inspector as to the inspection that takes place on your main lane inspection, and what happens in compliance with the State inspection law.

Mr. NOETTL. Yes.

Senator COOK. Thank you very much.

Thank you, Mr. Noettl. I am sorry that we have kept you so long.

These hearings will be in recess until tomorrow at 10 o'clock.

(Whereupon, at 5:45 p.m., the hearing was adjourned, to reconvene at 10 a.m., Thursday, May 13, 1971.)

(The material referred to above follows:)

Since the state of Missouri coordinated with the Automobile Club of Missouri in developing Missouri's state inspection regulations, the Automobile Club of Missouri's Diagnostic Clinic uses *all* procedures and methods as defined by the Missouri Vehicle Safety Inspection Regulations as a standard *starting point* on all diagnostic tests. The following Exhibits (A, B, and C) are performed in the clinic in *addition* to the Missouri State procedures and methods.

Exhibit A

AUTOMOBILE CLUB OF MISSOURI'S DIAGNOSTIC CLINIC PROCEDURE ON STEERING MECHANISMS; BINDING-STEERING WHEEL PLAY

PROCEDURE

1. The interview with the owner/driver will determine special complaints the owner/driver has of the automobile.

2. The steering system is inspected visually, manually, audibly to determine if excessive wear, interference, insecurity of components, maladjustments, physical impact damage, shoddy workmanship, exist in the steering linkage and/or steering gear.

3. The following visual and audible tests are done while inside the car (the engine must be running on power steering vehicles).

3.1 Steering wheel spokes are visually inspected for centered horizontal appearance, with front tires straight ahead. Visual appearance warns inspector that toe has been reset improperly, that some components are bent, that steering wheel has been improperly re-installed after removal, and other possible defects.

3.2 Steering wheel is turned fully left and right, while feeling for unequal or excessive resistance to turning effort, and listening for the engine idle speed change that sounds excessive on power steering vehicles, improper belt tension squeal on power steering vehicles, or excessive friction-rubber bushing noise on manual or power systems.

3.3 Position of steering wheel spokes is visually noted on full left turn, and total number of revolutions are counted from left stop back to right stop.

3.4 Steering wheel free play is visually observed (and if play appears excessive, it is measured with a 6 inch machinist pocket scale) with the car's own weight on its front wheels and on a dry surface (front wheels straight ahead). Steering wheel is gently turned left and right to a distance at which the slightest movement can be noticed at the front tire side-wall.

REJECTION

a. If steering wheel is over ½ turn from a centered horizontal appearance with front wheels straight ahead.

b. If steering wheel stops turning or effort greatly increases at any point other than at the wheel stops.

c. If free play measured at rim of steering wheel on manual steering types exceeds 1½ inches on steering wheels up to and including 16 inches in diameter.

d. If free play measured at rim of steering wheel on power steering types exceeds 2 inches on steering wheels up to and including 16 inches in diameter.

e. If free play measured at rim of steering wheel on power steering types exceeds 3 inches on steering wheels up to and including 18 inches in diameter.

f. If free play measured at rim of steering wheel on either manual or power types exceeds 4 inches on steering wheels at or over 19 inches in diameter.

g. If an excessively loud mechanical or hydraulic "clunk" is heard when turning steering wheel gently left and right, on the above free-play test.

h. If total number of revolutions steering wheel revolves is one revolution over or one under that specified by car manufacturer.

PROCEDURE

4. The following visible and audible tests are done while outside the car (the engine must be running on power steering vehicles).

4.1 Hood is opened and mast jacket (under-hood section) bushing is inspected, steering shaft and its coupling to gear box, gear box-to-mounting security.

4.2 Leakage of gear box lubricant, or fluid leakage on power systems is inspected.

4.3 Pressure and return hoses are inspected on power systems for improper routing, interference, chafing, kinks, leakage of fluid at any point including pump, gear box, or cylinder and control valve on linkage-type power systems.

4.4 Pump cap is removed and fluid level, aeration of fluid is checked.

4.5 Pump mounting security, belt condition and tension, security and mounting of power cylinder (linkage-type), and any missing or loose mounting/attaching bolts and/or parts are visually inspected.

4.6 High point (mid-point) reference marks are inspected on steering gear shaft and box to see if they align with one another (on models so marked by the car manufacturer).

(Note: with two inspectors, Procedure 3 is done at the same time as Procedure 4.)

REJECTION

a. If steering gear shaft to box centering marks (when so marked and visible) are more than ¼ turn from one another 90°).

b. If lower mast jacket bushing collar is mis-located, damaged, or missing (on models so equipped).

c. If steering shaft is bent or wobbles excessively, as wheel is turned left and right. If shaft U-Joint or coupling is worn, loose, or not intact in any way. If sideways play exceeds .030 when grasping shaft with hand (wheels straight ahead) and shaking sideways.

d. If lubricant leakage has obviously left little quantity in the gear box.

e. If fluid leakage exists at any point on power systems.

f. If hoses are improperly routed, chafed, kinked or leaking.

g. If fluid level in pump is not visible, or doesn't read on the dipstick. If fluid is aerated, or emulsified appearing.

h. If pump makes excessive mechanical noise.

i. If pump is insecurely mounted (excluding Chrysler self-tightening design. Reject this type when pump may be shaken fore and aft by hand over ¼ inch).

j. If belt is badly glazed, too loose, frayed, or main body shows deep cracks, or rides too high or too low in pulley grooves, which indicates wrong belt installed.

k. If relay rod-control valve-to-pitman arm clearance exceeds .090 on linkage-type systems.

l. If power cylinder to relay rod or to frame bracket/mount are loose, insecure, bent, or rubber bushings gone or badly deteriorated.

Exhibit B

Automobile Club of Missouri's Diagnostic Clinic Procedure on Steering Mechanisms: Front Wheel Play and Linkage

PROCEDURE

1. The interview with the owner driver will determine special complaints the owner driver has of the automobile.

2. The steering system is inspected visually, manually, audibly to determine if excessive wear, interference, insecurity of components, maladjustments, physical impact damage, shoddy workmanship exist in the steering linkage and/or steering gear.

3. The following visual and audible tests done by the Automobile Club of Missouri's Diagnostic Clinic exert more pressure on front wheel linkage and suspension components than the Missouri Vehicle Safety Inspection Regulations. The prime consideration is NOT how far you can move a tie rod ball socket VERTICALLY with your hand and physical force, but how far it moves HORIZONTALLY when steering wheel is turned to and fro with vehicle weight on the front steering and suspension components.

3.1 Steering wheel is turned ½ turn left of center and back ½ turn right of center, while a second inspector under the vehicle observes linkages and steering gear in motion under load to detect lost motion or excessive free play.

3.2 With steering linkage in motion under load, the inspector under the vehicle will observe the linkage from a horizontal plane view, then he will drop down to get a vertical view of the linkage. On most designs, these two views are mandatory to see play and or rocking, binding, locking, jamming, interference, or any combination of these.

3.3 A visual inspective is made of tie rod end ball sockets, relay rod, idler arm, and pitman arm ball sockets, loose tapered studs, bolts, control arm pivot shafts (loose mounting bolts), while under load in motion, which closely simulates road condition dynamics.

3.4 Wheel bearing play is inspected by hoisting the vehicle in the prescribed manner (same as Missouri Vehicle Safety Inspection Regulations procedure—reference Exhibit B-1) and exerting moderate force on wheel. Position of hands will first be at 12:00 and 6:00, then at 11:00 and 5:00 or 1:00 and 9:00. Force on the wheel will be firm but not violent, to avoid moving the control arms, or the vehicle body.

(Note: It is a generally known fact that the TRAINED human eye can detect the difference between 1/16, 1/8, 1/4 of an inch, plus smaller or large dimensions, at a glance.)

REJECTION

a. If tie-rod ends, pitman arm, center relay rod show any noticeable play (horizontally) at their respective ball socket ends.

b. If idler arm vertical movement at relay rod end is over ½ inch higher or lower at center of arc throughout its swing, from ½ turn left and right of center.

c. If steering (pitman) arm (sector) shaft exiting from steering box shows more than .030 sideways play. (Worn steering arm shaft and/or bushing.)

d. If, holding forefinger on ball socket housing and thumb on tie-rod or relay rod, a definite snap or difference in dimension is felt and/or heard, indicating semilocking or binding internally.

e. If rubber dust seals are missing or are badly torn, or any locking or retaining devices are missing.

f. If noticeable (exceeding .020) looseness is detected between the brake backing plate and inside vertical flat on brake drum (at drum's periphery).

g. If noticeable (exceeding .015) looseness is detected between the brake splash/cooling shield and/or caliper to the brake disc (rotor) vertical surface (at rotor's periphery).

Exhibit C

Automobile Club of Missouri Diagnostic Clinic Procedure on Tires

PROCEDURES

1. The interview with the owner/driver will determine special complaints the owner/driver has of the automobile.

2. The tests that are done for braking and steering geometry routinely during diagnosis also give an excellent indication of a tire's dynamic characteristics such as vertical or horizontal run out, traction quality, imbalance, thumping from irregularities, tire force variation.

3. All tires are rotated at least one full revolution to inspect the tire's entire outer circumference.

3.1 Tires are inspected for mis-matched sizes, and especially for mis-matched types and/or sizes on the same axle.

3.2 Tires are measured for the least (minimum) tread depth at three positions (120° apart) : on the inner trend, center tread, and outer tread. A minimum reading is recorded for the thinnest spot found anywhere on the inner tread, center tread, or outer tread.

3.3 Tires are inspected to determine if the tires with the greatest amount of remaining tread are found on the rear axle.

3.4 Tires are inspected to see if tire size and type meets the car manufacturer's minimum recommended size and type.

3.5 Tires are inspected for mixed tire types, to be sure if bias ply and bias belted types are used together, the bias ply tires are on the front axle.

3.6 Tires are inspected for series numbers (aspect ratio) of tires used to determine if series mixing on the same axle exists.

3.7 Tires are inspected for winter-tread types being used in summer months, or winter-tread types being used at all four wheels (excluding four-wheel drive vehicles used in off-road or specific applications).

3.8 The spare tire is inspected visually to determine that it is inflated, has useable remaining tread, and would truly serve as an emergency tire.

REJECTIONS

a. If tire sizes and types are mis-matched, especially when used on the same axle.

b. If tire measurements show the minimum tread depth at or below 3/32 of an inch.

c. If tire sizes and types do not meet the car manufacturer's minimum recommendations.

d. If seasonal tire types are present on the vehicle during the wrong season (example; snow tires in summer—excluding four wheel drive vehicles used in off-road or specific applications).

e. If inspection shows series number mixing (different aspect ratios) especially when used on the same axle.

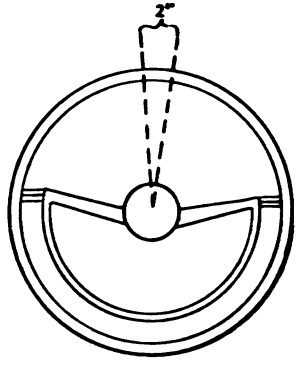
f. If tire types are mixed by using *bias ply, bias belted,* with radial types.

g. If spare tire is missing or obviously cannot be used as an emergency tire.

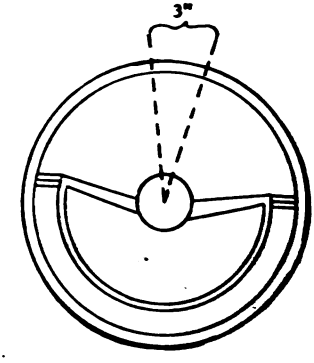
STEERING MECHANISMS – BINDING – STEERING WHEEL PLAY

The steering system must be inspected to determine if excessive wear and/or maladjustment exists in the steering linkage and or steering gear. If the vehicle is equipped with power steering, the engine must be running and the fluid level and belt tension must be adequate before testing.

PROCEDURE	REJECT VEHICLE
1. BINDING OR JAMMING. Turn steering wheel through a full right and left turn and feel for binding or jamming conditions.	1. If steering gear binds or jams other than at wheel stops.
2. STEERING WHEEL PLAY. With the front wheels on a dry surface and in the straight ahead position, turn steering wheel in both directions until the turning motion can be observed at the front wheels. Measure free movement.	2. If there is more than 2 inches of free movement in steering wheels up to and including 18 inches in diameter or more than 3 inches in steering wheels over 18 inches in diameter.
3. Check power steering belt and belt tension.	3. If the power steering belt slips or is frayed.



2" free movement allowed in steering wheels up to and including 18" in diameter.



3" free movement allowed in steering wheels over 18" in diameter.

STEERING MECHANISMS – WHEEL BEARINGS

Wheel bearings out of adjustment can cause wander and erratic front brake action. The proper functioning of the front suspension cannot be maintained unless the front wheel bearings are correctly adjusted. Because the steering system and related linkage are affected wheel bearing adjustment must be inspected to determine wear or damage.

On vehicles equipped with ball joints, the inspection for proper wheel bearing adjustment has to be made while the ball joints are under load. To load the ball joint the vehicle must be hoisted from the cross member or frame when the front spring or torsion bar is supported by the lower control arm (Figure 1). When the front spring or torsion bar is supported by the upper control arm the vehicle must be hoisted at the lower control arm (Figure 2). Hoist vehicle from underside of axle on vehicles equipped with I Beam front axle (Figure 3).

PROCEDURE	REJECT VEHICLE
1. WHEEL BEARINGS. With the front end of the vehicle lifted properly, grasp the front tire top and bottom and rock it in and out, and record movement. To verify that any looseness detected is in the wheel bearings, notice the relative movement between the brake drum or disc and the backing plate or splash shield.	1. If any noticeable looseness is detected between the brake drum or disc and the backing plate or splash shield.

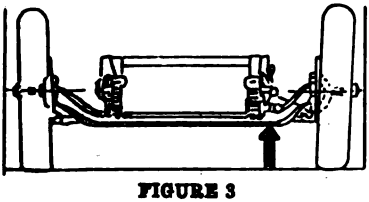


FIGURE 3
INSPECTION FOR WHEEL BEARING ADJUSTMENT, WHEEL AND LINKAGE PLAY WITH "I" BEAM FRONT AXLE. (Raise until wheel clears one side at a time.)

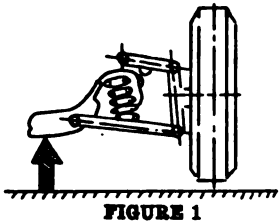


FIGURE 1
INSPECTION FOR WHEEL BEARING ADJUSTMENT AND FOR WHEEL PLAY WITH SPRING ON LOWER CONTROL ARM

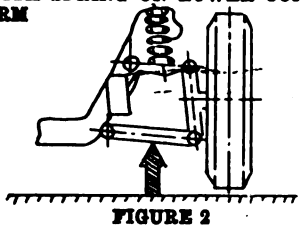
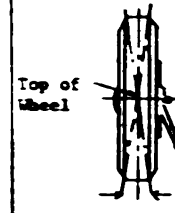


FIGURE 2
INSPECTION FOR WHEEL BEARING ADJUSTMENT AND FOR WHEEL PLAY WITH SPRING ON UPPER CONTROL ARM

STEERING MECHANISMS – FRONT WHEEL PLAY AND LINKAGE

Linkage and Wheel Play—Excessive free play causes wheel shimmy, erratic brake action and steering control problems. The inspection for front wheel and linkage play has to be made while the ball joints are under load, therefore, vehicles equipped with ball joint suspension must be hoisted in the same manner as prescribed in Figures 1 and 2. Vehicles equipped with I Beam axles must be hoisted under the axle (Figure 3). Hoisting in the prescribed manner will permit the inspection for wear of the steering linkage and for front wheel play about the vertical axis if the vehicle is equipped with ball joints (Figure 4) or the horizontal axis if the vehicle is equipped with king pins (Figure 5).

PROCEDURE	REJECT VEHICLE
1. FRONT WHEEL PLAY. With the front end lifted properly, grasp front and rear of tire and attempt to turn assembly right and left. Then grasp top and bottom of tire and attempt to rock it in and out. Record movement at extreme front and rear—top and bottom—of tire (Figures 4 and 5).	1. If measurement is found to be in excess of: **Wheels** ¼ inch—16" or less ⅜ inch—17" and 18" ½ inch—Over 18"
2. STEERING LINKAGE. Inspect pitman arm, idler arm, stabilizer link and tie rods for looseness and locked joints.	2. If linkage is loose or if joints are not secured with cotter pins or other devices.



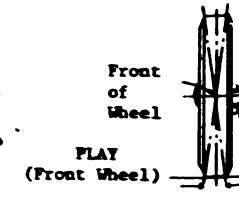


Fig. 4 STEERING LINKAGE Fig. 5

NOTE: Make sure any looseness detected is not wheel bearing play. Wheel bearing play can be eliminated by applying the service brakes.

TIRES

Worn, cut or snagged tires may result in a blow-out and could cause the driver to lose control of his vehicle. Smooth tires produce poor braking effort and are much more susceptible to skids, particularly on wet pavement.

A visual examination of the tires will be made. The spare tire need not be inspected.

PROCEDURE	REJECT VEHICLE
1. Inspect for cord exposure.	1. If tire has an exposed cord.
2. Inspect for knots, cuts or separations.	2. If tire has any cut or separation that exposes the cord when the tire is inflated or if the tire has any knot.
3. Inspect for mis-matching of tire sizes on dual tires.	3. If tire size on any duals are mis-matched by more than ½ inch in diameter.
4. Inspect for mis-matching of tire types mounted on the same axle if not equipped with dual tires. (Bias, bias belted, radial ply.)	4. If different type single tires are mounted on same axle.

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

THURSDAY, MAY 13, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m. in room 5110, New Senate Office Building, Hon. Frank E. Moss, presiding.

Present: Senators Moss and Baker.

Senator Moss. The committee will come to order. For the past 8 days this committee has been examining the automobile compensation system and the automobile which is such an integral part of that system.

We have received constructive testimony from many interested parties concerning the proposals for insurance reform before this committee and counterproposals offered by some of the witnesses.

On Monday, Tuesday, and Wednesday of this week we focused on the way in which the automobile contributes to rising insurance premiums, and we were presented with information suggesting that the Government, business, and the consuming public itself had been derelict in their responsibility to promote the building of safe cars without eggshell exteriors.

The committee had scheduled Douglas Toms, Acting Administrator of the National Highway Traffic Safety Administration, to testify today. However, for the mutual convenience of this committee and the Department of Transportation, Mr. Toms will not appear today but will appear at a later date.

We do have some very important witnesses to hear today and we will call them and look forward to having their testimony.

I must say that I think the testimony we have had and the presentations that have been made have been of the highest order and have contributed greatly to the development of this subject matter before this committee. I know that today will be no exception, it will be a continuation of this fine presentation.

Our first witness will be Mr. Jacob Clayman, administrative director of the industrial union department of the AFL–CIO from Washington.

We are very glad to have Mr. Clayman before this committee once again. We have had him with us before and we look forward to your testimony.

STATEMENT OF JACOB CLAYMAN, ADMINISTRATIVE DIRECTOR, INDUSTRIAL UNION DEPARTMENT, AFL-CIO; ACCOMPANIED BY PHILIP DAUGHERTY, STAFF MEMBER

Mr. CLAYMAN. Thank you very much, Senator. I have with me Mr Philip Daugherty, a member of our industrial union department.

Senator MOSS. We welcome you, Mr. Daugherty. Glad to have you here.

Mr. CLAYMAN. As perhaps you know, the Industrial Union Department is the central body of the industrial unions. We represent 59 national unions, and our membership is in excess of 6 million.

Before I address myself immediately to my statement, I would like to make a short informal preface.

Senator MOSS. That will be acceptable.

Mr. CLAYMAN. I do not pose, nor do we pose, as technicians in this area, Senator, but we do pose as being reasonably expert in knowing what our membership is thinking, and our membership, I am certain, reflects the general attitudes of the common person in this country.

I have been getting around on a variety of issues over the country and I think I can say with certitude that this issue or issues before this committee now are pretty close to the top, may even be a the very top of the consumer concerns of our membership.

Everywhere I go I catch the sense of frustration, often anger, concerning the matter of the insurance costs, insurance cancellations, and the general disarray of the industry in its relationship to the ordinary insured, the ordinary consumer. And, really, what I am doing here today is expressing both that frustration, that concern, and perhaps even that anger.

Now to the written testimony.

In testifying before your committee in March, Secretary Volpe made it abundantly clear that the present auto insurance—accident reparations system is not performing in a socially responsible fashion. It is costly, wasteful, and completely unjust. Compensation under the present system is untimely, unpredictable, malapportioned, and uncoordinated.

Worse yet, too many seriously injured accident victims go uncompensated, and too many dependents of fatality cases receive little, if any, benefits from the system.

The system is terribly inequitable because it confers the greatest injustices on the more disadvantaged members of our society. Three-fifths of the families in this country have incomes of less than $10,000. One of the DOT studies found that seriously injured auto accident victims in this income bracket recovered only 46 percent of their personal and family economic loss. Yet these victims suffered over four-fifths of the total loss of all those auto accident victims that particular year.

This same study reveals that those auto accident victims who completed the eighth grade recovered 23 percent of their losses, while those with college training recovered 64 percent.

And, if I may interject, this is an interesting commentary, maybe even a melancholy commentary, on the way our system of auto insurance, indeed maybe of justice, operates, that the more your education and the closer you are to the mainstream of American life, the

more likely you are able to recover insurance than if you are a chap who has no education and you are removed from the mainstream of American life.

And these statistics may indeed tell much more than I am able to express to this committee concerning the inequitable operation of the program that we are talking about this morning.

The tragedy of all this is that these people with income less than $10,000 are likely to be paying the highest premiums for this lack of protection.

For example, a 23-year-old married man living in the city—where many of our more disadvantaged live—for a standard bureau company-issued policy, would pay $587 is Los Angeles; $619 in Chicago; $706 in Philadelphia; and $486 in Detroit.

It is no wonder that Secretary Volpe has testified that "the present system needs change badly, and needs it now." Nevertheless, all the administration could offer in support of implementing a no-fault auto insurance system "now" was a concurrent resolution—in our judgment, I trust this is not too harsh, I do not believe it is, a rather meaningless piece of paper.

In my experience before I came to Washington a number of years ago was with the State government. I was with the labor movement in a large State. And I could see the operation of State government close up. And I can tell you out of my own experience there, and everything I have heard, learned since, tells me that the States are not doing the job and there is every likelihood, unless we have some kind of interesting metamorphosis in State government, they are not likely to do the job. That is why we are led to say that we thought that this was a rather meaningless piece of paper.

This resolution would do nothing except allow the States with their part-time legislators, many of whom make their living off of auto accident cases, to enact lawyer and insurance company type plans, if they do anything at all.

The present system does need change badly and does need change now. We ask that S. 945 be approved now and that goal will be realized. We would like to suggest, however, that section 6 be strengthened by giving the Secretary of DOT authority to establish the maximum amount or percentage to be allowed as surcharges.

We say this because as good as the pricing and claims information scheme might seem on paper, it will not prevent the companies from pricing some of the public out of the market—and we are not talking about the completely irresponsible driver.

We feel that the average person will not understand the pricing and claim information. It might be of some aid to the fellow with college education in mathematics, but the majority are not that fortunate.

The bill also leaves State regulation of auto insurance rates to the States. Our State organizations have learned to their members' sorrow over the years that it is futile to fight auto insurance rate increases in most of the States, particularly in those where the insurance commissioner has little or no power to review the rates before they are put into effect. Ohio, California, Georgia, New York, Illinois, and Missouri are such States.

Why, even under the administration's unprogressive health insurance program which will enrich the private health insurers, HEW Secretary Richardson has said that there would be Federal regulation of policy forms and rates, beyond even asking for complete rate regulation, but recommending that ceilings be placed on surcharges.

Another aspect of the bill we endorse fully is the provision, section 5(d), in essence, requiring the insurance companies to serve the public.

If the no-fault coverage is compulsory, the companies cannot be left free to deal with the public as they please. This is the case today. Our members complain bitterly about the arbitrary treatment they receive from the companies. When they attempt to use the insurance and collect, many times they are canceled or the policy not renewed. If they are not dropped by the company, their rates are increased.

There is no need to take up your time with the horror stories, they are all only too familiar. Everybody I know of, and that includes myself, have our own little chamber of horrors in this area. And just scratch the surface of most anybody that you know and, obviously people that I know, and you will find a volcano erupting of horror stories in this area. And the pity is that the horror stories are true.

Secretary Volpe implied that a no-fault system would eliminate most of the causes. But, as Mr. Robert Klein of Consumer's Union testified before you last week, other first-party, no-fault insurance like homeowners and burglary is difficult to get and keep in many parts of the country today. All we can say is, for the public's sake, enact S. 945 with section 5(d).

Now, if S. 945 were enacted, would it bring about truly inexpensive auto insurance for the average motorist? We can see where there would be lower claims administration costs and an overall better distribution of present premium dollars—that is, more money available to claimants through the removal of most legal costs and shift funds from the overcompensated to the undercompensated accident victim. But we cannot see how other wasteful insurance company overhead and selling costs are going to be significantly reduced by implementing no-fault through private insurance carriers.

Group auto insurance may be of some help—particularly for the working man if the employer contributes part of the premium and the working man does not have to include that part in his income tax return.

S. 946 would speed along group auto insurance and S. 947 would correct the tax situation. We endorse both bills. However, group auto insurance may be a long time coming even with no-fault insurance.

One bad aspect of group auto insurance is that a large segment of the motoring public will not be in groups and will have to look to individual policies.

As the Senate Antitrust and Monopoly Subcommittee's Blue Cross hearings showed, price competition between the Blues and commercial health insurers has resulted in lower rates for the large groups at the expense of individual policyholders and small groups.

Individual policyholders may even be in companies—like the health insurers selling policies—who eat up 50 cents of every premium dollar.

We have prepared these charts—and they appear at the end of the testimony—to show the flow of an estimated $14 billion in auto injury and car repair insurance premiums in 1970, and I would like to demon-

strate the charts in rather larger visible form so that all of us get the full implication of these figures.

We have the auto insurance premiums, expenses and payouts for the year 1970. We show the total premiums, $14 billion. It is my understanding and information that we have understated it some. It is in excess of $14 billion. It may indeed be pretty close to $14.5 billion.

The premiums paid in—this is just personal injury claims, you see—premiums paid in were $6 billion in 1970. Insurance overhead and profit, $2,700 million. Claimants got a total of $3,300 million from which they had to pay $900 million to lawyers. And so the total from $6 billion paid in premiums, the total that actually found its way into the pockets and the homes of the claimants who paid the $6 billion was $2,400 million. That means that out of every premium dollar only 40 cents went to the claimants.

I would make the case elsewhere in our economy any industry that had that kind of overloading, where only 40 cents went to the people who paid the bill, we would do more than raise our eyebrows. We probably would have had all kinds of legislation in Washington and in the various States long before this late date.

Now I want to show you——

Senator BAKER. Could I interrupt for a second? To make sure I fully understand this, this $6 billion of premiums is just premiums for personal injury liability?

Mr. CLAYMAN. Right.

Senator BAKER. Not for personal injury and property damage?

Mr. CLAYMAN. Just for personal injury liability claims, bodily injury. The others will raise the other issues.

Senator BAKER. Do you have any idea what the ratios are on property damage?

Mr. CLAYMAN. We have them right here. I have a small belief that seeing somehow aids the process. Here we have the premiums, expenses, and payouts for 1970. This applies to collision and comprehensive. Premiums paid in, $5 billion; insurance and overhead and profit, $2 billion; net to policyholders, $3 billion.

In this category, interestingly enough, we have the highest payout to the consumer. In this case 60 cents of every dollar goes to the consumer.

The next chart takes us to damages to cars and property of others. Premiums, $3 billion; overhead, insurance, and profit, $1,000,300,000, of which claimants got $1,700 million and lawyers got $100 million of that. That meant a net of $1,600 million for the claimants.

In this category the consumer got 53 cents of every premium dollar paid in, which means that in toto, including all of these categories, the consumer got 50 cents of every dollar paid in. And I must tell you that these are the most conservative figures that I have seen.

I have seen some other figures which I have not cited which show the consumer gets only 42 cents of every dollar. And so, quite deliberately, we have taken the most conservative figures we could find because, unfortunately, the conservative figures make the case.

I am returning now to my testimony.

What can be done to reduce drastically the $6 billion in administrative expenses? What can be done to reduce drastically the underlying auto repair costs. How can we expect to have real savings unless

some system is devised along the lines of the auto accident social protection plan in Puerto Rico? How can we achieve real savings unless the auto manufacturers are forced to build safer and less costlier to repair cars?

The DOT final report (Motor Vehicle Crash Losses and Their Compensation in the United States, table 2, p. 6) estimated injury and property damage compensable economic loss resulting from 1967 auto accidents to be $10.5 billion. With inflation, that probably means $12 billion as of 1970.

Mr. Frank Fournier of the Puerto Rico Accident Compensation Administration stated in his prepared statement to this committee that operating expenses of the Puerto Rico plan were 12 percent of total income from premiums charged. Certainly, since the plan has been in operation for only 15 months, these expenses will be reduced in time.

If a Puerto Rico type social protection plan was operating in the 50 States and District of Columbia the $12 billion in injury and property damage loss could have been compensated and it would have taken only around $1.6 billion to run the system. And we still would not have used up the $14 billion in premiums.

S. 976 would enable us to reduce auto repair costs. If we had better bumpers we could save over a billion dollars a year.

Imagine the savings possible in human life and injuries, as well as dollars, if we had sturdier cars. Fragile cars are costing us untold human suffering. Fragile cars are robbing the public of hard-earned dollars for costly repairs.

I happened to be yesterday, Mr. Chairman, in Atlanta and saw a kind of a cartoon in one of their papers there. I suspect it is syndicated. The cartoon shows the picture of a supermarket basket, you know, that you haul around and pick up your groceries, and it shows it is in collision with an automobile, and the automobile is all banged up and the supermarket cart is there, it is intact. And the legend underneath is one chap talking to another, "We are still way ahead of Detroit. There is not one new car that can win a collision with one of our shopping carts."

Of course it is ludicrous, but the point it makes is not so ludicrous, that it has become part of the common folklore that cars are as fragile as obviously they are.

Now, I understand, and I got this from newspaper accounts, I gather that the industry, automobile industry, has observed partially in rebuttal, and I may not make their entire case, that the public wants it this way. If the public wanted it another way they would have it. Maybe there is some kind of slight case made there.

I watch TV, as all of the rest of us do, and I see all kinds of pictorial advertisements which show a big crane picking up a car by the body and look how sturdy this car is, it doesn't bend or buckle or anything else. Obviously the import of this kind of propaganda is that we build a strong car. In other words, having said here that the public wants a fragile car because it looks prettier, they are here doing their level best, spending hundreds of thousands of dollars, trying to demonstrate to the same public that it is a strong and powerful car.

Have you seen the advertisements on the banging of the door? Apparently a certain kind of bang is supposed to represent to us stur-

diness. Again, spending hundreds of thousands of dollars trying to demonstrate to the American public that the car truly is a tough sturdy vehicle.

Yet I gather—and maybe my information is incomplete from what I have read in the paper—we have fragile cars because the public wants fragile cars.

I am inclined, as a member of the public and from what I hear from the people I associated with—they want strong cars. They want beautiful cars too, but they want strong cars. They want cars that won't cost so much when a collision develops. And they want cars that won't require the kinds of insurance costs that are involved these days.

We urge you to pass S. 976 as soon as possible. We believe that it is time that this Congress began to consider seriously the establishment of a Government-operated auto accident compensation plan for all of its citizens. At the least, we urge you to pass S. 945 with surcharge controls on the private carriers and Consumer Union's suggestions as to pricing and claims evaluation.

And, finally, in closing, my home State is Ohio, and I worked there for many years. I keep in close touch with it. Our people are so distressed by the whole business of automobile insurance costs that seriously they are talking about developing their own auto insurance company.

Having said that, you cannot possible realize the implications of their frustration, if they have come to that pass, because they do not like to talk or think about taking over a business of this nature, but they are so distressed that in convention action, board action, in dozens of ways their membership has said let's start one of our own, we think we can bring down the costs.

That, members of the committee, is the sum total of our testimony.

(The charts follow:)

64-345 O - 71 - pt. 4 -- 12

AUTO INSURANCE PREMIUMS AND PAY-OUT - 1970
TOTAL PREMIUMS $14,000, 000,000.

FOR
PERSONAL INJURY
LIABILITY CLAIMS

PREMIUMS		INSURANCE OVERHEAD AND PROFIT
$6,000,000,000.	→	$2,700,000,000.

FOR CLAIMANTS		LAWYERS
$3,300,000,000.	→	$900,000,000.

NET TO CLAIMANTS

$2,400,000,000.

SOURCE: U.S. Senate Antitrust and Monopoly Subcommittee.

AUTO INSURANCE PREMIUMS AND PAY-OUT - 1970
TOTAL PREMIUMS $14,000,000,000.

FOR DAMAGE TO CARS AND PROPERTY OF OTHERS (LIABILITY):

PREMIUMS		INSURANCE OVERHEAD AND PROFIT
$3,000,000,000.	→	$1,300,000,000.

FOR CLAIMANT		LAWYERS	NET TO CLAIMANTS
$1,700,000,000.	→	$100,000,000.	$1,600,000,000.

POLICYHOLDERS'OWN COLLISION AND COMPREHENSIVE:

PREMIUMS		INSURANCE OVERHEAD AND PROFIT	NET TO POLICYHOLDERS
$5,000,000,000.	→	$2,000,000,000.	$3,000,000,000.

SOURCE: U.S. Senate Antitrust and Monopoly Subcommittee.

Senator Moss. Thank you very much, Mr. Clayman, for your fine statement and bringing to us the viewpoint of the great organization that you represent.

Seeing your charts, we appreciate the fact that there is great economic waste in the failure to get the money paid for premiums into the hands of those who are injured. So much of it is lost in overhead. And then your comment showing that the uneducated suffer particularly as against those with a greater degree of education makes the maldistribution even more clear.

So I agree with you and Secretary Volpe that the time to act is now in this matter and that is what we are trying to do here.

Your figures were excellent. I notice that because 1970 figures were not available you used estimates. It happens that the 1970 figures were published yesterday and are available, and they are essentially like yours, but I will put in the record at this point a compilation of the figures as they were finally published rather than based on the estimates which will simply amplify your statement to some extent.

(The chart follows:)

AUTOMOBILE INSURANCE, 1970

[In billions of dollars]

	All auto insurance	Bodily injury	Property damage
Premiums earned	14.4	6.5	7.9
Insurance overhead	5.5	2.3	3.2
Lawyers fees and other litigation expense	1.5	1.4	.1
Net benefits paid to cover bodily injury and property damage	7.4	2.8	4.6
Compensable economic loss [1]	12.0	6.5	5.5
Percent of loss covered	61	43	83

[1] Wage and medical loss, and future earnings of fatality victims with dependent survivors, and property damage.

Source: Derived from "Motor Vehicle Crash Losses and Their Compensation in the United States," Department of Transportation (1971), table 2 at p. 6—adjusted to 1970; "Best's Aggregates and Averages" (1970 edition); "The Spectator; Automobile Personal Injury Claims," Department of Transportation, pp. 73, 80 (1970); "Automobile Accident Litigation," Department of Transportation, p. 7 (1970).

Senator Moss. I do not know that I have any technical questions to ask you, Mr. Clayman, because I think you have given us a point of view, a restatement of a lot of the problems that surround this automobile accident injury area about which you are so concerned and on which we have been taking testimony.

I want to assure you that we share that concern on the committee and we are looking diligently for the proper way to find a remedy.

I surely do thank you for coming to testify.

Senator Baker may have some questions.

Senator BAKER. Thank you very much, Mr. Chairman. I do not have extensive questions.

I, too, would like to thank the witness for the penetrating and astute observations of this difficult problem. I would express concern, as he has expressed concern, over the disparity between the access to compensation dependent on education, social position, economic welfare. I think that may be one of the matters that we can and ought to give closest and most immediate attention to.

For the record, I disagree with the witness in the sense that the ills cited, which we agree on, need necessarily be solved by a Govern-

ment program, Government corporation, or by Federal Government combination.

I think the diversity of the multiple approach holds more appeal for me than maybe it does for him. But this is not the forum to debate that particular issue.

I compliment him on citing the concerns involved, the abuses, and the difficulties, and he has made a real and meaningful contribution to the record.

Thank you.

Senator Moss. Thank you very much, gentlemen.

Our next witness will be Mr. Joe W. Henry, president of the Tennessee Bar Association. I am going to call on Senator Baker to introduce Mr. Henry who comes from his State of Tennessee.

Senator BAKER. Thank you very much, Mr. Chairman.

It is my great pleasure to welcome to this committee as a witness this distinguished gentlemen, who is not only a great lawyer and the president of the Tennessee Bar Association, but also a former adjutant general of the Tennessee National Guard. He has been a member of the General Assembly of the State of Tennessee; he has been involved in county and city and State government occupations.

Most of all, I can vouch to the committee firsthand that he is a great human being, sensitive to the needs and requirements of our time, our State and our country. As I pointed out to the chairman earlier, I count him a great Tennessean, a great friend, and for the edification of the majority of the committee, he is also a great Democrat.

With that I would like to welcome him to these hearings.

Senator Moss. The Senator paid you the final compliment there at the end of his introduction, Mr. Henry.

Mr. HENRY. I concur.

Senator Moss. We are pleased indeed to have you before our committee and we look forward to your testimony, sir.

STATEMENT OF JOE W. HENRY, PRESIDENT, TENNESSEE BAR ASSOCIATION

Mr. HENRY. Thank you, Mr. Chairman. I am delighted to be here and I am profoundly grateful to my great and esteemed friend, Howard Baker, with whom I do not always agree on matters, but I will have to say at this particular time and under these circumstances I am glad, even though I am a Democrat by dedication and by conviction, I am glad my friend Howard Baker sits here.

Mr. Chairman, I appear as president of the Tennessee Bar Association in opposition to S. 945, the Uniform Motor Vehicle Insurance Act. We appreciate this opportunity to present our views.

At the very threshold I would like to make it a matter of record that the lawyers of Tennessee stand united in unequivocal hostility to any proposal to abolish the fault concept of tort liability. Regardless of whether we represent innocent and outraged plaintiffs seeking just compensation or defend the insurance industry against rapacious and unjust demands, we are convinced that any proposal which would penalize the prudent, reward the reckless, abolish trial by jury, in part, close the courthouse door to those seeking redress against wrongdoers, coddle the grossly negligent and shift the burden of respons-

bility for traffic accidents from the guilty to the innocent, is basically unsound, fundamentally unworkable, wholly unrealistic and tends to erode justice to the detriment of the consuming public.

At a former hearing before this committee Tennessee's senior U.S. Senator succintly and correctly stated:

> I hazard the observation that the negligence system grounded in the common law, complete with its concept of specific damages, or compensatory damages and punitive damages, is not only calculated to compensate for injuries or death of property damage, but also to deter and provide a disincentive for those who drive automobiles or act recklessly.

I agree wholeheartedly with Senator Baker.

In the affluent and mobile America of today where the ownership of an automobile has long since become a necessity for the average citizen instead of the rich man's luxury—where automobile accidents occur at the approximate rate of 13,600,000 per year—where over 50,000 persons die annually in automobile accidents—it is only natural that people are concerned.

We are admittedly delving into problem areas of vital public concern, but polarization of thought and overreaction are neither realistic nor reasonable solutions.

The present system of automobile reparations needs constructive and critical analysis, but corrective action need not involve planting a trojan horse in the House of Tort.

May I very succinctly enumerate the basic reasons for our opposition to this proposal.

(1) The fault system is a cherished part of the English common law, the crowning contribution of our mother country to the ideal of equal and exact justice and ordered liberty under the law.

(2) It is prejudicial to the public interest to make payments indiscriminately to all victims without regard to fault—to the sober and the drunk, the careful and the careless, the responsible and the irresponsible and to amalgamate all into a one-class, homogenized victim population equally entitled to recover, regardless of merit and oblivious to fault.

(3) It is contrary to the public interest to place arbitrary and unrealistic restrictions on loss of earnings or loss of life.

(4) It is against the public interest to deprive a citizen of his time-honored and constitutionally guaranteed right of trial by jury.

(5) It abolishes the collateral source rule and in effect credits the wrongdoer with the innocent victim's Blue Cross-Blue Shield, accident and health, medical pay, sick leave, and other benefits paid for or earned by him.

(6) Notwithstanding the fact that approximately 82 percent of the population is protected now by one or more forms of private health insurance and 81 percent of all holders of automobile liability insurance have medical payment coverage, S. 945 would require them to duplicate this coverage but would deny them duplicate benefits. It is a parasite plan that feeds on other insurance. Seventy-five percent of the total labor force is covered by some form of wage continuation plan.

(7) It abolishes pain and suffering as an element of compensation except as to survivors and in catastrophic injuries.

(8) It completely ignores the fact that approximately two-thirds of the premium dollar goes for car damages, coverage, and more than

10 times as many people incur property damage than incur personal injuries.

(9) All no-fault insurance proposals represent deviation from the established principles of tort liability—governing all other tort situations. We see no essential difference between injuries resulting from automobile accidents and those caused by other failures to use and exercise due care. We agree with the American College of Trial Lawyers that the auto plan is "an incoherent, partial and irrational form of social insurance."

(10) We are not persuaded that any no-fault plan of automobile reparations will result in any savings to the consuming public. All such proposals are necessarily premised on the proposition that there will be a substantial reduction in benefits. We are persuaded that when the prudent automobile owner purchases all insurance coverage necessary to give him adequate protection the cost will tend to exceed present premiums.

(11) The present fault system provides a meaningful deterrent to improper motor vehicle operating practices, whereas no-fault tends to ease the consequences of negligent conduct, which was the point Senator Baker heretofore made.

SOLUTIONS

Among the proposed solutions now under active consideration by the Tennessee Bar Association and upon which we will finalize our position on June 11, 1971, at our annual convention are these:

First, those relating to court congestion and delays.

We submit that the problem of court congestion has been ovestated in that it only exists in a relatively few metropolitan jurisdictions and results primarily from ineffective judicial administration and insufficient judges in proportion to the population. Moreover the trial of automobile accident cases is but one factor in crowded dockets. The major culprit appears to be the criminal actions resulting from the increasing crime rate.

Be these things as they may, we are considering two proposals bearing upon the question of congestion:

First, a change in our law to permit nonunanimous verdicts in automobile cases resulting in verdicts being rendered more quickly and minimizing the prospects of hung juries.

Second, the enactment of an arbitration procedure for all automobile claims, both personal injury and property damage, where the amount in controversy does not exceed $2,500.

RELATING TO AUTOMOBILES AND DRIVERS

We are considering five proposals with respect to automobiles and drivers as follows:

(1) The enactment of a stronger driver's license law providing, among other things, for compulsory examination of drivers at periodic intervals, to the end that those incapable, for any reason, of the safe operation of a motor vehicle be denied driving privileges.

(2) The adoption of legislation providing for a mandatory jail sentence for those convicted of driving while under the influence of alcohol or narcotics drugs.

(3) The mandatory revocation of driving privileges for those guilty of repeated moving traffic violations.

(4) The adoption of legislation requiring that every private passenger automobile sold and licensed in Tennessee on or after July 1, 1973, be equipped with an appropriate energy absorption system. And I will not go into the safe bumper, because this committee has heard much testimony on that heretofore.

(5) The establishment of minimum standards of automobile registration and a vehicle inspection law designed to prevent the operation of unsafe vehicles upon our streets and highways.

RELATING TO AUTOMOBILE INSURANCE

Much of the criticism of the present system stems from unfair cancellation and rejection practices.

To correct this problem we are considering legislation which would forbid insurance companies to cancel any policy unless the insured, (*a*) has had his license revoked; (*b*) has not been permitted to renew his license after periodic examination; (*c*) fails to pay his premium.

We are also considering legislation which would prohibit the rejection of any application for a policy of automobile insurance without just cause to be made known to the applicant.

Additionally, we feel that with each automobile insurance policy issued there should be medical pay coverage, unless rejected by the insured in writing.

RELATING TO SUBSTANTIVE LAW

We are considering the abolition of the doctrine of contributory negligence and the adoption in its place of a comparative negligence system.

The adoption of this doctrine will spread the benefits and the burdens of automobile reparations on a broader and more equitable basis.

The present negligence system has certain gaps in compensation which are not attributable to the tort system but to a series of immunized defendant groups—State and local governments, charitable organizations, spouses and family members. These immunities are wholly and utterly indefensible. They stand impeached by reason, riddled by policy analysis, forsaken by logic and have become totally untenable in light of the availability of liability insurance.

We are, therefore, considering proposals which would abolish all such immunities thereby eliminating a substantial part of the so-called compensation gap.

These are the highlights of the proposals the lawyers of Tennessee have under active consideration.

We recognize that we face a pressing problem of serious public concern, but we are not willing to topple the "House of Tort" in our quest for solutions. We believe that these matters should be approached on a calm, considered and judicious basis. We caution against overreaction.

The use of the guillotine is an effective cure for dandruff, but it has certain disadvantages.

We are committed to our traditional belief in the right of trial by jury and we are convinced that our present system for providing repa-

rations for those injured in automobile accidents should be retained as the basic legal structure for dealing with such cases.

We can find no valid reason—and none has been cited—to except from the general common law rule of liability one who acts through the instrumentality of an automobile.

In closing may I say that in the last analysis solutions to these social ills lie within the exclusive domain of the several States. We therefore are opposed to the intrusion of Federal law in this area. Thank you. Senator.

Senator Moss. Thank you, Mr. Henry, for your statement setting forth the position of the Tennessee bar. It is a very strong statement indeeed.

In your criticism of any change in tort liability, particularly in the opening where you talk about rewarding the reckless and abolishing trial by jury, and closing the courthouse door to those seeking redress from wrongdoers, that made me wonder if you had overlooked the fact that this of course would not affect the traffic laws that we have, nor any of the criminal laws. If a driver of an automobile is offending against others in the sense that he is committing any sort of a crime he still can be held responsible under the law. You have not overlooked that, have you?

Mr. HENRY. No, sir; that is the significance of those two words "in part," close the courthouse door in part or abolish trial by jury in part. I am only relating this entire statement to the single area of automobile reparations and to civil actions brought for the purpose of obtaining compensation for damages done on our highways as a result of automobile accidents.

Senator Moss. Of course you saw the charts that were presented by the last witness and other figures that we have had indicating that really a rather negligible part of the premiums flow through to the accident victim in the end. What is your defense of that under the present systems?

Mr. HENRY. There is no question, Senator, but what the present system does indeed need some overhauling. I think we are all in agreement on that. I have not examined those figures. The lawyers, of course, of America became the whipping boy in this particular problem area. I suspect that if we had proposals to close down the hospitals in our country that the doctors would rise up and be opposed to it. Any program that is predicated upon the lack of need for attorneys starts off with a built-in injustice.

The better figures that, the figures that I have seen, considering the total cost of insurance, are that attorneys' fees only account for somewhere between 11 and 12.6 percent of the entire premium dollar. I do not know how to analyze these charts in the light of those figures. But those are the figures that I thought were pretty well accepted.

Senator Moss. Well, of course I do not know what source your figures are from, but the chart shows that lawyers' fees and litigation expenses were $1.5 billion this past year, which is—I do not know what it is in percentage; I would have to divide back and see—but——

Senator BAKER. About 9 percent.

Senator Moss. Nine percent or so. Well, 9, 10, 11, somewhere along in there. But nevertheless that is a very large amount that goes out in simply litigating the fault question. Of course I am a lawyer too, I

have to confess to being a lawyer and having tried some tort cases in my practice. So I can understand your concern for fear that some change might be made in a system you consider the best yet developed. In reference to your statement here, "The crowning contribution of our Mother country to ideal and equal and exact justice and ordered liberty under law"—do you know if the fault system is still operable in England as to traffic accidents?

Mr. HENRY. I am sorry, sir; I do not.

Senator Moss. Well, it has been very largely modified.

Senator Moss. Well, it has been very largely modified. That was interesting I thought in connection with the quote. You know, changes are going on and we have to face up to conditions as we are presented with them.

You also talked about the present system being something of a parasite, the proposal being a parasite system. But under the present system there are $5 billion of compensable economic loss for seriously injured accident victims who receive only $2.5 billion in benefits, but of those $2.5 billion in benefits only $1.1 billion are provided by automobile insurance and the remainder of the $1.4 billion comes from health and life and social security and other types of insurance. So isn't our present system somewhat parasitic?

Mr. HENRY. To some extent. But when an injured plaintiff brings a civil action, the defendant, the wrongdoer, is not entitled under the present system to claim credit for any wages he may have received while off from work under a wage continuation plan, from any accident or hospital or health benefits he may have received from some other private insurance, from a private insurer, those collateral benefits he has earned or paid for. And this system would credit the wrongdoer with those benefits.

I realize there is written in here an exception where an applicant can take out certain insurance that will specify that it is not, that the benefits are supplemental to other benefits. But of course this depends on whether the industry wants to offer such coverage or not. It is a discouraging thing to me to see people's sick leave consumed as a result of an accident where he was totally innocent of all fault or free from all blame. And he has maybe 90 days' sick leave. That is used and he goes back to work and 2 weeks later he has a heart attack and is off 90 days and he has no compensation, he has given that to the drunk driver who ran him down. This is why we are so hostile to this, Senator.

Senator Moss. Yes. Well, this would not affect, of course, other types of coverage a person has.

Mr. HENRY. No, sir, but it credits the wrongdoer with that coverage, which the injured man pays for. It forces him to, it forces duplicate protection, it gives solitary coverage.

Senator Moss. Well, I see the point you are making. Have you studied to any degree the no-fault system that Puerto Rico has established and is operating now?

Mr. HENRY. No, sir, I have not. I have never even read anything on that. I just know that Puerto Rico does have a modified version of it. I might say this about that, it would occur to me that in a country which is basically undeveloped and where the elementary economics of that situation might dictate that some modified plan of no-fault is

rations for those injured in automobile accidents should be retained as the basic legal structure for dealing with such cases.

We can find no valid reason—and none has been cited—to except from the general common law rule of liability one who acts through the instrumentality of an automobile.

In closing may I say that in the last analysis solutions to these social ills lie within the exclusive domain of the several States. We therefore are opposed to the intrusion of Federal law in this area. Thank you. Senator.

Senator Moss. Thank you, Mr. Henry, for your statement setting forth the position of the Tennessee bar. It is a very strong statement indeeed.

In your criticism of any change in tort liability, particularly in the opening where you talk about rewarding the reckless and abolishing trial by jury, and closing the courthouse door to those seeking redress from wrongdoers, that made me wonder if you had overlooked the fact that this of course would not affect the traffic laws that we have, nor any of the criminal laws. If a driver of an automobile is offending against others in the sense that he is committing any sort of a crime he still can be held responsible under the law. You have not overlooked that, have you?

Mr. HENRY. No, sir; that is the significance of those two words "in part," close the courthouse door in part or abolish trial by jury in part. I am only relating this entire statement to the single area of automobile reparations and to civil actions brought for the purpose of obtaining compensation for damages done on our highways as a result of automobile accidents.

Senator Moss. Of course you saw the charts that were presented by the last witness and other figures that we have had indicating that really a rather negligible part of the premiums flow through to the accident victim in the end. What is your defense of that under the present systems?

Mr. HENRY. There is no question, Senator, but what the present system does indeed need some overhauling. I think we are all in agreement on that. I have not examined those figures. The lawyers, of course, of America became the whipping boy in this particular problem area. I suspect that if we had proposals to close down the hospitals in our country that the doctors would rise up and be opposed to it. Any program that is predicated upon the lack of need for attorneys starts off with a built-in injustice.

The better figures that, the figures that I have seen, considering the total cost of insurance, are that attorneys' fees only account for somewhere between 11 and 12.6 percent of the entire premium dollar. I do not know how to analyze these charts in the light of those figures. But those are the figures that I thought were pretty well accepted.

Senator Moss. Well, of course I do not know what source your figures are from, but the chart shows that lawyers' fees and litigation expenses were $1.5 billion this past year, which is—I do not know what it is in percentage; I would have to divide back and see—but——

Senator BAKER. About 9 percent.

Senator Moss. Nine percent or so. Well, 9, 10, 11, somewhere along in there. But nevertheless that is a very large amount that goes out in simply litigating the fault question. Of course I am a lawyer too, I

have to confess to being a lawyer and having tried some tort cases in my practice. So I can understand your concern for fear that some change might be made in a system you consider the best yet developed. In reference to your statement here, "The crowning contribution of our Mother country to ideal and equal and exact justice and ordered liberty under law"—do you know if the fault system is still operable in England as to traffic accidents?

Mr. HENRY. I am sorry, sir; I do not.

Senator MOSS. Well, it has been very largely modified.

Senator MOSS. Well, it has been very largely modified. That was interesting I thought in connection with the quote. You know, changes are going on and we have to face up to conditions as we are presented with them.

You also talked about the present system being something of a parasite, the proposal being a parasite system. But under the present system there are $5 billion of compensable economic loss for seriously injured accident victims who receive only $2.5 billion in benefits, but of those $2.5 billion in benefits only $1.1 billion are provided by automobile insurance and the remainder of the $1.4 billion comes from health and life and social security and other types of insurance. So isn't our present system somewhat parasitic?

Mr. HENRY. To some extent. But when an injured plaintiff brings a civil action, the defendant, the wrongdoer, is not entitled under the present system to claim credit for any wages he may have received while off from work under a wage continuation plan, from any accident or hospital or health benefits he may have received from some other private insurance, from a private insurer, those collateral benefits he has earned or paid for. And this system would credit the wrongdoer with those benefits.

I realize there is written in here an exception where an applicant can take out certain insurance that will specify that it is not, that the benefits are supplemental to other benefits. But of course this depends on whether the industry wants to offer such coverage or not. It is a discouraging thing to me to see people's sick leave consumed as a result of an accident where he was totally innocent of all fault or free from all blame. And he has maybe 90 days' sick leave. That is used and he goes back to work and 2 weeks later he has a heart attack and is off 90 days and he has no compensation, he has given that to the drunk driver who ran him down. This is why we are so hostile to this, Senator.

Senator MOSS. Yes. Well, this would not affect, of course, other types of coverage a person has.

Mr. HENRY. No, sir, but it credits the wrongdoer with that coverage, which the injured man pays for. It forces him to, it forces duplicate protection, it gives solitary coverage.

Senator MOSS. Well, I see the point you are making. Have you studied to any degree the no-fault system that Puerto Rico has established and is operating now?

Mr. HENRY. No, sir, I have not. I have never even read anything on that. I just know that Puerto Rico does have a modified version of it. I might say this about that, it would occur to me that in a country which is basically undeveloped and where the elementary economics of that situation might dictate that some modified plan of no-fault is

proper in Puerto Rico. I am not, however, in a position to comment on this one way or another.

Let me say this to you, Senator, as far as the lawyers are concerned. I do not believe the lawyers have any objection to a modified no-fault insofar as they are professionally concerned. Every trial lawyer will tell you, Mr. Chairman, and you will no doubt recall yourself, that many, many of these small claims are troublesome, it is not economically feasible to handle them. We would frankly prefer not to have to bother with them. But a lawyer is not a tradesman in the marketplace. he does not exist just to make money only, although the elementary economics of the situation make it highly desirable that we do so. But we have certain public service responsibilities.

I told Senator Baker yesterday, I just left my office the day before yesterday, and one of my law partners, my brother, was quarreling with a client because he was insisting on bringing a lawsuit for property damages involving a total of $357, with his own insurance carrier trying to pay him $370. He just wanted to prove he was right. Now this, to go into court under the conventional contingent fee system we would make a little over $100 for a day's work, Senator. And it just is not done that way anymore. I can remember when it was.

Of course these people who want to howl about the contingent fee system, what I have always called the poor man's key to the courthouse, it is the only way he can get there. I have been offering clients for 30 years now the proposition, you can either pay me on a contingent fee basis or you can pay me win, lose or draw. And I have never had that first client yet take up that win, lose or draw proposition. They want to gamble.

What these people who write about the horrors of the contingent fee system don't realize and don't tell you is that all they do is read a newspaper article where somebody got a judgment for $250,000, maybe the lawyer made more money than his time was honestly worth in that particular case, but they do not tell you about the horrors, the heartbreak, the tragedies of these cases you work your heart out on, you finance because the indigent plaintiff cannot carry his own financing. and then you try his lawsuit for a week and the jury comes in and says, "We find the issues in favor of the defendant." It makes a difference.

Senator Moss. I have met some of those juries.

Senator Baker?

Senator BAKER. I have too, Mr. Chairman, even once or twice when I was a defendant instead of prosecutor.

I want to commend you, Mr. Henry, for a good statement with controversial content in a forum that has heard testimony primarily in support of the concepts at variance with the point of view you make. You have done it effectively, you have done it responsibly, and you have done what I knew you would, and I appreciate it. You have offered particular and understandable alternative suggestions. I commend you and I commend the Tennessee Bar Association for providing this point of view for you to express in your own behalf and on their behalf.

One or two particular questions that I think are significant and that you could help the committee with occurred to me during the course of your statement. They are largely broadbased or philosophical ques-

tions, but I think they are significant in the determination of whether or not we do at the Federal level alter the tort system and that is in essence what we are talking about here.

My first question concerns the testimony by the distinguished witness 2 days ago to the effect that the present tort system has been so modified and changed by the advent of widely available and in some cases compulsory liability insurance, that in effect we have a system of no-fault already, at least insofar as the disincentive for negligence, which is the basis for the tort system, has been displaced by the availability or the unavailability of insurance.

I wonder if you would agree with that witness that there are distortions in the system already that are brought about by financial responsibility laws, by compulsory insurance provisions, by the nature of the insurance industry which puts a premium on settlements instead of litigation to the point where maybe the disincentive or the deterrent against negligence that is inherent in the tort system has been modified or diluted?

Mr. HENRY. Senator Baker, I would have to agree that there has been some diminution of the deterrent theory. As I understand the history of tort law, prior to the prevalence of liability insurance you did not have many tort actions, many actions for personal injury and property damage. It is to the credit of the insurance industry itself and to our enlightened system of justice in this country of ours that we have become aware of our social responsibility and now there can be some method of compensation.

I think if you have an effective merit rating for insurance where the rate that the policyholder pays bears some direct relation to his driving habits and his record, then you still have a significant amount of deterrence. I think, Senator, Mr. Chairman, I think we all would have to agree that we—rightfully or wrongfully, and sometimes I have mixed emotions on it but probably lean toward doing it—are going toward, rapidly toward a national health insurance program in this country. If we have an effective, sensible, properly administered comprehensive national health insurance program, then the underpinning of this entire no-fault concept is gone, we do not need it.

Senator BAKER. That is a good point.

Mr. HENRY. This may be premature.

Senator BAKER. No, it is not premature, in my opinion anyway, and that is one of the points I tried to make in colloquy with Dean Roddis who testified here before this committee on the 7th of May. I tried to point out, and I believe the witness agreed with me, that whether we intended it or not the tort system in the United States and the insurance industry which overlays it has assumed a duality of roles, one to indemnify against reparations required by the tort system and the other to serve a social purpose, that is, to provide protection against loss of wages, earnings, medical benefits, and the like. And that before we decide to run the Trojan horse into the courthouse yard we ought to give some question as to whether or not we fully understand the dual burden we are placing on the system.

Mr. HENRY. They are different problems; they are of course interrelated, but they are different problems.

Senator BAKER. I thank you for your testimony, General Henry. I agree with your point of view. I think, however, I agree most heartily

proper in Puerto Rico. I am not, however, in a position to comment on this one way or another.

Let me say this to you, Senator, as far as the lawyers are concerned. I do not believe the lawyers have any objection to a modified no-fault insofar as they are professionally concerned. Every trial lawyer will tell you, Mr. Chairman, and you will no doubt recall yourself, that many, many of these small claims are troublesome, it is not economically feasible to handle them. We would frankly prefer not to have to bother with them. But a lawyer is not a tradesman in the marketplace. he does not exist just to make money only, although the elementary economics of the situation make it highly desirable that we do so. But we have certain public service responsibilities.

I told Senator Baker yesterday, I just left my office the day before yesterday, and one of my law partners, my brother, was quarreling with a client because he was insisting on bringing a lawsuit for property damages involving a total of $357, with his own insurance carrier trying to pay him $370. He just wanted to prove he was right. Now this, to go into court under the conventional contingent fee system we would make a little over $100 for a day's work, Senator. And it just is not done that way anymore. I can remember when it was.

Of course these people who want to howl about the contingent fee system, what I have always called the poor man's key to the courthouse, it is the only way he can get there. I have been offering clients for 30 years now the proposition, you can either pay me on a contingent fee basis or you can pay me win, lose or draw. And I have never had that first client yet take up that win, lose or draw proposition. They want to gamble.

What these people who write about the horrors of the contingent fee system don't realize and don't tell you is that all they do is read a newspaper article where somebody got a judgment for $250,000, maybe the lawyer made more money than his time was honestly worth in that particular case, but they do not tell you about the horrors, the heartbreak, the tragedies of these cases you work your heart out on, you finance because the indigent plaintiff cannot carry his own financing, and then you try his lawsuit for a week and the jury comes in and says, "We find the issues in favor of the defendant." It makes a difference.

Senator Moss. I have met some of those juries.

Senator Baker?

Senator BAKER. I have too, Mr. Chairman, even once or twice when I was a defendant instead of prosecutor.

I want to commend you, Mr. Henry, for a good statement with controversial content in a forum that has heard testimony primarily in support of the concepts at variance with the point of view you make. You have done it effectively, you have done it responsibly, and you have done what I knew you would, and I appreciate it. You have offered particular and understandable alternative suggestions. I commend you and I commend the Tennessee Bar Association for providing this point of view for you to express in your own behalf and on their behalf.

One or two particular questions that I think are significant and that you could help the committee with occurred to me during the course of your statement. They are largely broadbased or philosophical ques-

tions, but I think they are significant in the determination of whether or not we do at the Federal level alter the tort system and that is in essence what we are talking about here.

My first question concerns the testimony by the distinguished witness 2 days ago to the effect that the present tort system has been so modified and changed by the advent of widely available and in some cases compulsory liability insurance, that in effect we have a system of no-fault already, at least insofar as the disincentive for negligence, which is the basis for the tort system, has been displaced by the availability or the unavailability of insurance.

I wonder if you would agree with that witness that there are distortions in the system already that are brought about by financial responsibility laws, by compulsory insurance provisions, by the nature of the insurance industry which puts a premium on settlements instead of litigation to the point where maybe the disincentive or the deterrent against negligence that is inherent in the tort system has been modified or diluted?

Mr. HENRY. Senator Baker, I would have to agree that there has been some diminution of the deterrent theory. As I understand the history of tort law, prior to the prevalence of liability insurance you did not have many tort actions, many actions for personal injury and property damage. It is to the credit of the insurance industry itself and to our enlightened system of justice in this country of ours that we have become aware of our social responsibility and now there can be some method of compensation.

I think if you have an effective merit rating for insurance where the rate that the policyholder pays bears some direct relation to his driving habits and his record, then you still have a significant amount of deterrence. I think, Senator, Mr. Chairman, I think we all would have to agree that we—rightfully or wrongfully, and sometimes I have mixed emotions on it but probably lean toward doing it—are going toward, rapidly toward a national health insurance program in this country. If we have an effective, sensible, properly administered comprehensive national health insurance program, then the underpinning of this entire no-fault concept is gone, we do not need it.

Senator BAKER. That is a good point.

Mr. HENRY. This may be premature.

Senator BAKER. No, it is not premature, in my opinion anyway, and that is one of the points I tried to make in colloquy with Dean Roddis who testified here before this committee on the 7th of May. I tried to point out, and I believe the witness agreed with me, that whether we intended it or not the tort system in the United States and the insurance industry which overlays it has assumed a duality of roles, one to indemnify against reparations required by the tort system and the other to serve a social purpose, that is, to provide protection against loss of wages, earnings, medical benefits, and the like. And that before we decide to run the Trojan horse into the courthouse yard we ought to give some question as to whether or not we fully understand the dual burden we are placing on the system.

Mr. HENRY. They are different problems; they are of course interrelated, but they are different problems.

Senator BAKER. I thank you for your testimony, General Henry. I agree with your point of view. I think, however, I agree most heartily

with the attitude you have expressed in bringing this controversial issue to us in most forceful terms and in very original terms. I have an idea that you may agree with me that the Congress can and ought to look into this subject and we ought to try to respond to those social concerns, but I also surmise from what you say that you agree with me that we do not have to throw out the tort system in order to do it.

Mr. HENRY. That is precisely my feeling, sir.

Senator BAKER. Thank you.

Senator MOSS. Thank you very much, Mr. Henry. We are glad to have had you here.

Professor Cornelius Peck, the University of Washington, Law School, will be our next witness.

Professor Peck is a distinguished tort professor and certainly can carry on the discussion of the tort laws which we have had introduced by Mr. Henry.

STATEMENT OF CORNELIUS PECK, UNIVERSITY OF WASHINGTON, SCHOOL OF LAW, SEATTLE, WASH.

Mr. PECK. Thank you.

I appreciate this opportunity to appear before you and give my views concerning S. 945 and S. 946 and S. 976.

I am primarily concerned with S. 945, which is otherwise known as the Hart-Magnuson Uniform Motor Vehicle Insurance Act. I am in favor of the bill and the system of no-fault automobile accident insurance which it would establish. I think and hope to demonstrate that adoption of such a system would constitute a significant improvement in the law by which we now allocate the costs of automobile accidents.

I do not plan to go into any testimony concerning the deficiencies of our present system, other than to indicate my agreement with the testimony given earlier this morning. There are other studies which show the terrible inefficiency of our present system of dealing with automobile accident losses.

I think any system under which, as we know, only 40 to 45 percent of the premiums paid go to pay benefits to the persons who are injured. is a system operating at a horrible inefficiency. That 45 percent has an even greater injustice in it. The statistics show that there are large numbers of people who suffer relatively small injuries who recover three, four or five times the amount of their economic loss, whereas many people who are seriously injured recover only a small part of their total economic losses.

But as I said, I don't plan to deal with the deficiences of our existing system.

I would instead like to direct my attention to what I believe are three of the major objections to the enactment of S. 945.

(1) It adopts a system which in very large part abandons the rule that fault on the part of some other person must be shown in order for one injured in an automobile accident to obtain compensation for the injuries which he suffered in that accident, and substitutes in lieu thereof a no-fault liability stems;

(2) It adopts a system which does not provide compensation for pain and suffering or other noneconomic losses unless the person injured has suffered what the bill defines as a catastrophic loss;

(3) It involves the U.S. Government to a limited extent in the regulation of the insurance industry, the regulation of which has until this time been left to State governments.

STRICT LIABILITY

There are those who suggest that the adoption in whole or in part of a system of strict or no-fault liability to allocate the costs of automobile accidents would be a reversion to the unsophisticated law of feudal times, or something even more primitive—that it violates constitutional concepts of substantive due process and fairness—or that it would undermine the moral fabric of our society.

I must say that while I know many people hold these views with deep commitment, I view them as being wrong and in fact a little short of nonsensical.

As I believe is quite well documented in the Department of Transportation study of the origin and development of the negligence action, it was not until the middle of the 19th century that our law began to require that negligence be shown as the basis for recovering damages for accidental or unintended injury. Prior to that time it was possible for an injured party to recover in an action of trespass to the person merely by showing that the defendant's act directly and immediately caused his injury. It is true that if the injury had not occurred in what the common law viewed as a direct and immediate way, the plaintiff was required to prove fault or negligence on the part of the defendant in order to recover in an action of trespass on the case. It is also true that the common law decisions suggested that a defendant might prevail in an action of trespass if he proved that the injury occurred without any fault on his part, but so far as I know none of the reported cases involved situations in which a defendant succeeded in carrying that heavy burden.

I believe it is quite well established that the mid-19th century change to the negligence standard was an accommodation, probably unconscious, of the law to a changed technology. That technology promised great benefits to society as a whole but it might not have been able to work unless freed from the burden of compensating those who were unintentionally injured by its instrumentalities.

For example, railroads were such a marked improvement upon the then available means of transportation that it was easy and perhaps compelling to believe that they deserved to be judged by standards of liability which would permit their growth. If railroads were to have their liabilities assessed according to the common law rules of the trespass action—that is if all one had to prove to recover was that it was the railroad train which struck a wagon or pedestrian at a crossing—the burden of tort liabilities would have been great and perhaps crushing. If instead, the injured person had to show that the railroad's employees had been at fault in order to recover, the burden on the railroads would be much less. If, as the law which developed provided, the railroad was not liable for the negligence of its employees if the driver of the wagon or the pedestrian were partially at fault, the burden would be even less. The change made in the law in the middle of the 19th century was thus one which provided a favorable climate for development of a technology serving the body of society.

Senator BAKER. To make sure I fully understand the point you are making, you contend the evolution of the negligence aspects, the tort system, and the English common law and its further evolution and development in the United States, was based on economic concerns, primarily, rather than on fault and reparation concerns?

Mr. PECK. I think the switch to it was dictated largely by those considerations. I said unconscious. I think, for example, that it was these unconscious factors that guided Chief Justice Shaw of the Supreme Court of Massachusetts, who wrote the leading opinion in *Kendall* v. *Brown*, which was a case involving a man separating two dogs that were fighting—he happened to hit the plaintiff with a stick behind his back. I really don't think that Chief Justice Shaw said, "Ah, I have a good case, I can slip it over on them now and make my railroad securities go up." I think he considered the case, as we all do, by the prevailing mores of his time. Those standards inevitably became a part of our standards of judgment. I don't believe Chief Justice Shaw could have been ignorant of what the tresspass rule would do to industrial developments such as railroads. That is the kind of an accommodation which I think took place.

I am not at all suggesting that there were evil or designing men who produced the change in the law. But law does, the common law does evolve and change to meet changed circumstances. I think that the change in the trespass rule was one of the changes that took place.

At this point it might be well to give consideration to the question of whether strict liability as a standard for automobile accidents is what I have heard some critics refer to as socialistic principles of law.

We are indebted to Dean and Professor Leon Green for the acute observation that the adoption of the negligence standard was in fact the adoption of a socialistic rule reflecting the view that what happened to the body of society was more important than what happened to an individual. As he suggested, a change to strict liability for automobile accident would be a change consonant with the idea that what happens to an individual is at least as important as what happens to the social body.

By this, Leon Green meant, and I mean, that the fault rule of negligence law is one which in effect says, "We, the social group, have got such good things serving us that we cannot be held back by paying for the injuries suffered by individuals injured by the devices of improvement, unless they can prove that their operators were at fault and they were free of fault." In short, they have fallen off the sleigh ride to progress without fault on society's part, or even if society's agents were at fault, they fell off partly because of their fault, and society could not afford to go back and pick them up.

Strict liability reflects a different judgment on the problem. It says in effect, our society has a very good and productive economy serving us, and we have enough concern for each individual that we can afford to compensate anyone injured because of the operation of those devices which we are so good and productive. Or as Leon Green suggested, we would be at least as concerned about what happened to the individual as we are for the social group.

To put it in slightly different terms the question is whether our society has become sufficiently affluent that we can afford a system of

compensation for all those who have been injured by the expensive, speedy, and powerful automobiles we now use. I think that we have, and that it is wrong to adhere to a rule of law developed to permit an economy to lift men above the fruits of what they could produce with their own sweat and labor. As the English political theorist Walter Bagehot put it, "Progress would not be the rare thing that it is if the sweet food of one age were not the poison of the next."

I do not, however, want to give the impression that the adoption of a strict liability standard would be a new or revolutionary development in our law. Quite the contrary, as my comments thus far have indicated, strict liability was the rule for accidental or unintended injuries until the middle of the 19th century.

Senator BAKER. Are you saying that before the middle of the 19th century strict liability with negligence was a rule or that strict liability without negligence was a rule?

Mr. PECK. Strict liability with no showing of negligence.

In the trespass action, all the plaintiff had to prove was that the defendant's act directly and immediately injured him. Now if we get really into the refinements of common law, there was trespass on the case——

Senator BAKER. From which all of the negligence law derives?

Mr. PECK. No, sir; what Chief Justice Shaw did was to make the action of trespass one that encompassed what used to be the rules for trespass on a case. And prior to the middle of the 19th century, there was a strict liability in trespass. The plaintiff only proved, needed to prove, that the defendant's act directly and immediately caused him harm. There was no question of fault.

If it was not direct and immediate, then the plaintiff had to prove negligence. The typical classroom illustrations are the defendant who throws a log over the hedge. If the log hits the plaintiff walking on the sidewalk, there is an action of trespass. You didn't go into the question of fault, whether or not there were people frequently going up and down or whether there hadn't been a person on that sidewalk for the last 10 years. If the log falls on the sidewalk and stays there, however and the plaintiff trips on it at night, then the plaintiff had to prove negligence.

Senator BAKER. I am not going to belabor this question any further, but negligence in this sense goes way back in the English common law prior to the 19th century, doesn't it?

Mr. PECK. Yes, for those actions which had to be brought in case rather than in trespass.

Senator BAKER. Right. So the concept of negligence, at least in the cases of trespass on the case, go back hundreds of years before that?

Mr. PECK. Yes, but if we are going to be guided by that, let me point out every automobile action would be brought under the common law form of action, in an action of trespass and not trespass on the case. But I think that those are refinements that perhaps are of more interest to legal historians.

I would like to give you some more examples which I think will persuade you that strict liability is not an anomaly, not a new thing, it is an old thing in the law.

Senator BAKER. I don't mind that, and that is not the purpose I am trying to serve, but I am trying to make sure I fully understand the import of your statement.

I understood your statement to indicate that negligence was a concept that came into being in court cases in the middle of the 19th century and that is at variance with my understanding of the situation. So, for my understanding of your position, I want to pursue this point to this extent.

Mr. PECK. Let me say this: Negligence did not become the pervasive and all-encompassing form of action——

Senator BAKER. That is not what you say in the statement though. Go ahead, sir.

Mr. PECK. That is true. If we want to go back to the days when trespass on the case developed——

Senator BAKER. I don't want to do that. I just want to make sure I understood what you said and I didn't understand you to say that.

Mr. PECK. Yes; I think we can be clear on this, that trespass and liability without fault would have been the rule for all automobile accident cases if we had had to develop with them under the common law rules.

While our law evolved so as to eliminate the no-fault trespass rule and to require proof of negligence for recovery for personal injuries in physical accidents, we have retained a no-fault rule in many other areas of tort law. Indeed, legislatures and courts have both shown that they believe a no-fault rule of liability to be preferable for certain types of liability problems.

I suppose the most important no-fault rule applicable to tortious injuries is the rule of respondent superior, by which a totally innocent employer is held liable for torts committed by his employee. It makes no difference that the employer had the best possible screening device for job applicants, that he backed it up with elaborate safety education programs, and that his supervisory staff was far more vigilant than others in attempting to prevent accidents. If such an employer's employee commits a tort in the course of his employment, the employer is liable without proof of the employer's fault, or indeed, despite his demonstrated lack of fault.

We use this rule of strict liability for employers for a number of reasons, none of which have been definitively articulated, but which include the concepts that the employer is responsible because he entrusted the means of causing harm to his employee, because he makes a profit from the activities of his employees, and can add that cost to the price he charges for the enterprise which he manages, and because he has a deep pocket, compared to the employee and the injured plaintiff, and thus probably is in a better position to bear the loss.

We have retained a number of other no-fault rules, which I have discussed in greater detail in the contributions which I made to the Department of Transportation's study of the origin and development of the negligence action. Among those situations in which we have preserved a no-fault rule for determining liability are intentional but good faith trespass to real property, misdelivery by a bailee, purchase of stolen goods by a bona fide purchaser, libel and slander, harm done by trespassing cattle, and loss of or damage to goods by either a common carrier or an innkeeper.

Admiralty long ago applied strict liability in the duty to furnish maintenance and cure for sailors who fell ill in the service of the vessel. A strict liability has always been imposed upon those who remove

lateral or subjacent support for land, and cause it to subside. Moreover, both Congress and State legislatures have given recognition to strict or no-fault liability as the desirable rule for a number of problems. Thus, the workmen's compensation statutes enacted at the beginning of this century throughout the Nation by State legislatures reflect the view that an injured worker should be entitled to compensation if he can show that his injury arose out of and in the course of his employment, entirely aside from questions concerning his employer's fault or his fault.

The Jones Act, extending the protections of maritime workers, follows the same principle. Courts in a number of jurisdictions have developed a strict liability for innocent misrepresentations in business transactions, and Congress has apparently given its approval to such a rule with respect to security transactions regulated by the Securities Exchange Commission.

The U.S. Government recently insisted in the Montreal amendments of the Warsaw Convention upon a no-fault liability system for victims of crashes of planes on international flights. In many jurisdictions, no-fault is the rule for those who engage in abnormally dangerous activities such as blasting or fumigating with poisonous gases. State courts across the country are adopting a strict liability, or no-fault liability, rule governing manufacturers and others who sell defective goods for injuries suffered by consumers.

The short of it is that the concept of strict liability, or liability without fault, is neither a vestige of primitive law nor a new and revolutionary principle. It is instead a rule which the Anglo-American society has used for a long time, which it has abandoned in certain situations in which changes indicated the desirability of a different rule, which has been preserved for other types of problems in which it served society well, and which has been adopted for still other types of problems for which changed circumstances indicated the need for the rule.

Both the judicial and the legislative branches of government have given their approval to a strict liability, or no-fault principle, for determining responsibility for accidental losses. The question is not whether strict liability can be recognized as a legitimate and just principle for allocating losses, but whether a particular type of problem is one for which it is the appropriate rule.

Before turning to consideration of those factors which I believe indicate the appropriateness of a strict liability or no-fault rule for automobile accidents, I would like to suggest that it is in fact inaccurate to describe the current rules of law applicable to those accidents as being rules by which losses are distributed or not distributed according to fault. It is only by putting on blinders and viewing the real world as though it existed according to the traditional law school curriculum that one could arrive at such a conclusion. It is true that in our torts classes we teach law students that the principles of negligence law apply to automobile accidents, and that they require that the plaintiff prove that a defendant was negligent and therefore at fault in causing an accident. We further tell them that a plaintiff is barred from recovery in most of the States if he was at fault and therefore contributed to the accident which injured him.

If we look at the real world, we know that in almost every case there

is no interest in whether the defendant was at fault unless he was insured. We also know that the settlement policies of insurance companies are such that they in fact practice comparative negligence, so that the fault of an injured party will not bar him from recovery, but only reduce the amount of his recovery.

Moreover, one is not sued because he was at fault. One is sued because he was insured. The person who was at fault but uninsured almost never pays. It is only an insurance company that pays if the driver was at fault. And a plaintiff is almost certain to get something from an insurance company even though he was at fault.

The short of it is that while we talk about fault, those at fault do not pay nor are they barred from recovery. Instead, insurance companies and through them all those who buy liability insurance pay for the accidental injuries caused by automobiles. Insurance companies are the conduits through which those of us using automobiles pay for accidents upon basis which have little to do with fault. The accuracy of this statement is made so much more apparent if we look, not to the 2 or 2½ percent of the cases which go to trial, but to the 97.5 percent or 98 percent of the cases which are settled in negotiations between insured persons and insurance companies.

Even if we took the talk about fault seriously, we would recognize that it is used in such a limited and specialized sense that it would find at fault the man, who despite 25 years of driving without an accident, went through a posted stop sign because he was so distracted by his thoughts about his seriously ill wife whom he had just left at the hospital. Again, only one fitted with the special blinders which some lawyers wear would call that fault.

Returning to a consideration of those features of situations in which we find a strict liability rule used, I think that we must note that severe problems of proof for the injured plaintiff frequently lead to use of the strict liability test. When a warehouse used to store dynamite explodes there is ordinarily a notable shortage of witnesses to tell what actually caused the explosion. Despite the magnificent detective work done by the Federal Aviation Administration, the same is frequently the case with respect to the crash of an airplane. The shipper who has entrusted his goods to a common carrier is not in a good position to prove that the carrier was at fault in the way in which it handled his goods when they were 300 or 500 miles away.

The guest at an inn or hotel who left his room is not in a good position to prove who among those who had keys to his room actually took his goods. The purchaser of the varied complicated products which we buy today, be they synthetic, electronic, or automated, is not in a very good position to prove that their defects were caused by negligence. The bailor is at the mercy of the bailee if he must accept his account of how careful he was before delivering the goods to someone who was not entitled to them.

Another common factor in the strict liability rule situations is the inability of the injured party to protect himself from injury. This is most certainly the case of one injured by the miscarriage of an abnormally dangerous activity, whether it be blasting or the crash of a 250-foot airplane carrying tons of inflammable fuel. It is likewise the situation of the shipper, the guest at an inn, or the person defamed by a libelous statement, the publication of which could not be en-

joined. It is also the situation of the modern-day consumer, purchasing the products of our advanced technology. The same is true of the owner of land from which the lateral or subjacent support has been removed.

Strict liability is frequently used to govern the liability of those who engage in activities which we do not believe should be enjoined in absence of demonstrated injury, at which time damages may constitute an adequate remedy. Certainly this is the case with those who engage in abnormally dangerous activities such as blasting, or those who publish newspapers and magazines. Courts are ill equipped to determine in advance whether sufficient precautions have been taken in removing lateral or subjacent support of land, and thus unlikely to provide an injunction against conduct which after the fact will have proved to have been dangerous and harmful.

We have used strict liability as the rule for liability of those who engaged in what can be defined with some certainty and clarity. This has the advantage that it establishes both a limit to the applicability of a rule of strict liability and likewise establishes that activity as an accounting unit to which costs of accidents may be attributed. This makes it possible for those engaged in those activities to obtain insurance, or act as self-insurers, and thus pass the costs of accidental injuries they cause on to those who generally benefit from what they do.

To mention but a few of such activities, I think this is the case with blasting, flying airplanes, exterminating with poisonous gas, being a common carrier, or being an innkeeper. It is the underlying theme of workmen's compensation, as well as manufacturer's strict liability.

How do these generalized observations about the appropriateness of a strict liability rule indicate its suitability for allocating costs of automobile accidents? I believe they indicate that the gigantic problem we have in this field is one which demands and cries for a strict liability rule.

Problems of proof have been, I believe, a very important reason why our insured-fault system, if I may call it that, has failed to work. Indeed, one of the greatest but undeserved votes of confidence our society has given the existing legal system is that too many continue to believe that that system can provide justice and a sensible scheme for distributing the costs of accidents under a fault principle.

In fact, for those few cases which are decided in court how do we decide who should bear the cost of the accident loss? Modern highway and freeway traffic make it very important the signs displayed a half mile or a mile before the site of the accident, the lines and markers painted on the road surface, whether solid, colored, double, or spaced. The lights on signs and vehicles likewise have great significance, and what color and whether they were steady or flashing could also be controlling.

The observation of these and other important things were made by persons not skilled as observers, and indeed by persons who were so thoroughly unprepared for the catastrophic event which transpired before their unprepared horrified eyes that they may have suffered injuries to both psyche and memory.

The determination in the courtroom is made however not upon what they observed which they were so poorly prepared to observe, but instead what they think they remember of what they observed 3 years

later and after talking to insurance adjusters, friendly and adverse lawyers, and friends. Worse than that, the determination must be made upon the basis of what a jury remembers from the testimony heard over a 3- or 4-day period from witnesses who were so ill prepared to observe and give reliable testimony about the event under consideration. I wonder whether it is really possible to say with confidence much more than that a person was injured because of the operation of an automobile.

I am reminded of an anthropologist friend of mine who described to me the legal system of a primitive society. Whenever something wrong occurs, he says the medicine man decides who it was responsible. They bring all of the men in the village into the circle, because it is well understood that women and children cannot commit crimes. The medicine man stands for a while and whirls his stick around and throws it into the air. When it lands it points at the man who has done it. The anthropologist tells me sometimes that man looks rather surprised, but on most occasions he takes it with great equanimity.

My anthropologist friend suggested that the society is so small, that practically no one has any secrets, and the medicine man usually came up with a pretty good guess.

I suggest probably the medicine man is doing a better job than we do when we try to deal with automobile accidents on the basis of the observations of these people who were so poorly prepared to make their observations.

I know that there are those who argue that who was at fault is a matter which can be proved. After all, there are the rubber streaks of tires locked by frantically applied brakes, there is an ascertainable spot at which each vehicle came to rest, it may be possible to tell what parts of the vehicles came in contact, et cetera.

I agree that there is significant physical evidence left after an accident. But whether it tells the whole story is another thing. What mark was left by the vehicle which unpredictably changed lanes, setting off the whole chain of accident producing reactions leaving the scene unscathed, unmarked, with its driver totally unconscious of what had been caused. More important, I am impressed with the difficulty and expense involved in making such an investigation, first to determine what in fact happened, and second to assess responsibility under the fault system for what did occur.

I would like to suggest a little caution in accepting the words of very eminent trial lawyers about how well fault can be proved. You have both mentioned that you have tried cases, and I have argued cases, too. And I think one of the things we lawyers become convinced of is the merits in our case. You really don't have to work on a case more than about a week and you have convinced yourself almost every time. And those lawyers who then tell you that it is possible to determine who was at fault in an accident are thinking as advocates.

I have had a little experience as a labor arbitrator with problems which are much better documented, and I can tell you when you get to be the judge, the problem of deciding exactly what did happen is many times much worse than it is when you are the advocate trying to persuade somebody what happened.

I believe that this problem of uncertainty as to what did happen, the expense of attempting to determine what did happen, and the

difficulty of assessing responsibility, has produced the situation so well documented in the studies of the Department of Transportation and earlier studies, in which so many persons suffering relatively slight injuries recover three or four times their economic losses.

If fault were easy to determine there would be no need to pay so many of these claimants. Instead, the difficulty of ascertaining fault multiplied by the danger of liability for pain and suffering damages leads insurance companies to make what is the wise and economic decision under the prevailing rules. They buy up the small claims at what is generally an inflated value because it is not worth the expense of building the file which will prove that no recovery should be allowed.

In short, I think that the experience of the insurance industry in dealing with the problems of proof concerning claims arising out of automobile accidents presents a typical situation for the use of the strict liability principle which, as I have mentioned, is so frequently used when problems of proof are severe.

If we give consideration to that factor of the inability of the victim to protect himself from injury which seems to be associated with the strict liability rules of the common law, we must note that in almost every automobile case it is only the drivers of the one, two, or more cars involved in an accident who might have had an opportunity to avoid the accident. The passengers in the vehicles involved certainly had no such opportunity, and considering the way many automobile accidents occur at the present time, I doubt that even all the drivers have an opportunity to avoid an accident.

Pedestrians injured by automobiles may have had a chance to avoid accidents, but I believe that the statistics of the National Safety Council show that a very high proportion of pedestrian injuries in crosswalks are inflicted upon pedestrians who were crossing streets with the right-of-way. For persons walking on sidewalks, working in buildings, or engaged in any number of activities near highways and streets there is practically no opportunity to protect against injury. Once again, consideration of the factor indicates that a strict liability rule is appropriate for assessing the costs of automobile accidents.

I suppose that it is so obvious that automobile transportation is so highly prized by the American public that it cannot be enjoined, despite the demonstrated dangers which it produces, but instead its potential victims must await the time when they have in fact become victims in order to obtain judicial relief.

In this respect it is appropriate to consider that each year we kill more people than the number of military personnel killed in Vietnam thus far, and that we likewise seriously injure in automobile accidents a number comparable to the total number of wounded thus far in Vietnam. I do suggest that we should tolerate these losses on the highways in light of what the American public has been willing to tolerate in Vietnam. My point is simply that the driving of automobiles is an activity which looks very much like an ultrahazardous activity. The only reason why it does not fit the traditional definition of an ultrahazardous or abnormally dangerous activity is that so many persons usually deters us from applying a strict liability standard. But the problems of proof mentioned above concerning what in fact occurred deprive a jury or a judge of the ability to accurately assess the conduct involved, which is a justifying reason for using negligence as the stand-

ard for determining liabilities which arise out of matters of common usage.

Like other activities to which the law has applied a strict liability standard, the operation of motor vehicles is an activity which can be defined with precision that makes it possible to establish it as an accounting unit. Accident rates and loss experiences can be, and have been, determined, making it an insurable activity. Moreover, those who have the money to purchase and operate automobiles can afford and should be required to purchase insurance. As with other activities to which the law has applied a strict liability standard, its use with automobiles would have the desirable effect of passing the inevitable costs of the activity on to those who benefit from it.

To summarize what I believe I have demonstrated, strict liability is a rule of the common law which has been applied over the centuries on an eclectic basis, depending upon how well it served the needs of society at the time. It is not the vestige of a primitive age, but instead is equally the product of an attuned and sensitive age, which has found the rule appropriate to modern conditions. Upon an overall appraisal it seems that it is the most desirable rule for assessing responsibility and providing compensation for automobile accidents.

DAMAGES: PAIN AND SUFFERING AND THE CONCEPT OF CATASTROPHIC LOSS

Critics of no-fault automobile insurance schemes frequently ascribe to those schemes the fixed and outdated schedules of allowances for injuries established by workmen's compensation statutes. They argue that the fault system utilizes an individualized and particularized measure of damages, which gives a refined and humanized justice. In particular, they argue that the damage rules used with the fault system are more desirable because they recognize and attempt to compensate for pain and suffering and disfigurement, which usually are not items of damage under workmen's compensation schemes.

Of course all these items of damages could be incorporated in a no-fault system if they are considered desirable and if we are willing to pay for them. The rigidity in damage allowances attributed to no-fault insurance is a rigidity manufactured by those who oppose the adoption of such a system rather than a rigidity which inheres in no-fault. The question is then how should compensation be determined under a no-fault system.

The Hart-Magnuson bill avoids much of the charged rigidity with its provision for awards of economic losses based upon the monthly earnings of the person injured. I agree with Dean Roddis of the University of Washington School of Law, who appeared before this committee last week, that it would probably be better to set a limit higher than the $1,000 per month maximum established in the current draft of the bill, and to compensate for economic losses occurring over a longer period than 30 months. Indeed, as I shall develop later, I would allow recovery for all economic loss on a no-fault basis instead of relying on the traditional tort remedy as the bill now does.

I also believe the definition of earnings should be revised so as to permit computation upon the basis of probable future income rather than the actual income earned at the time of the accident in order to take care of those persons, such as students, who would probably have

had a substantial increase in income but for the accident. If the period of time for which compensation for economic loss is given on a no-fault basis is extended to 4 or 5 years, it would also be appropriate to give consideration to the fact that wage and salary rates will probably rise during that time.

As a technical matter of drafting, I think the bill might be improved upon by addition of a statement more clearly establishing that compensation in cases not involving death be made on an installment basis and that in death cases economic loss shall, or shall not, be reduced to present value.

I might interject a few words about collateral source rule that was mentioned earlier this morning.

It would seem to me there is nothing wrong with the provision in the bill taking advantage of the fact that there are other insurance schemes. I do not believe it is correct to say that the bill would allow the wrongdoer to have the benefit of the group health or medical insurance which the injured person buys. It is not the wrongdoer who is going to get the benefit, it is another insurance company that is going to get the benefit. Under our present scheme, the wrongdoer is not going to be sued unless he was insured. And even if we do come to—I would make a distinction, first, between those things which are insurance and those things which we should consider as assets of the plaintiff.

For example, a workman who is required to take sick leave, thereby reducing the amount of sick leave which he has in his bank, sick leave most certainly should not be required to do that. But if it is Blue Cross or some kind of medical coverage, I think we should certainly accept the hypothetical bill as drafted.

One of my classroom hypotheticals which I use with students who say you are allowing the wrongdoer the benefit of what the plaintiff bought, is, suppose the plaintiff were a man who had taken a first-aid course, and he had learned how to apply a tourniquet, and in an accident one of his arteries was cut. Suppose he manages to put the tourniquet on and therefore he doesn't die. Other people would have died if they hadn't known how to do it. Are we going to say he was entitled to recovery for wrongful death, because other people would have died? They wouldn't have had the foresight to take the course to prepare themselves for the possibility of the accident in the way you did? No. And I think the analogy is sufficiently strong to say the same thing is true for the person who has had the foresight to take out an accident insurance policy or medical and accident insurance policy.

The most controversial part of the bill is that now found in section 4, which preserves the traditional tort action for cases of catastrophic injury. Personally, I would be willing to substitute no-fault for all harm caused by automobile accidents, and limit the compensation to economic loss. The hybrid systems of no fault with a limited tort recovery have a political appeal, and defuse some of the arguments based upon cases involving disfigurement and much pain. But I believe the preservation of the tort remedy is inconsistent with the findings which led to proposals for adoption of no fault insurance.

It is probably a startling proposition for the professor of tort law to state that there is no sense to the awarding of damages for pain and suffering in automobile cases. But I believe that objective considera-

tion of the matter leads to the conclusion that in giving damages for noneconomic losses we are trying to make money do what money cannot do, make insurance companies' money do what many insurance companies cannot do.

We know that there is no market for pain, and the attempt to assign a dollar value to it is doomed to failure. Likewise, in cases of disfigurement, after we have done everything that can be done with medical care, I doubt that payment of money makes any sense.

Remember that the money paid in a case of disfigurement is almost certain to be the money of an insurance company and, hence, the money of the insurance-buying public. It is almost certain not to be the money of one who has been determined to be at fault. And no amount of money can undo the disfigurement or constitute adequate compensation for what has happened.

In discussing whether it makes any sense to award damages for pain and suffering or disfigurement. I am sometimes reminded of the accounts given by anthropologists of a practice of the natives of the New Guinea highlands. The New Guinea highland people live in a stone-age economy, subsisting primarily upon the many varieties of sweet potato which they grow and the few wild pigs which they catch.

If a person is killed, particularly if he is killed in battle, other members of the village express their condolences with the family in what seems to us a ghastly way. They cut off and send to the bereaved family fingers of little girls.

We ask what sense this could possibly make—how can the bereaved family any better support their loss because of fingers taken from little girls who had nothing to do with the death?

I suspect, however, that if we could get a sufficiently sophisticated New Guinea native, he might ask us what we thought we were accomplishing by giving money to compensate for pain and suffering or disfigurement.

He might also point out to us that they carefully select the ring fingers of girls so as not to interfere with their later productivity, and he might ask us if our use of pain and suffering damages does not prevent us from giving compensation for all economic loss suffered by victims of automobile accidents.

I suppose that in both cases we have an expression by society of its concern for what happened to the individual—a tangible demonstration of our concern.

I share that concern for what happens to members of our society, but I question whether the fault system is the best system for expressing that concern, considering that it bars or fails to provide compensation in such cases as well as permitting it.

I think that we are better able to show our concern if we proceed on the basis of asking no more than whether it was an automobile which caused the injury before we provide all that can be done by existing medical treatment.

True, it would be nice if we could do more in a tangible way, but not nice enough to lead me to believe that we should do it rather than provide compensation for all economic harm on a no-fault basis.

I would therefore strike from section 4 of the bill that language which preserves the common law tort action for cases of catastrophic harm and from section 7 that language which establishes a [illegible]

on the amount of earnings which can be included in the computation of economic loss.

Of course, if these purist views of a supporter of no-fault cannot be incorporated in the bill, I would give my support to the definition of catastrophic harm and the limitation which it imposes upon damages for pain and suffering.

Senator BAKER. Before you go on, may I ask a question on the other subject?

Do you feel, and does your statement imply, that the insurance industry in one way or the other could support the cost of strict liability no-fault insurance without limitation as to amount?

I am not implying anything. I just want your point of view.

Mr. PECK. I obviously have to make something of a guess. But I believe it could. A large part of the insurance expenditures are those made on the small claims where the economic loss is relatively small and the claimants receive in the settlements three, four and five items the amount of their economic loss. I think the reason for the overpayment is that under the existing rules it makes sense for the insurance companies to buy up that claim.

Senator BAKER. I understand that. But do you have any supporting data on the number of claims that are made and not paid, whether barred by contributory negligence or failure to sue or whatever. Do you have any basis for judging the total cost if we had no-fault without limitation?

Mr. PECK. I do not have them with me now. Dean Leon Green, who wrote one of the pioneering books on no-fault, did estimate that this could be accomplished. I think that Professor Conard's study at the University of Michigan would indicate the feasibility of this. I don't think that his study has a chapter or section devoted directly to this.

Senator, the studies of the insurance industry indicate that contributory negligence very seldom bars recovery. Most insurance companies will pay something even if they think their insured was only one-half at fault. And, for certain categories of cases, such as death, the studies indicate that they will make a payment even though they think their person had no fault at all. That makes sense, buy it up if you can.

Senator BAKER. I understand that. All I am after is a more narrow response and that is if you have any estimates of cost if we had no-fault and no limitation as to the amount of potential recovery.

Mr. PECK. I do not have those. Dean Leon Green did do the work and he reached the conclusion that it could be done.

Senator BAKER. My question was as to whether the insurance industry could cover these costs; your answer, as I understood it, was it could.

At some point I would like to explore whether the insurance industry could cover these costs; your answer, as I understood it, was it could.

At some point I would like to explore whether it should, which is a question I put to another witness, on whether or not we ought to broaden the base of support of these social obligations beyond just the operator of the motor vehicle.

Mr. PECK. Well, that might be. But, as I attempted to develop in the first part of my presentation, I believe that automobile accidents present a classic case for the use of strict liability. If we take another example, take the difference between rotary lawnmowers and reel lawnmowers.

Senator BAKER. Excuse me. It is late and I am imposing on the chairman's patience by putting these questions. So let me save the rest of it until later.

Mr. PECK. I am sorry. Let me go to the problem about Federal intervention.

FEDERAL INTERVENTION INTO REGULATION OF THE INSURANCE INDUSTRY—STATE EXPERIMENTATION WITH NO-FAULT INSURANCE

As I understand it, one of the major objections to the Hart-Magnuson bill is that it would involve the Federal Government in the regulation of the insurance industry, a subject which until now has been left largely to the State governments.

I have an appreciation for the value of local government, an appreciation which was heightened by my study of the highly centralized legal and governmental system of the Philippines. But I believe that the problem of no-fault automobile accident compensation is one which can be dealt with sensibly only on a Federal basis.

We have until now been able to get along with a system which depends upon State tort law because that law had a uniformity drawn from English common law. Even so, the amount of interstate travel has produced enough complications because of the differences in State law to provide very difficult and interesting cases for casebooks on the conflict of laws.

I believe that the statistics compiled by the National Safety Council will show that about one-seveneth of the fatal accidents involve drivers who were not residents of the States in which the accidents occurred, and that about one-twelfth of all accidents involve drivers who were not residents of the States in which the accidents occurred.

The higher ratio with respect to cases involving death probably reflects the high rate of speed of automobiles in interstate travel.

If we are now to embark upon a program of legislation of no-fault schemes, the absence of a single and agreed-upon model from which a draft is made insures that the result will be a tremendous confusion concerning which law governs and what system of compensation applies.

Given the amount of interstate travel involved and the interstate character of the insurance business, there is in my mind no doubt that the subject is an appropriate one for Federal regulation.

While I would worry as much as anyone about a camel's nose appearing in the tent, I can take consolation from the fact that icebergs still float with only a fraction of their bulk appearing above the water.

It is the nature of the problem and not the simile suggested which should determine the proper course of action.

It is suggested, however, that the subject should be left to the States so that we may have the advantages of 50 laboratory solutions to the problem and thus come up with what is the best system.

I should like to point out that a similar argument could have been made concerning the insurance scheme we know as social security, and that the history of social security in this country does not indicate that experimentation, change, and improvement need end because the statute enacted is Federal.

I would also point out that what we have permitted with respect to experimentation by States has sometimes resulted in State adherence to laboratory results which are clearly undesirable.

I refer, for example, to matters such as unemployment compensation and welfare, in which I believe the disparity in the level of benefits cannot be rationally defended, though it continues to persist.

More important, I have considerable doubts that the experimentation will take place, even though Massachusetts is currently providing us with one model of a no-fault system.

In an article which I published in 48 Minnesota Law Review 265 (1963) on the "Role of Courts and Legislatures in the Reform of Tort Law," I investigate the operation of State legislatures.

Generally speaking, State legislatures are composed of underpaid, part-time legislators, meeting for short periods of time, perhaps once every 2 years, working under unsatisfactory conditions and without adequate supporting staffs.

They are, I believe, particularly susceptible to the pressures of lobbyists, who, with considerable frequency, prevent the enactment of reforms.

Particularly is this so with regard to reform of tort law, because the opponents of reform—insurance companies, manufacturers, apartment house owners, et cetera—are well organized and capable of lobbying against reform, whereas the victims of notorious conduct are seldom organized or capable of lobbying for reform.

The conclusion which I reached—and, incidentally, it is the conclusion which Professor Keeton of the Keeton and O'Connell plan has reached—is that the area of tort law is one in which judicial activism is particularly appropriate.

The same analysis leads me to the conclusion that if interest in problems of tort law with interstate dimensions can be organized at the Federal level, the problem is one for Federal activism.

Consider what will probably happen with respect to those proposals of a no-fault system introduced into State legislatures. They will be met with the combined opposition of both plaintiff's and defendant's bar, as well as the opposition of some insurance companies.

I suppose that some companies engaged in transportation may also find it worthwhile to lobby against the no-fault proposal.

Lawyers in the legislatures will be quite friendly with the lawyers from "both sides" appearing before them.

Who will lobby for it? There is no organization or lobby of the victims of automobile accidents, and I do not expect one to be formed.

The problem is sufficiently complicated that the busy part-time legislator, lacking the assistance of an adequate staff, may easily conclude that the case for change has not been made with sufficient clarity.

I suppose a few might also think in terms of the effect of their vote upon the campaign contributions they will need for the next election.

The result will be either no action or, as happened in the State of Washington, reference of the matter to a council for study.

I believe that the draft of the Hart-Magnuson bill shows the expert work and understanding of your committee staff. I believe—or at least I hope—that you have heard enough about the problem of automobile accident compensation to know that a change must be made from our existing insured-fault system.

While I would like to see the bill embrace the no-fault concept to the exclusion of all tort liability, I believe enactment of the bill would be a substantial improvement in our law. I recommend that action to you.

Senator BAKER. Excuse me. It is late and I am imposing on the chairman's patience by putting these questions. So let me save the rest of it until later.

Mr. PECK. I am sorry. Let me go to the problem about Federal intervention.

FEDERAL INTERVENTION INTO REGULATION OF THE INSURANCE INDUSTRY—STATE EXPERIMENTATION WITH NO-FAULT INSURANCE

As I understand it, one of the major objections to the Hart-Magnuson bill is that it would involve the Federal Government in the regulation of the insurance industry, a subject which until now has been left largely to the State governments.

I have an appreciation for the value of local government, an appreciation which was heightened by my study of the highly centralized legal and governmental system of the Philippines. But I believe that the problem of no-fault automobile accident compensation is one which can be dealt with sensibly only on a Federal basis.

We have until now been able to get along with a system which depends upon State tort law because that law had a uniformity drawn from English common law. Even so, the amount of interstate travel has produced enough complications because of the differences in State law to provide very difficult and interesting cases for casebooks on the conflict of laws.

I believe that the statistics compiled by the National Safety Council will show that about one-seventh of the fatal accidents involve drivers who were not residents of the States in which the accidents occurred, and that about one-twelfth of all accidents involve drivers who were not residents of the States in which the accidents occurred.

The higher ratio with respect to cases involving death probably reflects the high rate of speed of automobiles in interstate travel.

If we are now to embark upon a program of legislation of no-fault schemes, the absence of a single and agreed-upon model from which a draft is made insures that the result will be a tremendous confusion concerning which law governs and what system of compensation applies.

Given the amount of interstate travel involved and the interstate character of the insurance business, there is in my mind no doubt that the subject is an appropriate one for Federal regulation.

While I would worry as much as anyone about a camel's nose appearing in the tent, I can take consolation from the fact that icebergs still float with only a fraction of their bulk appearing above the water.

It is the nature of the problem and not the simile suggested which should determine the proper course of action.

It is suggested, however, that the subject should be left to the States so that we may have the advantages of 50 laboratory solutions to the problem and thus come up with what is the best system.

I should like to point out that a similar argument could have been made concerning the insurance scheme we know as social security, and that the history of social security in this country does not indicate that experimentation, change, and improvement need end because the statute enacted is Federal.

I would also point out that what we have permitted with respect to experimentation by States has sometimes resulted in State adherence to laboratory results which are clearly undesirable.

I refer, for example, to matters such as unemployment compensation and welfare, in which I believe the disparity in the level of benefits cannot be rationally defended, though it continues to persist.

More important, I have considerable doubts that the experimentation will take place, even though Massachusetts is currently providing us with one model of a no-fault system.

In an article which I published in 48 Minnesota Law Review 265 (1963) on the "Role of Courts and Legislatures in the Reform of Tort Law," I investigate the operation of State legislatures.

Generally speaking, State legislatures are composed of underpaid, part-time legislators, meeting for short periods of time, perhaps once every 2 years, working under unsatisfactory conditions and without adequate supporting staffs.

They are, I believe, particularly susceptible to the pressures of lobbyists, who, with considerable frequency, prevent the enactment of reforms.

Particularly is this so with regard to reform of tort law, because the opponents of reform—insurance companies, manufacturers, apartment house owners, et cetera—are well organized and capable of lobbying against reform, whereas the victims of notorious conduct are seldom organized or capable of lobbying for reform.

The conclusion which I reached—and, incidentally, it is the conclusion which Professor Keeton of the Keeton and O'Connell plan has reached—is that the area of tort law is one in which judicial activism is particularly appropriate.

The same analysis leads me to the conclusion that if interest in problems of tort law with interstate dimensions can be organized at the Federal level, the problem is one for Federal activism.

Consider what will probably happen with respect to those proposals of a no-fault system introduced into State legislatures. They will be met with the combined opposition of both plaintiff's and defendant's bar, as well as the opposition of some insurance companies.

I suppose that some companies engaged in transportation may also find it worthwhile to lobby against the no-fault proposal.

Lawyers in the legislatures will be quite friendly with the lawyers from "both sides" appearing before them.

Who will lobby for it? There is no organization or lobby of the victims of automobile accidents, and I do not expect one to be formed.

The problem is sufficiently complicated that the busy part-time legislator, lacking the assistance of an adequate staff, may easily conclude that the case for change has not been made with sufficient clarity.

I suppose a few might also think in terms of the effect of their vote upon the campaign contributions they will need for the next election.

The result will be either no action or, as happened in the State of Washington, reference of the matter to a council for study.

I believe that the draft of the Hart-Magnuson bill shows the expert work and understanding of your committee staff. I believe—or at least I hope—that you have heard enough about the problem of automobile accident compensation to know that a change must be made from our existing insured-fault system.

While I would like to see the bill embrace the no-fault concept to the exclusion of all tort liability, I believe enactment of the bill would be a substantial improvement in our law. I recommend that action to you.

Senator Moss. Thank you very much, Professor Peck. That certainly is a scholarly and well thought out paper, and one that impresses me considerably knowing you are in the field of torts, and knowing you know all of the ramifications of tort actions.

I was particularly interested when you talked about the pain and suffering and disfigurement angles of damages.

Is there any medical measure that has ever been developed on pain and suffering to evaluate it?

Mr. PECK. None that I know of, sir. I have talked to the neurologists of the University of Washington, in fact I have had them come to my torts class to discuss pain and we learn a little bit about it.

Pain, for example, exists only when tissue is being destroyed or irritated. When it has been totally destroyed, there is no more pain.

The pain which people suffer depends a great deal upon their psychological problems and varies tremendously with what the factors entirely unrelated to the injury which causes them to suffer pain. By that, I mean that the persons who has many problems in his life may be looking for sort of a trashcan into which he can throw all of the things that bother him. If he once gets that pain, that little tingling in his arm that perhaps is the remnants of a whiplash, for that person—that is the wife he doesn't like, that is the job he doesn't like, all of the things that have troubled him can now, somehow, get located in that terrific pain he has got there.

There is a tremendous variation in the amount of pain which people report to their doctors and in situations which the doctors think physiologically the pain should be the same.

Senator Moss. I ask that because I had a friend who was an insurance adjuster, and he used to tell me that if he got a case where he had pain in the sacroiliac, he just bought it at any price he could get, because there was no end to it. It never could be measured, and it was all subjective, and the thing to do was just get it settled at any cost.

And it seems to me that is what you are saying about the general concept of pain and suffering. It can't be measured, and besides, it isn't lessened at all by turning over a given number of dollars.

Mr. PECK. I would suppose if we provide, as the bill does, for all of the medical treatment that can be given to alleviate the pain, if there is still pain being suffered, I doubt very much that there can be any enjoyment of money at that time. And when it is over, something very bad has occurred, but it doesn't have a dollar value.

Senator Moss. Following up what Senator Baker had asked you earlier—by the way, he had to leave because of an appointment, and he wanted me to express his apologies. He did want to remain.

But, I understand that you suggest by your testimony that our society has become sufficiently affluent that we can afford a system of compensation that focuses on the individual and could cover all loss.

Is that right?

Mr. PECK. Yes.

Senator Moss. And you would not have any limitation on the length of time of treatment or loss of wages? You would have it extend as long as the person was actually prevented——

Mr. PECK. I suspect the provisions in the bill establishing a top-dollar limit does make some sense. I suppose most of those people who have a very high income level have probably taken out their own in-

surance scheme for the cases of catastrophic loss of income-earning capacity.

But, I do think, given the income levels in the United States today, and what we can expect them to rise to, that the maximum of $1,000 a month is too low.

My proposal is that we allow recovery without regard to the length of time for economic loss, and I am not suggesting that there should not be any limit on the amount that could be recovered each particular month.

Senator Moss. To what extent would you have access to the courts available to settle administrative disputes, for instance, as to the amount, for instance measuring the amount, the number of dollars for any particular medical procedure, anything of that sort?

Do you envisage any way there could be a settlement where there was a disagreement between the recipients and the administrator?

Mr. PECK. Oh, I suppose that the settlement process will be and should be used for most cases, as it is today. I suppose that we have also got to have a system in which ultimately, if there is disagreement, there will be judicial review.

In that respect, if we do provide a system in which the claimant, who disagrees with his insurance company over the percentage of his disability, is able to go to court, I suspect that some of the fears of practicing lawyers that they will not have any business, may be misplaced. If everybody injured is able to make a claim, not simply those who are able to prove fault on the other party's side as well as freedom of fault on their side there will probably be more claims and perhaps more disputes about exactly how severe the injury was.

It is also my impression that a good deal of the litigation, time spent in litigation under the tort system, does not relate to fault.

A good deal of it relates to how seriously was the victim injured, how permanent will his injuries be, and how incapacitating are they?

Those are things which I don't suppose we can eliminate.

Senator Moss. You are not fearful this will put all of the lawyers out of business then, if the bill is passed?

Mr. PECK. No, it is an old joke about the legal profession, that for every solution, there are problems.

Senator Moss. Mr. Sutcliffe has a question or two he wants to ask you.

Mr. SUTCLIFFE. Professor, in examining the thrust of your statement related to strict liability, you mention the way in which the strict liability rule has predominated, that we have adjusted over time for the negligence action, that we still had strict liability when we switched primarily to a negligence setup.

You also mention in your analysis that change in the tort law through a State legislature was a difficult process to accomplish.

I think the question that must be posed because of the statement that you have made today, is why don't we rely upon the judiciary to determine that the strict liability rules now apply to automobiles?

Let's assume that if we did rely upon the judiciary to make this determination, would it have a palliative effect on the present problems in our compensation system, since it is still a liability scheme, and not in any way demanding first-party coverages?

Mr. PECK. Well, of course, as I mentioned, the judiciary has done this with regard to products liability, or is in the course of doing it,

throughout the Nation. We are adopting strict liability for that problem.

I suspect there is a greater difficulty with automobile accidents in the matter of limitations which can be imposed upon the total liability, which we were just talking about.

If a court makes a change to some kind of a rule of strict liability, it can't set the limits such as the $1,000 or $1,500.

Mr. SUTCLIFFE. Let me stop you there and see if I understand you.

You are suggesting that the judicial mechanism can change its legal rules, but cannot change the insurance rules?

Mr. PECK. That is right.

And if the judiciary were to make the change, there would be many people owning automobiles, which have insurance policies written on the fault theory. They would be totally unprotected from the liabilities which the judiciary would impose upon them if it adopted the strict liability standard.

The change can be made so much better in a legislative way, in the way this bill proposes, requiring that insurance policies be written in certain ways to meet the problems. The judiciary could not do that in making the change in its rule of liability.

Mr. SUTCLIFFE. I appreciate your comments on that point.

Would you oppose the awarding of intangible loss recoveries on a first-party basis, assuming that there is a palliative, if not a corrective effect in the giving of money or the extending of the fingers of small children?

Mr. PECK. As I said, that can be made a part of a no-fault system. There is no reason why the noneconomic losses can't be part of the damage.

Mr. SUTCLIFFE. As a person with arbitration experience, would it be appropriate to submit this kind of determination to an arbitrator?

Mr. PECK. A good deal of that is done now with the insured motorist coverage in the standard policies.

It could be done by arbitration, certainly, I suppose, and indeed the present bill, I suppose, would permit the insurance companies to add coverage of that sort if the person buying the insurance wants to get it, or if he wants to get it for himself and the people riding in his car with him. I believe the present bill would permit the insurance companies to add that as an additional kind of insurance, which he could purchase if he wants to purchase it.

Mr. SUTCLIFFE. On an optional basis?

Mr. PECK. Yes.

Mr. SUTCLIFFE. In discussions we have had before this committee, there has been some suggestion that if we are going to fulfill a social function, we should put it on a basis larger than the automobile user.

My question to you, given the testimony that you have presented here about the wide use of automobiles, do you think that there would be a significant difference between a premium assessment, or a tax upon the automobile user as distinct from the general taxpayer?

Mr. PECK. Well, I think your question leads to what has been so well explored by Professor Calabresi of Yale Law School. He pointed out that one of the things that we should strive to do with the rules [illegible] that we utilize is to establish a cost accounting system which [illegible]

the American public realize how much they are paying for any particular product, and how much any particular activity costs.

To the extent that we have a general socialized accident or insurance scheme, we may end up making uneconomic decisions.

If we take an activity which can be an accounting unit and make it responsible for those accidents caused by that activity, we then price it and then people know what that activity costs them. Automobiles, I think, are different from a good number of other things.

One of Professor Calabresi's hypotheses, which I was going to mention to Senator Baker, is the difference between reel lawnmowers and rotary mowers. Reel mowers are much safer than rotary lawnmowers. But, when the customer goes into the store and he looks and he sees the higher price on the rotary lawnmower, he decides to buy the reel.

If he were really going to be getting the same thing, he should also buy an insurance policy for the additional harm that he might get from the rotary lawnmower.

And Calabresi's suggestion is we should try to have a system of law so that when a customer buys, he will make an informed and wise decision. The difficulty with lawnmowers is illustrated by the problem caused when the rotary lawnmower hits a glass beer bottle, and the flying glass cuts someone. Is the cost one, then, that goes to the rotary lawnmower industry, or the glass bottle manufacturers?

I think we can avoid that problem with automobiles because as I have suggested, they are an activity which can be defined with precision, and we can make it an accounting unit. And I don't think we can end up feeling there is any great injustice that comes from attaching responsibility for all of the accidents which occur to that activity.

Mr. SUTCLIFFE. Thank you very much, professor.

Senator MOSS. Thank you, Professor Peck. It has been a very interesting and stimulating paper that you have delivered to us, and we appreciate your coming to present it to the committee.

Mr. PECK. I thank you very much for the opportunity.

Senator MOSS. This committee will now stand in recess until 2 o'clock, when we have two very excellent witnesses to hear.

(Whereupon, at 12:20 p.m., the hearing was recessed, to reconvene at 2 p.m., this same day.)

AFTERNOON SESSION

Senator MOSS. The committee will come to order.

We will resume our hearings on S. 945, S. 946 and S. 976 and Concurrent Resolution 23.

Our first witness this afternoon is Mr. Lorne Worthington, insurance commissioner of the State of Iowa. He will be making his presentation on behalf of the National Association of Insurance Commissioners.

We are very glad to have you, Mr. Worthington. I see you have a very well prepared and rather thick document here. I hope there will be ways of summarizing and highlighting that.

throughout the Nation. We are adopting strict liability for that problem.

I suspect there is a greater difficulty with automobile accidents in the matter of limitations which can be imposed upon the total liability, which we were just talking about.

If a court makes a change to some kind of a rule of strict liability, it can't set the limits such as the $1,000 or $1,500.

Mr. SUTCLIFFE. Let me stop you there and see if I understand you.

You are suggesting that the judicial mechanism can change its legal rules, but cannot change the insurance rules?

Mr. PECK. That is right.

And if the judiciary were to make the change, there would be many people owning automobiles, which have insurance policies written on the fault theory. They would be totally unprotected from the liabilities which the judiciary would impose upon them if it adopted the strict liability standard.

The change can be made so much better in a legislative way, in the way this bill proposes, requiring that insurance policies be written in certain ways to meet the problems. The judiciary could not do that in making the change in its rule of liability.

Mr. SUTCLIFFE. I appreciate your comments on that point.

Would you oppose the awarding of intangible loss recoveries on a first-party basis, assuming that there is a palliative, if not a corrective effect in the giving of money or the extending of the fingers of small children?

Mr. PECK. As I said, that can be made a part of a no-fault system. There is no reason why the noneconomic losses can't be part of the damage.

Mr. SUTCLIFFE. As a person with arbitration experience, would it be appropriate to submit this kind of determination to an arbitrator?

Mr. PECK. A good deal of that is done now with the insured motorist coverage in the standard policies.

It could be done by arbitration, certainly, I suppose, and indeed the present bill, I suppose, would permit the insurance companies to add coverage of that sort if the person buying the insurance wants to get it, or if he wants to get it for himself and the people riding in his car with him. I believe the present bill would permit the insurance companies to add that as an additional kind of insurance, which he could purchase if he wants to purchase it.

Mr. SUTCLIFFE. On an optional basis?

Mr. PECK. Yes.

Mr. SUTCLIFFE. In discussions we have had before this committee, there has been some suggestion that if we are going to fulfill a social function, we should put it on a basis larger than the automobile user.

My question to you, given the testimony that you have presented here about the wide use of automobiles, do you think that there would be a significant difference between a premium assessment, or a tax upon the automobile user as distinct from the general taxpayer?

Mr. PECK. Well, I think your question leads to what has been so well explored by Professor Calabresi of Yale Law School. He points out that one of the things that we should strive to do with the rules of law that we utilize is to establish a cost accounting system which makes

the American public realize how much they are paying for any particular product, and how much any particular activity costs.

To the extent that we have a general socialized accident or insurance scheme, we may end up making uneconomic decisions.

If we take an activity which can be an accounting unit and make it responsible for those accidents caused by that activity, we then price it and then people know what that activity costs them. Automobiles, I think, are different from a good number of other things.

One of Professor Calabresi's hypotheses, which I was going to mention to Senator Baker, is the difference between reel lawnmowers and rotary mowers. Reel mowers are much safer than rotary lawnmowers. But, when the customer goes into the store and he looks and he sees the higher price on the rotary lawnmower, he decides to buy the reel.

If he were really going to be getting the same thing, he should also buy an insurance policy for the additional harm that he might get from the rotary lawnmower.

And Calabresi's suggestion is we should try to have a system of law so that when a customer buys, he will make an informed and wise decision. The difficulty with lawnmowers is illustrated by the problem caused when the rotary lawnmower hits a glass beer bottle, and the flying glass cuts someone. Is the cost one, then, that goes to the rotary lawnmower industry, or the glass bottle manufacturers?

I think we can avoid that problem with automobiles because as I have suggested, they are an activity which can be defined with precision, and we can make it an accounting unit. And I don't think we can end up feeling there is any great injustice that comes from attaching responsibility for all of the accidents which occur to that activity.

Mr. SUTCLIFFE. Thank you very much, professor.

Senator MOSS. Thank you, Professor Peck. It has been a very interesting and stimulating paper that you have delivered to us, and we appreciate your coming to present it to the committee.

Mr. PECK. I thank you very much for the opportunity.

Senator MOSS. This committee will now stand in recess until 2 o'clock, when we have two very excellent witnesses to hear.

(Whereupon, at 12:20 p.m., the hearing was recessed, to reconvene at 2 p.m., this same day.)

AFTERNOON SESSION

Senator MOSS. The committee will come to order.

We will resume our hearings on S. 945, S. 946 and S. 976 and Concurrent Resolution 23.

Our first witness this afternoon is Mr. Lorne Worthington, insurance commissioner of the State of Iowa. He will be making his presentation on behalf of the National Association of Insurance Commissioners.

We are very glad to have you, Mr. Worthington. I see you have a very well prepared and rather thick document here. I hope there will be ways of summarizing and highlighting that.

STATEMENT OF LORNE WORTHINGTON, INSURANCE COMMISSIONER, STATE OF IOWA, AND PRESIDENT, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS; ACCOMPANIED BY JOHN S. HANSON, EXECUTIVE SECRETARY-DIRECTOR OF RESEARCH; AND ROBERT E. DINEEN, CONSULTANT

Mr. WORTHINGTON. Thank you, Senator. I will attempt to summarize it.

Senator MOSS. Thank you, sir. Would you identify the gentlemen with you?

Mr. WORTHINGTON. I would like to identify the gentlemen with me. On my right is Mr. John Hanson, the executive secretary of the National Association of Insurance Commissioners. On my left is Mr. Robert Dineen who is a special consultant to our organization.

Senator MOSS. We welcome you.

Mr. WORTHINGTON. My name is Lorne R. Worthington. I am appearing today on behalf of the National Association of Insurance Commissioners, which is commonly referred to as the NAIC. I am here both as insurance commissioner of Iowa and as president of the NAIC.

NAIC, for the record, had its inception in, and regular meetings since, 1871. The NAIC is the oldest voluntary association of State officials. It includes among its members the principal insurance regulatory authorities of the 50 States, the District of Columbia and the territories of the United States.

I will attempt to deal with each of the matters before your committee separately and start by giving my comments on the Uniform Motor Vehicles Insurance Act and the administration's proposed concurrent resolution.

Because our views on this matter are relatively well known, for summary purposes I am going to turn to the summary of our statement and read that at this time rather than go through the statement in any great detail, and then I will be pleased to answer any questions you might have in reference to the statement during the question period.

Senator MOSS. Thank you. The statement will go in the record in full in its regular order, and, so you may be sure it is a part of the record, everything that you have presented here.

Mr. WORTHINGTON. Thank you.

The basic issue with which we are confronted is the appropriate means to test and/or implement the no-fault concept as it applies to motor vehicles insurance.

Whether or not this concept or some variation should be adopted is a question of public policy which extends beyond the traditional confines of insurance and the regulation thereof. Whatever the decision, however, the State insurance departments have and continue to be prepared to regulate in the public interest.

The whole question involves a host of complex factors, conflicting objectives and a multiplicity of alternatives. As the DOT report documented, the public attitudes, and understandably so, are confused and mixed.

As a consequence, the NAIC opposes the enactment of the proposed no-fault legislation on a Federal national level and recommends experimentation on a State-by-State basis to resolve the problems posed in a manner responsive to the public's choice in the marketplace re-

flecting its balance between benefits it wants at costs it is willing to pay.

A congressional mandate as to mandatory and uniform coverage would destroy flexibility, freeze in error, and preclude choice and self-determination.

Massive Federal involvement, particularly in light of the substantial cost implications, would seem to be premature.

Similarly, we express reservations as to the establishment of specific Federal guidelines or objectives since these would prejudge what the market has not yet passed upon and would tend to inhibit the range of consumer choice.

These comments are not to argue for the status quo nor against the no-fault concept set out in the proposed legislation. We agree that some change is needed, although the extent is subject to debate.

The NAIC supports utilizing the State-by-State approach to ascertain the best plan or plans. This process is already well underway as indicated by the already extensive activity at the State level.

Furthermore, the NAIC opposes legislation which interjects an extensive Federal regulatory mechanism over automobile insurance. Such would create duplicatory regulation, confusion and unnecessary taxpayer expenses.

I would like to read a quote from the statement of position adopted by the National Association of Insurance Commissioners in 1969. This is included in the text of my statement, Senator.

Because factors, concepts, values and attitudes vary from local to locale, this public policy decisions—

That is, fault or no-fault—

would best be made on a state-by-state basis rather than at the federal level. This in turn affords the opportunities to test and experiment with different approaches on a limited basis. After a period of experience with different plans, the better solution or solutions will emerge. The NAIC therefore opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternatives on a state-by-state basis. Whatever the system, the various state insurance regulators can regulate for the public interest most effectively because of the varied needs of the different populus in the several states.

The public, by its responses to legislation, and by the decisions it makes in the marketplace, in accepting or rejecting various coverages and services offered, will ultimately settle the issue.

Both Secretary Volpe's statement and the comprehensive DOT study clearly indicate that such intervention is not warranted so long as the States can continue to adjust to the changing environment.

Furthermore, the proposed statute with its mandatory uniformity and inflexibility would turn back the clock 25 years to re-create what the antitrust laws and the Senate Antitrust Monopoly Subcommittee have attempted to discourage these past many years.

In short, the NAIC endorses the administration's positions on experimenting with different approaches at the State level.

If Congress believes that some type of congressional action is necessary, we feel that the resolution approach is the most appropriate. However, the inclusion of specific Federal standards in such a resolution would be premature and would tend to inhibit the wide range of experimentation which it seeks to achieve.

On the other hand, the resolution could express the sense of Congress by pointing out the problems, taking cognizance of the various studies and conflicting objectives and calling upon the States, the industry, and other interested parties to develop and test solutions within a reasonable period of time, such as 5 years. Failure to do so could be construed as an invitation for Congress to undertake the task.

I might add parenthetically at this point, that should the States fail to act, I would personally seek opportunities to come and testify again before this committee and ask the Federal Government to move into an area which might not have been met by the States.

I am not suggesting that State inaction would mean forever inaction.

I would like to turn now to comments on group or mass merchandising. The proposed Motor Vehicle Group Insurance Act, S. 946, attempts to foster a legal climate in which automobile insurance could be marketed, free from various legal restraints.

To achieve this objection section 3(a) would prohibit any State from prohibiting, inhibiting, restricting, or conditioning the issuance and marketing of group insurance as defined by the statute. Thus, S. 946 poses two basic questions: One, the objective sought and, two, the means to implement the objective.

At this moment the NAIC position on mass marketing of automobile insurance is limited to a broad statement included in the statement of position adopted in June 1969, and we have brought a copy of that for you, Senator, if you would care to have it for the committee purposes.

Senator MOSS. We would like to have that for our purposes. We will include it in the record by reference.

Mr. WORTHINGTON. Thank you.

I quote from that document.

> The mass merchandising of automobile insurance has the potential of decreasing the dollar cost of auto insurance to the public. The savings may well be a mere transfer of the cost to either an employer or to the policyholder in the form of reduced services. True group auto insurance, separate and distinct from mass merchandising, may also offer a potential avenue to make the existing system function more smoothly. Both mass merchandising and group underwriting are currently being pursued under a variety of plans in various states.
>
> The NAIC believes that a wide degree of experimentation will develop an array of alternatives and choices in the marketplace which will be consistent with the best interests of the insurance-buying public and the NAIC encourages such experimentation.

The subject is currently under review by our executive committee which has directed the NAIC central office staff to prepare a comprehensive report thereon. This report will be completed by our June meeting.

According to NAIC procedure, based upon this report and any other information submitted, the NAIC will adopt a specific position statement on the subject. When the staff study and position statement become available we will provide your committee with copies.

Thus at this time, I cannot speak for the NAIC except in the broadest of terms. However, based upon my own personal experience in the Iowa Insurance Department and upon a reading of the first rough draft of the NAIC staff report, I can make the following personal observations.

I might add I have the first rough draft of the merchandising report with me, and though I will not refer to it directly, many of my views and conclusions have been generated as a result of the information I gained from a study of that draft.

1. THE GENERAL OBJECTIVE

First, as the staff study and the NAIC general statement suggests and, I believe, as a matter of general public policy the insurance consumer is entitled to the maximum choice possible, consistent with other goals of public policy, among the various competing alternative methods of distributing insurance which have a varying impact on the amount he pays and the services he receives.

This range of choice should embrace marketing not only by brokers, independent agents, exclusive agents, direct sellers (through salaried solicitors) and by mail, but also by various types of mass marketing techniques.

Whatever may be said for the reasons justifying the enactment of these early restrictive measures, that is, the need for "orderly marketing," the avoidance of unfair discrimnation between different classes of buyers of the same form of insurance, apprehension about the possibilities of abuse inherent in a new form of merchandising, desire to protect the survival of the small agent, the insurance counterpart of the small businessman in whom Congress has long taken an interest, we think that with the passage of time and changes in conditions, that is the advent of sophisticated and widespread advertising through the printed media, radio, TV, public acceptance of the advantage of more competition, improved regulatory techniques, et cetera, the time is ripe to strike down these measures. Today they are an anachronism completely out of tune with the times.

After reviewing the various arguments made, pro and con, by various agent groups, company groups, government officials, and representatives of the consumers, I think it may be said that on balance the case for artificial restraints on marketing techniques lacks sufficient force to justify their imposition.

This is not to say that I advocate mass marketing as the panacea to the automobile insurance problem or that it is even better than the other marketing methods.

What I am saying is that the consumer and the public should have the opportunity to make its own choice and not be found by some governmental fiat one way or another. To this extent it would seem that both myself and the NAIC concur with the general objectives of S. 946.

2. IMPLEMENTING THE OBJECTIVE

In attempting to achieve the objective of an appropriate regulatory climate for mass marketing of automobile insurance, great care must be taken to avoid creating on the one hand a duplication of regulatory supervision or, on the other, a void in regulatory authority.

Federal action

As to the question of a need for a Federal mandate, the various insurance agent groups, and others, have historically opposed mass mar-

keting of insurance coverage. This occurred when group life insurance was introduced around 1911.

Various restrictions were designed to promote orderly insurance marketing. The proponents of these measures were seriously mistaken if they believed their efforts would permanently preclude the growth of group insurance.

As time went on there was increased understanding and acceptance of the benefits of group life insurance, and later group health and hospitalization coverages, by the man on the street.

Competition between insurance companies was a major factor in freezing up the market. Federal tax concessions also played a significant role. Employer and union pressures for the benefits of this coverage became manifest. The States and regulatory agencies responded to these developments.

The barriers began to fall away and today group coverage is readily accessible throughout the Nation. No congressional intervention aimed at restrictive practices was necessary to achieve this result.

History is now repeating itself in the property and liability field. Here too, restrictions, fostered primarily by agent groups, were established, for example, in the form of fictitious fleet laws and more recently the so-called guideline legislation.

Once again pressure mounted to abolish such artificial restraints: for example, the attorney general's opinion in Michigan, Governor Rockefeller's veto of proposed guideline legislation in New York, the Connecticut Supreme Court decision, increased critical scrutiny by insurance departments of existing and future regulations and legislation, et cetera.

Perhaps the most significant indication of the changing climate was the retention of Booz, Allen & Hamilton to study mass merchandizing by the independent agents themselves. This study has now been released and it makes plain that mass marketing of the property and liability lines is here to stay and to grow.

Cognizant of the fundamental changes and pressures which are emerging, the NAIC executive committee requested the staff study referred to earlier. Early review of the report by the NAIC is expected.

Since the tentative findings of the staff seem to be generally consistent with the changed outlook against burdensome restrictions on this form of merchandising, further remedial action by the NAIC may be forecast.

In short, the pressures for change stemming from changed economic, social, and political conditions coupled with an "increasing amount of information and awareness have already "loosened" the former situation. Change is already occurring and will continue as it has in mass marketing of life insurance without Federal legislation.

Incidentally, the problems faced by the State in this area are not unique. Agents are not the only groups who have sought to use laws or regulations to maintain or improve their economic position. Farmers and unions, to mention a few, have long sponsored legislation to improve their economic lot. Congress has adopted such legislation even though the effect was to increase costs for the consumer.

When the pendulum swings too far—as it does from time to time with all legislation with economic overtones—public pressures are cre-

ated calling for a redressing of the balance and legislatures respond. So it is and will be with mass marketing.

Thus the same public pressures are at work on the State legislatures as are at work in Congress. The question of whether a Federal solution is desirable, then, rests on three questions: (1) will congressional action bring a more rapid and desirable solution, (2) can Federal action be taken in such a manner as to adequately protect the total insurance buying public and at the same time not create burdensome and conflicting regulatory machinery, and (3) will congressional action be such as to not preempt or take precedence over State actions that may encourage experimental and pilot programs?

If the answers to the above three questions are all affirmative, then I personally have no objections to the enactment of such a piece of legislation.

S. 946 has some provisions in it that would, in my opinion, require some of the above questions to be answered negatively and therefore if Congress is to act in this matter, I suggest that the bill be amended to assure that it is more workable.

Section 3(a), for example, provides that no State shall prohibit, inhibit or restrict—by fictitious group laws, by agency licensing requirements or by application of prohibitions against unfair discrimination—the issuance and marketing of group insurance.

Such a provision would free insurers from all restraints thereby opening the door to potential multiple abuse. Although in the past efforts—probably well intentioned but conceptually faulty—have been used to restrict the sale of group coverages through a narrow construction of the unfair discrimination statutes as applied to expense differentials due to different marketing mechanisms, this does not mean we must go to the other extreme and emasculate all prohibitions against unfair discrimination.

Under this language Congress would declare open season for unfair trade practices totally unrelated to these interpretations restricting the use of mass marketing. The law of the commercial jungle would prevail. For example, the New York Insurance Law (sec. 213, par. 10) provides that: "No such (life insurance) company shall issue any life insurance or annuity contract which shall not appear to be self-supporting on reasonable assumptions as to interest, mortality, and expense." Among other things, this is designed to prevent the sale of "loss leaders." It prevents an insured from transferring the costs of an inadequate or unbalanced price structure from one group of policyholders to another and is a device to prevent unfair discrimination. S. 946 would appear to prevent provisions of this type at least with respect to automobile insurance.

Such a result can only be expected when one sweeps away all restraints over the conduct of commercial affairs.

Section 2 (2) attempts to define the "group insurance" to which the act would apply. Such an effort is subject to inherent flaws.

First, mass marketing is in its infancy. Various insurers and sponsoring groups are experimenting with different types of coverages, distribution mechanism—or eligibility—requirements, et cetera, to determine what best meets the needs of the buyer, those insured, and the insurers. To provide the imposition of a rigid Fedral definition would

tend to freeze innovative efforts and retard the natural development of mass marketing to the detriment of the insured public.

Second. The definition is fairly rigorous against the freedom of the insurers to underwrite on an individual basis. As a consequence, especially in the incipient stage of mass marketing's development, insurer's may be unwilling to provide mass marketed coverage, particularly to small and medium size groups which are particularly vulnerable to volatile loss experience. Thus, rigorous elements in the definition tend to discourage the very development of coverage the act is intended to assist.

Incidentally, it is interesting to note that agents groups have employed the rigorous definition approach in their so-called "guide line" statutes at the State level as a technique to inhibit the mass marketing development. Furthermore, insurers marketing insurance on a mass basis with elements not incorporated in the definition would not be helped by this act.

Third. On the other hand, a too liberal definition, coupled with the sweeping prohibition against appropriate regulatory controls, would greatly expand the potential for abuse as discussed above.

Fourth. After group life insurance was introduced, a major approach to restricting its use was the development of the group life definition in 1917. Since then, much effort has been expended to amend and reduce the scope so that group life insurance would achieve its full potential. The proponents of the mass marketing concept might keep this experience in mind before attempting to repeat provisions such as those in S. 946.

3. TAX TREATMENT

Although S. 947 providing favorable Federal tax treatment for group automobile insurance is before another subcommittee, it is part of the overall package. As such, reference should be made to it.

In my personal opinion, not speaking now for NAIC, in order to promote wide usage of group coverage, there must be a tax break given similar to the one now in effect for other group insurance coverages. There are obvious problems in adoption of such a law such as the discrimination against those who do not have access to an employer group and I suggest that you work to find some way to minimize this kind of discrimination. In spite of that problem, however, I personally endorse legislation like that proposed in S. 947.

DAMAGEABILITY STATEMENT

The third area of interest before you today that I want to discuss is the proposed Motor Vehicle Information and Cost Savings Act which would permit the Department of Transportation to set minimum standards for reduction of economic loss resulting from property damage to motor vehicles involved in accidents. To develop these minimum standards, and for other purposes, the bill would require DOT to prescribe certain tests to be performed on all makes and models, the results of which would be publicly distributed by DOT and auto manufacturers and dealers.

Among those receiving the results would be insurance companies. DOT would be required to report to the President and Congress a

the subsequent use of these test results in insurance ratemaking. Comparisons in insurance costs by make and model would then be distributed by auto dealers. Finally, the bill would require DOT to set a standard for the States to establish motor vehicle inspection, registration, and uniform certificate of title programs.

The bill is in essence an expansion of a program established by Congress in the National Traffic and Motor Vehicle Safety Act of 1966. At that time attention was centered on the risk of death or injury to persons resulting from inadequate auto design and DOT's responsibility was limited to preventing or reducing personal injury or death.

Today we are focusing on a related problem—that is, the ever-increasing cost of auto insurance attributable to damageability of the automobiles and their repair cost.

In our mobile society, which lacks adequate mass transportation facilities, the automobile has become a necessity rather than a luxury. Consequently the cost of purchasing and operating the automobile is a significant social problem as both the automobile insurance industry and we as regulators are keenly aware.

There are many points at which costs could be reduced—for example, basic auto purchase prices, parking rates, gasoline prices—and certainly economic loss from property damage is one of them. Since much, though not all, economic loss to motor vehicles is paid for through the insurance mechanism, the cost of property damage, collision, and to some extent comprehensive coverages will respond to reductions in damage to motor vehicles involved in accidents. The cost of repair parts and labor are two very substantial items which influence the high cost of automobile insurance.

Insurance companies have manifested great concern about increasing repair costs for motor vehicles. Individually, they are seeking to encourage the purchase of damage resistant autos, to discourage purchase of muscle cars, and to encourage other loss reduction activities like safer driving and stiffer licensing standards.

Collectively, insurance companies are acting through several organizations and committees, most significantly the Insurance Institute for Highway Safety. They are attempting to measure the fragility of automobiles and to ascertain methods of reducing that fragility. Insurers, both individually and collectively, are proceeding to develop indexes of relative susceptibility to damage which could then be used for ratemaking purposes.

Insurance regulators are following these developments closely because we too realize the need for property loss reduction. The NAIC Committee on Property and Liability Insurance has held hearings on the progress of methods for determining relative fragility of motor vehicles. The NAIC, working with the individual States, is preparing to develop the needed regulatory techniques and statistics to implement the fragility index concepts in ratemaking.

Of course, the translating of damageability statistics into automobile insurance rates would not in itself result in lower overall costs in operating an automobile. It will, however, permit us to redistribute a greater proportion of the same overall economic losses from property damage to those persons who choose to purchase autos with greater susceptibility to damage.

Furthermore, to the extent that the purchasers of automobile insurance consider the relative insurance premiums attributable to damageability in purchasing their cars, the automobile insurance mechanism can contribute to driving those poorly designed cars out of the market and thereby reduce overall economic cost including that of insurance. This, of course, depends upon whether there is a corresponding rise—and to what extent—in cost of designing and manufacturing less damage prone cars and/or in personal injury damage.

Incidentally, it may be appropriate to note some of the factors insurance regulators will be watching as ratemaking based on damageability develops:

(1) Since most individual insurers are not large enough to develop credible statistics, they will find it necessary to pool their data in order to rate older models from real world experience. Insurance departments will be regulating this combining process to protect competition in rates.

(2) Insurance department personnel will be closely examining the results of the prescribed tests to satisfy themselves that there is jurisdiction for rating auto makes and models differently.

(3) Determining the susceptibility of new model cars to damage will require the use of advanced computer techniques. Since many insurers do not have the necessary facilities available they will be using data centrally determined. Departments will wish to satisfy themselves that this data is properly used.

(4) Ratemaking based on relative fragility will result in a different classification system. The departments will be watching these classifications closely to be certain they are equitable and that individual consumers are properly classified.

S. 976 attacks this overall problem head on by authorizing DOT to make tests, set minimum standards, make results available to insurers and regulators for ratemaking purposes, etc. The NAIC endorses the general concepts and objectives embodied in this bill. We would suggest, however, that the bill make explicit direction or authority for DOT to consult with both the insurance industry and the insurance regulators or a continuous basis so that the initial and future tests data compiled therefrom and other information will be developed in a form that is usable in automobile insurance ratemaking.

I would like to personally comment specifically on several provisions of S. 976 at this time:

(1) The provisions found in section 125 (b) and (c) are particularly significant and should be expanded to give the Secretary the widest possible powers and unquestioned authority to act in a direct and definitive manner.

(2) Section 127 is particularly important to insure regulators and I suggest that you amend the bill to provide for an official relationship between the Secretary and the State insurance commissioners in at least two areas: (*a*) the Secretary should be required to consult with representatives of the insurance commissioners from time to time and (*b*) the Secretary should be required to officially report his findings to the insurance commissioners of the various States.

I am confident that this kind of relationship will be welcomed by the commissioners and also that they will move rapidly to remove the implementation of rating techniques based on the damageability [illegible]

(3) Section 128 appears to also be a key section and I commend you for such a provision. It should be of great assistance in meeting consumer needs.

(4) The provision to section 501 that requires an independent system of automobile inspection, though idealistically sound, has a measure of impracticality involved in it in my opinion. To require the kind of expense involved in establishing the system contemplated in S. 976 is sure to generate enough opposition to stall if not stop the whole inspection program in many places.

I support your concept, but wonder if you shouldn't modify it to make the proposal more palatable and less expensive in order to receive the broadest support from the States.

I would also suggest there should be some official recognition made in the bill which would require that accident data collection systems be established to show the speed, the angle of impact, the frequency of automobile accidents, and other data which would be particularly important in determining the accuracy of the data which might be included in the damageability index.

In a very hurried way, Senator Moss, that concludes my formal testimony.

Senator Moss. Thank you, Mr. Worthington. I think we will have some questions.

I have to be absent for a short period of time.

Mr. Sutcliffe may have some questions while I am away and I will come back and follow up if there are some he didn't get to that I think ought to be in the record.

Moreover, I might suggest, since you have cooperated by summarizing that rather lengthy statement, it may be that after we have read it in full, we may want to submit a few questions to you, sending them to you in writing, to have you respond.

I am sure you would be glad to do that?

Mr. WORTHINGTON. We would have no objection to that, Senator, we would be pleased to.

Senator Moss. Thank you, and if you will excuse me, I will leave Mr. Sutcliffe here and ask if he has any questions he wants to ask in the interim.

Mr. SUTCLIFFE. Mr. Worthington, before we begin any questioning I want to ask whether or not the arrangement that Senator Moss suggested is satisfactory with you?

Mr. WORTHINGTON. I have no objection.

Mr. SUTCLIFFE. Thank you.

The argument that you pose, suggesting that the States be allowed to test various approaches certainly has some appeal from a theoretical standpoint. There are many unanswered questions in this area of considering automobile reform legislation. When you set about to experiment in the laboratory or in a State, do you need to have some guidelines as to the kind of experiment that should take place and the kinds of goals that you would hope would be met through the experimentation, particularly if you are trying to improve the present reparation system or do you think that it can just take place without that guideline, without that kind of direction, so in order to obtain the results of the experiment?

Could you comment generally on how you can undertake this on an experimental basis, assuming this is one of your arguments, and still end up with a valid experiment?

Mr. WORTHINGTON. I would be glad to.

To use as examples some proposals that are already before us, in Massachusetts they passed one form of a modified no-fault system. with some additional benefits. That plan is now in effect and we are seeing some interesting results. Not enough results are in yet to make a valid observation, I don't think, about the extent to which it meets the problems. But I think it is an excellent opportunity for us to gain some experience.

It is my understanding that in the State of Florida there is a very good opportunity that some form of no-fault bill will pass, which is much different than the one in Massachusetts.

Mr. SUTCLIFFE. Let me stop you right there, so I can understand.

I guess in any kind of experiment you will set it up and design it in such a fashion as to be able to test the results. Have the Massachusetts proponents of no-fault set up through their insurance regulatory mechanism or whatever a procedure whereby they can test the validity of their experiment, where they can get the information that would be useful from an experimental point of view, and if so, could you describe some of that for the committee?

Mr. WORTHINGTON. You are talking about——

Mr. SUTCLIFFE. Do you understand what I mean? In other words, you are saying there appears to be some beneficial results from an experimentation program in Massachusetts. What specifically has Massachusetts done to insure that the information which is coming out of Massachusetts about their plan has validity, measures costs, measures savings, measures redistribution of benefits to improve the problems highlighted in the Department of Transportation study?

Mr. WORTHINGTON. If you are asking was part of the program in Massachusetts a program that would require surveillance and analysis of statistics that might be developed to see how it works, I don't think that it was. There is no business, however, that I know of in the country, that generates more statistics and that has more adequate information about how it functions that are available to both the regulators and to the public, and my observation about the fact that it is providing some information that is interesting and shows it may be beneficial, is based on some of the statistics it has generated.

For example, one of the very interesting ones there has been the fact that there are fewer claims being filed now for physical damage.

Mr. SUTCLIFFE. We have had two explanations, you see. This is the reason I ask the question. Because if the approach to allowing for experimentation is going to be followed, then it seems to me that it is natural to ask what methods of collecting these statistics and validating those statistics are being provided.

We have been told by one group that the decrease in claims in the bodily injury area is a result of the constitutional test, and that the lawyers are simply holding back hoping that the constitutional challenge will be successful.

In another instance it has been explained to us that because of the unique situation in Massachusetts, many of the bodily injury claims reflected property damage claims, because it was a mandatory State.

Now it seems to me that if we set out to experiment on a State-by-State basis, apart from whether or not that is a practical possibility, this committee would like to know what assurances we will have that the results from those experiments will produce meaningful information to other States or to the Federal Government in its analysis of the reform.

Mr. WORTHINGTON. I think you are asking is there going to be some supervisory person to look at it to see whether there are meaningful results?

Mr. SUTCLIFFE. Or is the NAIC itself recommending this kind of procedure to the States?

Mr. WORTHINGTON. One of the functions which I currently serve in in the NAIC as chairman of a committee called the Committee on Profitability of Liability and Property Companies. This committee is attempting to look and see what sort of things go into the determination of rates for insurance companies and how much money is sent back to the consumer, how much is generated as a result of their investments. And this kind of committee function in the NAIC will very well, I am sure, sort out the actual statistical and practical profit and public interest items that will result from the experimentations in the various States.

So I think I can say unequivocably that the NAIC, if the States continue to experiment in this manner, will watch closely to see what happens.

We have discussed briefly about whether we should attempt to design a model bill. And it is not an official policy of the NAIC, but the officers have generally agreed that at this point we should not try to design a model bill, but that rather we should observe what the different States are doing and collect the data about the effectiveness of their operations, and after a period of time then put the portions of their program which seem to work most effectively into some model guidelines that could be used by the States that are interested.

Let me go on a little bit about the experimentation. I would say the New York proposal is different than any other State proposal. Illinois has a plan before its legislature.

Mr. SUTCLIFFE. Does it differ, because it suggested that it could be done at either the State or Federal level?

Mr. WORTHINGTON. No; I think it has a completely different thrust, for example, than the one in Illinois or Iowa, because it basically does away with the tort system.

Our proposal is to preserve it, but give first-party coverage in all instances and let the insurance companies subrogate. I have said in the past and would say again that though my plan in Iowa is substantially different from the one in New York, I would hope New York would adopt their bill and give us a chance to gain some experience as a result of its operation.

I would hope Iowa and Illinois would adopt their bills, so we can compare our experience too.

Mr. SUTCLIFFE. To that point then, what mechanism would you create to monitor the cost benefit differences between the Massachusetts plan and the Illinois or Iowa plans? The cost differences, for example, between an inter-insurer subrogation provision or a cost offset provision, differences between, in Massachusetts, the $500 medical payment

On the other hand, the resolution could express the sense of Congress by pointing out the problems, taking cognizance of the various studies and conflicting objectives and calling upon the States, the industry, and other interested parties to develop and test solutions within a reasonable period of time, such as 5 years. Failure to do so could be construed as an invitation for Congress to undertake the task.

I might add parenthetically at this point, that should the States fail to act, I would personally seek opportunities to come and testify again before this committee and ask the Federal Government to move into an area which might not have been met by the States.

I am not suggesting that State inaction would mean forever inaction.

I would like to turn now to comments on group or mass merchandising. The proposed Motor Vehicle Group Insurance Act, S. 946, attempts to foster a legal climate in which automobile insurance could be marketed, free from various legal restraints.

To achieve this objection section 3(a) would prohibit any State from prohibiting, inhibiting, restricting, or conditioning the issuance and marketing of group insurance as defined by the statute. Thus, S. 946 poses two basic questions: One, the objective sought and, two, the means to implement the objective.

At this moment the NAIC position on mass marketing of automobile insurance is limited to a broad statement included in the statement of position adopted in June 1969, and we have brought a copy of that for you, Senator, if you would care to have it for the committee purposes.

Senator Moss. We would like to have that for our purposes. We will include it in the record by reference.

Mr. WORTHINGTON. Thank you.

I quote from that document.

> The mass merchandising of automobile insurance has the potential of decreasing the dollar cost of auto insurance to the public. The savings may well be a mere transfer of the cost to either an employer or to the policyholder in the form of reduced services. True group auto insurance, separate and distinct from mass merchandising, may also offer a potential avenue to make the existing system function more smoothly. Both mass merchandising and group underwriting are currently being pursued under a variety of plans in various states.
>
> The NAIC believes that a wide degree of experimentation will develop an array of alternatives and choices in the marketplace which will be consistent with the best interests of the insurance-buying public and the NAIC encourages such experimentation.

The subject is currently under review by our executive committee which has directed the NAIC central office staff to prepare a comprehensive report thereon. This report will be completed by our June meeting.

According to NAIC procedure, based upon this report and any other information submitted, the NAIC will adopt a specific position statement on the subject. When the staff study and position statement become available we will provide your committee with copies.

Thus, at this juncture, I cannot speak for the NAIC except in the broadest of terms. However, based upon my own personal experience in the Iowa Insurance Department and upon a reading of the first rough draft of the NAIC staff report, I can make the following personal observations.

I might add I have the first rough draft of the merchandising report with me, and though I will not refer to it directly, many of my views and conclusions have been generated as a result of the information I gained from a study of that draft.

1. THE GENERAL OBJECTIVE

First, as the staff study and the NAIC general statement suggests and, I believe, as a matter of general public policy the insurance consumer is entitled to the maximum choice possible, consistent with other goals of public policy, among the various competing alternative methods of distributing insurance which have a varying impact on the amount he pays and the services he receives.

This range of choice should embrace marketing not only by brokers, independent agents, exclusive agents, direct sellers (through salaried solicitors) and by mail, but also by various types of mass marketing techniques.

Whatever may be said for the reasons justifying the enactment of these early restrictive measures, that is, the need for "orderly marketing," the avoidance of unfair discrimnation between different classes of buyers of the same form of insurance, apprehension about the possibilities of abuse inherent in a new form of merchandising, desire to protect the survival of the small agent, the insurance counterpart of the small businessman in whom Congress has long taken an interest, we think that with the passage of time and changes in conditions, that is the advent of sophisticated and widespread advertising through the printed media, radio, TV, public acceptance of the advantage of more competition, improved regulatory techniques, et cetera, the time is ripe to strike down these measures. Today they are an anachronism completely out of tune with the times.

After reviewing the various arguments made, pro and con, by various agent groups, company groups, government officials, and representatives of the consumers, I think it may be said that on balance the case for artificial restraints on marketing techniques lacks sufficient force to justify their imposition.

This is not to say that I advocate mass marketing as the panacea to the automobile insurance problem or that it is even better than the other marketing methods.

What I am saying is that the consumer and the public should have the opportunity to make its own choice and not be found by some governmental fiat one way or another. To this extent it would seem that both myself and the NAIC concur with the general objectives of S. 946.

2. IMPLEMENTING THE OBJECTIVE

In attempting to achieve the objective of an appropriate regulatory climate for mass marketing of automobile insurance, great care must be taken to avoid creating on the one hand a duplication of regulatory supervision or, on the other, a void in regulatory authority.

Federal action

As to the question of a need for a Federal mandate, the various insurance agent groups, and others, have historically opposed mass mar-

keting of insurance coverage. This occurred when group life insurance was introduced around 1911.

Various restrictions were designed to promote orderly insurance marketing. The proponents of these measures were seriously mistaken if they believed their efforts would permanently preclude the growth of group insurance.

As time went on there was increased understanding and acceptance of the benefits of group life insurance, and later group health and hospitalization coverages, by the man on the street.

Competition between insurance companies was a major factor in freezing up the market. Federal tax concessions also played a significant role. Employer and union pressures for the benefits of this coverage became manifest. The States and regulatory agencies responded to these developments.

The barriers began to fall away and today group coverage is readily accessible throughout the Nation. No congressional intervention aimed at restrictive practices was necessary to achieve this result.

History is now repeating itself in the property and liability field. Here too, restrictions, fostered primarily by agent groups, were established, for example, in the form of fictitious fleet laws and more recently the so-called guideline legislation.

Once again pressure mounted to abolish such artificial restraints: for example, the attorney general's opinion in Michigan, Governor Rockefeller's veto of proposed guideline legislation in New York, the Connecticut Supreme Court decision, increased critical scrutiny by insurance departments of existing and future regulations and legislation, et cetera.

Perhaps the most significant indication of the changing climate was the retention of Booz, Allen & Hamilton to study mass merchandizing by the independent agents themselves. This study has now been released and it makes plain that mass marketing of the property and liability lines is here to stay and to grow.

Cognizant of the fundamental changes and pressures which are emerging, the NAIC executive committee requested the staff study referred to earlier. Early review of the report by the NAIC is expected.

Since the tentative findings of the staff seem to be generally consistent with the changed outlook against burdensome restrictions on this form of merchandising, further remedial action by the NAIC may be forecast.

In short, the pressures for change stemming from changed economic, social, and political conditions coupled with an "increasing amount of information and awareness have already "loosened" the former situation. Change is already occurring and will continue as it has in mass marketing of life insurance without Federal legislation.

Incidentally, the problems faced by the State in this area are not unique. Agents are not the only groups who have sought to use laws or regulations to maintain or improve their economic position. Farmers and unions, to mention a few, have long sponsored legislation to improve their economic lot. Congress has adopted such legislation even though the effect was to increase costs for the consumer.

When the pendulum swings too far—as it does from time to time with all legislation with economic overtones—public pressures are cre-

ated calling for a redressing of the balance and legislatures respond. So it is and will be with mass marketing.

Thus the same public pressures are at work on the State legislatures as are at work in Congress. The question of whether a Federal solution is desirable, then, rests on three questions: (1) will congressional action bring a more rapid and desirable solution, (2) can Federal action be taken in such a manner as to adequately protect the total insurance buying public and at the same time not create burdensome and conflicting regulatory machinery, and (3) will congressional action be such as to not preempt or take precedence over State actions that may encourage experimental and pilot programs?

If the answers to the above three questions are all affirmative, then I personally have no objections to the enactment of such a piece of legislation.

S. 946 has some provisions in it that would, in my opinion, require some of the above questions to be answered negatively and therefore if Congress is to act in this matter, I suggest that the bill be amended to assure that it is more workable.

Section 3(a), for example, provides that no State shall prohibit, inhibit or restrict—by fictitious group laws, by agency licensing requirements or by application of prohibitions against unfair discrimination—the issuance and marketing of group insurance.

Such a provision would free insurers from all restraints thereby opening the door to potential multiple abuse. Although in the past efforts—probably well intentioned but conceptually faulty—have been used to restrict the sale of group coverages through a narrow construction of the unfair discrimination statutes as applied to expense differentials due to different marketing mechanisms, this does not mean we must go to the other extreme and emasculate all prohibitions against unfair discrimination.

Under this language Congress would declare open season for unfair trade practices totally unrelated to these interpretations restricting the use of mass marketing. The law of the commercial jungle would prevail. For example, the New York Insurance Law (sec. 213, par. 10) provides that: "No such (life insurance) company shall issue any life insurance or annuity contract which shall not appear to be self-supporting on reasonable assumptions as to interest, mortality, and expense." Among other things, this is designed to prevent the sale of "loss leaders." It prevents an insured from transferring the costs of an inadequate or unbalanced price structure from one group of policyholders to another and is a device to prevent unfair discrimination. S. 946 would appear to prevent provisions of this type at least with respect to automobile insurance.

Such a result can only be expected when one sweeps away all restraints over the conduct of commercial affairs.

Section 2 (2) attempts to define the "group insurance" to which the act would apply. Such an effort is subject to inherent flaws.

First, mass marketing is in its infancy. Various insurers and sponsoring groups are experimenting with different types of coverages, distribution mechanism—or eligibility—requirements, et cetera, to determine what best meets the needs of the buyer, those insured, and the insurers. To provide the imposition of a rigid Fedral definition would

tend to freeze innovative efforts and retard the natural development of mass marketing to the detriment of the insured public.

Second. The definition is fairly rigorous against the freedom of the insurers to underwrite on an individual basis. As a consequence, especially in the incipient stage of mass marketing's development, insurer's may be unwilling to provide mass marketed coverage, particularly to small and medium size groups which are particularly vulnerable to volatile loss experience. Thus, rigorous elements in the definition tend to discourage the very development of coverage the act is intended to assist.

Incidentally, it is interesting to note that agents groups have employed the rigorous definition approach in their so-called "guide line" statutes at the State level as a technique to inhibit the mass marketing development. Furthermore, insurers marketing insurance on a mass basis with elements not incorporated in the definition would not be helped by this act.

Third. On the other hand, a too liberal definition, coupled with the sweeping prohibition against appropriate regulatory controls, would greatly expand the potential for abuse as discussed above.

Fourth. After group life insurance was introduced, a major approach to restricting its use was the development of the group life definition in 1917. Since then, much effort has been expended to amend and reduce the scope so that group life insurance would achieve its full potential. The proponents of the mass marketing concept might keep this experience in mind before attempting to repeat provisions such as those in S. 946.

3. TAX TREATMENT

Although S. 947 providing favorable Federal tax treatment for group automobile insurance is before another subcommittee, it is part of the overall package. As such, reference should be made to it.

In my personal opinion, not speaking now for NAIC, in order to promote wide usage of group coverage, there must be a tax break given similar to the one now in effect for other group insurance coverages. There are obvious problems in adoption of such a law such as the discrimination against those who do not have access to an employer group and I suggest that you work to find some way to minimize this kind of discrimination. In spite of that problem, however, I personally endorse legislation like that proposed in S. 947.

DAMAGEABILITY STATEMENT

The third area of interest before you today that I want to discuss is the proposed Motor Vehicle Information and Cost Savings Act, which would permit the Department of Transportation to set minimum standards for reduction of economic loss resulting from property damage to motor vehicles involved in accidents. To develop these minimum standards, and for other purposes, the bill would require DOT to prescribe certain tests to be performed on all makes and models, the results of which would be publicly distributed by DOT and auto manufacturers and dealers.

Among those receiving the results would be insurance companies. DOT would be required to report to the President and Congress

the subsequent use of these test results in insurance ratemaking. Comparisons in insurance costs by make and model would then be distributed by auto dealers. Finally, the bill would require DOT to set a standard for the States to establish motor vehicle inspection, registration, and uniform certificate of title programs.

The bill is in essence an expansion of a program established by Congress in the National Traffic and Motor Vehicle Safety Act of 1966. At that time attention was centered on the risk of death or injury to persons resulting from inadequate auto design and DOT's responsibility was limited to preventing or reducing personal injury or death.

Today we are focusing on a related problem—that is, the ever-increasing cost of auto insurance attributable to damageability of the automobiles and their repair cost.

In our mobile society, which lacks adequate mass transportation facilities, the automobile has become a necessity rather than a luxury. Consequently the cost of purchasing and operating the automobile is a significant social problem as both the automobile insurance industry and we as regulators are keenly aware.

There are many points at which costs could be reduced—for example, basic auto purchase prices, parking rates, gasoline prices—and certainly economic loss from property damage is one of them. Since much, though not all, economic loss to motor vehicles is paid for through the insurance mechanism, the cost of property damage, collision, and to some extent comprehensive coverages will respond to reductions in damage to motor vehicles involved in accidents. The cost of repair parts and labor are two very substantial items which influence the high cost of automobile insurance.

Insurance companies have manifested great concern about increasing repair costs for motor vehicles. Individually, they are seeking to encourage the purchase of damage resistant autos, to discourage purchase of muscle cars, and to encourage other loss reduction activities like safer driving and stiffer licensing standards.

Collectively, insurance companies are acting through several organizations and committees, most significantly the Insurance Institute for Highway Safety. They are attempting to measure the fragility of automobiles and to ascertain methods of reducing that fragility. Insurers, both individually and collectively, are proceeding to develop indexes of relative susceptibility to damage which could then be used for ratemaking purposes.

Insurance regulators are following these developments closely because we too realize the need for property loss reduction. The NAIC Committee on Property and Liability Insurance has held hearings on the progress of methods for determining relative fragility of motor vehicles. The NAIC, working with the individual States, is preparing to develop the needed regulatory techniques and statistics to implement the fragility index concepts in ratemaking.

Of course, the translating of damageability statistics into automobile insurance rates would not in itself result in lower overall costs in operating an automobile. It will, however, permit us to redistribute a greater proportion of the same overall economic losses from property damage to those persons who choose to purchase autos with greater susceptibility to damage.

Furthermore, to the extent that the purchasers of automobile insurance consider the relative insurance premiums attributable to damageability in purchasing their cars, the automobile insurance mechanism can contribute to driving those poorly designed cars out of the market and thereby reduce overall economic cost including that of insurance. This, of course, depends upon whether there is a corresponding rise—and to what extent—in cost of designing and manufacturing less damage prone cars and/or in personal injury damage.

Incidentally, it may be appropriate to note some of the factors insurance regulators will be watching as ratemaking based on damageability develops:

(1) Since most individual insurers are not large enough to develop credible statistics, they will find it necessary to pool their data in order to rate older models from real world experience. Insurance departments will be regulating this combining process to protect competition in rates.

(2) Insurance department personnel will be closely examining the results of the prescribed tests to satisfy themselves that there is jurisdiction for rating auto makes and models differently.

(3) Determining the susceptibility of new model cars to damage will require the use of advanced computer techniques. Since many insurers do not have the necessary facilities available they will be using data centrally determined. Departments will wish to satisfy themselves that this data is properly used.

(4) Ratemaking based on relative fragility will result in a differen classification system. The departments will be watching these classifi cations closely to be certain they are equitable and that individual con sumers are properly classified.

S. 976 attacks this overall problem head on by authorizing DOT t make tests, set minimum standards, make results available to insurer and regulators for ratemaking purposes, etc. The NAIC endorses th general concepts and objectives embodied in this bill. We would sug gest, however, that the bill make explicit direction or authority fo DOT to consult with both the insurance industry and the insuranc regulators or a continuous basis so that the initial and future test data compiled therefrom and other information will be developed i a form that is usable in automobile insurance ratemaking.

I would like to personally comment specifically on several provisio of S. 976 at this time:

(1) The provisions found in section 125 (b) and (c) are particularl significant and should be expanded to give the Secretary the widest po sible powers and unquestioned authority to act in a direct and definiti manner.

(2) Section 127 is particularly important to insure regulators a I suggest that you amend the bill to provide for an official relationsh between the Secretary and the State insurance commissioners in least two areas: (*a*) the Secretary should be required to consult wi representatives of the insurance commissioners from time to time a (*b*) the Secretary should be required to officially report his findings the insurance commissioners of the various States.

I am confident that this kind of relationship will be welcomed the commissioners and also that they will move rapidly to [illegible] i plementation of rating techniques based on the damageability [illegible]

(3) Section 128 appears to also be a key section and I commend you for such a provision. It should be of great assistance in meeting consumer needs.

(4) The provision to section 501 that requires an independent system of automobile inspection, though idealistically sound, has a measure of impracticality involved in it in my opinion. To require the kind of expense involved in establishing the system contemplated in S. 976 is sure to generate enough opposition to stall if not stop the whole inspection program in many places.

I support your concept, but wonder if you shouldn't modify it to make the proposal more palatable and less expensive in order to receive the broadest support from the States.

I would also suggest there should be some official recognition made in the bill which would require that accident data collection systems be established to show the speed, the angle of impact, the frequency of automobile accidents, and other data which would be particularly important in determining the accuracy of the data which might be included in the damageability index.

In a very hurried way, Senator Moss, that concludes my formal testimony.

Senator Moss. Thank you, Mr. Worthington. I think we will have some questions.

I have to be absent for a short period of time.

Mr. Sutcliffe may have some questions while I am away and I will come back and follow up if there are some he didn't get to that I think ought to be in the record.

Moreover, I might suggest, since you have cooperated by summarizing that rather lengthy statement, it may be that after we have read it in full, we may want to submit a few questions to you, sending them to you in writing, to have you respond.

I am sure you would be glad to do that?

Mr. WORTHINGTON. We would have no objection to that, Senator, we would be pleased to.

Senator MOSS. Thank you, and if you will excuse me, I will leave Mr. Sutcliffe here and ask if he has any questions he wants to ask in the interim.

Mr. SUTCLIFFE. Mr. Worthington, before we begin any questioning I want to ask whether or not the arrangement that Senator Moss suggested is satisfactory with you?

Mr. WORTHINGTON. I have no objection.

Mr. SUTCLIFFE. Thank you.

The argument that you pose, suggesting that the States be allowed to test various approaches certainly has some appeal from a theoretical standpoint. There are many unanswered questions in this area of considering automobile reform legislation. When you set about to experiment in the laboratory or in a State, do you need to have some guidelines as to the kind of experiment that should take place and the kinds of goals that you would hope would be met through the experimentation, particularly if you are trying to improve the present reparation system or do you think that it can just take place without that guideline, without that kind of direction, so in order to obtain the results of the experiment?

Could you comment generally on how you can undertake this on an experimental basis, assuming this is one of your arguments, and still end up with a valid experiment?

Mr. WORTHINGTON. I would be glad to.

To use as examples some proposals that are already before us, in Massachusetts they passed one form of a modified no-fault system, with some additional benefits. That plan is now in effect and we are seeing some interesting results. Not enough results are in yet to make a valid observation, I don't think, about the extent to which it meets the problems. But I think it is an excellent opportunity for us to gain some experience.

It is my understanding that in the State of Florida there is a very good opportunity that some form of no-fault bill will pass, which is much different than the one in Massachusetts.

Mr. SUTCLIFFE. Let me stop you right there, so I can understand.

I guess in any kind of experiment you will set it up and design it in such a fashion as to be able to test the results. Have the Massachusetts proponents of no-fault set up through their insurance regulatory mechanism or whatever a procedure whereby they can test the validity of their experiment, where they can get the information that would be useful from an experimental point of view, and if so, could you describe some of that for the committee?

Mr. WORTHINGTON. You are talking about——

Mr. SUTCLIFFE. Do you understand what I mean? In other words, you are saying there appears to be some beneficial results from an experimentation program in Massachusetts. What specifically has Massachusetts done to insure that the information which is coming out of Massachusetts about their plan has validity, measures costs, measures savings, measures redistribution of benefits to improve the problems highlighted in the Department of Transportation study?

Mr. WORTHINGTON. If you are asking was part of the program in Massachusetts a program that would require surveillance and analysis of statistics that might be developed to see how it works, I don't think that it was. There is no business, however, that I know of in the country, that generates more statistics and that has more adequate information about how it functions that are available to both the regulators and to the public, and my observation about the fact that it is providing some information that is interesting and shows it may be beneficial, is based on some of the statistics it has generated.

For example, one of the very interesting ones there has been the fact that there are fewer claims being filed now for physical damage.

Mr. SUTCLIFFE. We have had two explanations, you see. This is the reason I ask the question. Because if the approach to allowing for experimentation is going to be followed, then it seems to me that it is natural to ask what methods of collecting these statistics and validating those statistics are being provided.

We have been told by one group that the decrease in claims in the bodily injury area is a result of the constitutional test, and that the lawyers are simply holding back hoping that the constitutional challenge will be successful.

In another instance it has been explained to us that because of the unique situation in Massachusetts, many of the bodily injury claims reflected property damage claims, because it was a mandatory State.

Now it seems to me that if we set out to experiment on a State-by-State basis, apart from whether or not that is a practical possibility, this committee would like to know what assurances we will have that the results from those experiments will produce meaningful information to other States or to the Federal Government in its analysis of the reform.

Mr. WORTHINGTON. I think you are asking is there going to be some supervisory person to look at it to see whether there are meaningful results?

Mr. SUTCLIFFE. Or is the NAIC itself recommending this kind of procedure to the States?

Mr. WORTHINGTON. One of the functions which I currently serve in in the NAIC as chairman of a committee called the Committee on Profitability of Liability and Property Companies. This committee is attempting to look and see what sort of things go into the determination of rates for insurance companies and how much money is sent back to the consumer, how much is generated as a result of their investments. And this kind of committee function in the NAIC will very well, I am sure, sort out the actual statistical and practical profit and public interest items that will result from the experimentations in the various States.

So I think I can say unequivocably that the NAIC, if the States continue to experiment in this manner, will watch closely to see what happens.

We have discussed briefly about whether we should attempt to design a model bill. And it is not an official policy of the NAIC, but the officers have generally agreed that at this point we should not try to design a model bill, but that rather we should observe what the different States are doing and collect the data about the effectiveness of their operations, and after a period of time then put the portions of their program which seem to work most effectively into some model guidelines that could be used by the States that are interested.

Let me go on a little bit about the experimentation. I would say the New York proposal is different than any other State proposal. Illinois has a plan before its legislature.

Mr. SUTCLIFFE. Does it differ, because it suggested that it could be done at either the State or Federal level?

Mr. WORTHINGTON. No; I think it has a completely different thrust, for example, than the one in Illinois or Iowa, because it basically does away with the tort system.

Our proposal is to preserve it, but give first-party coverage in all instances and let the insurance companies subrogate. I have said in the past and would say again that though my plan in Iowa is substantially different from the one in New York, I would hope New York would adopt their bill and give us a chance to gain some experience as a result of its operation.

I would hope Iowa and Illinois would adopt their bills, so we can compare our experience too.

Mr. SUTCLIFFE. To that point then, what mechanism would you create to monitor the cost benefit differences between the Massachusetts plan and the Illinois or Iowa plans? The cost differences, for example, between an inter-insurer subrogation provision or a cost offset provision, differences between, in Massachusetts, the $500 medical payment

entry into the tort liability system and in Illinois, no entry provision, but a limitation on intangible loss recovery once tort is entered and an offset for any mandatory first-party coverages? How are we going to get the data to analyze that kind of difference?

Because if we are going to experiment, and the argument is we will learn from experimentation, it seems to me we have to be assured we will be able to get that kind of information back.

Mr. WORTHINGTON. I think I can assure you the NAIC in its normal functions will be gathering this data through the work of its committees, through the analysis of the reports that are filed now with the insurance departments, and which are, some of which are created by private organizations.

Mr. SUTCLIFFE. Is that information oriented toward answering the kinds of questions that are being asked now, or is it more oriented toward a business operation within the existing liability system focus?

Mr. WORTHINGTON. The data we would collect, I would anticipate, would be data that would answer the questions we wanted to ask.

Mr. SUTCLIFFE. So you would have to go through some kind of reformulation.

Mr. WORTHINGTON. If the standard reporting techniques we have now are not adequate, we can easily change them to make them adequate. What I am saying basically, I suppose, is that we think we have a system set up now which could gather the information. If it doesn't, then we can modify it.

Mr. SUTCLIFFE. Will you undergo an examination of that prior to the time of finding out that it doesn't produce the information? I mean are you presently engaged in analyzing your reporting system to make sure that it does the job or will you soon be engaged in that endeavor?

Mr. WORTHINGTON. As soon as we know whether or not the Congress is going to allow us to experiment, we will immediately begin the procedures to comply with the stewardship that you have given us. I think our past record in the past few years in the NAIC at least, is indicative of the fact we will do an adequate job.

Mr. SUTCLIFFE. As to a more basic question about the need for experimentation, how much experimentation was undertaken to test the postinsolvency assessment plans that you have advocated be adopted and have been quite successful in getting adopted in many jurisdictions in this country? When you promulgated that model bill how much experimentation with that system had been undertaken before you set it in concrete, so to speak?

Mr. WORTHINGTON. Before we promulgated our model bill I think there were some six or seven States which already had a form of insolvency fund or form of guarantee fund, and we drafted our bill based on the experience that those other States had had over the past years.

Mr. SUTCLIFFE. Those were all preassessment plans, were they not?

Mr. WORTHINGTON. No; there is a plan like the one in New Jersey, I think—or was it Maryland?—Michigan and California had adopted before our model postassessment plan. One of the things that led us to try the postassessment approach was the experience that they had had with the preassessment plans, and the experience with preassessment plans was such that we felt that was not the proper way to go.

Mr. SUTCLIFFE. You mentioned your organization also includes members of the territories of this country. I noted that with interest. Have you had an opportunity to receive the views of the regulatory authorities from Puerto Rico and had a chance to evaluate that particular experiment?

Mr. WORTHINGTON. The insurance commissioner from Puerto Rico regularly attends our meetings and participates in our committee functions, and he is very vocal about his experiences in Puerto Rico and feels that it is an excellent program for his territory. He is an active participant.

Mr. SUTCLIFFE. Have you come to any conclusions based upon the experience in Puerto Rico as to any recommendation the NAIC would make to States who are going to undertake experiments in reforming their automobile compensation system?

Mr. WORTHINGTON. I think it is too early to draw any valid conclusions about the Puerto Rican situation and recommend them to other States on an official basis. Obviously most of us that are interested in it are going to look closely at it because it is an operating one, just like we will the Massachusetts plan.

Senator MOSS. Thank you for excusing me for a short time, and I am sure Mr. Sutcliffe has had a number of questions that have occured to us in listening to your testimony. One thing I wanted to ask, Mr. Worthington, is, you referred in your statement to the danger of an ill-considered national program for insurance reform. Given the Department of Transportation's study and the extensive congressional hearings, do you really think this—it is ill considered to have a bill of this type before us now?

Mr. WORTHINGTON. I suppose if I were to give a definition of what I mean by ill considered it would have to be something like this, that any proposal which would change the system which has been in effect as long as the tort system has been in effect in the United States without some measure of experimentation or some trial of a new system on a national basis would have to by definition, be ill considered.

We are not indicating that you have not studied it long enough or that learned people have not given their opinions, but rather we are just saying that by the very extent of the enormity of the program it ought to be tried someplace before it is put forth for the whole country.

Senator MOSS. Well, I wonder about the parallel between automobile insurance and health insurance. The administration recommends the State regulation in automobile insurance but recommends a national system of health insurance; why should one be treated one way and the other the other?

Mr. WORTHINGTON. We are trying to help them become consistent, Senator.

Senator MOSS. Which way?

Mr. WORTHINGTON. In favor of the State.

Senator MOSS. I was, of course, pleased to note that you recognized that there needs to be changes and there was a great change going on in the industry. Isn't it true that it is less likely that you can get a change effected in all of the State legislatures? State legislators serve for a minimum period of time, and they are all employed in other lines of employment, and, as has been said, they are subject perhaps

to lobbying pressures more strongly than national legislators. Doesn't that argue against depending on the States to make the changes?

Mr. WORTHINGTON. I think not, Senator, for a couple of reasons. One is that in recent years in reference to insurance matters the States have responded quite well to the problems as they have been called to our attention. Mr. Sutcliffe mentioned a proposed national guarantee fund. Some 38 States have now adopted a form of proposal which would protect people from insolvencies of insurers in the period of 18 months. We have reason to believe that nearly all States will have this kind of proposal in short order. And this is while Congress is still deciding whether or not to do it. So we have acted really more rapidly than the Congress has in this matter.

When the problem of conglomerates dipping into the surplus of insurance companies became prevalent we began to draft a model bill to regulate insurance-holding companies so the conglomerates and insurance interests could not, without regulatory involvement, dip in and take surplus which had been made for the benefit of the policyholders.

Nearly all insurance-holding companies in the United States are now effectively regulated by the insurance-holding company bill. There are others where we have not been as successful, but where there has been a major national problem we have responded. And my testimony before you is such that again I want to restate that if the States do not act, I would be one of the first people to ask Congress to act. But I think that the States are certainly their stewardship responsibility in reference to insurance regulation adequately and responsibly, and it is only until it can be shown that they are not should you move in and act.

And one of what is proposed would alter significantly the regulation of insurance and prevent providing the kind of benefits you want to provide. We think we can provide those same benefits in an expeditious manner without forcing on people the kind of duplicatory regulation you would with what is proposed.

Senator MUSKIE. Doesn't this problem really extend beyond State lines? It is not confined to any national area or any particular geographical area. Isn't it a more proper subject of the type that ought to be considered at the national level by the National Congress?

Mr. WORTHINGTON. I do not think that it should necessarily. For example, if a person wanted to buy a policy under the proposed [illegible] in Texas, or travel to New York, or travel to Kansas or Florida, somewhere else that had a different kind of [illegible] for the insurance carriers [illegible] any State in our union on the policy that would [illegible] necessary for whatever State [illegible] with Canada now. [illegible] in dealing in State lines is as significant a problem [illegible] with relatively little complication [illegible] problem.

[illegible] State [illegible] many different kinds [illegible] of our country. [illegible] adequate and [illegible] for example.

nay not be adequate and may not be appropriate for the people living n Detroit or Manhattan or Los Angeles.

On the other side of the coin, if the bill is drafted to be in between oth of them, it really meets neither of their needs. We think they eed to be geared more definitely toward the people who will receive he benefits.

Senator Moss. Yes, but your rural resident of Iowa is not always riving around rural Iowa; he drives off to Chicago or Detroit or omeplace like that.

Mr. WORTHINGTON. Right. I am saying it is a relatively easy admin-trative matter to include, as a provision of his policy, minimum overage for whatever State he happens to be driving in. A man who ommuted between one State and another State would obviously have n easy time getting his policy amended because that is something he ould just have to have. The companies can do it with little difficulty. he regulators can assist them in this; we are experienced in that atter already because we do it in other areas.

Senator Moss. But if one State has a no-fault rule and his insurance written for a State that does not have that but has the traditional rt requirement—what law is applied to him? He is driving in a no-ult State, but his insurance policy is not geared to that; can this be sily adapted?

Mr. WORTHINGTON. Yes; it would. He would have a policy obviously the State he lives in, which would meet those rules. And there ould be as a provision of that policy a rider that would say some-ing to the effect that the provisions of this policy shall meet the inimum requirements for whatever State in which he may be in-lved in an accident, very simply.

Obviously the lawyers would make it longer and more complicated an that, but very simply that is what it would consist of. So if he ere in a no-fault State and had an accident in a fault State, he would ve the minimum requirements in that State.

Senator Moss. There might be a little problem in the rule of law ey apply, the rule of proof and so on. But I acknowledge your view at it could be readily adapted.

We do appreciate your coming to testify before the committee and eparing such a well documented and full statement that will be a eat addition to our record.

Thank you very much.

Thank you, gentlemen, for coming.

(The statement follows:)

ATEMENT OF LORNE R. WORTHINGTON, INSURANCE COMMISSIONER OF THE STATE F IOWA, ON BEHALF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMIS-IONERS

ly name is Lorne R. Worthington. Today I am appearing on behalf of the tional Association of Insurance Commissioners, commonly referred to as the IC, both as the Insurance Commissioner of the State of Iowa and as President the NAIC. Having its inception in and regular meetings since 1871, the NAIC the oldest voluntary association of state officials. It includes the principal urance regulatory authorities of the 50 states, the District of Columbia, and territories of the United States.

shall deal with each of the matters before your Committee separately and rt by giving my comments on the Uniform Motor Vehicle Insurance Act and Administration's proposed Concurrent Resolution.

1. THE ISSUE

The Uniform Motor Vehicle Insurance Act would create a federally mandated motor vehicle insurance system predicated on the no fault concept for bodily injury. The statute, among other things, would prescribe the minimum coverage which motorists would be required to purchase. In contrast, although the Administration has tentatively endorsed the no fault concept, it has concluded that "mere speculation without actual observation of experience with a new plan is an inadequate basis for massive, uniform national reform: and that the federal assumption of the current state regulatory authority over automobile insurance poses great issues and consequences and is highly undesirable."[1] The Administration recommends that solutions, built upon specified general principles, evolve at the state level to permit experimentation and testing of different approaches. *Thus the basic issue is joined—i.e. what is the most appropriate approach to test and/or implement the no fault concept.*

2. NAIC POSITION ON THE NO FAULT CONCEPT

At the outset, let me indicate the perspective from which the NAIC, as an association of state insurance regulators, views the fault versus no fault concept. The tort liability system is a legal system which is separate and distinct from the automobile insurance system. When the first automobile insurance policy was written prior to 1900, the fault concept was well embedded. The automobile insurance system, and the regulation thereof, of necessity, has in large part been engrafted on and molded by the broader legal environment in which it finds itself. As a consequence, automobile insurance was originally premised on the concept of protecting a person from economic disaster resulting from legal liability—by defending against claims and paying those adjudged to be valid. Only incidentally was the combination of the legal and insurance systems thought of in terms of providing reparation to the victim. In more recent years, there has been a shift in concept. Increasing attention has been focused on the plight of the victim. The inquiry now centers on how dependent upon fault the reparation system should be.

Obviously, the questions being posed extend far beyond the interests of automobile insurance and its regulation. Numerous groups are interested in the ultimate result. These include the policyholder, the claimants, the legal profession, the providers of medical services, insurers, agents, unions, etc. Because of the many groups involved, the extensive diversity within such groups, and the complexity of the issues involved, a wide range of conflicting attitudes and objectives exists. The NAIC, following a comprehensive background study by its Central Office staff, adopted a position statement which, among other things said that question of fault upon non fault "is an issue involving wide spread ramifications far beyond the traditional confines and insurance regulations . . .

" 'The decision as to whether the present system should be reformed is not a legal decision nor is it a statistical one; *it is a question of values.*'

"Thus the type of system adopted is a broad question of public policy.

"Thus NAIC, therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternative on a state-by-state basis."[2]

Our responsibility as regulators is a limited one. If private enterprise is chosen as the implementing mechanism (whether the third party legal system is retained, modified, or eliminated), our function would continue to be regulation in the interest of a sound, efficient, and equitable system on behalf of the insurance consuming public.

Incidentally, state insurance regulation has no vested interest in either eliminating or continuing the third party legal liability system for automobile insurance. We currently oversee both fault and no fault type coverages. What is ultimately in the best interest of the public is what we favor and support. The problem is determining what is ultimately in the public interest.

Let me add parenthetically that I personally favor the adoption of no fault laws on a state-by-state basis and that I think the need for such laws is of grave urgency.

---

[1] House Concurrent Resolution 241, 92nd Congress, 1st Sess. (1971).

[2] NAIC Statement of Position on Automobile Insurance, *Report of the Special Committee on Automobile Insurance Problems*, June 16, 1969, p. 17. The report was adopted by the NAIC in June 1969. In addition, the report contains the staff background study. A copy of the report is submitted for the record.

3. THE STATE-BY-STATE APPROACH

While we as insurance regulators will not be the ultimate arbiters as to what constitutes the most appropriate reparation system in terms of public policy objectives, we do occupy a unique vantage point for observing the existing system. State insurance departments regulate insurers, examine their operations, approve policy forms, review policyholder and claimholder complaints, and respond to all manner of consumer needs. Consequently, we have a continuing opportunity to closely observe the workings of the insurance mechanism and to do so from the public's viewpoint. Thus, in the sense, as well as from reviewing the studies made by the NAIC, DOT and individual insurance departments, we feel our observations will contribute to your deliberations.

The fault versus no fault concept poses numerous complex and difficult issues. Among the factors requiring primary consideration are finding a means to assure that payments are made promptly, that the distribution of claims payments is an equitable one, and that a greater percentage of each premium dollar is paid out to victims.

In addition, consideration must be given to: overlapping coverages and premiums, flexibility, and impact on rehabilitation. Implicit in these factors are conflicting attitudes and objectives. Public clamor over increased automobile insurance premiums has significantly added to the pressure for change. Proponents of no fault are urging that virtually all injuries be compensated regardless of fault. These are conflicting objectives—i.e. lower cost versus increased benefits. Thus a basic question becomes what benefits the public wants, what benefits the public is willing to forego, and what cost level the public is willing to accept.

The final report of the Department of Transportation, as well as Secretary Volpe's presentation, highlighted the multiplicity of options confronting us and the need for experimentation. For example, the report named six basic areas of consideration, each area involving numerous subconsiderations within itself: (1) the legal rule governing reparations, (2) the role of insurance, (3) the kinds of losses to be compensated, (4) private versus social insurance, (5) compulsory versus voluntary insurance, and (6) insurance and the loss minimization objectives.[3] Alternative approaches raised include (1) retain the status quo, (2) improve the present tort legal liability system (e.g. judicial reform, shift to comparative negligence, regulate contingency fees, etc.), (3) rely on evolutionary reform by combining fault and no fault coverages, (4) establish a total no fault system, and (5) utilize government insurance.[4]

In spite of the mass of research conducted, the general public has no clear concept of what is involved or the ramifications posed by the various alternative methods. The DOT report's section on public opinion makes this quite obvious:

"In general, these surveys indicate that *the public has mixed attitudes* about the performance of various aspects of the system, is generally ill-informed about the current system, and, on the whole, shows an openness to change when made aware of alternatives to the present system."[5] (Emphasis supplied)

In short, a clear and informed consensus has not yet emerged.

With these and other factors in mind, the NAIC has said:

"Because factors, concepts, values, and attitudes vary from locale to locale, this public policy decision can best be made on a state-by-state basis rather than at the federal level. This, in turn, affords the opportunity to test and experiment with different approaches on a limited basis. After a period of experience with different plans, the better solution(s) will emerge. *The NAIC, therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternatives on a state-by-state basis.* Whatever the system, the various state insurance regulators can regulate for the public interest most effectively because of the varied needs of a differing populace in the several states. *The public, by its responses to legislation and by the decisions it makes in the market place in accepting or rejecting various coverages and services offered, will ultimately settle the issue.*"[6] (Emphasis supplied)

This remains the judgment of the NAIC. Furthermore, it has been subsequently

[3] See DOT. *Motor Vehicle Crash Losses and their Compensation in the United States:* a Report to the President and Congress 101–111 (March 1971) (hereafter cited as the DOT Report).

[4] See *Id* at 112–127.

[5] *Id* at 81.

[6] NAIC Statement of Position, note 2 supra at 17.

Furthermore, to the extent that the purchasers of automobile insurance consider the relative insurance premiums attributable to damageability in purchasing their cars, the automobile insurance mechanism can contribute to driving those poorly designed cars out of the market and thereby reduce overall economic cost including that of insurance. This, of course, depends upon whether there is a corresponding rise—and to what extent—in cost of designing and manufacturing less damage prone cars and/or in personal injury damage.

Incidentally, it may be appropriate to note some of the factors insurance regulators will be watching as ratemaking based on damageability develops:

(1) Since most individual insurers are not large enough to develop credible statistics, they will find it necessary to pool their data in order to rate older models from real world experience. Insurance departments will be regulating this combining process to protect competition in rates.

(2) Insurance department personnel will be closely examining the results of the prescribed tests to satisfy themselves that there is jurisdiction for rating auto makes and models differently.

(3) Determining the susceptibility of new model cars to damage will require the use of advanced computer techniques. Since many insurers do not have the necessary facilities available they will be using data centrally determined. Departments will wish to satisfy themselves that this data is properly used.

(4) Ratemaking based on relative fragility will result in a different classification system. The departments will be watching these classifications closely to be certain they are equitable and that individual consumers are properly classified.

S. 976 attacks this overall problem head on by authorizing DOT to make tests, set minimum standards, make results available to insurers and regulators for ratemaking purposes, etc. The NAIC endorses the general concepts and objectives embodied in this bill. We would suggest, however, that the bill make explicit direction or authority for DOT to consult with both the insurance industry and the insurance regulators or a continuous basis so that the initial and future tests data compiled therefrom and other information will be developed in a form that is usable in automobile insurance ratemaking.

I would like to personally comment specifically on several provisions of S. 976 at this time:

(1) The provisions found in section 125 (b) and (c) are particularly significant and should be expanded to give the Secretary the widest possible powers and unquestioned authority to act in a direct and definitive manner.

(2) Section 127 is particularly important to insure regulators and I suggest that you amend the bill to provide for an official relationship between the Secretary and the State insurance commissioners in at least two areas: (*a*) the Secretary should be required to consult with representatives of the insurance commissioners from time to time and (*b*) the Secretary should be required to officially report his findings to the insurance commissioners of the various States.

I am confident that this kind of relationship will be welcomed by the commissioners and also that they will move rapidly to require implementation of rating techniques based on the damageability [illegible]

(3) Section 128 appears to also be a key section and I commend you for such a provision. It should be of great assistance in meeting consumer needs.

(4) The provision to section 501 that requires an independent system of automobile inspection, though idealistically sound, has a measure of impracticality involved in it in my opinion. To require the kind of expense involved in establishing the system contemplated in S. 976 is sure to generate enough opposition to stall if not stop the whole inspection program in many places.

I support your concept, but wonder if you shouldn't modify it to make the proposal more palatable and less expensive in order to receive the broadest support from the States.

I would also suggest there should be some official recognition made in the bill which would require that accident data collection systems be established to show the speed, the angle of impact, the frequency of automobile accidents, and other data which would be particularly important in determining the accuracy of the data which might be included in the damageability index.

In a very hurried way, Senator Moss, that concludes my formal testimony.

Senator Moss. Thank you, Mr. Worthington. I think we will have some questions.

I have to be absent for a short period of time.

Mr. Sutcliffe may have some questions while I am away and I will come back and follow up if there are some he didn't get to that I think ought to be in the record.

Moreover, I might suggest, since you have cooperated by summarizing that rather lengthy statement, it may be that after we have read it in full, we may want to submit a few questions to you, sending them to you in writing, to have you respond.

I am sure you would be glad to do that?

Mr. WORTHINGTON. We would have no objection to that, Senator, we would be pleased to.

Senator Moss. Thank you, and if you will excuse me, I will leave Mr. Sutcliffe here and ask if he has any questions he wants to ask in the interim.

Mr. SUTCLIFFE. Mr. Worthington, before we begin any questioning I want to ask whether or not the arrangement that Senator Moss suggested is satisfactory with you?

Mr. WORTHINGTON. I have no objection.

Mr. SUTCLIFFE. Thank you.

The argument that you pose, suggesting that the States be allowed to test various approaches certainly has some appeal from a theoretical standpoint. There are many unanswered questions in this area of considering automobile reform legislation. When you set about to experiment in the laboratory or in a State, do you need to have some guidelines as to the kind of experiment that should take place and the kinds of goals that you would hope would be met through the experimentation, particularly if you are trying to improve the present reparation system or do you think that it can just take place without that guideline, without that kind of direction, so in order to obtain the results of the experiment?

Could you comment generally on how you can undertake this on an experimental basis, assuming this is one of your arguments, and still end up with a valid experiment?

Mr. WORTHINGTON. I would be glad to.

To use as examples some proposals that are already before us, in Massachusetts they passed one form of a modified no-fault system. with some additional benefits. That plan is now in effect and we are seeing some interesting results. Not enough results are in yet to make a valid observation, I don't think, about the extent to which it meets the problems. But I think it is an excellent opportunity for us to gain some experience.

It is my understanding that in the State of Florida there is a very good opportunity that some form of no-fault bill will pass, which is much different than the one in Massachusetts.

Mr. SUTCLIFFE. Let me stop you right there, so I can understand.

I guess in any kind of experiment you will set it up and design it in such a fashion as to be able to test the results. Have the Massachusetts proponents of no-fault set up through their insurance regulatory mechanism or whatever a procedure whereby they can test the validity of their experiment, where they can get the information that would be useful from an experimental point of view, and if so, could you describe some of that for the committee?

Mr. WORTHINGTON. You are talking about——

Mr. SUTCLIFFE. Do you understand what I mean? In other words. you are saying there appears to be some beneficial results from an experimentation program in Massachusetts. What specifically has Massachusetts done to insure that the information which is coming out of Massachusetts about their plan has validity, measures costs, measures savings, measures redistribution of benefits to improve the problems highlighted in the Department of Transportation study?

Mr. WORTHINGTON. If you are asking was part of the program in Massachusetts a program that would require surveillance and analysis of statistics that might be developed to see how it works, I don't think that it was. There is no business, however, that I know of in the country, that generates more statistics and that has more adequate information about how it functions that are available to both the regulators and to the public, and my observation about the fact that it is providing some information that is interesting and shows it may be beneficial, is based on some of the statistics it has generated.

For example, one of the very interesting ones there has been the fact that there are fewer claims being filed now for physical damage.

Mr. SUTCLIFFE. We have had two explanations, you see. This is the reason I ask the question. Because if the approach to allowing for experimentation is going to be followed, then it seems to me that it is natural to ask what methods of collecting these statistics and validating those statistics are being provided.

We have been told by one group that the decrease in claims in the bodily injury area is a result of the constitutional test, and that the lawyers are simply holding back hoping that the constitutional challenge will be successful.

In another instance it has been explained to us that because of the unique situation in Massachusetts, many of the bodily injury claims reflected property damage claims, because it was a mandatory State.

Now it seems to me that if we set out to experiment on a State-by-State basis, apart from whether or not that is a practical possibility, this committee would like to know what assurances we will have that the results from those experiments will produce meaningful information to other States or to the Federal Government in its analysis of the reform.

Mr. WORTHINGTON. I think you are asking is there going to be some supervisory person to look at it to see whether there are meaningful results?

Mr. SUTCLIFFE. Or is the NAIC itself recommending this kind of procedure to the States?

Mr. WORTHINGTON. One of the functions which I currently serve in in the NAIC as chairman of a committee called the Committee on Profitability of Liability and Property Companies. This committee is attempting to look and see what sort of things go into the determination of rates for insurance companies and how much money is sent back to the consumer, how much is generated as a result of their investments. And this kind of committee function in the NAIC will very well, I am sure, sort out the actual statistical and practical profit and public interest items that will result from the experimentations in the various States.

So I think I can say unequivocably that the NAIC, if the States continue to experiment in this manner, will watch closely to see what happens.

We have discussed briefly about whether we should attempt to design a model bill. And it is not an official policy of the NAIC, but the officers have generally agreed that at this point we should not try to design a model bill, but that rather we should observe what the different States are doing and collect the data about the effectiveness of their operations, and after a period of time then put the portions of their program which seem to work most effectively into some model guidelines that could be used by the States that are interested.

Let me go on a little bit about the experimentation. I would say the New York proposal is different than any other State proposal. Illinois has a plan before its legislature.

Mr. SUTCLIFFE. Does it differ, because it suggested that it could be done at either the State or Federal level?

Mr. WORTHINGTON. No; I think it has a completely different thrust, for example, than the one in Illinois or Iowa, because it basically does away with the tort system.

Our proposal is to preserve it, but give first-party coverage in all instances and let the insurance companies subrogate. I have said in the past and would say again that though my plan in Iowa is substantially different from the one in New York, I would hope New York would adopt their bill and give us a chance to gain some experience as a result of its operation.

I would hope Iowa and Illinois would adopt their bills, so we can compare our experience too.

Mr. SUTCLIFFE. To that point then, what mechanism would you create to monitor the cost benefit differences between the Massachusetts plan and the Illinois or Iowa plans? The cost differences, for example, between an inter-insurer subrogation provision or a cost offset provision, differences between, in Massachusetts, the $500 medical payment

entry into the tort liability system and in Illinois, no entry provision, but a limitation on intangible loss recovery once tort is entered and an offset for any mandatory first-party coverages? How are we going to get the data to analyze that kind of difference?

Because if we are going to experiment, and the argument is we will learn from experimentation, it seems to me we have to be assured we will be able to get that kind of information back.

Mr. WORTHINGTON. I think I can assure you the NAIC in its normal functions will be gathering this data through the work of its committees, through the analysis of the reports that are filed now with the insurance departments, and which are, some of which are created by private organizations.

Mr. SUTCLIFFE. Is that information oriented toward answering the kinds of questions that are being asked now, or is it more oriented toward a business operation within the existing liability system focus?

Mr. WORTHINGTON. The data we would collect, I would anticipate, would be data that would answer the questions we wanted to ask.

Mr. SUTCLIFFE. So you would have to go through some kind of reformulation.

Mr. WORTHINGTON. If the standard reporting techniques we have now are not adequate, we can easily change them to make them adequate. What I am saying basically, I suppose, is that we think we have a system set up now which could gather the information. If it doesn't, then we can modify it.

Mr. SUTCLIFFE. Will you undergo an examination of that prior to the time of finding out that it doesn't produce the information? I mean are you presently engaged in analyzing your reporting system to make sure that it does the job or will you soon be engaged in that endeavor?

Mr. WORTHINGTON. As soon as we know whether or not the Congress is going to allow us to experiment, we will immediately begin the procedures to comply with the stewardship that you have given us. I think our past record in the past few years in the NAIC at least, is indicative of the fact we will do an adequate job.

Mr. SUTCLIFFE. As to a more basic question about the need for experimentation, how much experimentation was undertaken to test the postinsolvency assessment plans that you have advocated be adopted and have been quite successful in getting adopted in many jurisdictions in this country? When you promulgated that model bill how much experimentation with that system had been undertaken before you set it in concrete, so to speak?

Mr. WORTHINGTON. Before we promulgated our model bill I think there were some six or seven States which already had a form of insolvency fund or form of guarantee fund, and we drafted our bill based on the experience that those other States had had over the past years.

Mr. SUTCLIFFE. Those were all preassessment plans, were they not?

Mr. WORTHINGTON. No; there is a plan like the one in New Jersey, I think—or was it Maryland?—Michigan and California had adopted before our model postassessment plan. One of the things that led us to try the postassessment approach was the experience that they had had with the preassessment plans, and the experience with preassessment plans was such that we felt that was not the proper way to go.

Mr. SUTCLIFFE. You mentioned your organization also includes members of the territories of this country. I noted that with interest. Have you had an opportunity to receive the views of the regulatory authorities from Puerto Rico and had a chance to evaluate that particular experiment?

Mr. WORTHINGTON. The insurance commissioner from Puerto Rico regularly attends our meetings and participates in our committee functions, and he is very vocal about his experiences in Puerto Rico and feels that it is an excellent program for his territory. He is an active participant.

Mr. SUTCLIFFE. Have you come to any conclusions based upon the experience in Puerto Rico as to any recommendation the NAIC would make to States who are going to undertake experiments in reforming their automobile compensation system?

Mr. WORTHINGTON. I think it is too early to draw any valid conclusions about the Puerto Rican situation and recommend them to other States on an official basis. Obviously most of us that are interested in it are going to look closely at it because it is an operating one, just like we will the Massachusetts plan.

Senator MOSS. Thank you for excusing me for a short time, and I am sure Mr. Sutcliffe has had a number of questions that have occured to us in listening to your testimony. One thing I wanted to ask, Mr. Worthington, is, you referred in your statement to the danger of an ill-considered national program for insurance reform. Given the Department of Transportation's study and the extensive congressional hearings, do you really think this—it is ill considered to have a bill of this type before us now?

Mr. WORTHINGTON. I suppose if I were to give a definition of what I mean by ill considered it would have to be something like this, that any proposal which would change the system which has been in effect as long as the tort system has been in effect in the United States without some measure of experimentation or some trial of a new system on a national basis would have to by definition, be ill considered.

We are not indicating that you have not studied it long enough or that learned people have not given their opinions, but rather we are just saying that by the very extent of the enormity of the program it ought to be tried someplace before it is put forth for the whole country.

Senator MOSS. Well, I wonder about the parallel between automobile insurance and health insurance. The administration recommends the State regulation in automobile insurance but recommends a national system of health insurance; why should one be treated one way and the other the other?

Mr. WORTHINGTON. We are trying to help them become consistent, Senator.

Senator MOSS. Which way?

Mr. WORTHINGTON. In favor of the State.

Senator MOSS. I was, of course, pleased to note that you recognized that there needs to be changes and there was a great change going on in the industry. Isn't it true that it is less likely that you can get a change effected in all of the State legislatures? State legislators serve for a minimum period of time, and they are all employed in other lines of employment, and, as has been said, they are subject perhaps

to lobbying pressures more strongly than national legislators. Doesn't that argue against depending on the States to make the changes?

Mr. WORTHINGTON. I think not, Senator, for a couple of reasons. One is that in recent years in reference to insurance matters the States have responded quite well to the problems as they have been called to our attention. Mr. Sutcliffe mentioned a proposed national guarantee fund. Some 38 States have now adopted a form of proposals which would protect people from insolvencies of insurers in the period of 18 months. We have reason to believe that nearly all States will have this kind of proposal in short order. And this is while Congress is still deciding whether or not to do it. So we have acted really more rapidly than the Congress has in this matter.

When the problem of conglomerates dipping into the surplus of insurance companies became prevalent we began to draft a model bill to regulate insurance-holding companies so the conglomerates and insurance interests could not, without regulatory involvement, dip in and take surplus which had been made for the benefit of the policyholders.

Nearly all insurance-holding companies in the United States are now effectively regulated by the insurance-holding company bill. There are others where we have not been so successful, but where there has been a major national problem we have responded. And my testimony before you is such that again I want to restate that if the States do not act, I would be one of the first people to ask Congress to act. But I think that the States are bearing their stewardship responsibility in reference to insurance regulation adequately and resourcefully, and that only until it can be shown that they are not should you move in and act.

And the bill that is proposed would alter significantly the regulation of insurance other than providing the kind of benefits you want to provide. We think we can provide those same benefits in an expeditious manner without thrusting on people the kind of duplicatory, regulatory mechanism which would have to be imposed.

Senator MOSS. Doesn't this no-fault problem really extend beyond State lines? It is not confined to any particular area or any particular group. Isn't this then a major policy decision of the type that ought to be made on the national level by the National Congress?

Mr. WORTHINGTON. I do not think that it should necessarily. For example, if a person in Iowa were to buy a policy under the proposed Iowa plan and travel to Illinois, or travel to New York, or travel to Massachusetts or Florida, somewhere else that had a different kind of plan, it would be a relatively easy matter for the insurance carriers writing policies in any State to put riders on the policy that would give the people the coverage which would be necessary for whatever State they were driving in just like they have to do with Canada now. I do not think that the crossing of State lines is as significant a problem as it might be; it could be handled with relatively little complication and little administrative problem.

The people in rural States, for example, have many different kinds of problems than those that live in the urban centers of our country. And the no-fault insurance program which would be adequate and which would be meaningful to the people in rural Iowa, for example,

may not be adequate and may not be appropriate for the people living in Detroit or Manhattan or Los Angeles.

On the other side of the coin, if the bill is drafted to be in between both of them, it really meets neither of their needs. We think they need to be geared more definitely toward the people who will receive the benefits.

Senator Moss. Yes, but your rural resident of Iowa is not always driving around rural Iowa; he drives off to Chicago or Detroit or someplace like that.

Mr. WORTHINGTON. Right. I am saying it is a relatively easy administrative matter to include, as a provision of his policy, minimum coverage for whatever State he happens to be driving in. A man who commuted between one State and another State would obviously have an easy time getting his policy amended because that is something he would just have to have. The companies can do it with little difficulty. The regulators can assist them in this; we are experienced in that matter already because we do it in other areas.

Senator Moss. But if one State has a no-fault rule and his insurance is written for a State that does not have that but has the traditional tort requirement—what law is applied to him? He is driving in a no-fault State, but his insurance policy is not geared to that; can this be easily adapted?

Mr. WORTHINGTON. Yes; it would. He would have a policy obviously in the State he lives in, which would meet those rules. And there would be as a provision of that policy a rider that would say something to the effect that the provisions of this policy shall meet the minimum requirements for whatever State in which he may be involved in an accident, very simply.

Obviously the lawyers would make it longer and more complicated than that, but very simply that is what it would consist of. So if he were in a no-fault State and had an accident in a fault State, he would have the minimum requirements in that State.

Senator Moss. There might be a little problem in the rule of law they apply, the rule of proof and so on. But I acknowledge your view that it could be readily adapted.

We do appreciate your coming to testify before the committee and preparing such a well documented and full statement that will be a great addition to our record.

Thank you very much.

Thank you, gentlemen, for coming.

(The statement follows:)

STATEMENT OF LORNE R. WORTHINGTON, INSURANCE COMMISSIONER OF THE STATE OF IOWA, ON BEHALF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

My name is Lorne R. Worthington. Today I am appearing on behalf of the National Association of Insurance Commissioners, commonly referred to as the NAIC, both as the Insurance Commissioner of the State of Iowa and as President of the NAIC. Having its inception in and regular meetings since 1871, the NAIC is the oldest voluntary association of state officials. It includes the principal insurance regulatory authorities of the 50 states, the District of Columbia, and the territories of the United States.

I shall deal with each of the matters before your Committee separately and start by giving my comments on the Uniform Motor Vehicle Insurance Act and the Administration's proposed Concurrent Resolution.

to lobbying pressures more strongly than national legislators. Doesn't that argue against depending on the States to make the changes?

Mr. WORTHINGTON. I think not, Senator, for a couple of reasons. One is that in recent years in reference to insurance matters the States have responded quite well to the problems as they have been called to our attention. Mr. Sutcliffe mentioned a proposed national guarantee fund. Some 38 States have now adopted a form of proposals which would protect people from insolvencies of insurers in the period of 18 months. We have reason to believe that nearly all States will have this kind of proposal in short order. And this is while Congress is still deciding whether or not to do it. So we have acted really more rapidly than the Congress has in this matter.

When the problem of conglomerates dipping into the surplus of insurance companies became prevalent we began to draft a model bill to regulate insurance-holding companies so the conglomerates and insurance interests could not, without regulatory involvement, dip in and take surplus which had been made for the benefit of the policyholders.

Nearly all insurance-holding companies in the United States are now effectively regulated by the insurance-holding company bill. There are others where we have not been so successful, but where there has been a major national problem we have responded. And my testimony before you is such that again I want to restate that if the States do not act, I would be one of the first people to ask Congress to act. But I think that the States are bearing their stewardship responsibility in reference to insurance regulation adequately and resourcefully, and that only until it can be shown that they are not should you move in and act.

And the bill that is proposed would alter significantly the regulation of insurance other than providing the kind of benefits you want to provide. We think we can provide those same benefits in an expeditious manner without thrusting on people the kind of duplicatory, regulatory mechanism which would have to be imposed.

Senator MOSS. Doesn't this no-fault problem really extend beyond State lines? It is not confined to any particular area or any particular group. Isn't this then a major policy decision of the type that ought to be made on the national level by the National Congress?

Mr. WORTHINGTON. I do not think that it should necessarily. For example, if a person in Iowa were to buy a policy under the proposed Iowa plan and travel to Illinois, or travel to New York, or travel to Massachusetts or Florida, somewhere else that had a different kind of plan, it would be a relatively easy matter for the insurance carriers writing policies in any State to put riders on the policy that would give the people the coverage which would be necessary for whatever State they were driving in just like they have to do with Canada now. I do not think that the crossing of State lines is as significant a problem as it might be; it could be handled with relatively little complication and little administrative problem.

The people in rural States, for example, have many different kinds of problems than those that live in the urban centers of our country. And the no-fault insurance program which would be adequate and which would be meaningful to the people in rural Iowa, for example,

nay not be adequate and may not be appropriate for the people living n Detroit or Manhattan or Los Angeles.

On the other side of the coin, if the bill is drafted to be in between oth of them, it really meets neither of their needs. We think they eed to be geared more definitely toward the people who will receive he benefits.

Senator Moss. Yes, but your rural resident of Iowa is not always riving around rural Iowa; he drives off to Chicago or Detroit or omeplace like that.

Mr. WORTHINGTON. Right. I am saying it is a relatively easy administrative matter to include, as a provision of his policy, minimum overage for whatever State he happens to be driving in. A man who ommuted between one State and another State would obviously have n easy time getting his policy amended because that is something he ould just have to have. The companies can do it with little difficulty. he regulators can assist them in this; we are experienced in that atter already because we do it in other areas.

Senator Moss. But if one State has a no-fault rule and his insurance written for a State that does not have that but has the traditional rt requirement—what law is applied to him? He is driving in a no-ult State, but his insurance policy is not geared to that; can this be sily adapted?

Mr. WORTHINGTON. Yes; it would. He would have a policy obviously the State he lives in, which would meet those rules. And there ould be as a provision of that policy a rider that would say some-ing to the effect that the provisions of this policy shall meet the inimum requirements for whatever State in which he may be in-olved in an accident, very simply.

Obviously the lawyers would make it longer and more complicated an that, but very simply that is what it would consist of. So if he ere in a no-fault State and had an accident in a fault State, he would ave the minimum requirements in that State.

Senator Moss. There might be a little problem in the rule of law ey apply, the rule of proof and so on. But I acknowledge your view at it could be readily adapted.

We do appreciate your coming to testify before the committee and reparing such a well documented and full statement that will be a eat addition to our record.

Thank you very much.

Thank you, gentlemen, for coming.

(The statement follows:)

ATEMENT OF LORNE R. WORTHINGTON, INSURANCE COMMISSIONER OF THE STATE OF IOWA, ON BEHALF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

My name is Lorne R. Worthington. Today I am appearing on behalf of the ational Association of Insurance Commissioners, commonly referred to as the AIC, both as the Insurance Commissioner of the State of Iowa and as President the NAIC. Having its inception in and regular meetings since 1871, the NAIC the oldest voluntary association of state officials. It includes the principal surance regulatory authorities of the 50 states, the District of Columbia, and e territories of the United States.

I shall deal with each of the matters before your Committee separately and art by giving my comments on the Uniform Motor Vehicle Insurance Act and e Administration's proposed Concurrent Resolution.

1. THE ISSUE

The Uniform Motor Vehicle Insurance Act would create a federally mandated motor vehicle insurance system predicated on the no fault concept for bodily injury. The statute, among other things, would prescribe the minimum coverage which motorists would be required to purchase. In contrast, although the Administration has tentatively endorsed the no fault concept, it has concluded that "mere speculation without actual observation of experience with a new plan is an inadequate basis for massive, uniform national reform: and that the federal assumption of the current state regulatory authority over automobile insurance poses great issues and consequences and is highly undesirable."[1] The Administration recommends that solutions, built upon specified general principles, evolve at the state level to permit experimentation and testing of different approaches. *Thus the basic issue is joined—i.e. what is the most appropriate approach to test and/or implement the no fault concept.*

2. NAIC POSITION ON THE NO FAULT CONCEPT

At the outset, let me indicate the perspective from which the NAIC, as an association of state insurance regulators, views the fault versus no fault concept. The tort liability system is a legal system which is separate and distinct from the automobile insurance system. When the first automobile insurance policy was written prior to 1900, the fault concept was well embedded. The automobile insurance system, and the regulation thereof, of necessity, has in large part been engrafted on and molded by the broader legal environment in which it finds itself. As a consequence, automobile insurance was originally premised on the concept of protecting a person from economic disaster resulting from legal liability—by defending against claims and paying those adjudged to be valid. Only incidentally was the combination of the legal and insurance systems thought of in terms of providing reparation to the victim. In more recent years, there has been a shift in concept. Increasing attention has been focused on the plight of the victim. The inquiry now centers on how dependent upon fault the reparation system should be.

Obviously, the questions being posed extend far beyond the interests of automobile insurance and its regulation. Numerous groups are interested in the ultimate result. These include the policyholder, the claimants, the legal profession, the providers of medical services, insurers, agents, unions, etc. Because of the many groups involved, the extensive diversity within such groups, and the complexity of the issues involved, a wide range of conflicting attitudes and objectives exists. The NAIC, following a comprehensive background study by its Central Office staff, adopted a position statement which, among other things said that question of fault upon non fault "is an issue involving wide spread ramifications far beyond the traditional confines and insurance regulations . .

" 'The decision as to whether the present system should be reformed is not a legal decision nor is it a statistical one; *it is a question of values.*'

"Thus the type of system adopted is a broad question of public policy.

"Thus NAIC, therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternative on a state-by-state basis."[2]

Our responsibility as regulators is a limited one. If private enterprise is chosen as the implementing mechanism (whether the third party legal system is retained, modified, or eliminated), our function would continue to be regulation in the interest of a sound, efficient, and equitable system on behalf of the insurance consuming public.

Incidentally, state insurance regulation has no vested interest in either eliminating or continuing the third party legal liability system for automobile insurance. We currently oversee both fault and no fault type coverages. What is ultimately in the best interest of the public is what we favor and support. The problem is determining what is ultimately in the public interest.

Let me add parenthetically that I personally favor the adoption of no fault laws on a state-by-state basis and that I think the need for such laws is of great urgency.

---

[1] House Concurrent Resolution 241, 92nd Congress, 1st Sess. (1971).

[2] NAIC Statement of Position on Automobile Insurance, *Report of the Special Committee on Automobile Insurance Problems*, June 16, 1969, p. 17. The report was adopted by the NAIC in June 1969. In addition, the report contains the staff background study. A copy of the report is submitted for the record.

3. THE STATE-BY-STATE APPROACH

While we as insurance regulators will not be the ultimate arbiters as to what constitutes the most appropriate reparation system in terms of public policy objectives, we do occupy a unique vantage point for observing the existing system. State insurance departments regulate insurers, examine their operations, approve policy forms, review policyholder and claimholder complaints, and respond to all manner of consumer needs. Consequently, we have a continuing opportunity to closely observe the workings of the insurance mechanism and to do so from the public's viewpoint. Thus, in the sense, as well as from reviewing the studies made by the NAIC, DOT and individual insurance departments, we feel our observations will contribute to your deliberations.

The fault versus no fault concept poses numerous complex and difficult issues. Among the factors requiring primary consideration are finding a means to assure that payments are made promptly, that the distribution of claims payments is an equitable one, and that a greater percentage of each premium dollar is paid out to victims.

In addition, consideration must be given to: overlapping coverages and premiums, flexibility, and impact on rehabilitation. Implicit in these factors are conflicting attitudes and objectives. Public clamor over increased automobile insurance premiums has significantly added to the pressure for change. Proponents of no fault are urging that virtually all injuries be compensated regardless of fault. These are conflicting objectives—i.e. lower cost versus increased benefits. Thus a basic question becomes what benefits the public wants, what benefits the public is willing to forego, and what cost level the public is willing to accept.

The final report of the Department of Transportation, as well as Secretary Volpe's presentation, highlighted the multiplicity of options confronting us and the need for experimentation. For example, the report named six basic areas of consideration, each area involving numerous subconsiderations within itself: (1) the legal rule governing reparations, (2) the role of insurance, (3) the kinds of losses to be compensated, (4) private versus social insurance, (5) compulsory versus voluntary insurance, and (6) insurance and the loss minimization objectives.[3] Alternative approaches raised include (1) retain the status quo, (2) improve the present tort legal liability system (e.g. judicial reform, shift to comparative negligence, regulate contingency fees, etc.), (3) rely on evolutionary reform by combining fault and no fault coverages, (4) establish a total no fault system, and (5) utilize government insurance.[4]

In spite of the mass of research conducted, the general public has no clear concept of what is involved or the ramifications posed by the various alternative methods. The DOT report's section on public opinion makes this quite obvious:

"In general, these surveys indicate that *the public has mixed attitudes* about the performance of various aspects of the system, is generally ill-informed about the current system, and, on the whole, shows an openness to change when made aware of alternatives to the present system."[5] (Emphasis supplied)

In short, a clear and informed consensus has not yet emerged.

With these and other factors in mind, the NAIC has said:

"Because factors, concepts, values, and attitudes vary from locale to locale, this public policy decision can best be made on a state-by-state basis rather than at the federal level. This, in turn, affords the opportunity to test and experiment with different approaches on a limited basis. After a period of experience with different plans, the better solution(s) will emerge. *The NAIC, therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternatives on a state-by-state basis.* Whatever the system, the various state insurance regulators can regulate for the public interest most effectively because of the varied needs of a differing populace in the several states. *The public, by its responses to legislation and by the decisions it makes in the market place in accepting or rejecting various coverages and services offered, will ultimately settle the issue.*"[6] (Emphasis supplied)

This remains the judgment of the NAIC. Furthermore, it has been subsequently

[3] See DOT. *Motor Vehicle Crash Losses and their Compensation in the United States:* a Report to the President and Congress 101–111 (March 1971) (hereafter cited as the DOT Report).

[4] See *id* at 112–127.

[5] *Id* at 81.

[6] NAIC Statement of Position, note 2 supra at 17.

fortified by both Secretary Volpe's statement before the Senate Commerce committee [7] and by the DOT report which said:

"Moving in stages toward such a goal would allow us to test its virtues and discover its faults, thereby giving us new knowledge that could serve to modify the goal itself. A little observation is worth a great deal of speculation, and State experience with diverse plans will provide us with that opportunity for pilot project testing which must precede massive reform." [8]

Furthermore, Secretary Volpe said:

"First, it seems clear, at least to us, that *there remains much legitimate uncertainty about how far and how fast the public wants or is willing to go* in changing the reparations system. It is also clear that *there exists genuine and warranted concern as to the unknown and essentially unknowable price and cost implications of any major change in the system*, which of course would ultimately affect the cost and quality of service to consumers of insurance. Regulators and other responsible public officials would appear to share these feelings. We, ourselves, don't claim to have definite answers to these questions either. As a result, it seems to us that we should seek change through State action, but consistent with the broad outlines or principles of a system such as that described below. We need not and do not insist that a single reform system be imposed upon all the States. The experience of the States should have much to tell us about the most desirable final configuration of the motor vehicle reparations system." [9] (Emphasis supplied)

In brief, we simply don't know at this point what the answer or combinations of answers are. With all due respect to the advocates of the federal no-fault plan, we submit that no one knows the answers to these questions (and others which could be posed)—and until we do, no one knows what final form a national program should take.

4. CAVEATS ON FEDERAL MANDATED STANDARDS AND VOLUNTARY GUIDELINES

Secretary Volpe urged that change commence now and the Administration is supporting a joint concurrent resolution putting the states on notice that they are expected to resolve this problem within a reasonable period of time. We don't disagree that some change is needed, although the magnitude or direction of change is subject to intense debate.

a. *Immediate Uniform Massive Change is Premature.* At the one extreme the proposed Uniform Motor Vehicle Insurance Act would establish rigid statutory standards as to what must be in an automobile insurance policy. Such an approach has the practical effect of destroying flexibility and tends to freeze in limitations in coverage.[10] Perhaps even worse, the uniformity imposed would preclude the consuming public from the opportunity to register its choice over a meaningful period of time and thereby make the insurance mechanism responsible to the public's evolving concept as to the appropriate balance between benefits and costs.

b. *The Cost Factor.* No matter how hard we try, it is either impossible or foolhardy to ignore the ramifications of the cost of any given program or alternative. As the NAIC staff study pointed out:

"In appraising the worth of any system, a very important consideration is the cost of such system as compared to the cost of possible alternatives. Public clamor over increasing automobile insurance premium levels has significantly added to the pressure for change.

". . . the NAIC strongly supports efforts to reduce the cost of automobile insurance to the public to the extent that such reductions are consistent with other major objectives. It must be remembered that no program can meet all demands since the demands themselves are frequently in conflict. It is virtually impossible to pay more accident victims more dollars and reduce costs at the same time. Thus, whatever changes are recommended they should be evaluated with a view

[7] "Nor will I attempt to assess here the relative merits of all the various reform plans that have been offered as alternatives to the present system. In this thicket, there is plainly much less of a consensus; the complexity of the subject and its problems make possible an almost limitless number of combinations, permutations and variations of recovery rules, insurance coverages, etc." Statement of Secretary of Transportation John A. Volpe before the Senate Commerce Committee, March 18, 1971, p. 2.

[8] *DOT Report*, p. 133.

[9] Volpe's statement, note 7 supra at 3.

[10] The chief advantage of a standard policy is that it facilitates prior comparisons. In the past, uniform terms have often led to uniform and non-competitive prices. Competition in policy terms usually leads to more innovative contrasts and broader terms.

towards *the best balance possible between conflicting objectives and particularly between the objectives of increased benefits and cost savings.*"[11] (Emphasis supplied)

As the DOT report noted, "consumer attitudes about automobile insurance have shown its cost to lead all other concerns."[12] Consequently any program which does not afford the consumer an opportunity to relate the benefits he desires to the costs he must pay may create more public dissatisfaction than it eliminates.

This point is particularly relevant to a program such as automobile insurance whose costs are bound to increase. The DOT report has recognized:

"Perhaps the most pervasive influence upon automobile insurance as a public issue in recent years has been inflation."[13]

In effect, an automobile insurance company is a mass purchaser of a variety of goods and services such as medical, hospital, lawyer and court services, wage replacements, repair goods and services, etc. As the cost of these elements increase, the cost of insurance must do the same.[14]

"If such costs continue to inflate (and there is little reason to hope otherwise), initial cost savings resulting from changing the system would soon be forgotten and public frustration with costs would arise anew. This suggests that, while efficiencies in the system are important, drastic changes aimed at reducing premium levels (or lessening increases) may result in only temporary relief.[15]

Much of the American motoring public is being led to believe that no fault is a panacea, bringing with it broader coverage, payment in all cases, and lower costs. The idea that something must be given up in order to get something else back has not yet registered in many quarters. The passage of the proposed legislation, without a preliminary period of trial and error during which the public would become educated as to its advantages and disadvantages and would be able to relate its wants to its costs by choice in the free market, could set the stage for massive public disenchantment with all who were connected with its enactment.

The establishment of minimum mandatory benefits, such as those being discussed, in a federal statute poses far reaching, long-term ramifications. In fact, the same can be said, although perhaps to a lesser extent, as to the establishment of federal guidelines to which the states should strive since such guidelines would tend to become the minimum norm of consumers' expectations as to what they are "entitled to: by right."

If the cost of such benefits exceeds what the public is willing to pay, federal subsidies may be necessary and you should be prepared to recognize that potential need.

c. *Cause for Skepticism.* Though we don't question the conviction of the proponents of this proopsed federal act as to the rightness of their solution, past experience with massive federal programs entities us to voice some skepticism. For example, we launched into Medicare and Medicaid without an adequate exploration and testing to ascertain the cost implications; the impact on the delivery of health, etc. The program is now being devoured by expenses, the demand on medical facilities has skyrocketed, and now a few short years later persons are advocating scrapping these programs and launching into something else. In conjunction with national health plans it has been said:

"There must be a critical review not only of the estimated cost of such proposals but with the financing mechanisms as well as with the services which are expected to be provided. At the moment, in the rush to design these new proposals, it appears to be forgotten that the planners of Medicare and Medicaid grossly underestimated the cost of these programs. They also gave little heed to the existing shortage of health manpower and facilities which had been seriously aggravated by these new programs."[16]

This observation could apply with equal force to the proposals for federal automobile insurance reform. Forecasts as to the costs of this system are necessarily conjectural. It is only by a process of trial and error that the public will ascertain the true costs and only by experimental efforts at the state level can the best solution be found and earlier mistakes more readily rectified before they assume unmanageable proportions.

---

[11] NAIC Report, note 2 supra at 103.
[12] DOT Report at 138.
[13] *Id* at 61.
[14] E.g. over the past decade, doctors' fees and hospital daily service charges increased 58% and 155% respectively. *Id* at 61.
[15] NAIC report, note 2 supra 103.
[16] Wheatley, "Promises and Problems of National Health Insurance," an address before the American Pension Conference, N.Y., N.Y., March 1971.

This example, as well as other examples which could be named, is not cited in criticism of the results which were sought but rather as an example of what occurs when massive federal involvement and planning on a nationwide uniform basis in complex areas precedes or supersedes the market mechanism as an allocator of economic resources. Original concepts which were so convincingly put forth have often proved to be wrong, but the adverse consequences of the error have been "frozen in" over a period of time.

Let's avoid making a similar mistake as to automobile insurance, which involves 100 million automobile drivers and nearly all American families. This is the message Secretary Volpe is conveying when he emphasizes the need for experimentation. Certainly the Ontario Experience—where motorist rejected coverage combining the fault and no fault concepts put forth on a voluntary basis—should give one pause in mandating a fixed uniform standard on a nationwide basis.

d. *Federal Guidelines.* Although we support the state-by-state approach of the Administration, we do have reservations concerning the adoption of federal guidelines or objectives such as those in the proposed concurrent resolution. Such standards, in addition to the concern previously mentioned above as to the creation of certain expectations, tend to prejudge what the market place has not yet passed upon—e.g. the choice of an essentially no fault over a reformed fault system, the determination that automobile insurance should be the primary coverage, etc. Such standards tend to restrict the range in which proposed changes would fall and hence the range of consumer choice. This does not say that the choices implicit in the standards proposed are incorrect but rather they are premature. If there are to be minimum federal standards, we feel that broader standards which give greater meaning to experimentation should be adopted. The minimum criteria for any automobile insurance system as stated by the NAIC in its Statement of Position on Automobile Insurance could be a sample of the kind of federal standards that would be meaningful. [17] Nevertheless, a resolution by Congress expressing both the need and its will for prompt state action in exploring, testing and implementing improvements in the existing system would be an appropriate indication of the sense of Congress. This would serve notice on both the business and the states that progress is expected.

5. A TIME FOR CHANGE AND CURRENT MOMENTUM

All of this is not to argue for the status quo, nor to minimize the impact of the landmark DOT study, congressional hearings, academic works, state insurance departments' efforts and NAIC research. Quite to the contrary, each of these have significantly contributed to the emerging consensus that improvements are needed and have pointed out possible directions which should be considered and tested. Furthermore, the NAIC supports the Administration's position of recognizing not only the worth but the virtual necessity of a state-by-state approach until a clearer picture emerges as to the right answers—an answer which may vary from state to state or region to region.

To some proponents of the Uniform Motor Vehicle Insurance Act, the state-by-state approach is tantamount to doing nothing. This is incorrect. In addition to the "prod" from Congress in the form of a Congressional resolution, the states are receiving the same pressures for change that Congress receives. Few if any argue for the status quo. The basic research study is done. As of the early part of this month, we understand that no less than 28 states are now considering no fault or modified no fault legislation. (Other states have created study commissions. Some may be waiting to capitalize on the experimentation of others and others no doubt are waiting to see if Congress is going to preempt the field or give the states time to act.) The proposals range from the complete no

[17] "Whatever is decided as to the appropriate legal framework, the NAIC believes that any automobile insurance system should include as a minimum the following elements:

(*a*) ready access to insurance for all licensed drivers at prices which are reasonable with a means to purchase insurance through an assigned risk mechanism for those who cannot purchase it in the voluntary market.

(*b*) provision for prompt payment of basic economic loss and improved claims procedures.

(*c*) provision for protection from insolvencies, uninsured motorists and hit-and-run drivers, etc.

(*d*) meaningful classifications which are broad enough to spread risks and yet not so broad as to lessen availability of coverage.

(*e*) a responsive and meaningful pricing and marketing system.

(*f*) protection for the insured against arbitrary and unfair cancellation and nonrenewal.

(*g*) full disclosure of the nature of the coverage to the purchaser."

fault program of the American Automobile Insurance Association to those which primarily seek to improve the existing legal liability system such as the American Trial Lawyer's Reform package with all sorts of variations in between.

Secretary Volpe, in his statement before the Senate Commerce Committee said:

"Further change in the auto reparation system at the state level has clearly moved off dead center and would appear to be achieving some momentum. I could not have made that statement a year ago. I think this constructive move should be encouraged, perhaps guided and helped but not preempted by federal action." [13]

The activities mentioned above support the basis for the Secretary's beliefs and clearly demonstrate the heightened momentum. At this point, with so many different and sometimes conflicting ideas "floating around," and so much uncertainty as to what should be done, it is too early to predict what the states will and will not do. But events are moving sufficiently so, in our judgment, to warrant giving the states an adequate opportunity to act. If past experience is any guide, a variety of approaches will be tested and the best features of the various programs will emerge. At that point, the trend will be towards a more uniform system throughout the various states.

Of course, during the period of experimentation, we would be going through a phase when a number of different plans would be used in a number of different states. America is a mobile nation. Complications can be expected in the administration of a system as significant portions of the public journey across state lines. During this period, insurers operating across state borders will have to provide for the variation in coverage through appropriate endorsements. It will present some administrative problems for the insurers and regulatory problems for the states. But this is a small price to pay compared to the damage which could occur if an ill-considered national program was imposed upon the nation in one installment from the top.

6. FEDERAL REGULATORY INTERVENTION

Although most attention on the proposed Uniform Motor Vehicle Insurance Act has focused on the mandating of the no fault concept, the Act poses another fundamental issue—i.e. state versus federal regulation of automobile insurance. There can be no mistake as to the pervasive regulatory power vested in the Secretary of Transportation. For example, the Secretary would (1) determine and approve the financial substitutes for insurance (i.e. bonds, self insurance), (2) determine by rules and regulations the percentage of responsibility for net economic loss assigned to motor vehicles larger than ordinary passenger cars, (3) approve policy terms, conditions, exclusions, and deductibles, (4) promulgate a uniform statistical plan for compilation of claims and loss experience which every insurer must follow, (5) require standard uniform and standard minimal policy provisions, classes of risks, and rating territories, (6) prescribe rules and regulations under which insurers would submit premiums being charged for each class of risk in each rating territory, (7) make available a comparison of insurers' rates based upon claim and loss experience, (8) organize an assigned claims bureau in each state, and (9) make, amend, and repeal rules and regulations as he deems necessary.

Under existing state law, the insurance department possesses comprehensive regulatory authority over insurers doing business therein. For example, state regulation encompasses these elements: (1) the incorporation of companies qualifications, capital and surplus requirements, etc.), (2) the specification of required reserves, (3) the specifications of the areas in which insurance assets may be invested, (4) the approval of policy forms, (5) the supervision or monitoring of rates (for adequacy, excessiveness and non-discrimination), (6) the collection of statistics and the making of reports, (7) the examination of companies to determine if reserves are adequate, investments comply with the law, claim practices are satisfactory, etc., (8) the licensing and supervision of those who sell insurance, and (9) provision for residual coverages such as the assigned risk plans.

The regulatory overlap is substantial and clear. Confusion, waste, an increasingly complex system, and extra cost to the taxpayer in administering the automobile insurance is bound to result. We submit that such a dual system is not in the public interest.

[13] Volpe's statement, note 7 supra at 4.

This example, as well as other examples which could be named, is not cited in criticism of the results which were sought but rather as an example of what occurs when massive federal involvement and planning on a nationwide uniform basis in complex areas precedes or supersedes the market mechanism as an allocator of economic resources. Original concepts which were so convincingly put forth have often proved to be wrong, but the adverse consequences of the error have been "frozen in" over a period of time.

Let's avoid making a similar mistake as to automobile insurance, which involves 100 million automobile drivers and nearly all American families. This is the message Secretary Volpe is conveying when he emphasizes the need for experimentation. Certainly the Ontario Experience—where motorist rejected coverage combining the fault and no fault concepts put forth on a voluntary basis—should give one pause in mandating a fixed uniform standard on a nationwide basis.

d. *Federal Guidelines.* Although we support the state-by-state approach of the Administration, we do have reservations concerning the adoption of federal guidelines or objectives such as those in the proposed concurrent resolution. Such standards, in addition to the concern previously mentioned above as to the creation of certain expectations, tend to prejudge what the market place has not yet passed upon—e.g. the choice of an essentially no fault over a reformed fault system, the determination that automobile insurance should be the primary coverage, etc. Such standards tend to restrict the range in which proposed changes would fall and hence the range of consumer choice. This does not say that the choices implicit in the standards proposed are incorrect but rather they are premature. If there are to be minimum federal standards, we feel that broader standards which give greater meaning to experimentation should be adopted. The minimum criteria for any automobile insurance system as stated by the NAIC in its Statement of Position on Automobile Insurance could be a sample of the kind of federal standards that would be meaningful. [17] Nevertheless, a resolution by Congress expressing both the need and its will for prompt state action in exploring, testing and implementing improvements in the existing system would be an appropriate indication of the sense of Congress. This would serve notice on both the business and the states that progress is expected.

5. A TIME FOR CHANGE AND CURRENT MOMENTUM

All of this is not to argue for the status quo, nor to minimize the impact of the landmark DOT study, congressional hearings, academic works, state insurance departments' efforts and NAIC research. Quite to the contrary, each of these have significantly contributed to the emerging consensus that improvements are needed and have pointed out possible directions which should be considered and tested. Furthermore, the NAIC supports the Administration's position of recognizing not only the worth but the virtual necessity of a state-by-state approach until a clearer picture emerges as to the right answers—an answer which may vary from state to state or region to region.

To some proponents of the Uniform Motor Vehicle Insurance Act, the state-by-state approach is tantamount to doing nothing. This is incorrect. In addition to the "prod" from Congress in the form of a Congressional resolution, the states are receiving the same pressures for change that Congress receives. Few if any argue for the status quo. The basic research study is done. As of the early part of this month, we understand that no less than 28 states are now considering no fault or modified no fault legislation. (Other states have created study commissions. Some may be waiting to capitalize on the experimentation of others and others no doubt are waiting to see if Congress is going to preempt the field or give the states time to act.) The proposals range from the complete no

[17] "Whatever is decided as to the appropriate legal framework, the NAIC believes that any automobile insurance system should include as a minimum the following elements:

(a) ready access to insurance for all licensed drivers at prices which are reasonable with a means to purchase insurance through an assigned risk mechanism for those who cannot purchase it in the voluntary market.

(b) provision for prompt payment of basic economic loss and improved claims procedures.

(c) provision for protection from insolvencies, uninsured motorists and hit-and-run drivers, etc.

(d) meaningful classifications which are broad enough to spread risks and yet not so broad as to lessen availability of coverage.

(e) a responsive and meaningful pricing and marketing system.

(f) protection for the insured against arbitrary and unfair cancellation and nonrenewal.

(g) full disclosure of the nature of the coverage to the purchaser."

fault program of the American Automobile Insurance Association to those which primarily seek to improve the existing legal liability system such as the American Trial Lawyer's Reform package with all sorts of variations in between.

Secretary Volpe, in his statement before the Senate Commerce Committee said:

"Further change in the auto reparation system at the state level has clearly moved off dead center and would appear to be achieving some momentum. I could not have made that statement a year ago. I think this constructive move should be encouraged, perhaps guided and helped but not preempted by federal action." [15]

The activities mentioned above support the basis for the Secretary's beliefs and clearly demonstrate the heightened momentum. At this point, with so many different and sometimes conflicting ideas "floating around," and so much uncertainty as to what should be done, it is too early to predict what the states will and will not do. But events are moving sufficiently so, in our judgment, to warrant giving the states an adequate opportunity to act. If past experience is any guide, a variety of approaches will be tested and the best features of the various programs will emerge. At that point, the trend will be towards a more uniform system throughout the various states.

Of course, during the period of experimentation, we would be going through a phase when a number of different plans would be used in a number of different states. America is a mobile nation. Complications can be expected in the administration of a system as significant portions of the public journey across state lines. During this period, insurers operating across state borders will have to provide for the variation in coverage through appropriate endorsements. It will present some administrative problems for the insurers and regulatory problems for the states. But this is a small price to pay compared to the damage which could occur if an ill-considered national program was imposed upon the nation in one installment from the top.

6. FEDERAL REGULATORY INTERVENTION

Although most attention on the proposed Uniform Motor Vehicle Insurance Act has focused on the mandating of the no fault concept, the Act poses another fundamental issue—i.e. state versus federal regulation of automobile insurance. There can be no mistake as to the pervasive regulatory power vested in the Secretary of Transportation. For example, the Secretary would (1) determine and approve the financial substitutes for insurance (i.e. bonds, self insurance), (2) determine by rules and regulations the percentage of responsibility for net economic loss assigned to motor vehicles larger than ordinary passenger cars, (3) approve policy terms, conditions, exclusions, and deductibles, (4) promulgate a uniform statistical plan for compilation of claims and loss experience which every insurer must follow, (5) require standard uniform and standard minimal policy provisions, classes of risks, and rating territories, (6) prescribe rules and regulations under which insurers would submit premiums being charged for each class of risk in each rating territory, (7) make available a comparison of insurers' rates based upon claim and loss experience, (8) organize an assigned claims bureau in each state, and (9) make, amend, and repeal rules and regulations as he deems necessary.

Under existing state law, the insurance department possesses comprehensive regulatory authority over insurers doing business therein. For example, state regulation encompasses these elements: (1) the incorporation of companies (qualifications, capital and surplus requirements, etc.), (2) the specification of required reserves, (3) the specifications of the areas in which insurance assets may be invested, (4) the approval of policy forms, (5) the supervision or monitoring of rates (for adequacy, excessiveness and non-discrimination), (6) the collection of statistics and the making of reports, (7) the examination of companies to determine if reserves are adequate, investments comply with the law, claim practices are satisfactory, etc., (8) the licensing and supervision of those who sell insurance, and (9) provision for residual coverages such as the assigned risk plans.

The regulatory overlap is substantial and clear. Confusion, waste, an increasingly complex system, and extra cost to the taxpayer in administering the automobile insurance is bound to result. We submit that such a dual system is not in the public interest.

[15] Volpe's statement, note 7 supra at 4.

In this connection, it should be pointed out that the DOT report recognized that:

". . . the basic determinant of the size and nature of the compensation requirement, i.e., car crash losses, is almost entirely, if not completely, a function of outside forces—traffic law enforcement, safety measure, car design, driver licensing and education, highway design, etc. Loss costs, themselves, reflect the prices being charged in the market place for hospital and medical care, auto repair and replacement parts, legal services, the cost of vehicles, etc., and they, too, cannot be significantly influenced, at least directly, by the compensation mechanism." [19]

The NAIC earlier reached the same conclusion.

"(Traffic safety or the absence thereof, the economic climate within which automobile insurance functions and the legal system upon which it rests) have a fundamental impact on the cost and the operation of the automobile insurance system despite the fact that they are external to the system and not subject to that system's control. Nevertheless they comprise the framework within which the system functions. Although the insurance system has its defects, some of the basic problems are caused externally and can only be remedied outside the system. Congress, various federal agencies and administrations, the judicial system, the providers of medical services, the automotive industry, state activity or lack thereof in traffic safety, etc., all have contributed to the basic problems." [20]

Thus the insurance industry and the regulators thereof have had to function in a legal, social and economic environment not of its own choosing. The problems stemming from this environment should not be translated into discarding those operating within it as long as they commit themselves to adjust to a new environment when it comes about. The DOT report, at the outset, made this same point:

"The conclusions made about the present system and its operations should not be interpreted to reflect adversely on any of the participants. The subject under investigation was in fact the 'system' and not those who have tried to make it run and improve it. The conclusions are directed to the system." [21]

Furthermore, the Administration in the proposed resolution stated that "the principal problems and abuses with respect to automobile insurance stem from the defects in the system for compensating accident victims . . . rather than from defects in the insurance institution or in its regulation by the several states . . ." Consequently, shifting to a federal regulatory mechanism (even if federal guidelines or objectives are adopted) is not warranted nor recommended by the comprehensive studies made. As indicated earlier, the state insurance regulating mechanism has no vested interest other than its commitment to meeting the public needs in the extent to which the tort liability system is modified or eliminated. We regulate the providing of insurance now and can continue to do so on either a fault or no fault basis on either basis.

7. A PRACTICAL NOTE

As has been aptly pointed out elsewhere and referred to in this statement, inflation has been the prime cause in rate increases. Thus the basic responsibility for the problem generated rests in Washington. Public expenditures, increase in governmental activities, deficits, monetary policy, taxation, etc., all (with the exception of monetary policy) under the control of Congress largely determines the presence or absence of inflation.

This is not to say that improvements cannot or should not be made in the insurance mechanism at the state level. They should be made and they are being made. But the respite will only be temporary if inflation continues to take its inexorable toll. Efforts by Congress to deal with inflation, often hampered by political considerations, have not been effective thus far and there is national pessimism about the likelihood of any improvement in the picture.

SUMMARY—MASS MARKETING OF AUTOMOBILE INSURANCE

To summarize, the initial draft of the NAIC staff study on mass marketing suggests:

1. that insurance consuming public ought to be afforded the freedom of choice.
2. that pressures and events are moving in this direction now.

In addition, I personally believe:

1. that federal legislation of this type, if adopted, needs to be carefullly considered so as to: a) adequately protect the total insurance buying public and at the same time not create burdensome and conflicting regulatory machinery

[19] *DOT Report*, p. iv.

[20] *Report of the NAIC Special Committee on Automobile Insurance Problems*, 15 (June 1969).

[21] DOT Report, p. iv.

and b) avoid preemption or to take precedence over state actions that may encourage experimental and pilot programs.

2. that S. 946 has some inherent defects working at cross purposes to the achieving of the basic objective of providing the insurance consuming public with a free choice within a responsible insurance market and that before adoption of such an Act you should correct the defects.

SUMMARY—DAMAGEABILITY STATEMENT

In summary, the NAIC believes that auto insurance ratemaking based on relative susceptibility to property damage in an accident, if perfected, offers a significant contribution to *equitable distribution of rates* among insureds and anticipates that a program such as one embraced by S. 976, whether enacted at the Federal or state level, offers significant potential for cost relief to automobile owners and policyholders.

Senator Moss. Mr. Peter Beardsley, vice president and general counsel of the American Trucking Association will be our witness now.

We will be glad to hear from you, Mr. Beardsley.

STATEMENT OF PETER T. BEARDSLEY, VICE PRESIDENT AND GENERAL COUNSEL, AMERICAN TRUCKERS ASSOCIATION

Mr. BEARDSLEY. Thank you, Senator.

Senator MOSS. We will make your full statement a part of the record, and you may proceed in whatever manner you care to.

Mr. BEARDSLEY. All right, Senator. When I get to some of the statistical figures, I will refer to them, but not read them in.

Senator MOSS. Thank you. That will be very acceptable.

Mr. BEARDSLEY. My name is Peter T. Beardsley, and I am a vice president, and the general counsel of American Trucking Associations, Inc. Our organization is the national trade association of the motor carrier industry. It represents all types of motor carriers, and has affiliated associations in every State and the District of Columbia. Its office is located at 1616 P Street NW., Washington, DC 20036.

As a part of our activities, we often take a position before Congress respecting proposals which, if enacted, would have a significant impact upon the trucking industry. Ordinarily, such proposals are the same as, or very similar to, others which have preceded them, or propose amendments to existing laws with which we are familiar.

We confess to a lack of familiarity, however, with no-fault insurance, if for no other reason than that the subject itself—at least in the form of proposed legislation—is relatively new. We assume that no-fault means essentially that regardless of the degree of negligence exhibited by the various drivers involved in an accident, each of them would be paid by his insurer for his net economic loss as that term is defined in S. 945.

Based on that assumption, we take no position at this time respecting the no-fault principle as such.

We believe that in view of the every substantial change which this bill proposes in the field of motor-vehicle accident insurance, it would be wise before seriously considering its enactment to await the results of experience under State no-fault laws such as that which recently became effective in Massachusetts, and those of other States which may be enacted.

In any event, S. 945 is not, in any practical sense, no-fault insofor as the trucking industry is concerned, and we have no alternative but to oppose it for that reason. If the bill were amended along the

In this connection, it should be pointed out that the DOT report recognized that:

". . . the basic determinant of the size and nature of the compensation requirement, i.e., car crash losses, is almost entirely, if not completely, a function of outside forces—traffic law enforcement, safety measure, car design, driver licensing and education, highway design, etc. Loss costs, themselves, reflect the prices being charged in the market place for hospital and medical care, auto repair and replacement parts, legal services, the cost of vehicles, etc., and they, too, cannot be significantly influenced, at least directly, by the compensation mechanism." [19]

The NAIC earlier reached the same conclusion.

"(Traffic safety or the absence thereof, the economic climate within which automobile insurance functions and the legal system upon which it rests) have a fundamental impact on the cost and the operation of the automobile insurance system despite the fact that they are external to the system and not subject to that system's control. Nevertheless they comprise the framework within which the system functions. Although the insurance system has its defects, some of the basic problems are caused externally and can only be remedied outside the system. Congress, various federal agencies and administrations, the judicial system, the providers of medical services, the automotive industry, state activity or lack thereof in traffic safety, etc., all have contributed to the basic problems." [20]

Thus the insurance industry and the regulators thereof have had to function in a legal, social and economic environment not of its own choosing. The problems stemming from this environment should not be translated into discarding those operating within it as long as they commit themselves to adjust to a new environment when it comes about. The DOT report, at the outset, made this same point:

"The conclusions made about the present system and its operations should not be interpreted to reflect adversely on any of the participants. The subject under investigation was in fact the 'system' and not those who have tried to make it run and improve it. The conclusions are directed to the system." [21]

Furthermore, the Administration in the proposed resolution stated that "the principal problems and abuses with respect to automobile insurance stem from the defects in the system for compensating accident victims . . . rather than from defects in the insurance institution or in its regulation by the several states . . ." Consequently, shifting to a federal regulatory mechanism (even if federal guidelines or objectives are adopted) is not warranted nor recommended by the comprehensive studies made. As indicated earlier, the state insurance regulating mechanism has no vested interest other than its commitment to meeting the public needs in the extent to which the tort liability system is modified or eliminated. We regulate the providing of insurance now and can continue to do so on either a fault or no fault basis on either basis.

7. A PRACTICAL NOTE

As has been aptly pointed out elsewhere and referred to in this statement, inflation has been the prime cause in rate increases. Thus the basic responsibility for the problem generated rests in Washington. Public expenditures, increase in governmental activities, deficits, monetary policy, taxation, etc., all (with the exception of monetary policy) under the control of Congress largely determines the presence or absence of inflation.

This is not to say that improvements cannot or should not be made in the insurance mechanism at the state level. They should be made and they are being made. But the respite will only be temporary if inflation continues to take its inexorable toll. Efforts by Congress to deal with inflation, often hampered by political considerations, have not been effective thus far and there is national pessimism about the likelihood of any improvement in the picture.

SUMMARY—MASS MARKETING OF AUTOMOBILE INSURANCE

To summarize, the initial draft of the NAIC staff study on mass marketing suggests:

1. that insurance consuming public ought to be afforded the freedom of choice.
2. that pressures and events are moving in this direction now.

In addition, I personally believe:

1. that federal legislation of this type, if adopted, needs to be carefully considered so as to: a) adequately protect the total insurance buying public and at the same time not create burdensome and conflicting regulatory machinery

[19] *DOT Report*, p. iv.

[20] *Report of the NAIC Special Committee on Automobile Insurance Problems*, 15 (June 1969).

[21] DOT Report, p. iv.

and b) avoid preemption or to take precedence over state actions that may encourage experimental and pilot programs.

2. that S. 946 has some inherent defects working at cross purposes to the achieving of the basic objective of providing the insurance consuming public with a free choice within a responsible insurance market and that before adoption of such an Act you should correct the defects.

SUMMARY—DAMAGEABILITY STATEMENT

In summary, the NAIC believes that auto insurance ratemaking based on relative susceptibility to property damage in an accident, if perfected, offers a significant contribution to *equitable distribution of rates* among insureds and anticipates that a program such as one embraced by S. 976, whether enacted at the Federal or state level, offers significant potential for cost relief to automobile owners and policyholders.

Senator Moss. Mr. Peter Beardsley, vice president and general counsel of the American Trucking Association will be our witness now.

We will be glad to hear from you, Mr. Beardsley.

STATEMENT OF PETER T. BEARDSLEY, VICE PRESIDENT AND GENERAL COUNSEL, AMERICAN TRUCKERS ASSOCIATION

Mr. BEARDSLEY. Thank you, Senator.

Senator Moss. We will make your full statement a part of the record, and you may proceed in whatever manner you care to.

Mr. BEARDSLEY. All right, Senator. When I get to some of the statistical figures, I will refer to them, but not read them in.

Senator Moss. Thank you. That will be very acceptable.

Mr. BEARDSLEY. My name is Peter T. Beardsley, and I am a vice president, and the general counsel of American Trucking Associations, Inc. Our organization is the national trade association of the motor carrier industry. It represents all types of motor carriers, and has affiliated associations in every State and the District of Columbia. Its office is located at 1616 P Street NW., Washington, DC 20036.

As a part of our activities, we often take a position before Congress respecting proposals which, if enacted, would have a significant impact upon the trucking industry. Ordinarily, such proposals are the same as, or very similar to, others which have preceded them, or propose amendments to existing laws with which we are familiar.

We confess to a lack of familiarity, however, with no-fault insurance, if for no other reason than that the subject itself—at least in the form of proposed legislation—is relatively new. We assume that no-fault means essentially that regardless of the degree of negligence exhibited by the various drivers involved in an accident, each of them would be paid by his insurer for his net economic loss as that term is defined in S. 945.

Based on that assumption, we take no position at this time respecting the no-fault principle as such.

We believe that in view of the every substantial change which this bill proposes in the field of motor-vehicle accident insurance, it would be wise before seriously considering its enactment to await the results of experience under State no-fault laws such as that which recently became effective in Massachusetts, and those of other States which may be enacted.

In any event, S. 945 is not, in any practical sense, no-fault insofor as the trucking industry is concerned, and we have no alternative but to oppose it for that reason. If the bill were amended along the

lines of H.R. 7514, introduced by Chairman Moss of the Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce, we would find it much less objectionable.

We take no position on S. 946 or S. 947, or the resolution proposed by Secretary Volpe in his testimony before this committee on March 18, 1971, which is, I believe, Senate Concurrent Resolution 23.

Senator Moss. Yes.

Mr. BEARDSLEY. The interstate motor carriers subject to economic regulation by the Interstate Commerce Commission, and safety regulation by the Department of Transportation, fall into several categories. Over 15,000 for-hire carriers—common and contract—are subject to both economic and safety regulations.

There are additional thousands of for-hire carriers—mostly transporters of agricultural commodities—which are subject to safety regulation by DOT but exempt from ICC economic regulation. It is on behalf of the regulated carriers, rather than the exempt carriers that this statement is filed.

ATA also represents the interests of numerous private carriers of property through their membership in one or more of the ATA-affiliated State trucking associations, and this statement is filed on their behalf, too.

The trucking industry's concern for highway safety originated in a natural, humanitarian desire to reduce the tragedy of death and injury in traffic, and in a determination to improve the reputation of the industry as a safe, courteous partner on the road.

In addition, there is a business incentive for maintaining an extensive safety program. The millions of trucks of all kinds in daily use on streets and highways are constantly exposed to accident-producing situations which can result in loss or damage to other highway users, to industry drivers and vehicles, and to customer freight.

Such accidents have the potential of putting any motor carrier out of business because of the extremely high costs that are incurred through civil suits, workmen's compensation, vehicle repairs, and freight claims. Those costs are direct expenses to the carrier, regardless of the amount of its insurance coverage as truck insurance is written on a retrospective basis so that the premium for a given year is raised or lowered to reflect the accident cost experience for the previous year.

The loss potential faced by truck fleets and the retrospective method of rating insurance have been incentives for the conduct of carefully planned programs to prevent accidents.

Industry experience shows that driver selection is the key to the entire safety program, and so trucking companies try to insure that they do not "Hire their problems." In employment interviews and reference checks of prospective drivers, personnel officials use nationally approved guidelines which prescribe rigorous qualifications. Past employment, credit background, and traffic record are among the factors explored to determine an applicant's reliability, attitude, and willingness to accept responsibility for his vehicle and cargo, and for the welfare of other highway users.

The industry's driver selection program had its beginnings in the 1920's and was adopted as a national standard in 1940. In the 195[illegible]'s it was further improved through an industry-sponsored study by the School of Public Health of Harvard University which was designed to provide more information about driver motivation.

After being hired, a driver trainee receives detailed classroom instruction in company policies, traffic regulations, safety requirements, knowledge of the vehicle, and techniques for safe driving.

To develop driving proficiency, he undergoes a lengthly probationary period starting with student trips in the company of an experienced driver. He learns how to handle smaller trucks at first, and eventually may drive an intercity tractor-trailer rig.

Throughout his employment, industry and fleet supervision is provided through road patrols, radar checks, safety meetings and conferences, and the use of recording devices and check stations.

The professional truckdriver is required to allow the code of defensive driving, which places responsibility upon him to drive in such a way that he commits no driving errors himself, and can protect himself against the mistakes of other drivers.

If he is involved in an accident his company rules the accident as preventable, or nonpreventable. A preventable accident is one in which the truck driver did not take every possible step to prevent the accident, regardless of whether or not he was legally in the right, and the other driver was legally wrong.

Under this concept of preventability the driver's attitudes and actions are brought under close scrutiny and control by the company, so that the driver who develops poor attitudes or poor driving habits is quickly retrained or released from employment.

The effectiveness of the industry's programs is reflected in the following National Safety Council accident figures:

	Percent of trucks involved in accidents	Truck percent of registered vehicles	Percent of cars involved in accidents	Car percent of registered vehicles
Year:				
1948	17.0	18.0	80.0	81.0
1969	11.5	16.6	88.1	80.8

These figures are taken from the National Safety Council's publication Accident Facts, 1949 and 1970 editions, pages 66 and 56, respectively. They demonstrate that the truck record for accident involvement has improved substantially over the period shown, whereas that of the passenger car has gotten worse.

The figures shown do not reflect mileage driven. When this factor is considered, the truck record is significantly better than that of the passenger cars. This is demonstrated by the following figures:

Intercity fleets: Total truck mileage	12,460,796,451
(Class I and II). (Ratio: 3.15 trucks involved per million miles): Total trucks involved in accidents	39,302
All trucks (ratio: 14.9 trucks involved per million miles):	
Total truck mileage	206,680,000,000
Total trucks involved in accidents	3,075,000
All passenger cars (Ratio: 26.8 passenger cars involved per million miles):	
Total passenger car mileage	849,633,000,000
Total cars involved in accidents	22,800,000

The class I and II trucks referred to in the first category are those for-hire vehicles subject to economic regulation by the Interstate Commerce Commission, and safety regulation by the Department of

Transportation. The mileage and accident figures are obtained from the pamphlet, "1969 Accidents of Large Motor Carriers of Property," Bureau of Motor Carrier Safety, Department of Transportation.

A class I carrier is one whose annual gross operating revenue is $1 million or more. A class II carrier is one whose annual gross operating revenue is $300,000, but less than $1 million. The second category "all trucks," covers just that. It includes, for example, farm trucks, trucks operated by the Federal Government, as well as a very large number of trucks not subject to economic regulation by the ICC, but subject to DOT safety regulation.

The mileage figures for both the second and third categories are those of the Department of Transportation—Highway Statistics, 1969, table VM-1, page 73—and the accident figures are those of the National Safety Council—Accident Facts, 1970 edition, page 56. 1969 figures are used, as they are the latest available from all sources.

The effect of the industry's safety programs has been to enable motor carriers to significantly reduce the heavy costs of accident involvement. But even though the carriers have done an outstanding job of controlling their vehicles and drivers, there are still a large number of truck accidents each year that are caused by others. A study by American Fidelity and Casualty Co. of truck-involved accidents in the 1950's showed that in 104,000 accidents with other vehicles, truckdrivers could not in any way have prevented 70 percent of them.

Over the years, the trucking industry has been in the forefront of highway user groups which have made a consistent and conscientious effort to reduce their contribution to highway accidents. That effort has involved the expenditure of large sums of money and a great deal of time and work.

Now it is proposed that the cost of highway accidents be assigned, not to those responsible for them, but to all highway users, without regard to their driving habits, or their concern for their own welfare, or that of other users of the road.

If there is to be a shift to a no-fault basis, we submit that if any segment of highway users should be singled out for favored treatment, it should be the motor carriers. But instead of being rewarded for their successful efforts to reduce highway accidents, S. 945 would subject them to discriminatory treatment.

We don't ask for favors, but we do ask for fair treatment. If the law is to provide that, except for catastrophic loss, no driver involved in an accident is to be considered responsible for it, the same rule should apply with respect to drivers of commercial vehicles.

There is certainly no equity in arbitrarily assigning to such vehicles a very high percentage of the costs resulting from any accident in which it is involved. The proposal is indeed a paradox—on the one hand, operators of commercial vehicles are told that no matter how negligent automobile drivers may be, they bear no responsibility when then cause an accident in which the operator's trucks are involved, but the truckowners will be assessed a major share of the cost resulting from the very same accidents. Technically, this may be no-fault insurance; practically, it is insurance which arbitrarily assigns a great majority of the blame and cost to operators of commercial vehicles involved in accidents.

Under the current fault system of compensating for accident losses, motor carriers usually bear all or part of the accident costs if their driver contributed in any degree to an accident. However, the system quite often protects the carriers when other drivers are totally responsible. Thus the present system provides incentive to the carriers to continue their programs of careful driver selection, training, and supervision, and it keeps insurance costs at a point which the carriers can afford and still stay in business.

To the contrary, section 5(7)(A) and (B) of S. 945 would hold motor carriers uniformly liable for a large percentage of all property damage and personal injury regardless of whether or not their trucks were actually responsible for accidents. This would result in discrimination against trucks because, through millions of miles of operation, they are constantly exposed to accidents resulting from the driving errors of others.

The truckdriver is a skilled professional who must meet strict physical requirements every 2 years and who is limited to a maximum of 10 hours of driving in any one duty period. The vehicle he operates is a highly sophisticated machine that is the subject of regularly scheduled inspections and preventive maintenance. Yet, on the highway, he is exposed to drivers who have varying degrees of ability and who quite often are pushing their stamina by attempting to cover 10, 15, and 20 hours of driving following an 8-hour workday.

The truckdriver is exposed to driving mistakes by the very young neophyte driver whose attitudes lack maturity, by the older driver who may lack the physical conditioning necessary to safe driving at high speeds, and, because a very substantial amount of over-the-road trucking occurs at night, to the drunken driver. As a result of this exposure, there is a strong likelihood that even the best and most defensive truckdriver can become involved in an accident that he can in no way avoid.

Under the provisions of this bill, the costs of such accidents would be largely borne by the motor carriers and their insurance costs would rise very substantially.

As an example of the inherent inequity of this bill which would hold the commercial vehicle largely or almost entirely responsible for an accident involving a passenger car, consider the cost results of an accident under the present system versus the system proposed by the bill:

(*a*) Truck and trailer unit, westbound, in extreme right lane of four-lane divided highway.

(*b*) Passenger car with four occupants, eastbound, loses control, comes through the dividing median and collides with the truck.

RESULT—ALL OCCUPANTS OF CAR SEVERELY INJURED. NO INJURY TO TRUCKDRIVER

Present system

Based on the premise that one who causes injury to another by negligent conduct should fairly and adequately compensate him for that injury, the truck operator would owe nothing.

S. 945

This bill requires payment of up to $1,000 per month for a total of 30 months for loss of earnings resulting from an accident, with no

specified limits on costs for medical, hospital, surgical, et cetera, services, and physical and occupational therapy and rehabilitation.

Assuming that the injured parties in this accident were disabled many months each, the total cost for the injuries could well be in the hundreds of thousands of dollars, by virtue of the expenses covered by economic loss under section 2(10) of the bill.

Under the terms of S. 945 (sec. 5(7)(A)) by which a larger vehicle, depending on its size, would be responsible for a substantial percentage of net economic loss, it is possible that the motor carrier would be required to pay upward of 90 percent of the loss incurred by the occupants of the passenger car.

While we assume the figure would be somewhat lower, the bill gives the Secretary of Transportation (sec. 5(7)(B)) complete discretion to assign to vehicles larger than an "ordinary passenger automobile" a percentage of responsibility for net economic loss sustained by occupants of other vehicles. And the bill clearly indicates, in the same section, that the Secretary could determine that such responsiblity would exceed 70 percent.

The definition of "ordinary passenger automobile" contained in the bill (sec. 5(7)(A)(i)) includes vehicles having a seating capacity of up to nine passengers. It is, therefore, clear that the cited example of costs which might be incurred by motor carriers because their vehicles are involved in accidents for which—under the present system—they could not be held responsible, is modest indeed.

S. 945 is contrary to the principle of no-fault insurance because it would penalize motor carriers by placing them under a fault system of insurance rather than a no-fault system. It would hold the carriers responsible for losses incurred by all parties to all accidents involving trucks as if the carriers' vehicles are always responsible for such accidents.

One of the claims made for no-fault insurance is that premium costs will be reduced, but S. 945, if enacted, would tremendously increase the costs of truck insurance because of the larger portion of accident costs that would be borne by insurance companies which supply truck insurance.

Under the retrospective rating plan, those costs will be shifted back to the motor carriers through an increase in premiums. The regulated for-hire trucking industry includes approximately 1,500 class I carriers, 2,000 class II carriers, and, in addition, 11,700 class III carriers (those whose annual gross revenues are less than $300,000 and whose fleets consist of a small number of vehicles).

All for-hire carriers operate on a very slim profit margin and many would be unable to absorb a sharp rise in insurance costs. The industry is faced with severe competition from railroads, airlines, freight forwarders, and, to some extent, water carriers. Because of the competition of other transport modes, for-hire carriers are by no means completely free to recoup increased expenses by increases in their rates.

I referred earlier to H.R. 7514, introduced in the House by Congressman Moss of California. As we read his bill, it would eliminate the provision of S. 945 which would require that large vehicles be charged with a very substantial portion of the costs of all accidents in which they are involved, which is the very antithesis of the no-fault principle.

Let me say that we earnestly hope—if Federal no-fault insurance legislation is enacted—it will follow the lines of H.R. 7514 in this respect.

There is another aspect of S. 945 which seems entirely out of keeping with the no-fault philosophy. I refer to section 5(5), providing that persons not occupants of motor vehicles may recover their net economic loss from the insurer of any motor vehicle involved in an accident.

First off, we think the approach suggested by Secretary Volpe in his appearance before this committee on March 18, 1971, is preferable. As we understand his proposal, the insurance coverage obtained by a motor vehicle owner would cover himself and all members of his family whenever they were involved in a motor vehicle accident, whether in the owner's vehicle, as occupants of another vehicle, or as pedestrians. This would leave the owner's insurance company additionally liable only for injury or death to uninsured passengers or pedestrians.

But this is not our main objection to section 5(5). We believe its language is so broad as to allow recovery by any member of a train crew, or passenger on a train, from the insurer of any motor vehicle involved in a grade-crossing accident.

Just as S. 945 requires owners of passengers cars and operators of trucks and buses to provide insurance to cover the net economic loss suffered by occupants of their vehicles, it should also require the railroads to assume the same obligation with respect to members of train crews and passengers on trains. This is no minor matter.

Statistics published by the Department of Transportation show the following respecting grade-crossing accidents, and fatalities and injuries resulting therefrom, for the years 1967–69.[1]

	Number of accidents	Fatalities	Injuries
Year:			
1967	3,932	1,632	3,812
1968	3,816	1,546	3,744
1969	3,774	1,490	3,669

If no-fault is to be the standard for recovery of net economic loss in accidents involving motor vehicles, railroads cannot in fairness be given a free ride at the expense of owners of passenger cars, trucks and buses.

Under S. 945 as presently worded, the Secretary of Transportation might well decide, in exercising his authority under section 5(7)(A), to assign 75 percent of the net economic loss incurred by a passenger-car driver in an accident with a truck or bus to the insurer of the latter vehicles. If the bill is enacted with this provision included, then, by the same token, it should vest the same authority in the Secretary to assign responsibility—on a similar basis—to railroad equipment involved in accidents with passenger cars, trucks and buses.

Senator Moss, that completes my direct statement.

Thank you very much.

Senator Moss. Well, thank you, Mr. Beardsley, for that fine statement.

[1] Accident Bulletin No. 138, Federal Railroad Administration, table 6, p. 2.

I understand the objection that you have to the bill S. 945. The others you didn't comment on and didn't have any matter to present.

In this discussion that you had on the training of drivers, and therefore incentive to forestall accidents, to drive safely, don't insurance costs vary among companies depending on the record that they make of accidents?

Mr. BEARDSLEY. They surely do. Because of the retrospective system that I mentioned, Senator, if a company has a bad record, it is reflected next year in its premium.

Senator MOSS. So that sort of incentive would remain even if commercial trucks were required to continue to buy insurance; there would still be a great incentive to train drivers for safe driving, wouldn't there?

Mr. BEARDSLEY. I would hope there always would be regardless of what the state of the law was insurancewise or otherwise. that is the way it ought to be.

Senator MOSS. I would hope so, too, and I would expect there would be, but I was just pointing out that some economic incentive would remain there for the companies to do that. But other than the concern that you have that trucks are treated differently from passenger cars, you don't find any great difficulty with the bill. Is that right?

Mr. BEARDSLEY. No, sir. As I said at the outset of my testimony, this is something fairly new for ATA to be getting into. I recall this is the first time we had occasion to testify with respect to any legislation dealing with insurance, certainly in the Congress. And we are sort of feeling our way along, if I may say so.

We have a meeting of our executive committee coming up after the middle of June and we are going to put this subject on the agenda for further consideration. I have no way of knowing what the results will be, it may be just where we stand today, we may get some instructions to take a broader approach, so to speak. But so far our only instructions are to oppose S. 945 because of the provisions I stressed in my testimony.

Senator MOSS. Well, we surely appreciate your coming and we hope that when you have further considered it, if you arrive at a policy decision, you will communicate it to the committee and we will probably still be deeply involved in this, and when our transcript of our hearings is printed up, and you study them, if you have additoinal comments you think you would like to submit based on that, we would appreciate having that from you, too.

Mr. BEARDSLEY. Thank you very much.

Senator MOSS. Thank you, Mr. Beardsley.

We appreciate your appearance here today.

(The statement follows:)

STATEMENT OF PETER T. BEARDSLEY, VICE PRESIDENT AND GENERAL COUNSEL, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. Chairman and Members of the Subcommittee:

My name is Peter T. Beardsley, and I am a Vice-President, and the General Counsel of American Trucking Associations, Inc. Our organization is the national trade association of the motor carrier industry. It represents all types of motor carriers, and has affiliated associations in every state and the District of Columbia. Its office is located at 1616 P Street, N.W., Washington, D.C. [illegible]

As a part of our activities, we often take a position before Congress respecting proposals which, if enacted, would have a significant impact upon the truck

ing industry. Ordinarily, such proposals are the same as, or very similar to, others which have preceded them, or propose amendments to existing laws with which we are familiar. We confess to a lack of familiarity, however, with "no-fault" insurance, if for no other reason than that the subject itself—at least in the form of proposed legislation—is relatively new. We assume that "no-fault" means essentially that regardless of the degree of negligence exhibited by the various drivers involved in an accident, each of them would be paid by his insurer for his "net economic loss" as that term is defined in S. 945. Based on that assumption, we take no position at this time respecting the "no-fault" principle as such.

We believe that in view of the very substantial change which this bill proposes in the field of motor-vehicle accident insurance, it would be wise before seriously considering its enactment to await the results of experience under State "no-fault" laws such as that which recently became effective in Massachusetts, and those of other States which may be enacted.

In any event, S. 945 is not, in any practical sense, "no-fault" insofar as the trucking industry is concerned, and we have no alternative but to oppose it for that reason. If the bill were amended along the lines of H.R. 7514, introduced by Chairman Moss of the Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce, we would find it much less objectionable.

We take no position on S. 946 or S. 947, or the resolution proposed by Secretary Volpe in his testimony before this Committee on March 18, 1971.

The interstate motor carriers subject to economic regulation by the Interstate Commerce Commission, and safety regulation by the Department of Transportation, fall into several categories. Over 15,000 for-hire carriers (common and contract) are subject to both economic and safety regulation. There are additional thousands of for-hire carriers (mostly transporters of agricultural commodities) which are subject to safety regulation by DOT but exempt from ICC economic regulation. It is on behalf of the "regulated" carriers, rather than the "exempt" carriers that this statement is filed. ATA also represents the interests of numerous private carriers of property through their membership in one or more of the ATA-affiliated State trucking associations, and this statement is filed on their behalf too.

The trucking industry's concern for highway safety originated in a natural, humanitarian desire to reduce the tragedy of death and injury in traffic, and in a determination to improve the reputation of the industry as a safe, courteous partner on the road.

In addition, there is a business incentive for maintaining an extensive safety program. The millions of trucks of all kinds in daily use on streets and highways are constantly exposed to accident-producing situations which can result in loss or damage to other highway users, to industry drivers and vehicles, and to customer freight. Such accidents have the potential of putting any motor carrier out of business because of the extremely high costs that are incurred through civil suits, workmen's compensation, vehicle repairs and freight claims. Those costs are direct expenses to the carrier, regardless of the amount of its insurance coverage, as truck insurance is written on a retrospective basis so that the premium for a given year is raised or lowered to reflect the accident cost experience for the previous year.

The loss potential faced by truck fleets and the retrospective method of rating insurance have been incentives for the conduct of carefully planned programs to prevent accidents.

Industry experience shows that driver selection is the key to the entire safety program, and so trucking companies try to insure that they do not "hire their problems." In employment interviews and reference checks of prospective drivers, personnel officials use nationally approved guidelines which prescribe rigorous qualifications. Past employment, credit background, and traffic record are among the factors explored to determine an applicant's reliability, attitude and willingness to accept responsibility for his vehicle and cargo, and for the welfare of other highway users.

The industry's driver selection program had its beginning in the 1920's and was adopted as a national standard in 1940. In the 1950's it was further improved through an industry-sponsored study by the School of Public Health of Harvard University which was designed to provide more information about driver motivation.

After being hired, a driver trainee receives detailed classroom instruction in company policies, traffic regulations, safety requirements, knowledge of the vehicle and techniques for safe driving. To develop driving proficiency he undergoes a lengthy probationary period starting with student trips in the company of an experienced driver. He learns how to handle smaller trucks at first, and eventually may drive an intercity tractor-trailer rig.

Throughout his employment, industry and fleet supervision is provided through road patrols, radar checks, safety meetings and conferences, and the use of recording devices and check stations.

The professional truck driver is required to follow the code of "defensive driving," which places responsibility upon him to drive in such a way that he commits no driving errors himself and can protect himself against the mistakes of other drivers. If he is involved in an accident his company rules the accident as "preventable" or "non-preventable." A preventable accident is one in which the truck driver did not take every possible step to prevent the accident, regardless of whether or not he was legally in the right and the other driver was legally wrong. Under this concept of preventability the driver's attitudes and actions are brought under close scrutiny and control by the company so that the driver who develops poor attitudes or poor driving habits is quickly retrained or released from employment.

The effectiveness of the industry's programs is reflected in the following National Safety Council accident figures:

Year	Percent of trucks involved in accidents	Truck percent of registered vehicles	Percent of cars involved in accidents	Car percent of registered vehicles
1948	17.0	18.0	80.0	81.0
1969	11.5	16.6	85.1	80.8

These figures are taken from the National Safety Council's publication, "Accident Facts," 1949 and 1970 editions, pp. 66 and 56, respectively. They demonstrate that the truck record for accident involvement has improved substantially over the period shown, whereas that of the passenger car has gotten worse. The figures shown do not reflect mileage driven. When this factor is considered, the truck record is significantly better than that of the passenger cars. This is demonstrated by the following figures:

Intercity fleets (class I and II)	Total truck mileage	12,460,796,451
	Total trucks involved in accidents	39,302
	Ratio of trucks involved per million miles	3.15
All trucks	Total truck mileage	206,680,000,000
	Total trucks involved in accidents	3,075,000
	Ratio of trucks involved per million miles	14.9
All passenger cars	Total passenger car mileage	849,633,000,000
	Total cars involved in accidents	22,800,000
	Ratio of passenger cars involved per million miles	26.9

The Class I and II trucks referred to in the first category are those for-hire vehicles subject to economic regulation by the Interstate Commerce Commission, and safety regulation by the Department of Transportation. The mileage and accident figures are obtained from the pamphlet, "1969 Accidents of Large Motor Carriers of Property," Bureau of Motor Vehicle Safety, Department of Transportation. A Class I carrier is one whose annual gross operating revenue is $1 million or more. A Class II carrier is one whose annual gross operating revenue is $300,000, but less than $1 million. The second category "all trucks," covers just that. It includes, for example, farm trucks, trucks operated by the federal government, as well as a very large number of trucks not subject to economic regulation by the ICC, but subject to DOT safety regulation. The mileage figures for both the second and third categories are those of the Department of Transportation (Highway Statistics, 1969, Table VM-1, p. 73), and the accident figures are those of the National Safety Council (Accident Facts, 1970 ed., p. 56). 1969 figures are used, as they are the latest available from all sources.

The effect of the industry's safety programs has been to enable motor carriers to significantly reduce the heavy costs of accident involvement. But even though

the carriers have done an outstanding job of controlling their vehicles and drivers, there are still a large number of truck accidents each year that are caused by others. A study by American Fidelity and Casualty Co. of truck-involved accidents in the 1950's showed that in 104,000 accidents with other vehicles, truck drivers could not in any way have prevented 70% of them.

Over the years, the trucking industry has been in the forefront of highway user groups which have made a consistent and conscientious effort to reduce their contribution to highway accidents. That effort has involved the expenditure of large sums of money and a great deal of time and work. Now it is proposed that the cost of highway accidents be assigned, not to those responsible for them, but to all highway users, without regard to their driving habits, or their concern for their own welfare, or that of other users of the road. If there is to be a shift to a "no-fault" basis, we submit that if any segment of highway users should be singled out for favored treatment, it should be the motor carriers. But insead of being rewarded for their succesful efforts to reduce highway accidents, S. 945 would subject them to discriminatory treatment. We don't ask for favors, but we do ask for fair treatment. If the law is to provide that, except for catastrophic loss, no driver involved in an accident is to be considered responsible for it, the same rule should apply with respect to drivers of commercial vehicles.

There is certainly no equity in arbitrarily assigning to such vehicles a very high percentage of the costs resulting from any accident in which it is involved. The proposal is indeed a paradox—on the one hand, operators of commercial vehicles are told that no matter how negligent automobile drivers may be, they bear no responsibility when they cause an accident in which the operator's trucks are involved, but the truck owners will be assessed a major share of the cost resulting from the very same accidents! Technically, this may be "no fault" insurance; practically, it is insurance which arbitrarily assigns a great majority of the blame (cost) to operators of commercial vehicles involved in accidents.

Under the current fault system of compensating for accident losses, motor carriers usually bear all or part of the accident costs if their drivers contributed in any degree to an accident. However, the system quite often protects the carrier when other drivers are totally responsible. Thus the present system provides incentive to the carriers to continue their programs of careful driver selection, training and supervision, and it keeps insurance costs at a point which the carriers can afford and still stay in business.

To the contrary, § 5(7) (A) and (B) of S. 945 would hold motor carriers uniformly liable for a large percentage of all property damage and personal injury regardless of whether or not their trucks were actually responsible for accidents. This would result in discrimination against trucks because, through millions of miles of operation, they are constantly exposed to accidents resulting from the driving errors of others.

The truck driver is a skilled professional who must meet strict physical requirements every two years and who is limited to a maximum of ten hours of driving in any one duty period. The vehicle he operates is a highly sophisticated machine that is the subject of regularly-scheduled inspections and preventive maintenance. Yet, on the highway, he is exposed to drivers who have varying degrees of ability and who quite often are pushing their stamina by attempting to cover 10, 15 and 20 hours of driving following an eight-hour work day. The truck driver is exposed to driving mistakes by the very young neophyte driver whose attitudes lack maturity, by the older driver who may lack the physical conditioning necessary to safe driving at high speeds, and, because a very substantial amount of over the-road trucking occurs at night, to the drunken driver. As a result of this exposure, there is a strong likelihood that even the best and most defensive truck driver can become involved in an accident that he can in no way avoid. Under the provisions of these bills, the cost of such accidents would be largely borne by the motor carriers and their insurance costs would rise very substantially.

As an example of the inherent inequity of these bills which would hold the commercial vehicle largely or almost entirely responsible for an accident involving a passenger car, consider the cost results of an accident under the present system versus the system proposed by the bills:

A. Truck and trailer unit, westbound, in extreme right lane of 4-lane divided highway.

B. Passenger car with 4 occupants, eastbound, loses control, comes through the dividing median and collides with the truck.

Result: All occupants of car severely injured, No injury to truck driver.

PRESENT SYSTEM

Based on the premise that one who causes injury to another by negligent conduct should fairly and adequately compensate him for that injury, the truck operator would owe nothing.

S. 945

This bill requires payment of up to $1,000 per month for a total of 30 months for loss of earnings resulting from an accident, with no specified limits on costs for medical, hospital, surgical, etc., services, and physical and occupational therapy and rehabilitation. Assuming that the injured parties in this accident were disabled many months each, the total cost for the injuries could well be in the hundreds of thousands of dollars, by virute of the expenses covered by "economic" loss under § 2(10) of the bill.

Under the terms of S. 945 (§ 5(7)(A)) by which a larger vehicle, depending on its size, would be responsible for a substantial percentage of net economic loss, it is possible that the motor carrier would be required to pay upwards of 90% of the loss incurred by the occupants of the passenger car. While we assume the figure would be somewhat lower, the bill gives the Secretary of Transportation (§ 5(7)(B)) complete discretion to assign to vehicles larger than an "ordinary passenger automobile" a percentage of responsibility for net economic loss sustained by occupants of other vehicles. And the bill clearly indicates, in the same section, that the Secretary could determine that such responsibility would exceed 70%. The definition of "ordinary passenger automobile" contained in the bill (§ 5(7)(A)(i)) includes vehicles having a seating capacity of up to nine passengers. It is, therefore, clear that the cited example of costs which might be incurred by motor carriers because their vehicles are involved in accidents for which—under the present system—they could not be held responsible, is modest indeed.

S. 945 is contrary to the principle of "no-fault" insurance because it would penalize motor carriers by placing them under a "fault" system of insurance rather than a "no-fault" system. It would hold the carriers responsible for losses incurred by all parties to all accidents involving trucks as if the carriers' vehicles are always responsible for such accidents.

One of the claims made for "no-fault" insurance is that premium costs will be reduced, but S. 945, if enacted, would tremendously increase the costs of truck insurance because of the larger portion of accident costs that would be borne by insurance companies which supply truck insurance.

Under the retrospective rating plan, those costs will be shifted back to the motor carriers through an increase in premiums. The regulated for-hire trucking industy includes appoximately 1,500 Class I carriers, 2,000 Class II carriers, and. in addition, 11,700 Class III carriers (those who annual gross revenues are less than $300,000 and whose fleets consist of a small number of vehicles). All for-hire carriers operate on a very slim profit margin and many would be unable to absorb a sharp rise in insurance costs. The industry is faced with severe competition from railroads, airlines, freight forwarders, and to some extent, water carriers. Because of the competition of other transport modes—for-hire carriers are by no means completely free to recoup increased expenses by increases in their rates.

I referred earlier to H.R. 7514, introduced in the House by Congressman Moss of California. As we read his bill, it would eliminate the provision of S. 945 which would require that large vehicles be charged with a very substantial portion of the costs of all accidents in which they are involved, which is the very antithesis of the "no fault" principle. Let me say that we earnestly hope—if federal "no fault" insurance legislation is enacted—it will follow the lines of H.R. 7514 in this respect.

There is another aspect of S. 945 which seems entirely out of keeping with the "no-fault" philosophy. I refer to § 5(5), providing that persons not occupants of motor vehicles may recover their net economic loss from the insurer of any motor vehicle involved in an accident. First off, we think the approach suggested by Secretary Volpe in his appearance before this Committee on March 18, 1971, is preferable. As we understand his proposal, the insurance coverage obtained by a motor vehicle owner would cover himself and all members of his family whenever they were involved in a motor vehicle accident, whether in the owner's vehicle, as occupants of another vehicle, or as pedestrians. This would leave the owner's insurance company additionally liable only for injury or death to uninsured passengers or pedestrians.

But this is not our main objection to § 5(5). We believe its language is so broad as to allow recovery by any member of a train crew, or passenger on a train, from the insurer of any motor vehicle involved in a grade-crossing accident. Just as S. 945 requires owners of passenger cars and operators of trucks and buses to provide insurance to cover the net economic loss suffered by occupants of their vehicles, it should also require the railroads to assume the same obligation with respect to members of train crews and passengers on trains. This is no minor matter. Statistics published by the Department of Transportation show the following respecting grade-crossing accidents, and fatalities and injuries resulting therefrom, for the years 1967–1969: [1]

Year	Number of accidents	Fatalities	Injuries
1967	3,932	1,632	3,812
1968	3,816	1,536	3,744
1969	3,774	1,490	3,669

If "no fault" is to be the standard for recovery of net economic loss in accidents involving motor vehicles, railroads cannot in fairness be given a free ride at the expense of owners of passenger cars, trucks and buses. Under S. 945 as presently worded, the Secretary of Transportation might well decide, in exercising his authority under § 5(7)(A), to assign 75% of the net economic loss incurred by a passenger car driver in an accident with a truck or bus to the insurer of the latter vehicles. If the bill is enacted with this provision included, then, by the same token, it should vest the same authority in the Secretary to assign responsibility—on a similar basis—to railroad equipment involved in accidents with passenger cars, trucks and buses.

Senator Moss. This concludes our witnesses for today.

This concludes our witnesses for today.

This committee will convene tomorrow at 10:15 here in this room to hear additional witnesses.

We are now in recess until tomorrow.

(Whereupon, at 3:20 p.m., the hearing was recessed, to reconvene at 1:15 a.m., Friday, May 14, 1971.)

[1] Accident Bulletin No. 138, Federal Railroad Administration, Table 6, p. 2.

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

FRIDAY, MAY 14, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 10:30 a.m. in room 5110, New Senate Office Building, Hon. Philip A. Hart, presiding.

Present: Senators Hart and Stevens.

Senator HART. The committee will be in order.

Senator Case of New Jersey had planned to join us this morning in order to introduce our first witness. He has sent word that the Foreign Relations Committee is discussing, as it always does, some world-shaking problem and has not yet resolved it; and he suggested that we go ahead.

So, I welcome for Senator Case and those of us on the committee here Mr. Eugene M. Haring of Newark, N.J. I should explain that I read through Mr. Haring's statement, and it sounded great.

We do welcome you.

May I ask that the summary biography of Mr. Haring be printed at this point in the record. It is a most impressive one. It lends additional weight to his testimony.

(The biography follows:)

BIOGRAPHICAL SKETCH OF EUGENE M. HARING

Princeton University; A.B., Summa Cum Laude, 1949 (Phi Beta Kappa).
Princeton University; A.M., Philosophy, 1951, (Woodrow Wilson Fellow 1949–50).
Harvard Law School; J.D., 1955.
McCarter & English, Newark, New Jersey; Associate, 1955–1961; Partner, 1961– .
American Judicature Society; Essex County (N.J.) Bar Association; New Jersey State Bar Association; American Bar Association; Harvard Law School Association of New Jersey (Vice President & Trustee); Summit (New Jersey) Civil Rights Commission, 1970–71; United States Navy, 1945–46.

STATEMENT OF EUGENE M. HARING, ATTORNEY, McCARTER & ENGLISH, NEWARK, N.J., AND MEMBER, NEW JERSEY LAWYERS COMMITTEE FOR NO-FAULT INSURANCE; ACCOMPANIED BY JOHN L. McGOLDRICK, ASSOCIATE

Mr. HARING. Thank you, Senator Hart.

On my left is John McGoldrick, my associate.

As I believe you know, I am a practicing lawyer with offices in Newark, N.J., although my practice extends throughout that State.

During a substantial part of my professional experience, I have been responsible for much of the litigation conducted by my firm, which is one of the largest in New Jersey. I have been responsible for a wide variety of litigation, including automobile negligence cases, life insurance, health insurance, disability insurance, and products liability cases. Because of my personal concern I am affiliated with a group of New Jersey lawyers from all parts of the State for the lawyers committee for no-fault insurance. This is an unfunded, voluntary group; it speaks solely for its members and, we believe, the public interest.

Cochairmen of this group are Charles Danzig, Woodruff J. English and Donald B. Kipp, all distinguished lawyers of broad experience in positions sensitive to the overall legal process in New Jersey.

In addition, among the sponsors of this group are Alfred C. Clapp, former Republican State senator and former presiding judge of the appellate division of New Jersey; and Bernard Shanley, New Jersey Republican national committeeman and former counsel to President Eisenhower.

This is not a political group. It is nonpartisan. It is comprised of both Republicans and Democrats.

The cochairmen of the New Jersey lawyers for no-fault insurance have approved a statement of position. It includes the following:

> The Committee believes that the present system of handling automobile negligence litigation has demonstrated itself to be deficient in logic, in law and in practice.
>
> The Committee urges that a new system—a no-fault system—be tried. The weaknesses of the existing system have been so abundantly demonstrated that it is clear that palliatives and patchwork will not alleviate, but can only aggravate, the serious problems which undeniably exist. Basic and extensive reform is required.
>
> The Committee speaks only for itself. The lawyers comprising the Committee do not purport to speak for the clients of any of the Committee members nor for any other organized group.
>
> It would be unfortunate indeed if the public were mislead by a vocal segment of the Bar to believe that all lawyers are insensitive to the urgent need for reform.

That is the end of the excerpt from the committee's statement.

Chief Justice Weintraub of the New Jersey Supreme Court is respected nationally as well as in his own State. Under the New Jersey constitution the chief justice of New Jersey is directly responsible for the administration of the courts and must be in close touch with the judicial process in all the courts of the State. Chief Justice Weintraub of the New Jersey Supreme Court has stated publicly that he favors some form of no-fault insurance.

The chief justice has pointed out that given today's traffic congestion, accidents are inevitable. Indeed, they are statistically predictable. Given the split second accident, resulting from inadvertence, the chief justice has said we cannot speak realistically of fault.

Chief Justice Weintraub has said that accordingly there is not a fair basis upon which to fix fault, that if he thought the fault system were just, he would not advocate no-fault. He has pointed out that accidents happen so quickly that witnesses simply cannot recall and reconstruct the facts.

The chief justice says that saving court time by a no-fault system is a mere incidental benefit, that he would not advocate no-fault merely to save court time, but that given the split second quality of accidents,

their inevitability and predictability, a no-fault plan is the just and equitable plan. His basis for advocating no-fault is fairness and justice.

Quite apart from the position of the lawyers' committee I would make a few personal comments from my experience as a New Jersey trial lawyer.

I should say, Senator, that I am not here representing any vested interest. I am not here for labor. I am not here for business. I am not here for the insurance industry. I am here on my own. I bought my own ticket on the railroad.

New Jersey is the most densely populated States in the Nation. The density of automobiles in New Jersey is the greatest in the Nation. Accordingly, the problems which arise from the present automobile liability system are particularly severe in that State.

What we do under the tort system as distinct from what some lawyers say we do is attempt to provide compensation—compensation for the injured—but within a fault framework.

Indeed, the principle of compensation becomes most evident in the usual settlement conference which precedes a jury trial, and by which process the vast majority of cases are disposed of. At least by the morning of trial it becomes plainly evident that fault is not some absolute moral principle. Fault is what a jury says.

Given a split second accident which occurred years ago, jury verdicts are predicably unpredictable. Hence the settlement conference, the trade of certainty for risk.

Under the present system drivers play roulette. If they have an accident, no matter how seriously injured they are, they may well get very little. They stand a slim chance of hitting the jackpot. The recovery depends on how much insurance a stranger buys.

In fact, we are operating under an internally inconsistent system. We are trying to move in two directions at once. On the one hand, we operate within a system designed to prove fault and to reward the innocent. On the other hand, we apply principles of compensation with little regard to fault.

The result is uncertain compensation and frequently inadequate compensation, provided by a highly expensive system which was designed to determine fault.

Basic protection, self-insurance, or, as it has come to be called no-fault insurance would do what insurance was originally supposed to do—spread the risk and provide a certainty of payment.

You are well aware that highly vocal, and, at times shrill, objection to no-fault insurance has come from members of the legal profession. The familiar system seems simpler and more comfortable. Undoubtedly, much objection, while entirely sincere, proceeds from sheer inertia and visceral opposition to change. You know from recent testimony that some of it proceeds from sheer self-interest.

But, the legal profession, after all, exists to serve the public and not the other way around.

My office is in Newark. That city and much of New Jersey is beset by those social and economic and racial problems which afflict urban areas throughout the Nation.

Problems with respect to environment, products liability, consumers' rights, and the accommodation of conflicting interests of economic and racial groups more and more require and demand the attention of our courts both on the civil and criminal side.

During a substantial part of my professional experience, I have been responsible for much of the litigation conducted by my firm, which is one of the largest in New Jersey. I have been responsible for a wide variety of litigation, including automobile negligence cases, life insurance, health insurance, disability insurance, and products liability cases. Because of my personal concern I am affiliated with a group of New Jersey lawyers from all parts of the State for the lawyers committee for no-fault insurance. This is an unfunded, voluntary group; it speaks solely for its members and, we believe, the public interest.

Cochairmen of this group are Charles Danzig, Woodruff J. English and Donald B. Kipp, all distinguished lawyers of broad experience in positions sensitive to the overall legal process in New Jersey.

In addition, among the sponsors of this group are Alfred C. Clapp, former Republican State senator and former presiding judge of the appellate division of New Jersey; and Bernard Shanley, New Jersey Republican national committeeman and former counsel to President Eisenhower.

This is not a political group. It is nonpartisan. It is comprised of both Republicans and Democrats.

The cochairmen of the New Jersey lawyers for no-fault insurance have approved a statement of position. It includes the following:

> The Committee believes that the present system of handling automobile negligence litigation has demonstrated itself to be deficient in logic, in law and in practice.
>
> The Committee urges that a new system—a no-fault system—be tried. The weaknesses of the existing system have been so abundantly demonstrated that it is clear that palliatives and patchwork will not alleviate, but can only aggravate, the serious problems which undeniably exist. Basic and extensive reform is required.
>
> The Committee speaks only for itself. The lawyers comprising the Committee do not purport to speak for the clients of any of the Committee members nor for any other organized group.
>
> It would be unfortunate indeed if the public were mislead by a vocal segment of the Bar to believe that all lawyers are insensitive to the urgent need for reform.

That is the end of the excerpt from the committee's statement.

Chief Justice Weintraub of the New Jersey Supreme Court is respected nationally as well as in his own State. Under the New Jersey constitution the chief justice of New Jersey is directly responsible for the administration of the courts and must be in close touch with the judicial process in all the courts of the State. Chief Justice Weintraub of the New Jersey Supreme Court has stated publicly that he favors some form of no-fault insurance.

The chief justice has pointed out that given today's traffic congestion, accidents are inevitable. Indeed, they are statistically predictable. Given the split second accident, resulting from inadvertence, the chief justice has said we cannot speak realistically of fault.

Chief Justice Weintraub has said that accordingly there is not a fair basis upon which to fix fault, that if he thought the fault system were just, he would not advocate no-fault. He has pointed out that accidents happen so quickly that witnesses simply cannot recall and reconstruct the facts.

The chief justice says that saving court time by a no-fault system is a mere incidental benefit, that he would not advocate no-fault merely to save court time, but that given the split second quality of accidents,

their inevitability and predictability, a no-fault plan is the just and equitable plan. His basis for advocating no-fault is fairness and justice.

Quite apart from the position of the lawyers' committee I would make a few personal comments from my experience as a New Jersey trial lawyer.

I should say, Senator, that I am not here representing any vested interest. I am not here for labor. I am not here for business. I am not here for the insurance industry. I am here on my own. I bought my own ticket on the railroad.

New Jersey is the most densely populated States in the Nation. The density of automobiles in New Jersey is the greatest in the Nation. Accordingly, the problems which arise from the present automobile liability system are particularly severe in that State.

What we do under the tort system as distinct from what some lawyers say we do is attempt to provide compensation—compensation for the injured—but within a fault framework.

Indeed, the principle of compensation becomes most evident in the usual settlement conference which precedes a jury trial, and by which process the vast majority of cases are disposed of. At least by the morning of trial it becomes plainly evident that fault is not some absolute moral principle. Fault is what a jury says.

Given a split second accident which occurred years ago, jury verdicts are predicably unpredictable. Hence the settlement conference, the trade of certainty for risk.

Under the present system drivers play roulette. If they have an accident, no matter how seriously injured they are, they may well get very little. They stand a slim chance of hitting the jackpot. The recovery depends on how much insurance a stranger buys.

In fact, we are operating under an internally inconsistent system. We are trying to move in two directions at once. On the one hand, we operate within a system designed to prove fault and to reward the innocent. On the other hand, we apply principles of compensation with little regard to fault.

The result is uncertain compensation and frequently inadequate compensation, provided by a highly expensive system which was designed to determine fault.

Basic protection, self-insurance, or, as it has come to be called no-fault insurance would do what insurance was originally supposed to do—spread the risk and provide a certainty of payment.

You are well aware that highly vocal, and, at times shrill, objection to no-fault insurance has come from members of the legal profession. The familiar system seems simpler and more comfortable. Undoubtedly, much objection, while entirely sincere, proceeds from sheer inertia and visceral opposition to change. You know from recent testimony that some of it proceeds from sheer self-interest.

But, the legal profession, after all, exists to serve the public and not the other way around.

My office is in Newark. That city and much of New Jersey is beset by those social and economic and racial problems which afflict urban areas throughout the Nation.

Problems with respect to environment, products liability, consumers' rights, and the accommodation of conflicting interests of economic and racial groups more and more require and demand the attention of our courts both on the civil and criminal side.

In New Jersey 83 percent of automobile liability cases are settled before verdict. Accordingly, our courts are used largely not for the trial of cases at all, for which they were designed. They are a marketplace for the arbitration and compromise of claims.

Frequently the talents called upon are not so much those of the trained lawyer or judge, but those to be found in a Turkish bazaar. The time of lawyers and of judges is used to decide somehow the trading value of a whiplash injury, a broken arm or the loss of a leg. Their time could be used more productively.

I submit that the legal profession in the United States is one of the most valuable assets this country has. Its energies and talent should be directed to the most important problems which we face. A system which diverts so much legal talent to automobile liability settlements and trials wastes a valuable national resource.

There are numerous no-fault plans. The bill before this committee, S. 945, combines good aspects of many of these plans. It would provide reasonable medical expenses, would reimburse the injured for necessary services and, very important, would provide all reasonable expenses for rehabilitation.

At the same time, it limits reimbursement for wage loss to $30,000. It does not eliminate recovery for catastrophic harm.

Thus, limits are set upon the coverage while the victim of catastrophe may bring a legal action to receive a prompt decision in a court uncluttered by thousands of small automobile liability cases.

Criticisms frequently heard of the State bills relate to the out-of-State accident and the out-of-State driver. While this problem is not insuperable on a State level, it would be eliminated by the proposed Federal bill.

Senator HART. I hate to interrupt, and yet I must welcome the distinguished Senator whom we talked about a few moments ago. I hate to interrupt because the testimony is powerful and I hope will be listened to widely.

Senator CASE. Mr. Chairman, you are most gracious.

I am always happy when I can introduce two people whom I like very much to each other. In this respect, this is no exception.

Mr. Haring is a partner of an old and distinguished firm.

I am enormously happy that I could come in before he finished. I am sorry I was not here when he started. But if you will permit me non pro tunc to present to you one of our distinguished lawyers representing the bar committee on no-fault insurance, I would like to have it entered in the record that I do so. When you and I have long since ceased to be here and come back and look at the record you will not remember that I came in after he started.

Senator HART. We will fix that record.

Mr. HARING. Senator Hart, we need a self-insurance system. We need a no-fault system. We need prompt and well-considered reform. I personally believe that this bill will provide it.

I should say, Senator, my longer statement I hope will be filed and be made a matter of record. I have read a summary of my longer statement, and I am open to any questions.

Senator HART. Mr. Haring, the statement will be printed in full.

I indicated, having had an opportunity to read much of the statement in advance, that it is a powerful plea for the kind of reform that

we are considering here. There is so much in it, brief though it is, that simply puts exclamation points behind so much of what we have heard.

I sense those of us who feel strongly the need for legislation will be excerpting without credit from it in the days and weeks ahead. That expression "drivers play roulette," for example, is really so true under our existing system; whether you are going to be hit by a drunken driver who is heavily insured or a careful driver who may for a moment have been guilty of some omission whose fault is questionable but who isn't insured is a matter of chance.

What I think I would refer to most frequently is the point you make in reply to the argument that a no-fault system rewards irresponsibility and somehow or another has socially unacceptable implications.

In your statement you address yourself to that. You label it an invalid doctrine and conclude by saying, "A no-fault system promotes family integrity, rehabilitation and the self-respect which comes with it." I hope that point will be more clearly understood by all of us as we plow this ground.

It is not easy, I am sure even from so distinguished a firm as yours, to voice opinions that in the sense are regarded by your fellow members at the bar as doing them a direct financial disservice. But you are not alone because the profession happily is coming forward to speak the need for this reform as they see it. But to have one of your standing—and those associated with you in the New Jersey lawyer's committee for no-fault insurance—such as your able chief justice, Chief Justice Weintraub—come forward inevitably will help us make progress. The cumulative effect of this I hope will be great.

Last week this committee heard from a younger lawyer, Robert Joost of Boston who had been associated with the Trial Lawyers Association for some years. Incidentally, his academic credentials I thought would be unmatched, but yours match them, I notice.

Mr. HARING. Thank you.

Senator HART. If there is no objection, I would like to insert in the record a letter that I received from a partner in a prominent Milwaukee firm endorsing the concept of no-fault at the Federal level. He said:

> To await action by the individual states is ludicrous and in the interim period there is likely to be a rather chaotic state of affairs even as there is now to some degree in accidents between automobiles of various legal jurisdictions.

He concludes by saying:

> I am well aware of the objections of lawyers to no-fault insurance. I can't help but feel that much of this complaint is based on the prospective loss of fees. This really is not a valid cause for objection.

This letter along with another from a lawyer who has been an insurance instructor in San Francisco and an orthopedic surgeon will be made a part of the record.

(The letters follow:)

MICHAEL, BEST & FRIEDRICH,
Milwaukee, Wis., April 6, 1971.

SENATOR PHILIP HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: *This is to endorse the concept of no-fault insurance on a Federal level. To wait action by the individual states is ludicrous and in the interim period there is likely to be a rather chaotic state of affairs even as there is now to some degree in accidents between automobiles of various legal juris-*

dictions. The automobile insurance game has reached the point where the rate structures threaten to collapse the whole automobile business. By way of example. I just received a notice from my insurance company declining to renew my insurance of my three cars. There has been no claim under my policy since the last renewal. Heretofore my annual premium has been in the order of $920. Now they offer to insure me through one of their affiliated companies at extremely low liability limits for an annual premium of $2,880, approximately triple rate for far less coverage with no claims or traffic violations since the policy was written! The only way I can beat that within that company's structure would be if I would buy my two children old automobiles and put minimal insurance coverage on them. This would then mean that two automobiles of questionable merit and with low coverage would be plying the highways instead of having the kids in proper cars with proper coverage. The insurance company will not recognize an exclusion of the children from specified cars within the family.

I am well aware of the objections of lawyers to no-fault insurance. I can't help but feel that much of this complaint is based on the prospective loss of fees. This really is not a valid cause for objection. Much of the trouble with insurance today relates back to legal fees and pumping up claims for pain and suffering, etc.

BAYARD H. MICHAEL.

NEAR, FRIEDMAN & CRAWFORD,
ATTORNEYS AT LAW,
San Francisco, Calif. March 25, 1971.

Senator PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: Thank you for sending me a copy of your bill for a national no-fault insurance plan.

I have read it and believe it will go a long way to correct the remedies that plague our present system. I do not believe the states, who are in general under the thumb of the insurance lobby and whose members are mostly attorneys. will ever pass adequate legislation. The support for no-fault insurance is growing daily. Enclosed is the March 24, 1971 editorial from the San Francisco Chronicle strongly endorsing a no-fault system.

I do have a few objections to your plan. Perhaps these objections are misfounded, but I believe they might be of some value to you.

1. One of your provisions is that the insurance companies cannot refuse to renew unless the insured has his license cancelled or he refuses to pay the premium. What is to stop the insurance company from raising premiums substantially to anyone they wish to not renew? They can always say the new premium is necessary for *this* particular risk. I see rates going up astronomically for anyone insurance companies decide is undesirable.

2. I think that your plans to let rates be established by a file and use (open competition) type rating law will also lead to rates going up dramatically. I have accumulated some evidence to show that states with file and use laws have higher insurance rates than those where prior approval is required. Some of this evidence is contained in an unpublished article I have written, and I have enclosed a copy of that article. If interested, I could send you some additional evidence along this line. I have little faith in the fact that the Department of Transportation will be collecting various rates for different classifications and promulgating them to the public. The public hardly ever sees these government handouts, and the rates will all be high even if they see them.

3. The basic problem I see with the plan as you propose it is that by making the no-fault insurance compulsory, you will be placing a great many Americans under a severe financial strain, and I believe will create a new breed of criminals. those who drive without insurance. Whereas I heartily approve of compulsory insurance for motorists, I belive it must be at a price all can afford. To make someone pay $200, $300, $500 or $1,000 for a yearly premium, when he has a limited income, is very harsh. The system which I believe could work best is an insurance plan where all must buy a certain minimum insurance which covers all medical bills without regard to fault. Such a plan has been operating in Puerto Rico since January 1, 1970 and is widely accepted there. I am sure you are familiar with the Social Protection Plan in Puerto Rico (it is briefly described in my enclosed article) and I feel it could be modified in a national plan by: 1) substantially raising the loss of wages to the levels set by your bill and 2) only

allowing the tort remedy in cases of catastrophic loss as your bill does, although I believe your criteria a bit harsh.

I believe such a plan could sell in the states for $50 or less, and this would give the American consumer the break he has long sought. Under private companies, especially with a file and use law to regulate rates, I believe insurance rates will stay very high. The purported 80% reduction in liability rates will be more promise than reality, and although the victim will be infinitely better off, the consumer will still end up paying through the nose.

At the very least, a "watchdog commission" should follow the insurance company rates and determine what constitutes a fair rate of return, what part of investment income should be used in determining the rates, standardize the casualty insurance accounting systems, etc.

In the long run, you are leading a grass roots revolution in the insurance field, and I for one think the only way the consumer will ever get a fair break is when a government agency sells him a policy.

An article entitled "A Call For Adoption of the Puerto Rico Social Protection Plan in the United States" by Jean B. Aponte and Herbert S. Denenberg, professors at the University of Pennsylvania who drafted Puerto Rico's Plan is also enclosed.

I realize the fantastic political pressure that would be involved in getting the government to sell the insurance rather than private companies, but the nation is ready for a revolution, so why not go for a complete victory, rather than a compromise that will still place many consumers of auto insurance under an enormous economic burden?

Sincerely yours,

GILBERT FRIEDMAN.

[From the San Francisco Chronicle, March 24, 1971]

THE 'NO FAULT' INSURANCE PLAN

The Nixon administration, having in hand a $2 million two-year study by its Department of Transportation, has called for a drastic change in the system of automobile insurance under which drivers are now paying some $12 billion a year in premiums and getting back about 14.5 cents on the dollar to compensate for economic losses.

It has newly urged Congress to recommend the abandonment of the present tort-liability, or lawsuit system, and suggest that each State enact its own version of the so-called "no fault" system—a system which in essence discards considerations of negligence and promptly and automatically makes benefits available to all accident victims without attempting to establish legal liability.

Adherents of such a plan may not agree as to details, but there is complete agreement that the present system is not working and must be replaced. Insurance companies complain that they are losing millions; the insured complain of zooming rates, and studies by both the Government and the insurance associations reveal that millions of injured accident victims are being grossly underpaid for losses, while a minimal few are fantastically overpaid by sympathetic juries for so-called "general" damages.

The American Insurance Association, representing some 30 percent of the insurers and a pioneer advocate of no-fault insurance, says that under a "pure" no-fault plan. accident victims would promptly recover all medical and hospital costs, and would receive up to $1000 a month for loss of income, than in case of the death of a wage earner, survivors would receive funeral expenses and a continuing payment of the decedent's wages up to his life expectancy, and that an injured pedestrain would be covered by the car that hit him.

Various other benefits would accrue under such a system, the Association asserts, wherein insurance would be compulsory and no licensed driver would be refused coverage.

What is remarkable indeed is the claim that the cost to the motorist would be 30 per cent less than the premium rates now in effect—a boon made possible by the circumstances that no accident victim could sue or be sued. Thus the massive legal expenses incurred under the lawsuit system would be avoided and much of the approximately $3 billion a year that now goes to lawyers and investigators would become available for benefits that would comprise around 65 per cent of the premium fund instead of the 14.5 per cent now being paid.

This in some part at least explains why most lawyers and most bar associations oppose the no-fault system. In addition their hostility is based on charges that

After being hired, a driver trainee receives detailed classroom instruction in company policies, traffic regulations, safety requirements, knowledge of the vehicle and techniques for safe driving. To develop driving proficiency he undergoes a lengthy probationary period starting with student trips in the company of an experienced driver. He learns how to handle smaller trucks at first, and eventually may drive an intercity tractor-trailer rig.

Throughout his employment, industry and fleet supervision is provided through road patrols, radar checks, safety meetings and conferences, and the use of recording devices and check stations.

The professional truck driver is required to follow the code of "defensive driving," which places responsibility upon him to drive in such a way that he commits no driving errors himself and can protect himself against the mistakes of other drivers. If he is involved in an accident his company rules the accident as "preventable" or "non-preventable." A preventable accident is one in which the truck driver did not take every possible step to prevent the accident, regardless of whether or not he was legally in the right and the other driver was legally wrong. Under this concept of preventability the driver's attitudes and actions are brought under close scrutiny and control by the company so that the driver who develops poor attitudes or poor driving habits is quickly retrained or released from employment.

The effectiveness of the industry's programs is reflected in the following National Safety Council accident figures:

Year	Percent of trucks involved in accidents	Truck percent of registered vehicles	Percent of cars involved in accidents	Car percent of registered vehicles
1948	17.0	18.0	80.0	81.0
1969	11.5	16.6	85.1	80.8

These figures are taken from the National Safety Council's publication, "Accident Facts," 1949 and 1970 editions, pp. 66 and 56, respectively. They demonstrate that the truck record for accident involvement has improved substantially over the period shown, whereas that of the passenger car has gotten worse. The figures shown do not reflect mileage driven. When this factor is considered, the truck record is significantly better than that of the passenger cars. This is demonstrated by the following figures:

Intercity fleets (class I and II)	Total truck mileage	12,460,796,451
	Total trucks involved in accidents	39,302
	Ratio of trucks involved per million miles	3.15
All trucks	Total truck mileage	206,680,000,000
	Total trucks involved in accidents	3,075,000
	Ratio of trucks involved per million miles	14.9
All passenger cars	Total passenger car mileage	849,633,000,000
	Total cars involved in accidents	22,800,000
	Ratio of passenger cars involved per million miles	26.8

The Class I and II trucks referred to in the first category are those for-hire vehicles subject to economic regulation by the Interstate Commerce Commission, and safety regulation by the Department of Transportation. The mileage and accident figures are obtained from the pamphlet, "1969 Accidents of Large Motor Carriers of Property," Bureau of Motor Vehicle Safety, Department of Transportation. A Class I carrier is one whose annual gross operating revenue is $1 million or more. A Class II carrier is one whose annual gross operating revenue is $300,000, but less than $1 million. The second category "all trucks," covers just that. It includes, for example, farm trucks, trucks operated by the federal government, as well as a very large number of trucks not subject to economic regulation by the ICC, but subject to DOT safety regulation. The mileage figures for both the second and third categories are those of the Department of Transportation (Highway Statistics, 1969, Table VM-1, p. 73), and the accident figures are those of the National Safety Council (Accident Facts, 1970 ed., p. 56). 1969 figures are used because they are the latest available from all sources.

The effect of the industry's safety programs has been to enable motor carriers to significantly reduce the heavy costs of accident involvement. But even though

the carriers have done an outstanding job of controlling their vehicles and drivers, there are still a large number of truck accidents each year that are caused by others. A study by American Fidelity and Casualty Co. of truck-involved accidents in the 1950's showed that in 104,000 accidents with other vehicles, truck drivers could not in any way have prevented 70% of them.

Over the years, the trucking industry has been in the forefront of highway user groups which have made a consistent and conscientious effort to reduce their contribution to highway accidents. That effort has involved the expenditure of large sums of money and a great deal of time and work. Now it is proposed that the cost of highway accidents be assigned, not to those responsible for them, but to all highway users, without regard to their driving habits, or their concern for their own welfare, or that of other users of the road. If there is to be a shift to a "no-fault" basis, we submit that if any segment of highway users should be singled out for favored treatment, it should be the motor carriers. But insead of being rewarded for their succesful efforts to reduce highway accidents, S. 945 would subject them to discriminatory treatment. We don't ask for favors, but we do ask for fair treatment. If the law is to provide that, except for catastrophic loss, no driver involved in an accident is to be considered responsible for it, the same rule should apply with respect to drivers of commercial vehicles.

There is certainly no equity in arbitrarily assigning to such vehicles a very high percentage of the costs resulting from any accident in which it is involved. The proposal is indeed a paradox—on the one hand, operators of commercial vehicles are told that no matter how negligent automobile drivers may be, they bear no responsibility when they cause an accident in which the operator's trucks are involved, but the truck owners will be assessed a major share of the cost resulting from the very same accidents! Technically, this may be "no fault" insurance; practically, it is insurance which arbitrarily assigns a great majority of the blame (cost) to operators of commercial vehicles involved in accidents.

Under the current fault system of compensating for accident losses, motor carriers usually bear all or part of the accident costs if their drivers contributed in any degree to an accident. However, the system quite often protects the carrier when other drivers are totally responsible. Thus the present system provides incentive to the carriers to continue their programs of careful driver selection, training and supervision, and it keeps insurance costs at a point which the carriers can afford and still stay in business.

To the contrary, § 5(7) (A) and (B) of S. 945 would hold motor carriers uniformly liable for a large percentage of all property damage and personal injury regardless of whether or not their trucks were actually responsible for accidents. This would result in discrimination against trucks because, through millions of miles of operation, they are constantly exposed to accidents resulting from the driving errors of others.

The truck driver is a skilled professional who must meet strict physical requirements every two years and who is limited to a maximum of ten hours of driving in any one duty period. The vehicle he operates is a highly sophisticated machine that is the subject of regularly-scheduled inspections and preventive maintenance. Yet, on the highway, he is exposed to drivers who have varying degrees of ability and who quite often are pushing their stamina by attempting to cover 10, 15 and 20 hours of driving following an eight-hour work day. The truck driver is exposed to driving mistakes by the very young neophyte driver whose attitudes lack maturity, by the older driver who may lack the physical conditioning necessary to safe driving at high speeds, and, because a very substantial amount of over the-road trucking occurs at night, to the drunken driver. As a result of this exposure, there is a strong likelihood that even the best and most defensive truck driver can become involved in an accident that he can in no way avoid. Under the provisions of these bills, the cost of such accidents would be largely borne by the motor carriers and their insurance costs would rise very substantially.

As an example of the inherent inequity of these bills which would hold the commercial vehicle largely or almost entirely responsible for an accident involving a passenger car, consider the cost results of an accident under the present system versus the system proposed by the bills:

A. Truck and trailer unit, westbound, in extreme right lane of 4-lane divided highway.

B. Passenger car with 4 occupants, eastbound, loses control, comes through the dividing median and collides with the truck.

Result: All occupants of car severely injured, No injury to truck driver.

PRESENT SYSTEM

Based on the premise that one who causes injury to another by negligent conduct should fairly and adequately compensate him for that injury, the truck operator would owe nothing.

S. 945

This bill requires payment of up to $1,000 per month for a total of 30 months for loss of earnings resulting from an accident, with no specified limits on costs for medical, hospital, surgical, etc., services, and physical and occupational therapy and rehabilitation. Assuming that the injured parties in this accident were disabled many months each, the total cost for the injuries could well be in the hundreds of thousands of dollars, by virute of the expenses covered by "economic" loss under § 2(10) of the bill.

Under the terms of S. 945 (§ 5(7)(A)) by which a larger vehicle, depending on its size, would be responsible for a substantial percentage of net economic loss, it is possible that the motor carrier would be required to pay upwards of 90% of the loss incurred by the occupants of the passenger car. While we assume the figure would be somewhat lower, the bill gives the Secretary of Transportation (§ 5(7)(B)) complete discretion to assign to vehicles larger than an "ordinary passenger automobile" a percentage of responsibility for net economic loss sustained by occupants of other vehicles. And the bill clearly indicates, in the same section, that the Secretary could determine that such responsibility would exceed 70%. The definition of "ordinary passenger automobile" contained in the bill (§ 5(7)(A)(i)) includes vehicles having a seating capacity of up to nine passengers. It is, therefore, clear that the cited example of costs which might be incurred by motor carriers because their vehicles are involved in accidents for which—under the present system—they could not be held responsible, is modest indeed.

S. 945 is contrary to the principle of "no-fault" insurance because it would penalize motor carriers by placing them under a "fault" system of insurance rather than a "no-fault" system. It would hold the carriers responsible for losses incurred by all parties to all accidents involving trucks as if the carriers' vehicles are always responsible for such accidents.

One of the claims made for "no-fault" insurance is that premium costs will be reduced, but S. 945, if enacted, would tremendously increase the costs of truck insurance because of the larger portion of accident costs that would be borne by insurance companies which supply truck insurance.

Under the retrospective rating plan, those costs will be shifted back to the motor carriers through an increase in premiums. The regulated for-hire trucking industy includes appoximately 1,500 Class I carriers, 2,000 Class II carriers, and. in addition, 11,700 Class III carriers (those who annual gross revenues are less than $300,000 and whose fleets consist of a small number of vehicles). All for-hire carriers operate on a very slim profit margin and many would be unable to absorb a sharp rise in insurance costs. The industry is faced with severe competition from railroads, airlines, freight forwarders, and to some extent, water carriers. Because of the competition of other transport modes—for-hire carriers are by no means completely free to recoup increased expenses by increases in their rates.

I referred earlier to H.R. 7514, introduced in the House by Congressman Moss of California. As we read his bill, it would eliminate the provision of S. 945 which would require that large vehicles be charged with a very substantial portion of the costs of all accidents in which they are involved, which is the very antithesis of the "no fault" principle. Let me say that we earnestly hope—if federal "no fault" insurance legislation is enacted—it will follow the lines of H.R. 7514 in this respect.

There is another aspect of S. 945 which seems entirely out of keeping with the "no-fault" philosophy. I refer to § 5(5), providing that persons not occupants of motor vehicles may recover their net economic loss from the insurer of any motor vehicle involved in an accident. First off, we think the approach suggested by Secretary Volpe in his appearance before this Committee on March 18, 1971, is preferable. As we understand his proposal, the insurance coverage obtained by a motor vehicle owner would cover himself and all members of his family whenever they were involved in a motor vehicle accident, whether in the owner's vehicle, as occupants of another vehicle, or as pedestrians. This would leave the owner's insurance company additionally liable only for injury or death to uninsured passengers or pedestrians.

But this is not our main objection to § 5(5). We believe its language is so broad as to allow recovery by any member of a train crew, or passenger on a train, from the insurer of any motor vehicle involved in a grade-crossing accident. Just as S. 945 requires owners of passenger cars and operators of trucks and buses to provide insurance to cover the net economic loss suffered by occupants of their vehicles, it should also require the railroads to assume the same obligation with respect to members of train crews and passengers on trains. This is no minor matter. Statistics published by the Department of Transportation show the following respecting grade-crossing accidents, and fatalities and injuries resulting therefrom, for the years 1967–1969: [1]

Year	Number of accidents	Fatalities	Injuries
1967	3,932	1,632	3,812
1968	3,816	1,536	3,744
1969	3,774	1,490	3,669

If "no fault" is to be the standard for recovery of net economic loss in accidents involving motor vehicles, railroads cannot in fairness be given a free ride at the expense of owners of passenger cars, trucks and buses. Under S. 945 as presently worded, the Secretary of Transportation might well decide, in exercising his authority under § 5(7)(A), to assign 75% of the net economic loss incurred by a passenger car driver in an accident with a truck or bus to the insurer of the latter vehicles. If the bill is enacted with this provision included, then, by the same token, it should vest the same authority in the Secretary to assign responsibility—on a similar basis—to railroad equipment involved in accidents with passenger cars, trucks and buses.

Senator Moss. This concludes our witnesses for today.

This concludes our witnesses for today.

This committee will convene tomorrow at 10:15 here in this room to hear additional witnesses.

We are now in recess until tomorrow.

(Whereupon, at 3:20 p.m., the hearing was recessed, to reconvene at 1:15 a.m., Friday, May 14, 1971.)

[1] Accident Bulletin No. 138, Federal Railroad Administration, Table 6, p. 2.

PRESENT SYSTEM

Based on the premise that one who causes injury to another by negligent conduct should fairly and adequately compensate him for that injury, the truck operator would owe nothing.

S. 945

This bill requires payment of up to $1,000 per month for a total of 30 months for loss of earnings resulting from an accident, with no specified limits on costs for medical, hospital, surgical, etc., services, and physical and occupational therapy and rehabilitation. Assuming that the injured parties in this accident were disabled many months each, the total cost for the injuries could well be in the hundreds of thousands of dollars, by virute of the expenses covered by "economic" loss under § 2(10) of the bill.

Under the terms of S. 945 (§ 5(7)(A)) by which a larger vehicle, depending on its size, would be responsible for a substantial percentage of net economic loss, it is possible that the motor carrier would be required to pay upwards of 90% of the loss incurred by the occupants of the passenger car. While we assume the figure would be somewhat lower, the bill gives the Secretary of Transportation (§ 5(7)(B)) complete discretion to assign to vehicles larger than an "ordinary passenger automobile" a percentage of responsibility for net economic loss sustained by occupants of other vehicles. And the bill clearly indicates, in the same section, that the Secretary could determine that such responsibility would exceed 70%. The definition of "ordinary passenger automobile" contained in the bill (§ 5(7)(A)(i)) includes vehicles having a seating capacity of up to nine passengers. It is, therefore, clear that the cited example of costs which might be incurred by motor carriers because their vehicles are involved in accidents for which—under the present system—they could not be held responsible, is modest indeed.

S. 945 is contrary to the principle of "no-fault" insurance because it would penalize motor carriers by placing them under a "fault" system of insurance rather than a "no-fault" system. It would hold the carriers responsible for losses incurred by all parties to all accidents involving trucks as if the carriers' vehicles are always responsible for such accidents.

One of the claims made for "no-fault" insurance is that premium costs will be reduced, but S. 945, if enacted, would tremendously increase the costs of truck insurance because of the larger portion of accident costs that would be borne by insurance companies which supply truck insurance.

Under the retrospective rating plan, those costs will be shifted back to the motor carriers through an increase in premiums. The regulated for-hire trucking industy includes appoximately 1,500 Class I carriers, 2,000 Class II carriers, and. in addition, 11,700 Class III carriers (those who annual gross revenues are less than $300,000 and whose fleets consist of a small number of vehicles). All for-hire carriers operate on a very slim profit margin and many would be unable to absorb a sharp rise in insurance costs. The industry is faced with severe competition from railroads, airlines, freight forwarders, and to some extent, water carriers. Because of the competition of other transport modes—for-hire carriers are by no means completely free to recoup increased expenses by increases in their rates.

I referred earlier to H.R. 7514, introduced in the House by Congressman Moss of California. As we read his bill, it would eliminate the provision of S. 945 which would require that large vehicles be charged with a very substantial portion of the costs of all accidents in which they are involved, which is the very antithesis of the "no fault" principle. Let me say that we earnestly hope—if federal "no fault" insurance legislation is enacted—it will follow the lines of H.R. 7514 in this respect.

There is another aspect of S. 945 which seems entirely out of keeping with the "no-fault" philosophy. I refer to § 5(5), providing that persons not occupants of motor vehicles may recover their net economic loss from the insurer of any motor vehicle involved in an accident. First off, we think the approach suggested by Secretary Volpe in his appearance before this Committee on March 18, 1971, is preferable. As we understand his proposal, the insurance coverage obtained by a motor vehicle owner would cover himself and all members of his family whenever they were involved in a motor vehicle accident, whether in the owner's vehicle, as occupants of another vehicle, or as pedestrians. This would leave the owner's insurance company additionally liable only for injury or death to uninsured passengers or pedestrians.

But this is not our main objection to § 5(5). We believe its language is so broad as to allow recovery by any member of a train crew, or passenger on a train, from the insurer of any motor vehicle involved in a grade-crossing accident. Just as S. 945 requires owners of passenger cars and operators of trucks and buses to provide insurance to cover the net economic loss suffered by occupants of their vehicles, it should also require the railroads to assume the same obligation with respect to members of train crews and passengers on trains. This is no minor matter. Statistics published by the Department of Transportation show the following respecting grade-crossing accidents, and fatalities and injuries resulting therefrom, for the years 1967–1969: [1]

Year	Number of accidents	Fatalities	Injuries
1967	3,932	1,632	3,812
1968	3,816	1,536	3,744
1969	3,774	1,490	3,669

If "no fault" is to be the standard for recovery of net economic loss in accidents involving motor vehicles, railroads cannot in fairness be given a free ride at the expense of owners of passenger cars, trucks and buses. Under S. 945 as presently worded, the Secretary of Transportation might well decide, in exercising his authority under § 5(7)(A), to assign 75% of the net economic loss incurred by a passenger car driver in an accident with a truck or bus to the insurer of the latter vehicles. If the bill is enacted with this provision included, then, by the same token, it should vest the same authority in the Secretary to assign responsibility—on a similar basis—to railroad equipment involved in accidents with passenger cars, trucks and buses.

Senator Moss. This concludes our witnesses for today.

This concludes our witnesses for today.

This committee will convene tomorrow at 10:15 here in this room to hear additional witnesses.

We are now in recess until tomorrow.

(Whereupon, at 3:20 p.m., the hearing was recessed, to reconvene at 1:15 a.m., Friday, May 14, 1971.)

[1] Accident Bulletin No. 138, Federal Railroad Administration, Table 6, p. 2.

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

FRIDAY, MAY 14, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 10:30 a.m. in room 5110, New Senate Office Building, Hon. Philip A. Hart, presiding.

Present: Senators Hart and Stevens.

Senator HART. The committee will be in order.

Senator Case of New Jersey had planned to join us this morning in order to introduce our first witness. He has sent word that the Foreign Relations Committee is discussing, as it always does, some world-shaking problem and has not yet resolved it; and he suggested that we go ahead.

So, I welcome for Senator Case and those of us on the committee here Mr. Eugene M. Haring of Newark, N.J. I should explain that I read through Mr. Haring's statement, and it sounded great.

We do welcome you.

May I ask that the summary biography of Mr. Haring be printed at this point in the record. It is a most impressive one. It lends additional weight to his testimony.

(The biography follows:)

BIOGRAPHICAL SKETCH OF EUGENE M. HARING

Princeton University; A.B., Summa Cum Laude, 1949 (Phi Beta Kappa).
Princeton University; A.M., Philosophy, 1951, (Woodrow Wilson Fellow 1949–50).
Harvard Law School; J.D., 1955.
McCarter & English, Newark, New Jersey; Associate, 1955–1961; Partner, 1961– .
American Judicature Society; Essex County (N.J.) Bar Association; New Jersey State Bar Association; American Bar Association; Harvard Law School Association of New Jersey (Vice President & Trustee); Summit (New Jersey) Civil Rights Commission, 1970–71; United States Navy, 1945–46.

STATEMENT OF EUGENE M. HARING, ATTORNEY, McCARTER & ENGLISH, NEWARK, N.J., AND MEMBER, NEW JERSEY LAWYERS COMMITTEE FOR NO-FAULT INSURANCE; ACCOMPANIED BY JOHN L. McGOLDRICK, ASSOCIATE

Mr. HARING. Thank you, Senator Hart.

On my left is John McGoldrick, my associate.

As I believe you know, I am a practicing lawyer with offices in Newark, N.J., although my practice extends throughout that State.

During a substantial part of my professional experience, I have been responsible for much of the litigation conducted by my firm, which is one of the largest in New Jersey. I have been responsible for a wide variety of litigation, including automobile negligence cases, life insurance, health insurance, disability insurance, and products liability cases. Because of my personal concern I am affiliated with a group of New Jersey lawyers from all parts of the State for the lawyers committee for no-fault insurance. This is an unfunded, voluntary group; it speaks solely for its members and, we believe, the public interest.

Cochairmen of this group are Charles Danzig, Woodruff J. English and Donald B. Kipp, all distinguished lawyers of broad experience in positions sensitive to the overall legal process in New Jersey.

In addition, among the sponsors of this group are Alfred C. Clapp, former Republican State senator and former presiding judge of the appellate division of New Jersey; and Bernard Shanley, New Jersey Republican national committeeman and former counsel to President Eisenhower.

This is not a political group. It is nonpartisan. It is comprised of both Republicans and Democrats.

The cochairmen of the New Jersey lawyers for no-fault insurance have approved a statement of position. It includes the following:

> The Committee believes that the present system of handling automobile negligence litigation has demonstrated itself to be deficient in logic, in law and in practice.
>
> The Committee urges that a new system—a no-fault system—be tried. The weaknesses of the existing system have been so abundantly demonstrated that it is clear that palliatives and patchwork will not alleviate, but can only aggravate, the serious problems which undeniably exist. Basic and extensive reform is required.
>
> The Committee speaks only for itself. The lawyers comprising the Committee do not purport to speak for the clients of any of the Committee members nor for any other organized group.
>
> It would be unfortunate indeed if the public were mislead by a vocal segment of the Bar to believe that all lawyers are insensitive to the urgent need for reform.

That is the end of the excerpt from the committee's statement.

Chief Justice Weintraub of the New Jersey Supreme Court is respected nationally as well as in his own State. Under the New Jersey constitution the chief justice of New Jersey is directly responsible for the administration of the courts and must be in close touch with the judicial process in all the courts of the State. Chief Justice Weintraub of the New Jersey Supreme Court has stated publicly that he favors some form of no-fault insurance.

The chief justice has pointed out that given today's traffic congestion, accidents are inevitable. Indeed, they are statistically predictable. Given the split second accident, resulting from inadvertence, the chief justice has said we cannot speak realistically of fault.

Chief Justice Weintraub has said that accordingly there is not a fair basis upon which to fix fault, that if he thought the fault system were just, he would not advocate no-fault. He has pointed out that accidents happen so quickly that witnesses simply cannot recall and reconstruct the facts.

The chief justice says that saving court time by a no-fault system is a mere incidental benefit, that he would not advocate no-fault merely to save court time, but that given the split second quality of accidents,

their inevitability and predictability, a no-fault plan is the just and equitable plan. His basis for advocating no-fault is fairness and justice.

Quite apart from the position of the lawyers' committee I would make a few personal comments from my experience as a New Jersey trial lawyer.

I should say, Senator, that I am not here representing any vested interest. I am not here for labor. I am not here for business. I am not here for the insurance industry. I am here on my own. I bought my own ticket on the railroad.

New Jersey is the most densely populated States in the Nation. The density of automobiles in New Jersey is the greatest in the Nation. Accordingly, the problems which arise from the present automobile liability system are particularly severe in that State.

What we do under the tort system as distinct from what some lawyers say we do is attempt to provide compensation—compensation for the injured—but within a fault framework.

Indeed, the principle of compensation becomes most evident in the usual settlement conference which precedes a jury trial, and by which process the vast majority of cases are disposed of. At least by the morning of trial it becomes plainly evident that fault is not some absolute moral principle. Fault is what a jury says.

Given a split second accident which occurred years ago, jury verdicts are predicably unpredictable. Hence the settlement conference, the trade of certainty for risk.

Under the present system drivers play roulette. If they have an accident, no matter how seriously injured they are, they may well get very little. They stand a slim chance of hitting the jackpot. The recovery depends on how much insurance a stranger buys.

In fact, we are operating under an internally inconsistent system. We are trying to move in two directions at once. On the one hand, we operate within a system designed to prove fault and to reward the innocent. On the other hand, we apply principles of compensation with little regard to fault.

The result is uncertain compensation and frequently inadequate compensation, provided by a highly expensive system which was designed to determine fault.

Basic protection, self-insurance, or, as it has come to be called no-fault insurance would do what insurance was originally supposed to do—spread the risk and provide a certainty of payment.

You are well aware that highly vocal, and, at times shrill, objection to no-fault insurance has come from members of the legal profession. The familiar system seems simpler and more comfortable. Undoubtedly, much objection, while entirely sincere, proceeds from sheer inertia and visceral opposition to change. You know from recent testimony that some of it proceeds from sheer self-interest.

But, the legal profession, after all, exists to serve the public and not the other way around.

My office is in Newark. That city and much of New Jersey is beset by those social and economic and racial problems which afflict urban areas throughout the Nation.

Problems with respect to environment, products liability, consumers' rights, and the accommodation of conflicting interests of economic and racial groups more and more require and demand the attention of our courts both on the civil and criminal side.

In New Jersey 83 percent of automobile liability cases are settled before verdict. Accordingly, our courts are used largely not for the trial of cases at all, for which they were designed. They are a marketplace for the arbitration and compromise of claims.

Frequently the talents called upon are not so much those of the trained lawyer or judge, but those to be found in a Turkish bazaar. The time of lawyers and of judges is used to decide somehow the trading value of a whiplash injury, a broken arm or the loss of a leg. Their time could be used more productively.

I submit that the legal profession in the United States is one of the most valuable assets this country has. Its energies and talent should be directed to the most important problems which we face. A system which diverts so much legal talent to automobile liability settlements and trials wastes a valuable national resource.

There are numerous no-fault plans. The bill before this committee, S. 945, combines good aspects of many of these plans. It would provide reasonable medical expenses, would reimburse the injured for necessary services and, very important, would provide all reasonable expenses for rehabilitation.

At the same time, it limits reimbursement for wage loss to $30,000. It does not eliminate recovery for catastrophic harm.

Thus, limits are set upon the coverage while the victim of catastrophe may bring a legal action to receive a prompt decision in a court uncluttered by thousands of small automobile liability cases.

Criticisms frequently heard of the State bills relate to the out-of-State accident and the out-of-State driver. While this problem is not insuperable on a State level, it would be eliminated by the proposed Federal bill.

Senator HART. I hate to interrupt, and yet I must welcome the distinguished Senator whom we talked about a few moments ago. I hate to interrupt because the testimony is powerful and I hope will be listened to widely.

Senator CASE. Mr. Chairman, you are most gracious.

I am always happy when I can introduce two people whom I like very much to each other. In this respect, this is no exception.

Mr. Haring is a partner of an old and distinguished firm.

I am enormously happy that I could come in before he finished. I am sorry I was not here when he started. But if you will permit me non pro tunc to present to you one of our distinguished lawyers representing the bar committee on no-fault insurance, I would like to have it entered in the record that I do so. When you and I have long since ceased to be here and come back and look at the record you will not remember that I came in after he started.

Senator HART. We will fix that record.

Mr. HARING. Senator Hart, we need a self-insurance system. We need a no-fault system. We need prompt and well-considered reform. I personally believe that this bill will provide it.

I should say, Senator, my longer statement I hope will be filed and be made a matter of record. I have read a summary of my longer statement, and I am open to any questions.

Senator HART. Mr. Haring, the statement will be printed in full.

I indicated, having had an opportunity to read much of the statement in advance, that it is a powerful plea for the kind of reform that

we are considering here. There is so much in it, brief though it is, that simply puts exclamation points behind so much of what we have heard.

I sense those of us who feel strongly the need for legislation will be excerpting without credit from it in the days and weeks ahead. That expression "drivers play roulette," for example, is really so true under our existing system; whether you are going to be hit by a drunken driver who is heavily insured or a careful driver who may for a moment have been guilty of some omission whose fault is questionable but who isn't insured is a matter of chance.

What I think I would refer to most frequently is the point you make in reply to the argument that a no-fault system rewards irresponsibility and somehow or another has socially unacceptable implications.

In your statement you address yourself to that. You label it an invalid doctrine and conclude by saying, "A no-fault system promotes family integrity, rehabilitation and the self-respect which comes with it." I hope that point will be more clearly understood by all of us as we plow this ground.

It is not easy, I am sure even from so distinguished a firm as yours, to voice opinions that in the sense are regarded by your fellow members at the bar as doing them a direct financial disservice. But you are not alone because the profession happily is coming forward to speak the need for this reform as they see it. But to have one of your standing—and those associated with you in the New Jersey lawyer's committee for no-fault insurance—such as your able chief justice, Chief Justice Weintraub—come forward inevitably will help us make progress. The cumulative effect of this I hope will be great.

Last week this committee heard from a younger lawyer, Robert Joost of Boston who had been associated with the Trial Lawyers Association for some years. Incidentally, his academic credentials I thought would be unmatched, but yours match them, I notice.

Mr. HARING. Thank you.

Senator HART. If there is no objection, I would like to insert in the record a letter that I received from a partner in a prominent Milwaukee firm endorsing the concept of no-fault at the Federal level. He said:

> To await action by the individual states is ludicrous and in the interim period there is likely to be a rather chaotic state of affairs even as there is now to some degree in accidents between automobiles of various legal jurisdictions.

He concludes by saying:

> I am well aware of the objections of lawyers to no-fault insurance. I can't help but feel that much of this complaint is based on the prospective loss of fees. This really is not a valid cause for objection.

This letter along with another from a lawyer who has been an insurance instructor in San Francisco and an orthopedic surgeon will be made a part of the record.

(The letters follow:)

MICHAEL, BEST & FRIEDRICH,
Milwaukee, Wis., April 6, 1971.

SENATOR PHILIP HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: *This is to endorse the concept of no-fault insurance on a Federal level. To wait action by the individual states is ludicrous and in the interim period there is likely to be a rather chaotic state of affairs even as there is now to some degree in accidents between automobiles of various legal juris-*

After being hired, a driver trainee receives detailed classroom instruction in company policies, traffic regulations, safety requirements, knowledge of the vehicle and techniques for safe driving. To develop driving proficiency he undergoes a lengthy probationary period starting with student trips in the company of an experienced driver. He learns how to handle smaller trucks at first, and eventually may drive an intercity tractor-trailer rig.

Throughout his employment, industry and fleet supervision is provided through road patrols, radar checks, safety meetings and conferences, and the use of recording devices and check stations.

The professional truck driver is required to follow the code of "defensive driving," which places responsibility upon him to drive in such a way that he commits no driving errors himself and can protect himself against the mistakes of other drivers. If he is involved in an accident his company rules the accident as "preventable" or "non-preventable." A preventable accident is one in which the truck driver did not take every possible step to prevent the accident, regardless of whether or not he was legally in the right and the other driver was legally wrong. Under this concept of preventability the driver's attitudes and actions are brought under close scrutiny and control by the company so that the driver who develops poor attitudes or poor driving habits is quickly retrained or released from employment.

The effectiveness of the industry's programs is reflected in the following National Safety Council accident figures:

Year	Percent of trucks involved in accidents	Truck percent of registered vehicles	Percent of cars involved in accidents	Car percent of registered vehicles
1948	17.0	18.0	80.0	81.0
1969	11.5	16.6	85.1	80.8

These figures are taken from the National Safety Council's publication, "Accident Facts," 1949 and 1970 editions, pp. 66 and 56, respectively. They demonstrate that the truck record for accident involvement has improved substantially over the period shown, whereas that of the passenger car has gotten worse. The figures shown do not reflect mileage driven. When this factor is considered, the truck record is significantly better than that of the passenger cars. This is demonstrated by the following figures:

Intercity fleets (class I and II)	Total truck mileage	12,460,796,451
	Total trucks involved in accidents	39,302
	Ratio of trucks involved per million miles	3.15
All trucks	Total truck mileage	206,680,880,000
	Total trucks involved in accidents	3,075,000
	Ratio of trucks involved per million miles	14.9
All passenger cars	Total passenger car mileage	849,633,000,000
	Total cars involved in accidents	22,800,000
	Ratio of passenger cars involved per million miles	26.8

The Class I and II trucks referred to in the first category are those for-hire vehicles subject to economic regulation by the Interstate Commerce Commission, and safety regulation by the Department of Transportation. The mileage and accident figures are obtained from the pamphlet, "1969 Accidents of Large Motor Carriers of Property," Bureau of Motor Vehicle Safety, Department of Transportation. A Class I carrier is one whose annual gross operating revenue is $1 million or more. A Class II carrier is one whose annual gross operating revenue is $300,000, but less than $1 million. The second category "all trucks," covers just that. It includes, for example, farm trucks, trucks operated by the federal government, as well as a very large number of trucks not subject to economic regulation by the ICC, but subject to DOT safety regulation. The mileage figures for both the second and third categories are those of the Department of Transportation (Highway Statistics, 1969, Table VM-1, p. 73), and the accident figures are those of the National Safety Council (Accident Facts, 1970 ed., p. 56). 1969 figures are used, as they are the latest available from all sources.

The effect of the industry's safety programs has been to enable motor carriers significantly reduce the heavy costs of accident involvement. But even though

the carriers have done an outstanding job of controlling their vehicles and drivers, there are still a large number of truck accidents each year that are caused by others. A study by American Fidelity and Casualty Co. of truck-involved accidents in the 1950's showed that in 104,000 accidents with other vehicles, truck drivers could not in any way have prevented 70% of them.

Over the years, the trucking industry has been in the forefront of highway user groups which have made a consistent and conscientious effort to reduce their contribution to highway accidents. That effort has involved the expenditure of large sums of money and a great deal of time and work. Now it is proposed that the cost of highway accidents be assigned, not to those responsible for them, but to all highway users, without regard to their driving habits, or their concern for their own welfare, or that of other users of the road. If there is to be a shift to a "no-fault" basis, we submit that if any segment of highway users should be singled out for favored treatment, it should be the motor carriers. But insead of being rewarded for their succesful efforts to reduce highway accidents, S. 945 would subject them to discriminatory treatment. We don't ask for favors, but we do ask for fair treatment. If the law is to provide that, except for catastrophic loss, no driver involved in an accident is to be considered responsible for it, the same rule should apply with respect to drivers of commercial vehicles.

There is certainly no equity in arbitrarily assigning to such vehicles a very high percentage of the costs resulting from any accident in which it is involved. The proposal is indeed a paradox—on the one hand, operators of commercial vehicles are told that no matter how negligent automobile drivers may be, they bear no responsibility when they cause an accident in which the operator's trucks are involved, but the truck owners will be assessed a major share of the cost resulting from the very same accidents! Technically, this may be "no fault" insurance; practically, it is insurance which arbitrarily assigns a great majority of the blame (cost) to operators of commercial vehicles involved in accidents.

Under the current fault system of compensating for accident losses, motor carriers usually bear all or part of the accident costs if their drivers contributed in any degree to an accident. However, the system quite often protects the carrier when other drivers are totally responsible. Thus the present system provides incentive to the carriers to continue their programs of careful driver selection, training and supervision, and it keeps insurance costs at a point which the carriers can afford and still stay in business.

To the contrary, § 5(7) (A) and (B) of S. 945 would hold motor carriers uniformly liable for a large percentage of all property damage and personal injury regardless of whether or not their trucks were actually responsible for accidents. This would result in discrimination against trucks because, through millions of miles of operation, they are constantly exposed to accidents resulting from the driving errors of others.

The truck driver is a skilled professional who must meet strict physical requirements every two years and who is limited to a maximum of ten hours of driving in any one duty period. The vehicle he operates is a highly sophisticated machine that is the subject of regularly-scheduled inspections and preventive maintenance. Yet, on the highway, he is exposed to drivers who have varying degrees of ability and who quite often are pushing their stamina by attempting to cover 10, 15 and 20 hours of driving following an eight-hour work day. The truck driver is exposed to driving mistakes by the very young neophyte driver whose attitudes lack maturity, by the older driver who may lack the physical conditioning necessary to safe driving at high speeds, and, because a very substantial amount of over the-road trucking occurs at night, to the drunken driver. As a result of this exposure, there is a strong likelihood that even the best and most defensive truck driver can become involved in an accident that he can in no way avoid. Under the provisions of these bills, the cost of such accidents would be largely borne by the motor carriers and their insurance costs would rise very substantially.

As an example of the inherent inequity of these bills which would hold the commercial vehicle largely or almost entirely responsible for an accident involving a passenger car, consider the cost results of an accident under the present system versus the system proposed by the bills:

A. Truck and trailer unit, westbound, in extreme right lane of 4-lane divided highway.

B. Passenger car with 4 occupants, eastbound, loses control, comes through the dividing median and collides with the truck.

Result: All occupants of car severely injured, No injury to truck driver.

PRESENT SYSTEM

Based on the premise that one who causes injury to another by negligent conduct should fairly and adequately compensate him for that injury, the truck operator would owe nothing.

S. 945

This bill requires payment of up to $1,000 per month for a total of 30 months for loss of earnings resulting from an accident, with no specified limits on costs for medical, hospital, surgical, etc., services, and physical and occupational therapy and rehabilitation. Assuming that the injured parties in this accident were disabled many months each, the total cost for the injuries could well be in the hundreds of thousands of dollars, by virute of the expenses covered by "economic" loss under § 2(10) of the bill.

Under the terms of S. 945 (§ 5(7)(A)) by which a larger vehicle, depending on its size, would be responsible for a substantial percentage of net economic loss, it is possible that the motor carrier would be required to pay upwards of 90% of the loss incurred by the occupants of the passenger car. While we assume the figure would be somewhat lower, the bill gives the Secretary of Transportation (§ 5(7)(B)) complete discretion to assign to vehicles larger than an "ordinary passenger automobile" a percentage of responsibility for net economic loss sustained by occupants of other vehicles. And the bill clearly indicates, in the same section, that the Secretary could determine that such responsibility would exceed 70%. The definition of "ordinary passenger automobile" contained in the bill (§ 5(7)(A)(i)) includes vehicles having a seating capacity of up to nine passengers. It is, therefore, clear that the cited example of costs which might be incurred by motor carriers because their vehicles are involved in accidents for which—under the present system—they could not be held responsible, is modest indeed.

S. 945 is contrary to the principle of "no-fault" insurance because it would penalize motor carriers by placing them under a "fault" system of insurance rather than a "no-fault" system. It would hold the carriers responsible for losses incurred by all parties to all accidents involving trucks as if the carriers' vehicles are always responsible for such accidents.

One of the claims made for "no-fault" insurance is that premium costs will be reduced, but S. 945, if enacted, would tremendously increase the costs of truck insurance because of the larger portion of accident costs that would be borne by insurance companies which supply truck insurance.

Under the retrospective rating plan, those costs will be shifted back to the motor carriers through an increase in premiums. The regulated for-hire trucking industy includes appoximately 1,500 Class I carriers, 2,000 Class II carriers, and, in addition, 11,700 Class III carriers (those who annual gross revenues are less than $300,000 and whose fleets consist of a small number of vehicles). All for-hire carriers operate on a very slim profit margin and many would be unable to absorb a sharp rise in insurance costs. The industry is faced with severe competition from railroads, airlines, freight forwarders, and to some extent, water carriers. Because of the competition of other transport modes—for-hire carriers are by no means completely free to recoup increased expenses by increases in their rates.

I referred earlier to H.R. 7514, introduced in the House by Congressman Moss of California. As we read his bill, it would eliminate the provision of S. 945 which would require that large vehicles be charged with a very substantial portion of the costs of all accidents in which they are involved, which is the very antithesis of the "no fault" principle. Let me say that we earnestly hope—if federal "no fault" insurance legislation is enacted—it will follow the lines of H.R. 7514 in this respect.

There is another aspect of S. 945 which seems entirely out of keeping with the "no-fault" philosophy. I refer to § 5(5), providing that persons not occupants of motor vehicles may recover their net economic loss from the insurer of any motor vehicle involved in an accident. First off, we think the approach suggested by Secretary Volpe in his appearance before this Committee on March 18, 1971, is preferable. As we understand his proposal, the insurance coverage obtained by a motor vehicle owner would cover himself and all members of his family whenever they were involved in a motor vehicle accident, whether in the owner's vehicle, as occupants of another vehicle, or as pedestrians. This would leave the owner's insurance company additionally liable only for injury or death to uninsured passengers or pedestrians.

But this is not our main objection to § 5(5). We believe its language is so broad as to allow recovery by any member of a train crew, or passenger on a train, from the insurer of any motor vehicle involved in a grade-crossing accident. Just as S. 945 requires owners of passenger cars and operators of trucks and buses to provide insurance to cover the net economic loss suffered by occupants of their vehicles, it should also require the railroads to assume the same obligation with respect to members of train crews and passengers on trains. This is no minor matter. Statistics published by the Department of Transportation show the following respecting grade-crossing accidents, and fatalities and injuries resulting therefrom, for the years 1967–1969:[1]

Year	Number of accidents	Fatalities	Injuries
1967	3,932	1,632	3,812
1968	3,816	1,536	3,744
1969	3,774	1,490	3,669

If "no fault" is to be the standard for recovery of net economic loss in accidents involving motor vehicles, railroads cannot in fairness be given a free ride at the expense of owners of passenger cars, trucks and buses. Under S. 945 as presently worded, the Secretary of Transportation might well decide, in exercising his authority under § 5(7)(A), to assign 75% of the net economic loss incurred by a passenger car driver in an accident with a truck or bus to the insurer of the latter vehicles. If the bill is enacted with this provision included, then, by the same token, it should vest the same authority in the Secretary to assign responsibility—on a similar basis—to railroad equipment involved in accidents with passenger cars, trucks and buses.

Senator Moss. This concludes our witnesses for today.

This concludes our witnesses for today.

This committee will convene tomorrow at 10:15 here in this room to hear additional witnesses.

We are now in recess until tomorrow.

(Whereupon, at 3:20 p.m., the hearing was recessed, to reconvene at 1:15 a.m., Friday, May 14, 1971.)

[1] Accident Bulletin No. 138, Federal Railroad Administration, Table 6, p. 2.

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

FRIDAY, MAY 14, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 10:30 a.m. in room 5110, New Senate Office Building, Hon. Philip A. Hart, presiding.

Present: Senators Hart and Stevens.

Senator HART. The committee will be in order.

Senator Case of New Jersey had planned to join us this morning in order to introduce our first witness. He has sent word that the Foreign Relations Committee is discussing, as it always does, some world-shaking problem and has not yet resolved it; and he suggested that we go ahead.

So, I welcome for Senator Case and those of us on the committee here Mr. Eugene M. Haring of Newark, N.J. I should explain that I read through Mr. Haring's statement, and it sounded great.

We do welcome you.

May I ask that the summary biography of Mr. Haring be printed at this point in the record. It is a most impressive one. It lends additional weight to his testimony.

(The biography follows:)

BIOGRAPHICAL SKETCH OF EUGENE M. HARING

Princeton University; A.B., Summa Cum Laude, 1949 (Phi Beta Kappa).
Princeton University; A.M., Philosophy, 1951, (Woodrow Wilson Fellow 1949–50).
Harvard Law School; J.D., 1955.
McCarter & English, Newark, New Jersey; Associate, 1955–1961; Partner, 1961– .
American Judicature Society; Essex County (N.J.) Bar Association; New Jersey State Bar Association; American Bar Association; Harvard Law School Association of New Jersey (Vice President & Trustee); Summit (New Jersey) Civil Rights Commission, 1970–71; United States Navy, 1945–46.

STATEMENT OF EUGENE M. HARING, ATTORNEY, McCARTER & ENGLISH, NEWARK, N.J., AND MEMBER, NEW JERSEY LAWYERS COMMITTEE FOR NO-FAULT INSURANCE; ACCOMPANIED BY JOHN L. McGOLDRICK, ASSOCIATE

Mr. HARING. Thank you, Senator Hart.

On my left is John McGoldrick, my associate.

As I believe you know, I am a practicing lawyer with offices in Newark, N.J., although my practice extends throughout that State.

During a substantial part of my professional experience, I have been responsible for much of the litigation conducted by my firm, which is one of the largest in New Jersey. I have been responsible for a wide variety of litigation, including automobile negligence cases, life insurance, health insurance, disability insurance, and products liability cases. Because of my personal concern I am affiliated with a group of New Jersey lawyers from all parts of the State for the lawyers committee for no-fault insurance. This is an unfunded, voluntary group; it speaks solely for its members and, we believe, the public interest.

Cochairmen of this group are Charles Danzig, Woodruff J. English and Donald B. Kipp, all distinguished lawyers of broad experience in positions sensitive to the overall legal process in New Jersey.

In addition, among the sponsors of this group are Alfred C. Clapp, former Republican State senator and former presiding judge of the appellate division of New Jersey; and Bernard Shanley, New Jersey Republican national committeeman and former counsel to President Eisenhower.

This is not a political group. It is nonpartisan. It is comprised of both Republicans and Democrats.

The cochairmen of the New Jersey lawyers for no-fault insurance have approved a statement of position. It includes the following:

> The Committee believes that the present system of handling automobile negligence litigation has demonstrated itself to be deficient in logic, in law and in practice.
>
> The Committee urges that a new system—a no-fault system—be tried. The weaknesses of the existing system have been so abundantly demonstrated that it is clear that palliatives and patchwork will not alleviate, but can only aggravate, the serious problems which undeniably exist. Basic and extensive reform is required.
>
> The Committee speaks only for itself. The lawyers comprising the Committee do not purport to speak for the clients of any of the Committee members nor for any other organized group.
>
> It would be unfortunate indeed if the public were mislead by a vocal segment of the Bar to believe that all lawyers are insensitive to the urgent need for reform.

That is the end of the excerpt from the committee's statement.

Chief Justice Weintraub of the New Jersey Supreme Court is respected nationally as well as in his own State. Under the New Jersey constitution the chief justice of New Jersey is directly responsible for the administration of the courts and must be in close touch with the judicial process in all the courts of the State. Chief Justice Weintraub of the New Jersey Supreme Court has stated publicly that he favors some form of no-fault insurance.

The chief justice has pointed out that given today's traffic congestion, accidents are inevitable. Indeed, they are statistically predictable. Given the split second accident, resulting from inadvertence, the chief justice has said we cannot speak realistically of fault.

Chief Justice Weintraub has said that accordingly there is not a fair basis upon which to fix fault, that if he thought the fault system were just, he would not advocate no-fault. He has pointed out that accidents happen so quickly that witnesses simply cannot recall and reconstruct the facts.

The chief justice says that saving court time by a no-fault system is a mere incidental benefit, that he would not advocate no-fault merely to save court time, but that given the split second quality of accidents,

their inevitability and predictability, a no-fault plan is the just and equitable plan. His basis for advocating no-fault is fairness and justice.

Quite apart from the position of the lawyers' committee I would make a few personal comments from my experience as a New Jersey trial lawyer.

I should say, Senator, that I am not here representing any vested interest. I am not here for labor. I am not here for business. I am not here for the insurance industry. I am here on my own. I bought my own ticket on the railroad.

New Jersey is the most densely populated States in the Nation. The density of automobiles in New Jersey is the greatest in the Nation. Accordingly, the problems which arise from the present automobile liability system are particularly severe in that State.

What we do under the tort system as distinct from what some lawyers say we do is attempt to provide compensation—compensation for the injured—but within a fault framework.

Indeed, the principle of compensation becomes most evident in the usual settlement conference which precedes a jury trial, and by which process the vast majority of cases are disposed of. At least by the morning of trial it becomes plainly evident that fault is not some absolute moral principle. Fault is what a jury says.

Given a split second accident which occurred years ago, jury verdicts are predicably unpredictable. Hence the settlement conference, the trade of certainty for risk.

Under the present system drivers play roulette. If they have an accident, no matter how seriously injured they are, they may well get very little. They stand a slim chance of hitting the jackpot. The recovery depends on how much insurance a stranger buys.

In fact, we are operating under an internally inconsistent system. We are trying to move in two directions at once. On the one hand, we operate within a system designed to prove fault and to reward the innocent. On the other hand, we apply principles of compensation with little regard to fault.

The result is uncertain compensation and frequently inadequate compensation, provided by a highly expensive system which was designed to determine fault.

Basic protection, self-insurance, or, as it has come to be called no-fault insurance would do what insurance was originally supposed to do—spread the risk and provide a certainty of payment.

You are well aware that highly vocal, and, at times shrill, objection to no-fault insurance has come from members of the legal profession. The familiar system seems simpler and more comfortable. Undoubtedly, much objection, while entirely sincere, proceeds from sheer inertia and visceral opposition to change. You know from recent testimony that some of it proceeds from sheer self-interest.

But, the legal profession, after all, exists to serve the public and not the other way around.

My office is in Newark. That city and much of New Jersey is beset by those social and economic and racial problems which afflict urban areas throughout the Nation.

Problems with respect to environment, products liability, consumers' rights, and the accommodation of conflicting interests of economic and racial groups more and more require and demand the attention of our courts both on the civil and criminal side.

In New Jersey 83 percent of automobile liability cases are settled before verdict. Accordingly, our courts are used largely not for the trial of cases at all, for which they were designed. They are a marketplace for the arbitration and compromise of claims.

Frequently the talents called upon are not so much those of the trained lawyer or judge, but those to be found in a Turkish bazaar. The time of lawyers and of judges is used to decide somehow the trading value of a whiplash injury, a broken arm or the loss of a leg. Their time could be used more productively.

I submit that the legal profession in the United States is one of the most valuable assets this country has. Its energies and talent should be directed to the most important problems which we face. A system which diverts so much legal talent to automobile liability settlements and trials wastes a valuable national resource.

There are numerous no-fault plans. The bill before this committee, S. 945, combines good aspects of many of these plans. It would provide reasonable medical expenses, would reimburse the injured for necessary services and, very important, would provide all reasonable expenses for rehabilitation.

At the same time, it limits reimbursement for wage loss to $30,000. It does not eliminate recovery for catastrophic harm.

Thus, limits are set upon the coverage while the victim of catastrophe may bring a legal action to receive a prompt decision in a court uncluttered by thousands of small automobile liability cases.

Criticisms frequently heard of the State bills relate to the out-of-State accident and the out-of-State driver. While this problem is not insuperable on a State level, it would be eliminated by the proposed Federal bill.

Senator HART. I hate to interrupt, and yet I must welcome the distinguished Senator whom we talked about a few moments ago. I hate to interrupt because the testimony is powerful and I hope will be listened to widely.

Senator CASE. Mr. Chairman, you are most gracious.

I am always happy when I can introduce two people whom I like very much to each other. In this respect, this is no exception.

Mr. Haring is a partner of an old and distinguished firm.

I am enormously happy that I could come in before he finished. I am sorry I was not here when he started. But if you will permit me non pro tunc to present to you one of our distinguished lawyers representing the bar committee on no-fault insurance, I would like to have it entered in the record that I do so. When you and I have long since ceased to be here and come back and look at the record you will not remember that I came in after he started.

Senator HART. We will fix that record.

Mr. HARING. Senator Hart, we need a self-insurance system. We need a no-fault system. We need prompt and well-considered reform. I personally believe that this bill will provide it.

I should say, Senator, my longer statement I hope will be filed and be made a matter of record. I have read a summary of my longer statement, and I am open to any questions.

Senator HART. Mr. Haring, the statement will be printed in full.

I indicated, having had an opportunity to read much of the statement in advance, that it is a powerful plea for the kind of reform that

we are considering here. There is so much in it, brief though it is, that simply puts exclamation points behind so much of what we have heard.

I sense those of us who feel strongly the need for legislation will be excerpting without credit from it in the days and weeks ahead. That expression "drivers play roulette," for example, is really so true under our existing system; whether you are going to be hit by a drunken driver who is heavily insured or a careful driver who may for a moment have been guilty of some omission whose fault is questionable but who isn't insured is a matter of chance.

What I think I would refer to most frequently is the point you make in reply to the argument that a no-fault system rewards irresponsibility and somehow or another has socially unacceptable implications.

In your statement you address yourself to that. You label it an invalid doctrine and conclude by saying, "A no-fault system promotes family integrity, rehabilitation and the self-respect which comes with it." I hope that point will be more clearly understood by all of us as we plow this ground.

It is not easy, I am sure even from so distinguished a firm as yours, to voice opinions that in the sense are regarded by your fellow members at the bar as doing them a direct financial disservice. But you are not alone because the profession happily is coming forward to speak the need for this reform as they see it. But to have one of your standing—and those associated with you in the New Jersey lawyer's committee for no-fault insurance—such as your able chief justice, Chief Justice Weintraub—come forward inevitably will help us make progress. The cumulative effect of this I hope will be great.

Last week this committee heard from a younger lawyer, Robert Joost of Boston who had been associated with the Trial Lawyers Association for some years. Incidentally, his academic credentials I thought would be unmatched, but yours match them, I notice.

Mr. HARING. Thank you.

Senator HART. If there is no objection, I would like to insert in the record a letter that I received from a partner in a prominent Milwaukee firm endorsing the concept of no-fault at the Federal level. He said:

> To await action by the individual states is ludicrous and in the interim period there is likely to be a rather chaotic state of affairs even as there is now to some degree in accidents between automobiles of various legal jurisdictions.

He concludes by saying:

> I am well aware of the objections of lawyers to no-fault insurance. I can't help but feel that much of this complaint is based on the prospective loss of fees. This really is not a valid cause for objection.

This letter along with another from a lawyer who has been an insurance instructor in San Francisco and an orthopedic surgeon will be made a part of the record.

(The letters follow:)

MICHAEL, BEST & FRIEDRICH.
Milwaukee, Wis., April 6, 1971.

SENATOR PHILIP HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: *This is to endorse the concept of no-fault insurance on a Federal level. To wait action by the individual states is ludicrous and in the interim period there is likely to be a rather chaotic state of affairs even as there is now to some degree in accidents between automobiles of various legal juris-*

dictions. The automobile insurance game has reached the point where the rate structures threaten to collapse the whole automobile business. By way of example. I just received a notice from my insurance company declining to renew my insurance of my three cars. There has been no claim under my policy since the last renewal. Heretofore my annual premium has been in the order of $920. Now they offer to insure me through one of their affiliated companies at extremely low liability limits for an annual premium of $2,880, approximately triple rate for far less coverage with no claims or traffic violations since the policy was written! The only way I can beat that within that company's structure would be if I would buy my two children old automobiles and put minimal insurance coverage on them. This would then mean that two automobiles of questionable merit and with low coverage would be plying the highways instead of having the kids in proper cars with proper coverage. The insurance company will not recognize an exclusion of the children from specified cars within the family.

I am well aware of the objections of lawyers to no-fault insurance. I can't help but feel that much of this complaint is based on the prospective loss of fees. This really is not a valid cause for objection. Much of the trouble with insurance today relates back to legal fees and pumping up claims for pain and suffering, etc.

BAYARD H. MICHAEL.

NEAR, FRIEDMAN & CRAWFORD,
ATTORNEYS AT LAW,
San Francisco, Calif. March 25, 1971.

Senator PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: Thank you for sending me a copy of your bill for a national no-fault insurance plan.

I have read it and believe it will go a long way to correct the remedies that plague our present system. I do not believe the states, who are in general under the thumb of the insurance lobby and whose members are mostly attorneys, will ever pass adequate legislation. The support for no-fault insurance is growing daily. Enclosed is the March 24, 1971 editorial from the San Francisco Chronicle strongly endorsing a no-fault system.

I do have a few objections to your plan. Perhaps these objections are misfounded, but I believe they might be of some value to you.

1. One of your provisions is that the insurance companies cannot refuse to renew unless the insured has his license cancelled or he refuses to pay the premium. What is to stop the insurance company from raising premiums substantially to anyone they wish to not renew? They can always say the new premium is necessary for *this* particular risk. I see rates going up astronomically for anyone insurance companies decide is undesirable.

2. I think that your plans to let rates be established by a file and use (open competition) type rating law will also lead to rates going up dramatically. I have accumulated some evidence to show that states with file and use laws have higher insurance rates than those where prior approval is required. Some of this evidence is contained in an unpublished article I have written, and I have enclosed a copy of that article. If interested, I could send you some additional evidence along this line. I have little faith in the fact that the Department of Transportation will be collecting various rates for different classifications and promulgating them to the public. The public hardly ever sees these government handouts, and the rates will all be high even if they see them.

3. The basic problem I see with the plan as you propose it is that by making the no-fault insurance compulsory, you will be placing a great many Americans under a severe financial strain, and I believe will create a new breed of criminals, those who drive without insurance. Whereas I heartily approve of compulsory insurance for motorists, I belive it must be at a price all can afford. To make someone pay $200, $300, $500 or $1,000 for a yearly premium, when he has a limited income, is very harsh. The system which I believe could work best is an insurance plan where all must buy a certain minimum insurance which covers all medical bills without regard to fault. Such a plan has been operating in Puerto Rico since January 1, 1970 and is widely accepted there. I am sure you are familiar with the Social Protection Plan in Puerto Rico (it is briefly described in my enclosed article) and I feel it could be modified in a national plan by 1) substantially raising the loss of wages to the levels set by your bill and 2) only

allowing the tort remedy in cases of catastrophic loss as your bill does, although I believe your criteria a bit harsh.

I believe such a plan could sell in the states for $50 or less, and this would give the American consumer the break he has long sought. Under private companies, especially with a file and use law to regulate rates, I believe insurance rates will stay very high. The purported 80% reduction in liability rates will be more promise than reality, and although the victim will be infinitely better off, the consumer will still end up paying through the nose.

At the very least, a "watchdog commission" should follow the insurance company rates and determine what constitutes a fair rate of return, what part of investment income should be used in determining the rates, standardize the casualty insurance accounting systems, etc.

In the long run, you are leading a grass roots revolution in the insurance field, and I for one think the only way the consumer will ever get a fair break is when a government agency sells him a policy.

An article entitled "A Call For Adoption of the Puerto Rico Social Protection Plan in the United States" by Jean B. Aponte and Herbert S. Denenberg, professors at the University of Pennsylvania who drafted Puerto Rico's Plan is also enclosed.

I realize the fantastic political pressure that would be involved in getting the government to sell the insurance rather than private companies, but the nation is ready for a revolution, so why not go for a complete victory, rather than a compromise that will still place many consumers of auto insurance under an enormous economic burden?

Sincerely yours,

GILBERT FRIEDMAN.

[From the San Francisco Chronicle, March 24, 1971]

THE 'NO FAULT' INSURANCE PLAN

The Nixon administration, having in hand a $2 million two-year study by its Department of Transportation, has called for a drastic change in the system of automobile insurance under which drivers are now paying some $12 billion a year in premiums and getting back about 14.5 cents on the dollar to compensate for economic losses.

It has newly urged Congress to recommend the abandonment of the present tort-liability, or lawsuit system, and suggest that each State enact its own version of the so-called "no fault" system—a system which in essence discards considerations of negligence and promptly and automatically makes benefits available to all accident victims without attempting to establish legal liability.

Adherents of such a plan may not agree as to details, but there is complete agreement that the present system is not working and must be replaced. Insurance companies complain that they are losing millions; the insured complain of zooming rates, and studies by both the Government and the insurance associations reveal that millions of injured accident victims are being grossly underpaid for losses, while a minimal few are fantastically overpaid by sympathetic juries for so-called "general" damages.

The American Insurance Association, representing some 30 percent of the insurers and a pioneer advocate of no-fault insurance, says that under a "pure" no-fault plan. accident victims would promptly recover all medical and hospital costs, and would receive up to $1000 a month for loss of income, than in case of the death of a wage earner, survivors would receive funeral expenses and a continuing payment of the decedent's wages up to his life expectancy, and that an injured pedestrain would be covered by the car that hit him.

Various other benefits would accrue under such a system, the Association asserts, wherein insurance would be compulsory and no licensed driver would be refused coverage.

What is remarkable indeed is the claim that the cost to the motorist would be 30 per cent less than the premium rates now in effect—a boon made possible by the circumstances that no accident victim could sue or be sued. Thus the massive legal expenses incurred under the lawsuit system would be avoided and much of the approximately $3 billion a year that now goes to lawyers and investigators would become available for benefits that would comprise around 65 per cent of the premium fund instead of the 14.5 per cent now being paid.

This in some part at least explains why most lawyers and most bar associations oppose the no-fault system. In addition their hostility is based on charges that

"no fault" shifts responsibility for accidents from the guilty to the innocent, that it gives the uninsured guilty benefits that the insured driver pays for, that it forces the owner to pay deductbile losses, penalizes the car owners with large families, provides premium cuts for hot rodders, speeders and drunk drivers, confers immunity upon owners of commercial vehicles while shifting insurance costs to owners of private cars and eliminates property damages.

The "no-fault" advocates deny the major charges in full, and concede that some versions of the plan are susceptible in small part to the minor allegations. They argue further that the present system confers no direct benefits whatever upon the insured but actually protects the other fellow and does nothing for the insured but permit him to go into court and sue somebody.

The "no fault" concept is not new. It is, for instance in effect in Puerto Rico in a modified form which limits payments of salary and wages to 50 per cent. up to $50. Saskatchewan has a plan that compensates for property damage but puts a $1000 limit on medical and hospital expenses. In the United States, Massachusetts has the only no loss plan now in effect; with a medical limit of $2000, it was instituted in January and experience to date indicates a saving in premiums of $76 million for the year. Bills for a Federal plan are now before Congress and State plans are under consideration in various Legislatures, including California's.

How these plans will fare depends largely upon the depth and extent of public dissatisfaction with the present system, which is sharply rising. Thus "No Fault" insurance in various versions appears inevitable. In theory and from the limited experience available, it would also seem highly desirable.

THE PROFESSIONAL BUILDING.
Saginaw, Mich., March 31, 1971.

Sen. PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: Please accept my strong endorsement of your efforts to create a "no fault" automobile insurance system.

An inordinate amount of my time as an orthopaedic surgeon is taken to deal with insurance examinations, litigation, and court appearances in matters of automobile accidents and personal injury. I and my fellow orthopaedic surgeons could much better spend this time taking care of sick people.

Over the past few years I have been impressed by widespread opinion that justice is long delayed by cluttered court dockets. Surely removal of personal litigation from such legal proceedings would go a long way to free the courts to deal with more important matters.

Sincerely,

JOHN O. GOODSELL, M.D.

Senator HART. The orthopedic surgeon writes,

An inordinate amount of my time as an orthopedic surgeon is taken to deal with insurance examinations, litigation, and court appearances in matters of automobile accidents and personal injury.

And he concludes by suggesting that his skills could be better applied elsewhere.

Mr. HARING. I might say I think that is a very frequent reaction that I encounter with doctors.

Senator HART. It is the first time so far as I am aware of that in this set of hearings we have had this note introduced. I wasn't aware that it had this adverse effect on our society.

Having said all that, let me ask the question that so often is addressed us. "Why should I pay for damages to me if somebody who is a drunken driver hits me? Why propose a system that makes me pay for that?"

Mr. HARING. I think the virtue of such a system is, first, that you get paid and you know how much or can reasonably tell about how much you will get paid.

As far as the illustration of the drunken driver is concerned, which I think we have all heard in this debate again and again, I do not conceive that the function of the civil law is certainly primarily to punish and reward, and indeed juries at least in New Jersey are frequently instructed that they are not to award damages as punishment but simply as compensation. So, I think that compensation is what we need in today's automotive society.

As far as punishment, deterrence is concerned, that is as I conceive it primarily the job of the criminal law, and if the driver in your hypothesis is indeed drunk, he would be, at least in our State, punished severely indeed.

Senator HART. I am aware of no jurisdiction where the law would not mark him as one eligible for some sanctions.

There is another recurring theme in these hearings, and if you have a reaction to it we would be grateful.

When we step back a little from the day-to-day debates here, I think we would agree that there is a general acceptance of the idea that we should proceed to a no-fault system. There are some arguments as to form and so on.

Yes, the existing system is inadequate and inequitable; we will have a no-fault system. But let the States construct their systems. They would be more responsive to the character of their people and topography. If they don't move along then the Federal Government can act, and if later it is thought desirable that the Federal Government act we will have had the experience. Therefore, the Federal Government doesn't need to do anything right now.

Mr. HARING. Well, certainly I think many of us have traditionally though that the idea of experimentalism and pluralism which is supposed to proceed from State legislation is good. However, I think in this particular instance, and I might say I am speaking for myself here, the urgency of the need may very well override some sometimes sentimental thoughts with respect to State control.

Looking at it realistically, it would seem to me that the accomplishment of no-fault in the State, and I am referring to my State, faces a very rough road indeed.

We do have, for instance, an insurance commission which is supposed to be looking into this question, among others. It was unfunded for 13 months and one of the Trenton newspapers recently characterized its reception of Professor Keaton as disgraceful and said that the validity of its final report might be open to question.

Also, a segment of the bar has hired a paid lobbyist, and I saw yesterday in the Newark News on the train coming down here that the New Jersey Bar Association's section on civil procedure, which is meeting in Atlantic City this weekend—in fact right now—may propose such things as a paid lobbyist and other steps with which to fight no-fault.

I think with this type of thing going on in the States, and with the greater susceptibility of State legislatures to local pressure, taken together with the urgency of the need which I believe no-fault fills that Federal legislation may be the only way to get it soon enough and to perhaps prevent a number of States from suffering through some bad experiments.

Senator HART. Thank you, I was not aware of the recent events in New Jersey. But I think it is something that could be anticipated in many of the States.

Mr. HARING. I would certainly think so.

Senator HART. You make a point in your prepared statement that in New Jersey 88 percent of automobile liability cases are settled out of court, and you conclude by saying that courts are "a marketplace for the arbitration and compromise of claims."

The administrative director of the courts of Cook County, the chairman of the National Association of Trial Court Administrators, said substantially the same thing a few days ago testifying before the House on no-fault. He said in some courts around the country only 2 or 3 percent are decided by trial litigation. He said that this statistic indicates to him that the court is being used merely as a forum for the claims adjustment process, and concluded, "In no uncertain terms the taxpayer is subsidizing insurance companies to negotiate its own claims within public facilities and on judged time."

Is there any chance you can go over to Atlantic City on your way back to Newark and tell the boys that?

Mr. HARING. I think, Senator, that some of the statistics which are derivable from the report of the administrative director of New Jersey may support the point which you were just making. The most recent figures which are available in New Jersey are for the court year ending August 1970, and for that year 56 percent of all civil cases filed were automobile liability cases. There were almost 50,000 cases pending that year and 58 percent of those cases were automobile negligence cases. There figures apparently have kept rising, and I see no reason to believe that they will not keep rising. In other words, a greater and greater percentage of court time and of lawyer's time is being taken up by this area of litigation.

Senator HART. Really this reaches a little, but those who are concerned with the problem of law and order and are willing to listen suggest that there is more of a problem of solution than streetlights and more policemen. You point to the delay in the trial procedures of men and women charged with crime; you make the point that until there is a prompt disposition of an arrest you are contributing to a breakdown of law and order.

The principal contributor to the delay in the processing of the arrested person is the statistics that you and I have just been talking about.

Mr. HARING. Yes, I think that is true. I think it is certainly a fact, although I don't have the figures readily at hand, I believe most of us assume, and assume correctly that the criminal calendar certainly in the metropolitan areas such as the one I come from have become very heavy indeed. Criminal trials must be prompt. They should, I believe, be more prompt than they are.

Senator HART. And while judges and prosecutors in most cases do their very best to keep the criminal docket current, any court burdened with the kind of auto cases we are talking about is going to have an awful fight to stay abreast of its responsibility to move the criminal docket.

Mr. HARING. No question about that.

Senator HART. Had you given any thought to the possibility of providing on a first-party basis coverage for pain and suffering and catastrophic harm?

The reason we raise this question with you, we are talking about the burden of litigation and the uncertainty of it, and yet we are faced with the need to attempt to provide for recovery of pain and suffering in the so-called catastrophic type of injury, but rather than having that litigated on the tort basis, the suggestion is now surfacing that we ought to put that on a first-party basis, too. Do you have any reaction on that?

Mr. HARING. I do. I don't know how helpful it may be. The thing which I believe is disturbing about recoveries for pain and suffering is the incommensurability of pain and suffering and dollars. I, therefore, believe that payment of expenses and rehabilitation is more important, not only to society but quite probably to the individual concerned.

It is very difficult indeed to measure pain and suffering, and I suppose that first-party insurance which was for some predetermined amount over and above the wage loss and medical expenses could be provided if a person wanted to buy it.

I am aware that there has been testimony which would advocate an elimination of the catastrophic harm provisions of the bill before your committee.

I would think that pure and theoretic consistency might dictate the obligation of the catastrophic harm provisions.

On the other hand, I question whether consistency is always the aim of legislation and there is a tradition of recovery established here which I think many people in catastrophic cases might like to see continued.

Senator HART. Mr. McGoldrick, is there anything you would care to add as a result of our exchange?

Mr. MCGOLDRICK. No, I don't believe so, Senator.

Senator HART. Mr. Sutcliffe?

Mr. SUTCLIFFE. I have no questions of the witness.

Senator HART. Again, thank you, and I would hope you would convey our thanks to your associates for this kind of thoughtful testimony.

Mr. HARING. I certainly will, Senator, and I thank you for your very gracious reception.

(The statement follows:)

STATEMENT OF EUGENE M. HARING

My name is Eugene M. Haring. I am a practicing lawyer with offices in Newark, New Jersey. My practice extends throughout that state. During a substantial part of my professional experience, I have been responsible for much of the litigation conducted by my firm, which is one of the largest in New Jersey. I have been responsible for a wide variety of litigation, including automobile negligence cases, life insurance, health insurance, disability insurance, and products liability cases. In the course of this I have been responsible not only for the trial of cases, but also for the training of young lawyers in the litigation field. My professional experience has made me particularly aware of the effect of automobile negligence cases on the legal process in New Jersey.

Because of my personal concern I am affiliated with a group of New Jersey lawyers from all parts of the state, called The Lawyers Committee for No-Fault Insurance. This is an unfunded, voluntary group; it speaks solely for its members and, we believe, the public interest. Co-chairmen of this group are Charles Danzig, Woodruff J. English and Donald B. Kipp, all distinguished lawyers of broad experience in positions sensitive to the over-all legal process in New Jersey. In addition, among the sponsors of this group are Alfred C. Clapp, former Republican State Senator and former Presiding Judge of the Appellate Division of New

Jersey, and Bernard Shanley, New Jersey Republican National Committeeman and former counsel to President Eisenhower. This is not a political group. It is non-partisan. It is comprised of Republicans and Democrats.

The co-chairmen of the New Jersey Lawyers for No-Fault Insurance have approved a brief statement of position. It is as follows:

"The members of the Lawyers' Committee for No-fault Insurance, along with many others, are concerned with the consequences of our present methods of handling automobile liability litigation. Those consequences include court congestion, delay, expense, and inequities visited upon the public. The Committee fears that if prompt steps are not taken to rectify and reform existing practices and procedures, there will be a further loss of public confidence in our legal institutions and their responsiveness to changing needs.

"The Committee believes that the present system of handling automobile negligence litigation has demonstrated itself to be deficient in logic, in law and in practice.

"The present system relies upon ancient tort doctrines, developed long before the advent of the automobile. It combines these fault doctrines with the concept of third party insurance. The result is that courts and juries are used to find fault—so that someone other than the wrongdoer, namely the insurance company, will pay. Our Courts are thus overburdened and at times overwhelmed by cases inappropriate and unsuited to their historic function. The result is inequitable payments, or none at all, inordinate delay, unreasonable expense to the taxpayer and the policyholder, and the sacrifice of judicial time which would best be spent on issues of more widespread and compelling significance to the public.

"Recent statements by a vocal segment of the Bar—primarily those specializing in the trial of automobile negligence cases—may well have the effect of misleading the public to believe that lawyers as a class are opposed to change or improvement in the system which presently exists. The Lawyers' Committee for No-fault Insurance wishes to dispel any such impression.

"While the Lawyers' Committee approves the concept of no-fault insurance, it presently favors no specific no-fault plan over any other. It is convinced, however, that the present system of disposing of automobile cases—the use of intricate and expensive court machinery which was devised to deal with different types of problems—is less than satisfactory. The Committee believes that the existing system ill-serves the public for whose benefit the law, and lawyers, exist.

"Accordingly, the Committee urges that a new system—a no-fault system—be tried. The weaknesses of the existing system have been so abundantly demonstrated that it is clear that palliatives and patchwork will not alleviate, but can only aggravate, the serious problems which undeniably exist. Basic and extensive reform is required.

"The Committee speaks only for itself. The lawyers comprising the Committee do not purport to speak for the clients of any of the Committee members nor for any other organized group. Too frequently, professional organizations are accused of narrow or selfish attitudes towards specific problems confronting their profession. The Committee would impress upon the public that a significant segment of the Bar speaks for what it conceives to be the public interest.

"It seems to be agreed by all who have considered the problem that there is urgent need for reform. Most studies indicate that some form of no-fault insurance is the most reasonable road to reform. We believe that some form of no-fault insurance should and will ultimately be adopted in the automobile liability field. It would be unfortunate, indeed, if the public were misled by a vocal segment of the Bar to believe that all lawyers are insensitive to the urgent need for reform."

Under the New Jersey Constitution the Chief Justic of New Jersey is directly responsible for the administration of the courts and must be in close touch with the judicial process in all the courts of the State. Chief Justice Weintraub of the New Jersey Supreme Court has stated publicly that he favors some form of no-fault insurance. The Chief Justice has pointed out that given today's traffic congestion accidents are inevitable. Indeed they are statistically predictable. Given the split second accident, resulting from inadvertence, the Chief Justice has said we cannot speak realistically of fault. Chief Justice Weintraub has said that accordingly there is not a fair basis upon which to fix fault, that if he thought fault were just, he would not advocate no-fault. He has pointed out that accidents happen so quickly that witnesses simply cannot recall and reconstruct the facts. The Chief Justice says that saving court time by a no-fault system is a mere incidental benefit, that he would not advocate no-fault merely to save

court time, but that given the split second quality of accidents, their inevitability and predictability, a no-fault plan is the just and equitable plan. His basis for advocating no-fault is fairness and justice.

Quite apart from the position of the Lawyers' Committee, I would make a few personal comments from my experience as a New Jersey trial lawyer.

I am not here representing any vested interest. I am not here for labor. I am not here for business. I am not here for the insurance industry. I am here on my own. I bought my own ticket on the Penn Central.

New Jersey is the most densely populated state in the nation.[1] The density of automobiles in New Jersey is the greatest in the nation.[2] Accordingly, the problems which arise from the present automobile liability system are particularly severe.

The tort, or fault, system, combined with this great number of automobiles and third party insurance, have an intense impact on the courts, on lawyers and, most important, on the public.

During the New Jersey court year ended August 31, 1970, the last year for which figures are available, 56% of all civil cases filed were automobile negligence cases. Of the total of almost 50,000 cases pending, 58% were automobile negligence cases. These figures are rising; automobile cases are taking up a greater and greater percent of our court calendar. While 88% of the automobile cases were settled before verdict, they still accounted for more than 66% of all jury trials.[3]

What is this third party insurance system, this fault or tort system?

Under the tort or fault system in New Jersey, in order for an injured person to recover, fault must be proved, blame must be fixed. If fault is proved, then and only then, the defendant must pay. If the plaintiff, the injured party, was also at fault, he cannot recover.

We do not, in practice, operate under a pure fault system.

First of all, we all know that the guilty party, the wrongdoer, the person responsible for an accident, does not pay. His insurance company pays.

Secondly, what we do, as distinct from what some lawyers say, is attempt to provide compensation for the injured—but within a fault framework. Compensation, rather than fault finding, is the aim of financial responsibility laws, uninsured motorists laws, collision and medical payments insurance.

Indeed the principle of compensation becomes most evident in the usual settlement conference which precedes a jury trial, and by which process the vast majority of cases are disposed of.

At least by the morning of trial it becomes plainly evident that fault is not some absolute moral principle. It is what a jury says. Given a split second accident which occurred years ago, jury verdicts are predictably unpredictable. Hence, the settlement conference—the trade of certainty for risk.

Customarily a settlement conference involves the application of very practical considerations going well beyond the law applicable to the case. The seriousness of the plaintiff's injuries, the personalities and appearances of the witnesses, the extent of the defendant's insurance coverage, the common inability of the individual defendant to pay, the degree of the plaintiff's negligence, all have a most important bearing on how much the injured party will receive. Such considerations are more influential in determining the amount the injured party will receive than his specific economic loss. Thus, when receiving a case for a badly injured client, one of the first questions a lawyer asks is how much liability insurance the defendant carried. The serious case, such as brain damage, may be worth $10,000 or $100,000. It depends on the amount of insurance carried by the other driver. Therefore, drivers play a game of roulette. If they have an accident, no matter how seriously injured they are they may well get very little, but stand a slim chance of hitting the jackpot. The recovery depends on how much insurance a stranger buys.

In fact, we are operating under an internally inconsistent system. We are trying to move in two directions at once. On the other hand we operate within a system designed to prove fault and to reward the innocent. On the other hand we apply principles of compensation with little regard to fault.

The result is uncertain compensation and frequently inadequate compensation, provided by a highly expensive system which was designed to determine fault.

---

[1] See, e.g., Federal Highway Administration and Bureau of Census Statistics as quoted in World Almanac (Newspaper Enterprise Assn., Inc., 1970) p. 408, 700.

[2] *Ibid.*, p. 127, 700.

[3] Preliminary Report of the Administrative Director of the Courts for the Court Year 1969–70. (Administrative Office of the Courts, State House Annex, Trenton, N.J.).

Basic protection, self insurance, or as it has come to be called, "no fault insurance" would do what insurance was originally supposed to do—spread the risk and provide a certainty of payment.

You are well aware that highly vocal, and at times shrill, objection to no fault insurance has come from members of the legal profession. The familiar system seems simpler and more comfortable. Undoubtedly, much objection, while entirely sincere, proceeds from sheer inertia and visceral opposition to change. You know from recent testimony that some of it proceeds from sheer interest. But the duty of a profession, and particularly the legal profession, is to meet the needs of the public as they arise. The law—and lawyers—must adapt to change. The profession, after all, exists to serve the public, not the other way around.

The argument is frequently heard that no fault insurance would reward the negligent driver. This is an invalid argument. With the conditions of driving today there is not one of us who is an infallible driver. There is not one of us who has not made driving errors and thanked God that we and others escaped harm. Under the existing system if another car is involved when such an error is made, and if we receive serious injuries, we are subject to a most drastic form of retributive justice indeed. We may pay for our mistake by the loss of a limb, blindness, disfigurement, and, since we were at fault, receive no compensation whatsoever. On the other hand, a no fault system promotes family integrity, rehabilitation and the self respect which comes with it. This has obvious social benefits.

My office is in Newark. That city and much of New Jersey is beset by those social and economic and racial problems which afflict urban areas throughout the nation.

Problems with respect to environment, products liability, consumers' rights, and the accommodation of conflicting interests of economic and racial groups more and more require and demand the attention of our courts both on the civil and criminal side. The need for resolution of such problems is compelling. The time and careful attention of our courts to such problems is required. Cases involving important current social and economic issues have a far-reaching effect. The garden variety automobile liability case has no such effect. Our expensive judicial system should and must be used to a greater degree on problems of broad significance. Current problems are too compelling to tie up the time of juries and judges to decide which driver entered an intersection first.

Problems created by the glut of automobile liability cases are not quantitative alone. They are also qualitative.

You will recall that in New Jersey 88% of automobile liability cases are settled before verdict. Accordingly, our courts are used largely not for the trial of cases at all, for which they were designed. They are a marketplace for the arbitration and compromise of claims. Frequently the talents called upon are not so much those of the trained lawyer or judge but those to be found in a Turkish Bazaar. The time of lawyers and of judges is used to decide somehow the trading value of a whiplash injury, a broken arm or loss of a leg. Their time could be used more productively.

I submit that the legal profession in the United States is one of the most valuable assets this country has. Its energies and talent should be directed to the more important problems which we face. A system which diverts so much legal talent to automobile liability settlements and trials, wastes a valuable national resource.

There is something to be said for the experimentalism and pluralism resulting from state rather than federal legislation. On the other hand if our state is any example, pressures of certain interested groups may be more effective in defeating necessary legislation than they would be at the federal level. There are bills in the New Jersey legislature which would enact some form of no-fault insurance.[4] Debate within the State is escalating. A vocal segment of the Bar has hired a paid lobbyist. An Insurance Commission is investigating no-fault insurance. However, its reception to Professor Keeton was characterized by a Trenton newspaper as "disgraceful." That newspaper raises questions about the Commission's objectivity and the validity of the report it will ultimately submit.[5] Obstacles to no-fault legislation in New Jersey may be formidable.

There is something to be said for no-fault legislation at the state level, if it can be enacted. There is something to be said for a Keeton-O'Connell type plan which preserves the right to sue in some cases. However, the situation as it presently

[4] Assembly, No. 2302, Introduced March 29, 1971; Assembly No. 2423 Introduced April 26, 1971.

[5] The Trenton *Trentonian*, April 16, 1971, p. 24.

exists is so bad, and the need for reform so great, that a sound no-fault plan, offering hope of prompt enactment, should be supported.

There are numrous no-fault plans, ranging from the Massachusetts Plan, with very low limites, to the Keeton-O'Connell Plan, with limits of $10,000.00 for lost wages and medical bills and $5,000.00 for pain and suffering, to the open-ended plan proposed by the Stewart Commission in New York, under which almost all suits for general damages, or pain and suffering, would be eliminated.

The Bill before this Committee, S.945, combines good aspects of all these Plans. It would provide all reasonable medical expenses, would reimburse the injured for necessary services, and—very important—would provide all reasonable expenses for rehabilitation. At the same time it limits reimbursement for wage loss to $30,000.00. It does not eliminate, as the New York Plan would, recovery for catastrophic harm. Thus, limits are set upon the coverage while the victim of catastrophe may bring a legal action to receive a prompt decision in a court uncluttered by thousands of small automobile liability cases.

Criticisms frequently heard of the State Bills relate to the out-of-state accident and the out-of-state driver. While this problem is not insuperable on a state level it would be eliminated by the proposed Federal Bill.

We need a self-insurance system. We need a no-fault system. We need prompt, well considered reform. I personally believe your Bill would provide it.

Senator HART. The committee had been hoping that Senator Spong of Virginia might have been able to join us at this time. He has asked me to express for the record his regrets that he could not join us to present a distinguished Virginian.

Senator Spong suggested to me that our next witness' long experience in the State legislature and at the bar gives him some rather unique background out of which some constructive suggestions should be anticipated.

Having spoken for Senator Spong, let me welcome Mr. George E. Allen of Richmond.

STATEMENT OF GEORGE E. ALLEN, ATTORNEY, ALLEN, ALLEN & ALLEN, RICHMOND, VA.; ACCOMPANIED BY CARY BRANCH

Mr. ALLEN. Mr. Chairman, I feel highly honored to be permitted to appear before a Committee of the greatest deliberative body in the world. I hope I may be able to be of little help to you.

Senator HART. Thank you, sir.

Mr. ALLEN. This is one of my partners, Mr. Cary Branch. He is not going to make a statement, but I understand questions may be fielded to him.

As you will observe, Mr. Chairman, my statement is divided into two parts; one, that the matter of automobile reparations should be left to the States at least temporarily until there is some experimentation, and the other will be on the merits.

May I ask that I be notified when I have spoken 10 minutes?

Senator HART. Yes.

May I state that your statement will be printed in the record in full.

Mr. ALLEN. I am just going to very briefly summarize it. But first I would like to give you a little information on myself.

I was graduated from the University of Virginia Law School in 1910. I have recently been awarded by the University of Virginia the degree of doctor of laws. I have practiced continually since 1910 in the various state and Federal courts through the U.S. Court of Appeals for the Fourth Circuit and the Supreme Court of the United States. I was elected State Senator in 1916 and served through 1920. I am recipient of Award for Distinguished Service in postgraduate

education of trial lawyers, The Law Science Institute, 1953; Award for Courageous Advocacy, American College of Trial Lawyers, 1965; co-author, "Torts" Annual Survey of Virginia Law, Virginia Law Review, December 1960. Faculty member in legal medicine and medico-legal litigation, the Law Science Institute, 1953–54. Member, American Bar Association, Virginia State Bar, the Virginia State Bar Association, Virginia Trial Lawyers' Association (president, 1960–61), Richmond Bar Association (vice-president, 1958–59, president, 1959–60), American Trial Lawyers Association (vice-president, 1951–53; member board of Governors, 1954–56; associate editor in personal injury law, 1951—, president, Virginia chapter, 1952–53), American Judicature Society. Fellow American College of Trial Lawyers. Fellow and cofounder, International Academy of Trial Lawyers (member, board of directors, 1954–56; dean, 1965).

This great country of ours extends from Canada to Mexico, the Atlantic to the Pacific, and then Hawaii and Alaska. It is comprised of 50 States with varying circumstances and conditions in the States. It presents an ideal situation for experimentation on this subject in any of the States and to see how the matter works.

We have a judicial system in Richmond which we think is far more adequate than any of the no-fault systems. I am going to briefly refer to that.

Whether you know it or not, in 1918 Virginia passed the first "no-fault" act.

Senator HART. What year was that?

Mr. ALLEN. 1918. It was confined exclusively to accidents in the industrial field. I was practicing law then and our principal practice in the personnel injury field was actions by employees against employers under the master-servant doctrine. This act, of course, abolished all those actions, but I thought that the act would be of benefit to the workers and the State as a whole and I voted for it and supported it strongly.

We were told that all you would have to do—all that a worker would have to do would be to present this claim to industrial commission and it would be paid. But the results did not prove out that way. The few sections of the Code of Virginia which contained the Workmen's Compensation Act contained 47 pages of annotations in fine print, two columns to the page on this act.

Mind you now, they are only cases that got into the court of appeals. Heaven knows how many were contested in the lower courts. The various and sundry phrases in the Workmen's Compensation Act were defined, interpreted and construed time and time again.

Now, with the adoption of this no-fault plan, the bill itself, I believe, contains 24 pages, and the various and sundry phrases, which are used are unknown to the law, and the flood of litigation that would ensue concerning the interpretation and definition of those different phrases in the application of the law would be beyond the comprehension of the finite mind.

In Virginia we think we should be left alone at least temporarily to work out our own system. We are all the time making changes in it. We have abolished some of the common law defenses. We are on the road to abolishing others. We have in our State exceptionally good judges who are courageous in exercising their powers to maintain our

der. The General Assembly of Virginia is generous in giving us good judges, plenty of them.

Both sides of the bar under the rules of our practice are required to cooperate and disclose their full case to the other. If they do not, the court will make them. The result is both the lawyers for the plaintiff and defendant get together and make a full disclosure and over 90 percent of our cases are settled before trial for sums satisfactory to the parties, and in fact many of them are settled before suit is even filed.

As to the approximately 10 percent of the cases that are not settled without trial, perhaps half of them are decided for plaintiffs and maybe half for defendants, and then of those cases less than 5 percent of them ever get to the supreme court because we have a procedure which requires a person appealing to apply for an appeal and show good cause for one or he never gets in the court of appeals.

Now, half the applications for appeal—I have examined reports on this—are turned down to begin with, and the half that are granted—over half of them are affirmed. So you see the appellate judges do a pretty good screening job.

In Virgina we can get a trial even in a city like Richmond in 4 or 5 months after institution of the suit, and perhaps sooner in other sections of the State. We try a personal injury case in Virginia in less time than it takes to select a jury in many of the States. And that is because under our rules of practice and procedure lawyers are not allowed to examine jurors on the voir dire but very little. Lawyers are required to get all their information about jurors before they come to trial, and we have a man in our office whose business is to do that.

And when the trial lawyer goes to court to try a case he is handed a statement with check marks on it for striking off jurors. He has a right to strike three without cause, and then he can strike others by showing cause. So we select a jury in less than 5 or 10 minutes and get right on with the trial.

Now, my information is that most of the people who would be affected by this type of legislation consist of poor people, both blacks and whites, and middle class folks. I have been trying cases for a little bit—well, come June it will be exactly 60 years. I have never had to try but one case for a banker, never for an executive. Now, the reason is, either they do not have accidents or if they have them their prestige permits them to settle without even filing a suit, and insurance companies pay them off. That is the only way I can figure that out.

Now we see, therefore, that the legislation proposed here applies almost entirely to the poor people and the middle class people. But we do not know of anybody who has made a survey among those people as to what their preference is or whether or not they are satisfied as the law is administered in Virginia.

Now, if it be said that my views are selfishly motivated, I can only respond by saying that was not the case with the Workmen's Compensation Act. I worked for it and voted for its passage but was greatly disappointed in the result.

There is one late report on this subject that I think the committee ought to see, and it is just out I believe in March of this year, and that is the report of the American College of Trial Lawyers. That, as you know, is one of the most prestigious organizations of the bar in the

country. They studied the subject and the men who were appointed on that committee are among the brainiest lawyers in the United States from one end to the other of this country.

The report is fair and reasonable, and I submit it would be of interest to this committee, and I am going to leave a copy of this report on the table, some 25 or 30 copies of it.

Senator HART. We would appreciate receiving it in that quantity. My impression is we have available a copy, which was submitted by the American Bar Association when they testified.

Mr. ALLEN. This is the American College of Trial Lawyers I am talking about, and the American Bar Association, of course, has made a report, too.

Senator HART. Yes, but when the American bar's testimony was received, among the witnesses was a member of and spokesman for the American College of Trial Lawyers.

Mr. ALLEN. Yes, sir.

Now, in reference to my view being that of a trial lawyer, I am reminded of the most eloquent phrase of the late John F. Kennedy in his state of the Union message to the Congress: "Seek not what your country can do for you but what you can do for your country."

Believe it or not, I am motivated by the idea to do somehting for the working people, and our system needs improvement, but give us a chance to improve it and that will be done.

Just a moment on the merits of the case, the scope of this field is just simply tremendous.

I was chairman of the automobile law committee of the American Bar Association in 1960. I appointed a subcommittee at that time to deal with this very subject, and the committee was composed of very able men and the committee was chaired by FitzGerald Ames of California who later was designated as a judge out there and he is today a judge in California. He wrote the report. It is the best thing on the subject that I have ever seen, and it was written back in 1960.

Now, that report—I had a very difficult time finding it—I will just show you what it is, and I will be glad when I get back to have that copied and send as may copies up here as you would like. But you have not seen anything like that I am sure, and it goes right back yonder to 1960.

When we come to this no-fault insurance, there are apparently three groups of differing purposes under the no-fault. One is espoused by Travelers and Aetna Insurance Co., and a copy of Travelers' is attached, I think, to our statement.

Examination of their proposal would indicate less coverage and greater expense than is provided by an ordinary accident policy. Now, why is it—I know I have years ago carried accident policies that paid me if I got hurt driving an automobile or riding in an automobile or was struck by an automobile, paid me a substantial sum, paid me hospital and doctors' bills and loss of wages and things like that, and the premium was just unbelievably low for that type of insurance.

That would be no-fault, and the legislators of the States or the Congress could require a person to take out that type of policy before getting a license to drive a car, and that could be supplied and would not interfere with our common law doctrine and the progress and development of the common law in the States.

Another group is represented by the plans of Professors Keaton and O'Connell and the present law of Massachusetts. Their objectives appear to eliminate small claims, reserve to more seriously injured persons their present rights and also provide some medical coverage and indemnity coverage to all. A person must certainly be naive if he thinks a policy can be written like that and reduce the premiums.

Now then, the third plan I believe is expressed very well in Senator Hart's bill, the effect of which would take from the innocent what they are entitled to recover and pay it over to the guilty who ought to carry insurance for his own protection in the way of some form of accident insurance.

I understand, too, that property damage accounts for about two-thirds of the premiums on these insurance policies. Well, that is not provided for in the bill. Are we to proceed at common law to recover property damage?

Now, Mr. Chairman, I believe that is about all I have to say, sir; and I thank you.

Senator HART. Mr. Allen, and we were joined by the able senator from Alaska, Mr. Stevens, just as you were beginning, and I know I speak for him, we not only welcome the information you have given us but we appreciate the opportunity to listen to someone who lived 60 years of trial experience, and speaking from that background your counsel is certainly entitled to the very highest consideration.

As you commented, my bill suggests that we approach it from a different point of view. You raise the only point I would like to respond to, not in the form of a question but by way of an explanation for the action that I suggest we ought to take.

You note that the Secretary of Transportation, Mr. Volpe, has recommended a change from the tort system for the reason that it is not working well in that some people obtain more than they should and others do not obtain as much as they should. You go on to say that is true, the jury system is not perfect, but it is the best that we have yet devised to resolve disputes between parties.

The figures that we have been able to develop, though, suggest that the inadequacy in the existing system is very substantial and of such size that I am persuaded we ought to move to the no-fault. The less seriously injured party, persons whose injuries are under $500 in terms of hospital, doctor and so on, a person with injuries accounting for $500 or less of economic loss are paid five times—averaging—are paid five times their economic loss. Those with more serious injuries, those whose economic loss exceeds $25,000 recover only a third of their economic loss.

Now, that to me is disturbing enough, but when you ask the next question, well, who are these people? Well, there are many categories that we can cast ourselves in as citizens, but if you had an eighth-grade education, we discover that you get 25 percent of your economic loss; if you have a college education you get 64 percent; and another way to describe these income brackets, if your income is less than $10,000 you recover substantially less of your economic loss than if you are in the above $10,000 bracket.

So it is a redistribution to eliminate this kind of disparity that persuades me to move for a no-fault.

Senator Stevens.

Senator STEVENS. I, too, join the chairman in expressing admiration for anyone who has been a member of the bar for as long as you have, Mr. Allen.

I have just spent the morning on some cases coming out of the Indian Claims Commission which are related to a certain extent where the Government is finally paying for great wrongs that were done in the past to some of our native people, our Indian people, and I think the fact that you have been practicing since 1918 we ought to listen to some of your counsel.

Mr. ALLEN. Since 1910.

Senator STEVENS. Since 1910.

I notice your comments concerning the experience of Virginia in the industrial accident field. On the other hand, the chairman certainly has a point in terms of those personal injury cases that affect injured people who are in the lower economic brackets. As a lawyer, do you think we could not devise a means to deal with that portion of the spectrum as we have in social security and others and not deal with these cases that deal with the higher economic brackets?

Mr. ALLEN. Certainly we could. I think a very cheap accident policy with coverage of persons driving in an automobile, riding in an automobile or being struck by an automobile, an accident policy like that can provide substantial sums and the motorist should be required to take such a policy before he gets a license to drive a car. That can be done.

Senator STEVENS. I think we are more interested in some of the expenses that are incurred by those people who are in that spectrum of the economic scale where the costs of their litigation come directly out of the direct injuries that they suffer, either personal or property damage, and that the cost of litigation comes out of what they recover. When you get to the higher spectrum I think you get into the concept of future earnings and perhaps some pain and suffering concepts that have led to the larger verdicts. But the cost of litigation does not come out of actual injury.

Do you see a difference in treating these personal injury cases for people in lower brackets?

Mr. BRANCH. In my experience of having represented people who are hurt, having defended claims asserted against people, I take issue with the thought that the richer people get more money than the poorer people. The reverse is true; if you have a given injury to someone in the higher income bracket, my experience is that the juries give them very little, because such injuries seldom affect their earning capacity. A bad knee of a lawyer would mean very little, but where you are dealing with a truckdriver a bad knee is very important.

You take a spine fusion and the settlement value of one of those injuries to an executive type who sits in a chair or a lawyer is hardly more than the actual loss to the time of recovery. But those injuries leave the workingman with permanent disability, and jurors in their verdicts take the future loss of earning capacity into consideration. So, opposed to the thought those in the lower income brackets usually obtain a good deal more for the same injury—any type of injury, except on involving a brain injury to an executive or something that would affect his earning capacity, but the run-of-the-mill cases, the

lower income people get a good deal more because any physical injury is more important to him than it is to the executive.

That is the general experience of myself and the insurance people with whom I deal.

Senator STEVENS. I appreciate your opinion.

As a lawyer who has practiced for 20 years, I happen to feel in the normal personal injury case where someone is in the very low portion of the economic spectrum, the cost of the litigation alone costs him more than someone in the higher spectrum.

Mr. BRANCH. The cost of litigation probably does. In the higher income brackets quite often they do not make a claim, and if they do they are able to handle it themselves and deal directly with the companies, because such claims and such injuries to them they do not consider as important as the same injury to the workingman in the trade, and the workingman in the trade apparently is the one who does not feel competent to deal with the companies so they employ the lawyers. But in any event they usually obtain, relatively speaking, one who works in the trade with an injury, that injury is much more important to him and he gets much better compensation for it than the one who does not work with his body, so to speak.

Senator STEVENS. Thank you very much, Mr. Chairman.

Senator HART. Mr. Allen, let me thank you also for reminding us of the experience that you had in Virginia when you enacted that workmen's compensation legislation which was followed by a massive series of arguments over what it meant. I would hope, given the reminder that you have provided us, that if we do move in their area and do write a Federal statute, that we will be able to use the dictionary wisely and hopefully learn from the lesson that you have recited.

Gentlemen, thank you very much.

Mr. ALLEN. Did I understand that you would want me to make some copies of this?

Senator HART. Yes, please.

Mr. ALLEN. I will leave you with copies from the trial lawyers association.

I am going to leave you something else. You said something about the position I took in the Workmen's Compensation Act. Read my book, "The Law as a Way of Life," and the chapter on my philosophy of life, and you will not be surprised that I took that position.

Senator HART. Thank you.

(The statement and appendixes follow:)

STATEMENT OF GEORGE E. ALLEN

THE FIELD OF AUTOMOBILE ACCIDENT REPARATIONS SHOULD BE LEFT TO THE STATES AT LEAST UNTIL THERE IS FURTHER EXPERIMENTATION IN THE FIELD

It has been a favorite thesis of Justices Brandeis and Frankfurter that the *states* are important laboratories for social experiment. This is not perhaps true equally for all legal problems, but it seems to us especially persuasive for auto reparations. Evaluation of auto plans involves assumptions about costs, claims consciousness, fraud, deterrence, settlement behavior, lawyer behavior—assumptions on which experience with actual operation will shed much light. Moreover, the change from the common law to a plan is likely to be an irreversible change; it will be difficult to retrace our steps if experience proves the change unwise. It would be imprudent therefore with things in this posture to change the tort law everywhere in one single giant step.

Of course, the judicial system varies in the different states on the subject. We think we can demonstrate by a description of the Virginia system that we have a reasonably adequate and satisfactory system in which the victims of auto accidents are reasonably compensated with reasonable promptness. We are continuously improving the system.

In 1918, Virginia adopted one of the first "no fault" acts. This act was limited, however, to accidents in the industrial field and is commonly referred to as the Workmen's Compensation Act. Automobile accident litigation was practically nil at that time. The personal injury litigation was confined largely to common law actions by employees against employers under the master-servant/relationship. I was in the Senate of Virginia when the Act was passed. Although the Act abolished all common law actions by employees against employers, I nevertheless felt, as a lawyer, that it was perhaps a wise law for the benefit of employees who had found great difficulty in recovering against employers because of certain common law defenses which were abolished by the Act. We were told by the experts that this Act would enable injured employees to collect compensation merely upon presenting their claims to the Industrial Commission without a lawyer. To the great disappointment of those who voted for the bill, the results proved otherwise.

While the language of the Act was apparently simple, a flood of litigation followed, defining certain words and phrases in the Act such as—employers, employees, independent contractors, accidents arising out of and in the course of employment, proximate cause of the injuries, accidents occurring out of working hours, whether the injury occurred at a place where the employee is reasonably expected to be, or at, or reasonably near the premises where he is to work, accidents occurring during a deviation from the route the employee was authorized to travel, accidents occurring going to or from work, accidents occurring while employees are at hotels waiting to pick up his cargo, accidents occurring while performing preliminary tasks assigned after arriving at work, accidents occurring while returning from meals to carry out instructions, accidents occurring while disobeying instructions, accidents occurring while operating machines in violation of orders, accidents occurring while attempting to cross picket lines, accidents occurring while employee is performing personal services for an officer of a corporation who is an owner, who undertakes to perform or execute any work which is a part of his trade, business or occupation, who is a sub-contractor, employee's willful misconduct, employee's attempt to injure another, employee's willful failure or refusal to use a safety appliance or perform a duty required by statute or the willful breach of any rule or regulation adopted by the employer, subrogation of employer to employee's rights against third parties, average weekly wages, casual employees.

The annotations to the Act in the Virginia Code comprise 47 pages, two columns to the page in fine print.

The adoption of the "no fault" plan presented in Senate Bill 945, containing twenty-four pages, would give rise to a flood of litigation almost beyond the contemplation of the finite mind.

We of Virginia think we should be left alone to create our own grounds of liability and procedures for recovery at least until a better system is devised. While we have not yet abolished the common law defense of contributory negligence and adopted the comparative negligence rule, we expect our Legislature to do so in the near future. We are working to that end. The same is true of the doctrine of sovereign immunity and the doctrine of assumption of risk. While we have adopted only a modification of these two defenses, we hope to completely eliminate them in the near future in accordance with the recommendations of the American College of Trial Lawyers. When this is done, our system of automobile accident reparations will be in my opinion the best that can be devised.

We have, almost without exception, good judges who are courageous in exercising their powers to maintain order in the courtrooms. We have a General Assembly which has been generous in giving us enough judges to handle the litigation and we have lawyers, almost without exception, on both sides of the Bar who cooperate with each other and the courts in negotiating reasonably satisfactory settlements out of court. The result is that over 90% of the personal injury cases arising in Virginia are settled amicably out of court for sums reasonably satisfactory to all interested parties. Both attorneys for plaintiff and defendant make thorough investigations of the cases on the facts and the law, then confer with each other and negotiate fairly and honorably. This is because the courts, under our rules, require full disclosure by opposing counsel to each

other. As a result of these rules, many of the cases are settled before suit is filed.

As to the approximately 10% not settled without trial, about 50% of them are decided in favor of the plaintiff, but whether decided in favor of the plaintiff or defendant, more than half of the 50% terminate in the trial court. This is because, under our law, we have no appeal as of right. The losing party in the trial court has to apply to our State Supreme Court for an appeal. An examination of the Virginia Reports shows that over half of these applications are refused. Therefore, less than 5% of the cases get in our Supreme Court and they are usually decided within a year.

Under the administration of justice in Virginia, a personal injury suit may be tried, even in a city as large as Richmond, within four or five months from the date of the institution of the suit. In other areas in the state they may be tried within two to four months.

We in Virginia try a personal injury case in less time than it takes in many jurisdictions to select a jury. This is due to the fact that our courts do not permit extensive examinations of jurors on the voir dire. Lawyers have to get all the information they can about jurors before the trial. The jury list, with strikes noted, is delivered to trial counsel before the trial begins, so that all the trial lawyer has to do is to follow the list. Each side is allowed three preemptory strikes. Any additional strikes are subject to cause. Obtaining a jury requires only a few minutes and I think we get jurors as satisfactory as those obtained in other jurisdictions after extensive void dire examination, which sometimes continues for days.

My information is that both Labor, the poor, and the middle class people all favor the present system existing in Virginia. I don't know what the views of the bankers and the high-salaried corporate officers are, but strange as it may seem, it is seldom that a banker or any high corporate official ever gets involved in court because of an accident. I have been trying cases for more than half a century, most of them personal injury cases, and I have never had but one case for a banker and none for high corporate officials.

Perhaps the reason is that if they get involved in accidents, their influence and standing in the community is such that the insurance companies pay their claims without a contest.

So, we are discussing proposed legislation here, which, if enacted, would apply almost entirely to the poor—black and white—and people of the middle class, and we should certainly not deprive them of a system which they feel is more beneficial to them than any "no fault" system which may be adopted.

If it be said that these views are those of a trial lawyer representing chiefly plaintiffs in accident cases, my response is that I would hope that I would not permit any selfish interest to come in conflict with what I consider to be in the best interests of the people, my state and my country. I did not permit that to happen when the "no fault" plan referred to as Workmen's Compensation insurance was adopted in Virginia in 1918. I voted for it and worked for its passage. My personal interest was more involved then than now because about all the personal injury practice we had then was common law actions against employers by employees and they were abolished by the Act.

The most prestigious organization of lawyers in the United States is the American College of Trial Lawyers. The College appointed a special committee from among Fellows of the College to study and report and make recommendations in connection with automobile accident reparations. The report was completed and approved by the Board of Regents of the College on March 11, 1971. It embraces the best document on this subject that I have ever read. It is full and fair and I think is worthy of your study. I am therefore delivering 30 copies of the report to the Committee.

THE CASE ON ITS MERITS

The scope of the field of automobile accident reparations is enormous. Many materials have been collected and published in the comprehensive studies and reports by the American Bar Association Special Committee on Automobile Accident Reparations and the California Governor's Automobile Study Commission.

I was Chairman of the Automobile Law Committee of the American Bar Association in 1960. Our committee undertook to make a study of the subject. I appointed a sub-committee composed of ten of the best and most experienced lawyers in the country. This committee was chaired by FitzGerald Ames of California. His standing in the profession was such that he was subsequently

appointed to a judgeship in California. He wrote the report. It covers every phase of the subject and is well documented by both facts and figures. Just to give you some idea of the subjects discussed, the subject of Chapter 3 is "Workmen's Compensation and Automobile Compensation Plans, Not a Comparable Analogy." Chapter 4, "Court Congestion and Delay Can be Eliminated Without an Automobile Accident Compenation Commission." Chapter 5, "The Inadequacy of the Commisison System to Handle Automobile Accident Litigation." Chapter 8, "Court and Jury System Adequate to Determine With Reasonable Accuracy all Issues Presented in Automobile Accident Litigation." Chapter 10, "The Exclusion of Automobile Property Damage from the Benefits of the Proposed Compensation Plan Would Require Motorist to Carry Voluntary Public Liability Coverage at Additional Premium Cost." Chapter 13, "The Cost to the Taxpayer of Administering an Automobile Compensation Plan would be Greater than the Present Cost of Handling Automobile Accident cases Before Courts or Juries." Chapter 14, "Proposed Benefits under Automobile Compensation System would be Unconscionably Inadequate—to Provide Adequate Benefits would Result in Exorbitant Premiums." Chapter 15, "Average Attorneys' fees Recovered Under Present System of Handling Automobile Accident Cases is Fair Considering Contingency Risk Assumed by Attorneys and Recovery Procured for Client." Chapter 16, "Automobile Compensation Commission not Needed to Reduce Accidents or Promote Safety on Highways." Chapter 17, "Volume of Highway Accidents Does not Create any Economic Necessity for Special Legislation against this Type of Litigation." Chapter 18, "An Automobile Compensation System Would Create Multitudinous Conflict of Law Questions which Would Render Plan Unwieldy, Unjust and Unworkable." Chapter 19, "Constitutionality."

If the members of the Committee desire a copy of this report, I shall be glad to have copies made and delivered to them.

I have followed the progress of the various proposals for "no fault" insurance that have been made since Professor Keaton and O'Connell first wrote their book. Perhaps I have missed some particular study but if there has been one seeking the views of those people who were innocent of fault and who suffered injuries, such a study has escaped me. If no such study of that group of our citizens has been made, one would wonder why since they are the ones who are directly and adversely affected by the proposed legislation. Perhaps no such study was considered necessary because it can be acknowledged from the fact one is known as a plaintiff seeking damages for an injury wrongfully caused him, it can reasonably be assumed that not one of them throughout the land would favor the proposed bill of Senator Hart if the terms thereof were clearly explained to him. I can certainly state I have never met anyone asserting what he considered a just claim for damages who would favor such legislation.

There appears to be three groups of differing purposes all asserting their points of view under the banner of what has been termed "no fault" insurance. The objective of The Travelers and Aetna Insurance Companies who purport to support such a plan, is set forth in a statement of Travelers' position which, according to a talk I heard made by an Aetna underwriter, is generally the same as Aetna's objective. A copy of Travelers' position is attached as Appendix A. It should be noted or easily ascertained that accident (not including health) is the very cheapest form of insurance on the market. If such coverage were limited to accidents involving a particular car and limited further by a requirement that the company pay only medical expenses or lost wages in excess of or not payable from some other source available to the injured party, such limited coverage would obviously be so cheap that I don't know of any company making any effort to sell such coverage. However, it is relevant to note there is coverage available from Travelers as a rider on their auto polices that will pay $10,000 death benefit and $50 weekly indemnity unlimited up to age 65 for a yearly premium of $10. Medical expense coverage costs approximately $10 a year for $2,000 limit and $18 for $5,000. A Travelers' agent advises also there is available straight accident insurance (not limited to autos and to pay regardless of other insurance or benefits) for a yearly premium of $40 to $60 for weekly indemnity payments of $75. These weekly payments can be adjusted according to insured's income and premiums vary according to occupation.

When Travelers state that for such extremely limited coverage as they are proposing, they would want a premium of approximately 85% of the existing liability premium, their motive is readily apparent. If the law were to create such a market for the companies at such a premium as they are suggesting, that would truly be a bonanza to those companies. As indicated, however, the law would have to create their market because it is hardly likely that anyone would

want to pay any premium for coverage that in most instances would pay no benefit at all.

There is another group also proposing coverage under the term "no fault" insurance whose objective seems to be entirely different from the insurance companies' objective. This group includes those who believe in the plans of Professors Keaton and O'Connell and the present law in Massachusetts. Their objectives appear to be to eliminate small claims, reserve to the more seriously injured their present rights and to also provide some medical expense and indemnity coverage to all. They seem very naive to think that such a plan could reduce premiums. Professors Keaton and O'Connell announced at the time they made their original proposal they had failed to consult with or seek the advice of any claims man or trial attorney because they thought opinions from those sources would be biased and self-motivated. However, anyone who had some experience in dealing directly and face-to-face with injured claimants could have explained why the bills they were proposing would not have worked or accomplished the desired result.

At this point, I ask that we note the insurance companies' appeal from that part of the Massachusetts law calling for a reduction in premium and, at the instance of the companies, that provision was held unconstitutional, according to my information. It is also interesting to note that Governor Sargent in his address to the luncheon meeting of the Massachusetts Association of Independent Insurance Agents and Brokers said, in part:

"Inasmuch as most car owners carry the non-compulsory coverages, the cost of which may be four or more times the cost of bodily injury (no-fault) insurance, the net effect for many drivers has been to have a larger total auto insurance bill for 1971 than they had for 1970."

Many lawyers, I understand, are holding claims in Massachusetts pending final decision in the action that been filed attacking the constitutionality of the other part of the law adversely affecting injured people. And other claimants are assembling medical bills on their understanding the law requires them to do so to a total of $500 before they are granted the rights they are entitled to under the act. It is to be anticipated that Massachusetts and/or insurance companies writing business in that state face more serious problems in the months to come.

Senator Hart's bill titled "Uniform Motor Vehicle Insurance Act" apparently has as its primary objective more of a spread of available insurance dollars among all people injured in an accident and secondarily, or hopefully, some reduction in insurance premiums. This is the bill under consideration in the United States Senate and my remarks will now be directed only to this bill without dwelling any further on the other plans having differing objectives, even though known by the same term—"no fault."

To take from one innocently injured that which he is entitled to at common law, in order to provide something for others who cause the accident, is wrong in its basic philosophy. It is also a fact, perhaps not known to the committee, that the people who are to have their rights taken from them are largely those people working in the trades and whose abilities to work depend upon their physical strength and who are not in the upper income bracket of our society. I feel quite certain that any study or survey made of the plaintiffs seeking damages in the various courts throughout the land would reveal this statement to be true. It is certainly true on my personal experience and that of my partners and all other lawyers with whom I have any personal contact. The reason is obvious. When we think of a man who lives in a $40,000 home with three cars, one of which is for a child under 25, that individual feels that by his education and training, he is capable of handling his own claim, if he has one. He probably works at a desk job and sitting in an upholstered chair does not cause an injury to hurt him as it would the bricklayer or the carpenter or the auto mechanic. On the other hand, the man in the trades who suffers one of the injuries that may affect his working ability is quite concerned about his ability to continue to earn a living for his family and quite often is forced back to that laborious work by doctors who do not believe that any pain exists if it cannot be visually demonstrated. If the pending bill should accomplish the secondary purpose of reducing premiums, we would have the ironic fact established that we have taken away from the hard-working poor to reduce premiums for the rich who are paying high premiums for several cars, including one driven by a youngster.

All people involved in all of the accidents may be generally divided into two groups: those who are innocent and who are injured, and those others who are considered at fault in causing the accident. We should face the basic question directly and without evasive terminology and decide first which of those two

groups of people is society and most fair-minded men concerned about. If the question were posed that way, I suppose everyone would acknowledge more concern about the rights of the innocently injured than those who cause the accidents. It is on this point that those of us who work with the people who have been injured through no fault of their own cannot understand the proponents of the bill being proposed, since the bill takes from the innocent to give or provide for the guilty.

Having dealt with the people who were injured innocently for so many years, it follows that I have, of course, also dealt with those others against whom the claims are made—those who caused the accident. All of these people involved in accidents, both the innocent and those at fault, may also be divided into two general classes. There are those who have medical expense and wage loss benefits which they have either provided for themselves directly or have had provided for them by union contract, etc., and this group may generally be referred to as the responsible members of our society. The other group have not provided for themselves in such a manner nor do they work for employers who have so provided for them.

When we look at the provisions of the pending bill as applicable to those considered responsible, we see that those people would receive no benefits under this law unless they have what is termed catastrophic injury.

The proposed bill provides for a payment from this type of insurance only if the injured party does not have such benefits from other sources which, as seen, the responsible people do have. As to those people, how can a law that requires them to purchase and pay premiums for insurance that admittedly would pay them no benefits at all except for a harm termed "catastrophic," be justified?

Turning to the next question, would the average individual in that group of people who have no other health and accident benefits be particularly concerned about whether or not his doctors or the hospital were paid? As this point, it should be noted that despite some things we read, people who are injured and who do need medical attention are not denied such treatment because they have no money to pay for it. I have never known a hospital to refuse admittance to one brought to the emergency room by ambulance if such treatment was necessary because of the injuries then apparent. Follow-up care that is medically necessary is also available, perhaps not in the doctor's office but through the clinic; but, in any event, such treatment is rendered to those who need it by competent doctors. A check with hospitals and doctors generally would show that many such bills were incurred and written off unpaid when the injured party was unable to do so. Without unduly prolonging this subject, I hope the committee will accept my statement on my personal experience that such people who have no other insurance benefits usually are not particularly concerned with whether or not the doctor or hospital gets paid and when discussing settlement, the decisions are usually made by the injured people to settle or not according to how much would be paid to them from such a settlement. Thus, as to this group, we also see that they would not be particularly interested in the provisions of the proposed bill except that part that would pay them weekly indemnity, if they had been employed before they were injured and had no sick leave benefits, and such payments would mean only that they would not turn to welfare for assistance.

Along these lines, I think it can be fairly stated that except for what is termed catastrophic injuries, the benefits of the pending bill that would actually be paid would mean very little to those who are injured in accidents, whether at fault or not, but the doctors and hospitals would be pleased with these provisions. Again, it may be asked if denial of the rights of those who are innocently injured can be justified by referring to the benefits that would be paid to hospitals and doctors.

In any event, if it is indeed considered desirable to insist upon some coverage to protect economic losses sustained by the group who do not have other benefits, it would not be difficult or expensive to provide for such benefits in the existing policies. On this, I attach copy of the report and recommendations of the Committee of the Virginia Bar Association on Torts and Insurance, marked Appendix B. I also commend to the committee the report and recommendations of the special committee of the American College of Trial Lawyers on automobile accident reparations. We all know that simple med pay coverage is the very cheapest part of our policy even though such coverages pay on medical expenses without regard to whether such expenses are collectible from other sources. The insurance companies would probably oppose these recommendations broadening the scope of coverage because as we have seen, some of the

companies have as their objective limiting the coverage to practically no benefits for a 15% reduction of the existing premium. This involves a different subject but there is some question on the credibility of the companies' continuing statements of vast amount of "underwriting" losses. There is some question whether the statements are for the benefit of people who don't note the qualifying word "underwriting" before the word "loss." Whether the companies who make a great to-do about not writing new policies, such as Nationwide, is for the purpose of conditioning our legislators and the public to a change favorable to the industry is also a question. It can be noted that the insurance industry's magazine "Best" has reported the stock index of 18 fire and casualty companies have advanced 109% over the last 10 years—twice the 54% advance of Standard and Poor's index of 500 companies in industry generally. This should be sufficient answer to the companies when they do admit the profits they have made on investments and the insurance they write, but who say the return is not sufficient when the amount invested is considered.

The point is that on the complaints about unavailability of insurance, the companies cancelling, refusing to renew, ceasing to write new business, etc., those are problems very easily taken care of by state legislative action, if such is deemed advisable. The State of Virginia already has strict limitations on the company's right to cancel a policy and by the exercise of the same authority, the state can and has restricted the company's refusal to renew policies and to write new business. See Va. Code, § 38.1–381.5. It is the state that provides extra premium to be paid by those who have to go under assigned risk. The state has the authority to compel companies to write policies issued through the assigned risk and if the companies are making things difficult without justification, the state does not have to grant the company extra premium on those policies.

In any event, this sort of problem, to the extent it exists apparently in varying degrees throughout the different states, does not justify discarding our entire tort system that has existed for so long.

Secretary Volpe, Department of Transportation, has been quoted as resting his beliefs that the tort system should be changed upon his statement that it is not working well, in that some people obtain more than they should and others do not obtain as much as they should. That is acknowledged, since we have always said that our jury system is not perfect, but we have always added the admitted fact that it is the best system to resolve disputes between parties that has yet been devised. The same comments have been made concerning our political system and our system of free enterprise. If lack of perfection is to be considered a reason to abandon claims for damages by those injured without fault, then we should also abandon other parts of our system. Does the acknowledged fact that some guilty people are acquitted and some innocent people are found guilty in criminal court lead us to the conclusion we should abandon the system of criminal justice. Does the fact, equally acknowledged, that our lawmaking bodies from time to time pass bad laws and sometimes fail to pass good laws mean that we should abandon our system of government? Since admittedly, there is no perfection, the question is, are any defects in our present system of tort liability as great as would be the defects in the other system being proposed?

It has been said by some proponents of the so-called "no-fault" insurance that the question of who really was at fault cannot truly be answered. Again, we can admit there are some very few cases so close on liability that it is hard to tell whether the decision is truly right or not, but we who try cases have found that the juries are much better judges of such questions than anyone else or any other system. The fact is, however, that the overwhelming majority of cases do not cause any of the professionals in the business any problem. It is not hard to determine fault when one is shown to have disregarded a stop sign, hit another car in the rear, gone to the wrong side of the road, etc. A large part of the cases that go to trial are not really being tried on any question of liability but on a dispute between the parties on the cause, nature and extent of the injury and disability claimed.

Another point made by a proponent of the "no fault" system is that some of our courts have a large backlog where parties have to wait several years for a trial. Three of our large cities are usually mentioned in this connection. Such problems do not exist in Virginia and according to my colleagues I meet on the various seminars, they do not exist in most parts of the country. Solutions to the problems in those few large cities that have such problems have been suggested. Those of us who try cases generally cannot understand why in those few large cities it takes them longer to empanel a jury than it takes us to try an entire case to a conclusion here in Virginia. In any event, I would not think that any-

one would suggest that all of the tort laws and systems of civil justice throughout all of our states should be uprooted and innocent people denied their rights for the purpose of trying to solve problems largely of their own making in a very few of the large cities. Senator Hart has advised us that the Federal Judicial Center has pointed out motor accident litigation requires 11.4% of judge time in the Federal District Court and approximately 17% of the judge's time in state courts of general jurisdiction. I do not understand the significance of these figures. What about the flood of frivolous *habeas corpus* cases, creditor suits, etc.? Why should we say or suggest that the right of one who has suffered a disabling and painful injury is less important than the right of any other civil litigant?

The bill proposed would not alleviate any such problem because as indicated below, there are areas of built-in litigation in the proposed bill. On this subject, I would also refer the Committee to the letter of Chief Justice Tauro addressed to Governor Sargent of Massachusetts dated August 19, 1970, attached hereto, as Appendix C.

The bill introduced in the 91st Congress was changed and the one that now is under consideration defines "catastrophic harm" to mean that if one has less than a total disability, a permanent partial disability must be at least 70 percentum or more in order to have any rights preserved. I personally have never experienced a case of one having a disability less than total, but more than 70 per cent. I do know, however, that doctors are necessarily very imprecise in fixing percentages of disabilities and it is not unusual to have one doctor for the injured party testify to a larger per cent of disability and another doctor for the defense testify that the individual made a full and complete recovery with no disability. This approach is, in any event, fallacious.

The real question in any case is what the injury means to the individual, considering his work and other relevant factors. Consider a 45 year old truck-driver earning $15,000 a year, who as a result of a neck injury is left with a limitation of motion to the extent he cannot pass the ICC medical requirements. Physically, he would have a small degree of physical disability that would not be very important to a lawyer or a senator, but to this truck driver, that injury would be disastrous. If this bill were to pay him anything, considering his union benefits for a limited time, such payments would not continue very long and then who could suggest to him what he should do. If he were innocently injured, we could explain this law to him, but he would find small comfort in the thought the medical expenses of the wrongdoer had been paid, if such were not payable from other sources.

On the other hand, suppose the lawyer or senator had a throat injury that resulted only in loss of speech. Again, a small degree of physical disability, but a disaster, in terms of enjoyment of life and ability to work at our calling.

It has been suggested the bill has many areas of potential litigation. Who decides when a man should be able to return to work—the insurance doctor or the treating physician? Who decides whether an injury or condition is due to an accident? Remember, we have already pointed out the fact that a large number of cases involve disputes, not on the question of fault, but on medical questions. I have no statistics, but I believe the Industrial Commission decides as many cases involving such questions as are filed in courts of general jurisidiction.

We have noted the "net economic loss" approach means that the responsible members of our society will be required to buy this insurance although, admittedly, they would be paid no benefits at all. The provision that Blue Cross or other hospitalization plans and sick leave plans can provide their benefits are supplemental to this bill gives us no comfort. The individual still recovers nothing—he has simply paid premiums for this coverage that is, by its express terms, for the benefit of other insurance he also paid for.

Upon reflection, it now appears this bill before Congress, as opposed to the one originally introduced, is very close or it fits exactly the plans desired by Travelers and Aetna. We know their motive and cannot really be surprised or upset at any company's desire to increase earnings. The people, however, should not expect our lawmaking bodies to further such profit motives at the expense of those who suffer injuries through no fault on their part.

Touching again very briefly on that subject of people waiting a long time for their benefits under the present system, I think any lawyer or claims man dealing on a day-to-day basis with claimants would confirm me when I state that in any case where there is merit to the claim, the claimant could obtain more benefits than are provided for by the proposed bill immediately and simply by asking for them if that were all he wanted. I have already demonstrated, how-

ever, that those who are innocently injured conscientiously feel, and properly so, that they are entitled to compensation for pain, the inconvenience and other damages resulting from their injury and it is on their election that they wait until the doctor can give them some assurance as to what the future holds in store for them before bringing their case on to a conclusion. This again illustrates that those who are injured without fault on their part would be deeply distressed to lose what to them is a very important right after the fact of such an injury.

There is one more point that should be made as forcefully as possible. Going back to the view of Professors Keaton and O'Connell that opinions of professionals in the business are not reliable, I noted in the paper a short while ago that a gentleman from Illinois appeared before a Congressional committee expressing similar thoughts directed to all of our state legislators. I believe I have already demonstrated that I do not personally believe, on behalf of all the people who are injured without fault on their part, that any such law should be passed, either *state* or *federal*, taking away rights that to those in the lower economic status are most precious. In any event, that gentleman from Illinois was reported to have urged the Congress to take over not only the regulation of insurance, but to abolish and take over the rights to sue and be sued that are now the prerogative of the various states and their local courts. As a basis of his opinion, that gentleman from Illinois suggested to this Committee, it was reported, that all of the legislators throughout the states could not be counted on to do what he thought should be done. His reason for this was his statistics showing what percentage of the various legislative bodies consist of members of the Bar. Aside from the sheer arrogance of that suggestion that his individual wisdom was superior to the collective wisdom of all of the legislative bodies throughout the states, he ignored the fact that Congress likewise has a certain percentage of their members who are lawyers. I would hope that this Committee would not give any weight to the thought of one who suggests that all lawyers in our various legislative bodies, whether they are those few who are involved in the trial of tort actions or not, would make their decisions on various proposals opposed to what they conscientiously felt to be in the best interest of the people. Of course, there is no one who can claim perfection, but I would hope that most of us would recognize that whether a lawyer or not, our state legislators are conscientious men who are very close to their constituents and who will vote on any bill according to their true belief as to what is best for the people.

The New York Law Journal, April 26, 1971, p. 1, reports that a poll of New York trial judges shows 99 out of 100 opposed to "no fault" legislation and 80% favored arbitration of small claims. I would expect a study of trial judges throughout the land would show a similar result. If such a large percentage of our judges, our lawyers and, as the gentleman of Illinois says, all of our state legislators, oppose this type of legislation, I would expect that gentleman to reconsider his personal point of view. At least he should consider the possibility such men know more about the subject than he.

In closing, I would urge that the people we are concerned with be treated fairly. When statements are made that "claims" will be paid promptly and without regard to fault, they should be told in simple language that those are not claims as we know them today, but are claims that would result in payments to doctors and hospitals or there would be no claims paid at all to those who have other benefits against what is termed "economic loss."

Remember we are thinking of simple, hard-working and honest people who cannot always detect the true meaning of sophisticated phrases and who must trust our leaders to treat them fairly. On behalf of those people, who, if innocently injured would lose what to them are very precious rights, I ask that this committee make its report opposing this bill under consideration.

APPENDIX A

Travelers Position on the Automobile Problem

Few subjects are generating more public and political comment than the present system of automobile insurance. And with good reason. It is based on a system of laws that are, in many cases, no longer appropriate in settling accident victim compensation. Claim settlements are too high for some, and too low for others. And, again because of the system, more dollars are spent on costs than should be in our view.

Automobile insurance rates are affected by many factors, among them: the number of automobiles on the road, highway design, the licensing of drivers,

one would suggest that all of the tort laws and systems of civil justice throughout all of our states should be uprooted and innocent people denied their rights for the purpose of trying to solve problems largely of their own making in a very few of the large cities. Senator Hart has advised us that the Federal Judicial Center has pointed out motor accident litigation requires 11.4% of judge time in the Federal District Court and approximately 17% of the judge's time in state courts of general jurisdiction. I do not understand the significance of these figures. What about the flood of frivolous *habeas corpus* cases, creditor suits, etc.? Why should we say or suggest that the right of one who has suffered a disabling and painful injury is less important than the right of any other civil litigant?

The bill proposed would not alleviate any such problem because as indicated below, there are areas of built-in litigation in the proposed bill. On this subject, I would also refer the Committee to the letter of Chief Justice Tauro addressed to Governor Sargent of Massachusetts dated August 19, 1970, attached hereto, as Appendix C.

The bill introduced in the 91st Congress was changed and the one that now is under consideration defines "catastrophic harm" to mean that if one has less than a total disability, a permanent partial disability must be at least 70 percentum or more in order to have any rights preserved. I personally have never experienced a case of one having a disability less than total, but more than 70 per cent. I do know, however, that doctors are necessarily very imprecise in fixing percentages of disabilities and it is not unusual to have one doctor for the injured party testify to a larger per cent of disability and another doctor for the defense testify that the individual made a full and complete recovery with no disability. This approach is, in any event, fallacious.

The real question in any case is what the injury means to the individual, considering his work and other relevant factors. Consider a 45 year old truck-driver earning $15,000 a year, who as a result of a neck injury is left with a limitation of motion to the extent he cannot pass the ICC medical requirements. Physically, he would have a small degree of physical disability that would not be very important to a lawyer or a senator, but to this truck driver, that injury would be disastrous. If this bill were to pay him anything, considering his union benefits for a limited time, such payments would not continue very long and then who could suggest to him what he should do. If he were innocently injured, we could explain this law to him, but he would find small comfort in the thought the medical expenses of the wrongdoer had been paid, if such were not payable from other sources.

On the other hand, suppose the lawyer or senator had a throat injury that resulted only in loss of speech. Again, a small degree of physical disability, but a disaster, in terms of enjoyment of life and ability to work at our calling.

It has been suggested the bill has many areas of potential litigation. Who decides when a man should be able to return to work—the insurance doctor or the treating physician? Who decides whether an injury or condition is due to an accident? Remember, we have already pointed out the fact that a large number of cases involve disputes, not on the question of fault, but on medical questions. I have no statistics, but I believe the Industrial Commission decides as many cases involving such questions as are filed in courts of general jurisidiction.

We have noted the "net economic loss" approach means that the responsible members of our society will be required to buy this insurance although, admittedly, they would be paid no benefits at all. The provision that Blue Cross or other hospitalization plans and sick leave plans can provide their benefits are supplemental to this bill gives us no comfort. The individual still recovers nothing—he has simply paid premiums for this coverage that is, by its express terms, for the benefit of other insurance he also paid for.

Upon reflection, it now appears this bill before Congress, as opposed to the one originally introduced, is very close or it fits exactly the plans desired by Travelers and Aetna. We know their motive and cannot really be surprised or upset at any company's desire to increase earnings. The people, however, should not expect our lawmaking bodies to further such profit motives at the expense of those who suffer injuries through no fault on their part.

Touching again very briefly on that subject of people waiting a long time for their benefits under the present system, I think any lawyer or claims man dealing on a day-to-day basis with claimants would confirm me when I state that in any case where there is merit to the claim, the claimant could obtain such benefits than are provided for by the proposed bill immediately and simply by asking for them if that were all he wanted. I have already demonstrated, both

ever, that those who are innocently injured conscientiously feel, and properly so, that they are entitled to compensation for pain, the inconvenience and other damages resulting from their injury and it is on their election that they wait until the doctor can give them some assurance as to what the future holds in store for them before bringing their case on to a conclusion. This again illustrates that those who are injured without fault on their part would be deeply distressed to lose what to them is a very important right after the fact of such an injury.

There is one more point that should be made as forcefully as possible. Going back to the view of Professors Keaton and O'Connell that opinions of professionals in the business are not reliable, I noted in the paper a short while ago that a gentleman from Illinois appeared before a Congressional committee expressing similar thoughts directed to all of our state legislators. I believe I have already demonstrated that I do not personally believe, on behalf of all the people who are injured without fault on their part, that any such law should be passed, either *state* or *federal*, taking away rights that to those in the lower economic status are most precious. In any event, that gentleman from Illinois was reported to have urged the Congress to take over not only the regulation of insurance, but to abolish and take over the rights to sue and be sued that are now the prerogative of the various states and their local courts. As a basis of his opinion, that gentleman from Illinois suggested to this Committee, it was reported, that all of the legislators throughout the states could not be counted on to do what he thought should be done. His reason for this was his statistics showing what percentage of the various legislative bodies consist of members of the Bar. Aside from the sheer arrogance of that suggestion that his individual wisdom was superior to the collective wisdom of all of the legislative bodies throughout the states, he ignored the fact that Congress likewise has a certain percentage of their members who are lawyers. I would hope that this Committee would not give any weight to the thought of one who suggests that all lawyers in our various legislative bodies, whether they are those few who are involved in the trial of tort actions or not, would make their decisions on various proposals opposed to what they conscientiously felt to be in the best interest of the people. Of course, there is no one who can claim perfection, but I would hope that most of us would recognize that whether a lawyer or not, our state legislators are conscientious men who are very close to their constituents and who will vote on any bill according to their true belief as to what is best for the people.

The New York Law Journal, April 26, 1971, p. 1, reports that a poll of New York trial judges shows 99 out of 100 opposed to "no fault" legislation and 80% favored arbitration of small claims. I would expect a study of trial judges throughout the land would show a similar result. If such a large percentage of our judges, our lawyers and, as the gentleman of Illinois says, all of our state legislators, oppose this type of legislation, I would expect that gentleman to reconsider his personal point of view. At least he should consider the possibility such men know more about the subject than he.

In closing, I would urge that the people we are concerned with be treated fairly. When statements are made that "claims" will be paid promptly and without regard to fault, they should be told in simple language that those are not claims as we know them today, but are claims that would result in payments to doctors and hospitals or there would be no claims paid at all to those who have other benefits against what is termed "economic loss."

Remember we are thinking of simple, hard-working and honest people who cannot always detect the true meaning of sophisticated phrases and who must trust our leaders to treat them fairly. On behalf of those people, who, if innocently injured would lose what to them are very precious rights, I ask that this committee make its report opposing this bill under consideration.

APPENDIX A

Travelers Position on the Automobile Problem

Few subjects are generating more public and political comment than the present system of automobile insurance. And with good reason. It is based on a system of laws that are, in many cases, no longer appropriate in settling accident victim compensation. Claim settlements are too high for some, and too low for others. And, again because of the system, more dollars are spent on costs than should be in our view.

Automobile insurance rates are affected by many factors, among them: the number of automobiles on the road, highway design, the licensing of drivers,

automobile design, insurance competition and regulation, the laws concerning accidents, court decisions on compensation of accident victims, the costs of automobile repair and property replacement, and the system of insurance distribution.

Directly and through industry organizations we are working for improvement in many of these areas; for example, for better automobile and highway design, for stricter licensing requirements and better law enforcement. We are working for more open competition in setting insurance rates; for so-called file and use regulation. And, as quickly as laws permit, we are introducing mass merchandising—the system of selling automobile and other forms of insurance to individuals through their employers—as a means of lowering the costs of providing this insurance.

In addition, we are also working for changes in the laws governing automobile accidents and victim compensation on a state by state basis. We are supporting a modified "no-fault" automobile insurance plan. Our studies indicate that such a plan will allow us to lower rates on bodily injury insurance by approximately 15%.

Under the present system it is necessary to prove "fault" in an accident before a victim can be compensated. In some cases this is not possible, in others it means going to court. As a result, there are delays, some victims are not compensated at all, some are paid too little and others too much. Legal costs are sometimes high for both the accident victims and insurance companies.

The modified no-fault plan being supported by The Travelers would provide the following: a driver and his passengers who were in an accident would be compensated by his insurance company, without regard to fault, for up to $2,000 in medical and surgical expenses, lost wages, or the cost of hiring replacement services while injured. Such benefits would be paid after the benefits of health and welfare, and salary continuance plans. Wages would be compensated at 85% of normal level, reflecting the tax laws.

There would be no delays, no basis for court action, and no need to prove fault in any case in which the loss to an individual was $2,000 or less—a great percentage of cases at present. In cases in which there was loss of life, permanent disfigurement, dismemberment, permanent loss of a bodily function, or an economic loss to an individual of more than $2,000, an accident victim would keep the full right to court action, and to compensation for pain and suffering.

We believe there is an urgent need for change in the present system of automobile insurance, and are supporting those changes that we believe are in the interest of Travelers customers, Travelers shareholders and the public.

Virginia Bar Association Committee on Torts and Insurance
Report of Committee on Torts Insurance

To: The Virginia Bar Association.

I. INTRODUCTION

This Committee was appointed as a new Committee by President F. Waller Dudley, free to seek its own area of study within its framework of torts and insurance; however, it became apparent to the members of the Committee even before they met that the most pressing issue in the field of "Torts and Insurance" was that posed by the various "No Fault" proposals being made before the United States Congress and the various State Legislatures; and that we could find no more worthwhile undertaking than to study this issue with a view to making recommendations to the Executive Committee and membership of the Virginia Bar Association with respect thereto. The Committee, at its first meeting, proposed to:

> Make a thorough study of the subject of automobile accident reparations and seek to make recommendations to the Executive Committee and the membership of the Virginia Bar Association for consideration and, hopefully, adoption at the Annual Meeting at the Greenbriar on July 9, 1971.

The Committee's decision was clearly ambitious because of the great influx in recent years of proposals for automobile compensation plans. Five years ago, the Keaton-O'Connell "Basic Protection Plan" was being advocated but, since that time, more than a dozen alternative plans have been brought forward publicly. The sheer number and varying complexity of the plans made it virtually impossible to analyze and evaluate all of the various plans. Therefore, the

Committee sought to study the principal ones (including the "Massachusetts Plan" enacted in 1970, the "New York Stewart Plan", and those embraced in the bills introduced in the 91st Congress by Senator Hart) and the more comprehensive reports on the subject, with special reference to the report of the American Bar Association's Special Committee on Automobile Accident Reparations. Recently, the Committee membership received the report of the American College of Trial Lawyers on "Automobile Accident Reparation", which was felt to be one of the best.

The Committee met on three occasions: on October 30, 1970 in Richmond; on January 22, 1971 in Williamsburg, and on March 27th, 1971 in Richmond. The Committee has had spokesmen from the insurance industry appear before it in advocacy of and in opposition to the "No Fault" concept. Mr. Richard W. Galiher, Regional Representative for the American Bar Association, appeared before the Committee and explained the American Bar Association Report. Also, on invitation of the Committee, the 'Defense Council of Virginia,' the Virginia Bar Committee on "Basic Protection" and the Virginia Trial Lawyers Association sent a representative to our Committee meetings, and they made a substantial contribution to our efforts.

From the beginning, the Committee was of the opinion that lawyers and, in particular, the trial Bar, have a key role to play in public consideration of the issues proposed by these various insurance plans, whatever may be their individual views on the subject. The daily contact that trial lawyers have with automobile accident claims places them in a position to bring unique knowledge and experience to any discussion of these issues. In the Committee's view the fact that the Bar might have an economic interest in the matter should not disqualify it from taking an active role; but, after open-minded consideration of all recent proposals, should make its recommendation to legislators and the public on the basis of what mode of automobile reparations would best serve the public interest.

II. RESULTS OF STUDY—OPINIONS AND CONCLUSIONS

A. Problems within the present system

Chief complaints against the present system of auto reparations: (1) The high cost of insurance; (2) Unavailability of insurance; (3) Failure of many who suffer injury or loss to receive compensation.

1. The Committee is not convinced that the "No Fault" plans can offer a reduction in insurance premiums. These plans propose to compensate everyone suffering automobile injury for economic loss regardless of fault, economic loss being defined principally as medical bills and loss of income. To try to keep costs within acceptable limits, the "No Fault" plans propose to limit the benefits available to all victims, including those not at fault, in order to compensate those who are at fault. The United States Department of Transportation has stated that approximately forty percent (40%) of the people injured in automobile accidents recover nothing and that their collective economic loss approximates three billion dollars a year. Unless the benefits now being received by those not at fault are substantially reduced by virtue of the above mentioned limitations, payment of those allegedly not now being compensated must, of necessity, cause substantial increase in the overall cost of insurance.

Some plans adopt a two-level approach which abolishes the fault rule within the prescribed limits of loss/benefits but permit the tort action to stay alive if losses exceed this level or limit. The "Massachusetts Plan", for example, is of this structure in that it provides minimum "No Fault" benefits, but permits tort actions where the economic loss exceeds a certain sum. It is difficult to see how this could possibly reduce present insurance costs.

In addition, none of the "No Fault" plans purports to compensate for the cost of property damage to motor vehicles. Yet, property damage accounts for approximately two-thirds of the automobile insurance premiums paid today (California Commission Report). If such losses remain subject to the present system of recovery, no improvement in insurance cost can possibly be foreseen in this area.

2. The Committee feels that the Insurance Commission should act promptly on requests for rate increases to enhance availability of voluntary coverage. There was not sufficient time for the Committee to study the limited results and implications of "Open Competition", under which insurance companies are free to set their own rates. Insurance companies, although subject to regulation,

do not have a monopoly, as to public utilities and it may be that free competition would keep rates within reasonable bounds. The Committee feels that the "Open Competition" approach should be further studied for possible adoption for Virginia.

3. The American Bar Association Report and the report of the American College of Trial Lawyers both recommend that the "gaps" in our present system of compensation be reduced by adoption of a comparative negligence doctrine, abolition of the doctrine of gross negligence, and the elimination of the various charitable and governmental immunities. This Committee is not ready to recommend adoption of such proposals for fear that they might have an adverse effect on insurance premiums, but we recommend that they be further studied in detail.

The Committee does feel that the standard automobile policy in Virginia should contain mandatory medical pay and loss of income provisions. This would guarantee to everyone, regardless of fault, certain minimum benefits at little additional cost. These costs could be minimized by a change in the law of recoverable damages so as to automatically deduct the amount of monies recovered under these policy provisions from any recovery that may be effected by the injured party in an adversary claim.

B. The committee is philosophically opposed to the adoption of the "No Fault" plans being advocated

Information presented to the Committee indicated that the various "No Fault" plans would cost more (not less) than present insurance, or would substantially lower the benefits to which the innocent accident victim is now entitled. In the absence of significant offsetting advantage, we perceive no reason why the automobile accident victim should be singled out as entitled to less in damages for his injuries than those injured by some other means. The "Federal Employees Liability Act" applicable to railroad workers and the "Seamens Act" applicable to seamen, remain in effect, and there seems to be no movement to favor abolishing them in favor of some system of limited recovery. We feel that the automobile accident victim is as deserving of adequate recompense as is the railroad worker, the seaman, or other accident victims of our society.

Most of the "No Fault" proposals would take away the right of the accident victim, innocent or quilty, to collect for disability or pain and suffering. These are natural and proper bases of recovery and should not be prohibited without greater alternative benefit than the known "No Fault" plans would offer.

Finally, we believe that the established rules of tort law still have a valid place in our society, and that the public should not surrender lightly the principle of personal responsibility in automobile cases.

C. Highway Safety and Improved Automobile Design

The Committee feels that the Bar Association should work assiduously to strengthen laws that will tend to increase highway safety. For example, we felt that the Virginia Drunk Driving Laws are, in many ways, impracticable and difficult to enforce and have substantially reduced convictions of drunken drivers. Yet, there seems to be general agreement that alcohol is a factor in at least fifty percent (50%) of traffic fatalities. The recent increase in drug use constitutes a significant addition to the problem.

That strong sanctions, strictly enforced, do bring results, has been clearly established. The British adopted severe sanctions for drunk driving as a means of accident control and highway accidents were drastically reduced. Arkansas enacted a system of strict enforcement of drunk driver laws and there has been a corresponding reduction in traffic fatalities. Chicago had adopted a law providing mandatory jail sentences and suspension of license for one year for conviction under the influence; and, during the period of December 18, 1970 to January 3, 1971, highway fatalities were reduced by nearly two thirds. The positive impact of such measures on the problem of accident reparations is obvious. Our continuing and increased concern in this area is our public and professional obligation.

We were greatly impressed by the data offered by Company spokesmen indicative of the truly significant insurance savings that could be effectuated through improvement of car design for greater impact resistance and ease and economy of repair. Although this approach has less human appeal than the question of highway safety, its potential effect upon the problems of insurance coverage should not be underestimated.

III. RECOMMENDATIONS

The Committee recommends the following:

1. That all motorists in Virginia be required to carry insurance in addition to that now required by the statutes of Virginia, that would provide $1,000 medical pay benefits and disability payments of $60 per week for a maximum of 20 weeks. It was estimated that this coverage would cost $17.00;

2. That any amount paid pursuant to the terms of such mandatory coverage be deducted from the amount of any settlement or judgment which the injured party might obtain in an adversary proceeding;

3. That automobiles be designed to give the maximum safety to the occupants and automobile bumpers be designed so that property damage resulting to the automobile from relatively minor collisions would be eliminated or materially reduced, that to further this aim, legislation similar to Senate Bill No. 900, which has been passed by the legislature of Florida be passed by the legislature of Virginia. A copy of said Senate bill No. 900 is attached.

Allstate Insurance Company has stated publicly that they will reduce property damage premiums 20% upon enactment of this bill;

4. That continuing efforts should be made to improve highway safety and, in particular, promote laws and law enforcement to restrict the drunken driver;

5. That further study should be given as to whether allowing insurance companies to sell insurance on a competitive basis rather than have their rates regulated would result in reducing the costs of insurance and making it available to more people;

6. That every effort should be made to inform the public of the advantages of the present system over the proposed "No Fault" system and this Committee should request that the State Bar Association allocate funds that can be used for this purpose.

Respectfully submitted,

John J. Corson, IV, William B. Poff, Paul M. Shuford, Stanley E. Sacks, Frederick J. Larrick, John M. Hollis, Edward R. Slaughter, Jr., Leake I. Wornom, Jr., Willard J. Moody, Edward L. Breeden, III, Douglas K. Frith, Robert G. Coleburn, Archibald A. Campbell, W. H. Jolly, Henry H. McVey, III, Wilbur C. Allen, *Chairman.*

CHAPTER 70-420

SENATE BILL NO. 900

AN ACT relating to private passenger automobiles; defining "private passenger automobile;" creating a manufacturer's warranty as to standards of safety concerning the ability to sustain shock; providing, in lieu of the warranty, certification by the manufacturer of compliance with the energy absorption standards provided; providing an effective date

Be it Enacted by the Legislature of the State of Florida:

Definitions; warranty on sale and manufacture of automobiles; energy absorption system.—

Section 1. For the purposes of this act, the term "private passenger automobile" shall mean a four-wheeled motor vehicle designed principally for carrying passengers not for hire, for use on public roads and highways, and not designed for use principally as a dwelling or for camping.

Section 2. Every private passenger automobile manufactured on and after January 1, 1973, sold and licensed in the state of Florida, shall be sold subject to the manufacturer's warranty that it is equipped with an appropriate energy absorption system and that, without compromising existing standards of passenger safety, it can be driven, both front and rear, directly into a standard Society of Automotive Engineers (SAE J-850) test barrier at a speed of five (5) miles per hour without sustaining any damage to the automobile.

Section 3. Every private passenger automobile manufactured on and after January 1, 1975, sold and licensed in the State of Florida, shall be sold subject to the manufacturer's warranty that it is equipped with an appropriate energy absorption system and that, without compromising existing standards of passenger safety, it can be driven, both front and rear, directly into a standard Society of Automotive Engineers (SAE J-850) test barrier at a speed of ten (10) miles per hour without sustaining any damage to the automobile.

Section 4. The warranty provisions of this act shall not be applicable with respect to any private passenger automobile as to which the manufacturer files a written certification under oath with the Department of Motor Vehicles and Public Safety, on a form to be prescribed by that Department, that the particular make and model described therein complies with the applicable standards of this act.

Section 5. This act shall become effective on July 1, 1970.

Became a law without the Governor's approval.

Filed in Office Secretary of State July 8, 1970.

APPENDIX C

COMMONWEALTH OF MASSACHUSETTS,
THE SUPERIOR COURT,
Boston, Mass., August 19, 1970.

Hon. FRANCIS W. SARGENT,
Governor of the Commonwealth
State House
Boston, Mass.

DEAR GOVERNOR SARGENT. Since my most recent letter to you regarding the need for additional Superior Court justices, it has come to my attention that some opponents of legislation to enlarge the Superior Court contend that the recently enacted "no fault" insurance plan eliminates the need for additional Superior Court judges by doing away with a substantial portion of their workload. Unfortunately, nothing could be further from the truth.

Although the volume of automobile tort suits entered in the Superior Court is large in comparison to other types of entries, the fact is that proportionately few of them are ever tried. Consequently, they consume very little Superior Court judges' time. The minor cases remanded to the district and municipal courts and most of the remaining automobile cases are settled out of court.

A thoroughly documented study in 1966 revealed that only 13% of Superior Court judges' time in Suffolk County was devoted to the trial of automobile tort cases.

The major share of the court's time is used in processing serious criminal cases, land damage, zoning, equity, contract, products liability and medical malpractice suits, appellate review of administrative agencies such as licensing agencies, the Industrial Accident Board and the Civil Service Commission, petitions for extraordinary writs, commitments of narcotic addicts and sexually dangerous persons. *The "no fault" plan will have no effect whatsoever on these cases.* [Emphasis added]

Furthermore, the "no fault" plan applies only to relatively minor claims. These cases are customarily remanded to the district courts and only a minute percentage are ever appealed to and retried in the Superior Court. Their elimination from the judicial process will, therefore, have very little effect on the Superior Court. The more serious automobile tort cases will continue to require a Superior Court trial even under the "no fault" plan.

The Superior Court's workload may well be increased by Superior Court litigation involving the administration and application of the "no fault" plan.

The most critical problem confronting the Superior Court is not motor vehicle tort litigation but rather its spiraling criminal caseload and a constant increase in civil litigation. In no way will the enactment of the "no fault" insurance plan affect this problem. We simply do not have sufficient Superior Court judges to process with fairness, dignity and efficiency our caseload. The unconscionable accumulation of untried cases, civil as well as criminal, clearly demonstrates the need for additional Superior Court judges now. I fully concur with Chief Justice Burger's recent remarks to the American Bar Association in St. Louis:

"If ever the law is to have genuine deterrent effect on the criminal conduct giving us immediate concern, we must make some drastic changes. The most simple and obvious remedy is to give the courts the manpower and tools—including the posecutors and defense lawyers—to try criminal cases within 60 days after indictment. *I predict it would sharply reduce the crime rate.*" [Emphasis added]

In short, I do not believe that the supporters of the "no fault" insurance [illegible] can at this time properly list as one of its features a significant reduction [illegible] business of the Superior Court. It is my considered judgment that [illegible] enactment of legislation which would give the court much needed help [illegible]

an untried theory and unproven facts would further jeopardize the ability of the Superior Court to effectively administer justice.

G. JOSEPH TAURO.

Senator HART. Next we will have the testimony reflecting the view of the Independent Mutual Insurance Agents Association of New York, New Jersey, and Connecticut, from the chairman of its national affairs committee, Mr. Charles L. Rue, Jr.

STATEMENT OF CHARLES L. RUE, JR., CPCU, CHAIRMAN, NATIONAL AFFAIRS COMMITTEE, INDEPENDENT MUTUAL INSURANCE AGENTS ASSOCIATION OF NEW YORK, NEW JERSEY, AND CONNECTICUT, TRENTON, N.J.; ACCOMPANIED BY ERIK A. NICOLAYSEN III, CPCU, PRESIDENT, ERIK A. NICOLAYSEN, INC., CHAPPAQUA, N.Y.; JOHN S. BRADY, PRESIDENT, WEBSTER'S INSURANCE SERVICE, INC., WATERBURY, CONN.; AND IRVING B. MICKEY, DIRECTOR OF COMMUNICATIONS, INDEPENDENT MUTUAL INSURANCE AGENTS, GLENMONT, N.Y.

Mr. RUE. Thank you, Mr. Chairman.

I am Charles L. Rue, CPCU, from Trenton, N.J. I would like to introduce to you, if I may, some of my companions here this morning.

On my right, Mr. Erik A. Nicolaysen, CPCU from Chappaqua, N.Y. On my left, Mr. John S. Brady, Waterbury, Conn. Both of these gentlemen have been on our auto study committee since 1968.

I also have with me Mr. Irving B. Mickey, director of communications for our association headquarters in Glenmont, N.Y.

Our three States, Mr. Chairman, represent about 3,500 agencies and 10,000 individual agents. Our three States serve approximately 5 million insured persons. I am serving currently as chairman of the three-States national affairs committee.

The objectives of our testimony today are twofold. One, to express our basic philosophy on the subject of automobile accident reparations reform and the related subjects encompassed by S. 945, S. 946, and S. 976, and, two, to comment on the few specific portions of these bills to which we object or which raise serious questions in our minds—I might add that these are relatively few because, by and large, we are very favorably disposed toward the objectives of this package of legislation.

First, on S. 945.

Our three associations, both individually and collectively, strongly support the concept of a first-party automobile accident reparations system and, in keeping with that philosophy, we will actively support any measure which represents a reasonable evolutionary step in that direction.

This position stems from an intensive study of accident reparation problems conducted by our three-State automobile study committee in 1968, the findings of which were published in the fall of that year.

We have appended a copy of that report to the official copies of this document. We will simply summarize our findings. I will not go through our objections to the tort system. They have already been eliminated by many other witnesses. Neither will I read the advantages of the first-party system since you are familiar with those.

In this connection, it should be pointed out that the DOT report recognized that:

". . . the basic determinant of the size and nature of the compensation requirement, i.e., car crash losses, is almost entirely, if not completely, a function of outside forces—traffic law enforcement, safety measure, car design, driver licensing and education, highway design, etc. Loss costs, themselves, reflect the prices being charged in the market place for hospital and medical care, auto repair and replacement parts, legal services, the cost of vehicles, etc., and they, too, cannot be significantly influenced, at least directly, by the compensation mechanism." [19]

The NAIC earlier reached the same conclusion.

"(Traffic safety or the absence thereof, the economic climate within which automobile insurance functions and the legal system upon which it rests) have a fundamental impact on the cost and the operation of the automobile insurance system despite the fact that they are external to the system and not subject to that system's control. Nevertheless they comprise the framework within which the system functions. Although the insurance system has its defects, some of the basic problems are caused externally and can only be remedied outside the system. Congress, various federal agencies and administrations, the judicial system, the providers of medical services, the automotive industry, state activity or lack thereof in traffic safety, etc., all have contributed to the basic problems." [20]

Thus the insurance industry and the regulators thereof have had to function in a legal, social and economic environment not of its own choosing. The problems stemming from this environment should not be translated into discarding those operating within it as long as they commit themselves to adjust to a new environment when it comes about. The DOT report, at the outset, made this same point:

"The conclusions made about the present system and its operations should not be interpreted to reflect adversely on any of the participants. The subject under investigation was in fact the 'system' and not those who have tried to make it run and improve it. The conclusions are directed to the system." [21]

Furthermore, the Administration in the proposed resolution stated that "the principal problems and abuses with respect to automobile insurance stem from the defects in the system for compensating accident victims . . . rather than from defects in the insurance institution or in its regulation by the several states . . ." Consequently, shifting to a federal regulatory mechanism (even if federal guidelines or objectives are adopted) is not warranted nor recommended by the comprehensive studies made. As indicated earlier, the state insurance regulating mechanism has no vested interest other than its commitment to meeting the public needs in the extent to which the tort liability system is modified or eliminated. We regulate the providing of insurance now and can continue to do so on either a fault or no fault basis on either basis.

7. A PRACTICAL NOTE

As has been aptly pointed out elsewhere and referred to in this statement, inflation has been the prime cause in rate increases. Thus the basic responsibility for the problem generated rests in Washington. Public expenditures, increase in governmental activities, deficits, monetary policy, taxation, etc., all (with the exception of monetary policy) under the control of Congress largely determines the presence or absence of inflation.

This is not to say that improvements cannot or should not be made in the insurance mechanism at the state level. They should be made and they are being made. But the respite will only be temporary if inflation continues to take its inexorable toll. Efforts by Congress to deal with inflation, often hampered by political considerations, have not been effective thus far and there is national pessimism about the likelihood of any improvement in the picture.

SUMMARY—MASS MARKETING OF AUTOMOBILE INSURANCE

To summarize, the initial draft of the NAIC staff study on mass marketing suggests:

1. that insurance consuming public ought to be afforded the freedom of choice,
2. that pressures and events are moving in this direction now.

In addition, I personally believe:

1. that federal legislation of this type, if adopted, needs to be carefully considered so as to: a) adequately protect the total insurance buying public and at the same time not create burdensome and conflicting regulatory machinery

[19] *DOT Report*, p. iv.

[20] *Report of the NAIC Special Committee on Automobile Insurance Problems*, 15 (June 1969).

[21] DOT Report, p. iv.

and b) avoid preemption or to take precedence over state actions that may encourage experimental and pilot programs.

2. that S. 946 has some inherent defects working at cross purposes to the achieving of the basic objective of providing the insurance consuming public with a free choice within a responsible insurance market and that before adoption of such an Act you should correct the defects.

SUMMARY—DAMAGEABILITY STATEMENT

In summary, the NAIC believes that auto insurance ratemaking based on relative susceptibility to property damage in an accident, if perfected, offers a significant contribution to *equitable distribution of rates* among insureds and anticipates that a program such as one embraced by S. 976, whether enacted at the Federal or state level, offers significant potential for cost relief to automobile owners and policyholders.

Senator Moss. Mr. Peter Beardsley, vice president and general counsel of the American Trucking Association will be our witness now.

We will be glad to hear from you, Mr. Beardsley.

STATEMENT OF PETER T. BEARDSLEY, VICE PRESIDENT AND GENERAL COUNSEL, AMERICAN TRUCKERS ASSOCIATION

Mr. BEARDSLEY. Thank you, Senator.

Senator Moss. We will make your full statement a part of the record, and you may proceed in whatever manner you care to.

Mr. BEARDSLEY. All right, Senator. When I get to some of the statistical figures, I will refer to them, but not read them in.

Senator Moss. Thank you. That will be very acceptable.

Mr. BEARDSLEY. My name is Peter T. Beardsley, and I am a vice president, and the general counsel of American Trucking Associations, Inc. Our organization is the national trade association of the motor carrier industry. It represents all types of motor carriers, and has affiliated associations in every State and the District of Columbia. Its office is located at 1616 P Street NW., Washington, DC 20036.

As a part of our activities, we often take a position before Congress respecting proposals which, if enacted, would have a significant impact upon the trucking industry. Ordinarily, such proposals are the same as, or very similar to, others which have preceded them, or propose amendments to existing laws with which we are familiar.

We confess to a lack of familiarity, however, with no-fault insurance, if for no other reason than that the subject itself—at least in the form of proposed legislation—is relatively new. We assume that no-fault means essentially that regardless of the degree of negligence exhibited by the various drivers involved in an accident, each of them would be paid by his insurer for his net economic loss as that term is defined in S. 945.

Based on that assumption, we take no position at this time respecting the no-fault principle as such.

We believe that in view of the every substantial change which this bill proposes in the field of motor-vehicle accident insurance, it would be wise before seriously considering its enactment to await the results of experience under State no-fault laws such as that which recently became effective in Massachusetts, and those of other States which may be enacted.

In any event, S. 945 is not, in any practical sense, no-fault insofor as the trucking industry is concerned, and we have no alternative but to oppose it for that reason. If the bill were amended along the

In this connection, it should be pointed out that the DOT report recognized that:

". . . the basic determinant of the size and nature of the compensation requirement, i.e., car crash losses, is almost entirely, if not completely, a function of outside forces—traffic law enforcement, safety measure, car design, driver licensing and education, highway design, etc. Loss costs, themselves, reflect the prices being charged in the market place for hospital and medical care, auto repair and replacement parts, legal services, the cost of vehicles, etc., and they, too, cannot be significantly influenced, at least directly, by the compensation mechanism." [19]

The NAIC earlier reached the same conclusion.

"(Traffic safety or the absence thereof, the economic climate within which automobile insurance functions and the legal system upon which it rests) have a fundamental impact on the cost and the operation of the automobile insurance system despite the fact that they are external to the system and not subject to that system's control. Nevertheless they comprise the framework within which the system functions. Although the insurance system has its defects, some of the basic problems are caused externally and can only be remedied outside the system. Congress, various federal agencies and administrations, the judicial system, the providers of medical services, the automotive industry, state activity or lack thereof in traffic safety, etc., all have contributed to the basic problems." [20]

Thus the insurance industry and the regulators thereof have had to function in a legal, social and economic environment not of its own choosing. The problems stemming from this environment should not be translated into discarding those operating within it as long as they commit themselves to adjust to a new environment when it comes about. The DOT report, at the outset, made this same point:

"The conclusions made about the present system and its operations should not be interpreted to reflect adversely on any of the participants. The subject under investigation was in fact the 'system' and not those who have tried to make it run and improve it. The conclusions are directed to the system." [21]

Furthermore, the Administration in the proposed resolution stated that "the principal problems and abuses with respect to automobile insurance stem from the defects in the system for compensating accident victims . . . rather than from defects in the insurance institution or in its regulation by the several states . . ." Consequently, shifting to a federal regulatory mechanism (even if federal guidelines or objectives are adopted) is not warranted nor recommended by the comprehensive studies made. As indicated earlier, the state insurance regulating mechanism has no vested interest other than its commitment to meeting the public needs in the extent to which the tort liability system is modified or eliminated. We regulate the providing of insurance now and can continue to do so on either a fault or no fault basis on either basis.

7. A PRACTICAL NOTE

As has been aptly pointed out elsewhere and referred to in this statement, inflation has been the prime cause in rate increases. Thus the basic responsibility for the problem generated rests in Washington. Public expenditures, increase in governmental activities, deficits, monetary policy, taxation, etc., all (with the exception of monetary policy) under the control of Congress largely determine the presence or absence of inflation.

This is not to say that improvements cannot or should not be made in the insurance mechanism at the state level. They should be made and they are being made. But the respite will only be temporary if inflation continues to take its inexorable toll. Efforts by Congress to deal with inflation, often hampered by political considerations, have not been effective thus far and there is national pessimism about the likelihood of any improvement in the picture.

SUMMARY—MASS MARKETING OF AUTOMOBILE INSURANCE

To summarize, the initial draft of the NAIC staff study on mass marketing suggests:

1. that insurance consuming public ought to be afforded the freedom of choice
2. that pressures and events are moving in this direction now.

In addition, I personally believe:

1. that federal legislation of this type, if adopted, needs to be carefully considered so as to: a) adequately protect the total insurance buying public and at the same time not create burdensome and conflicting regulatory machinery

[19] *DOT Report*, p. iv.
[20] *Report of the NAIC Special Committee on Automobile Insurance Problems*, 15 (June 1969).
[21] DOT Report, p. iv.

and b) avoid preemption or to take precedence over state actions that may encourage experimental and pilot programs.

2. that S. 946 has some inherent defects working at cross purposes to the achieving of the basic objective of providing the insurance consuming public with a free choice within a responsible insurance market and that before adoption of such an Act you should correct the defects.

SUMMARY—DAMAGEABILITY STATEMENT

In summary, the NAIC believes that auto insurance ratemaking based on relative susceptibility to property damage in an accident, if perfected, offers a significant contribution to *equitable distribution of rates* among insureds and anticipates that a program such as one embraced by S. 976, whether enacted at the Federal or state level, offers significant potential for cost relief to automobile owners and policyholders.

Senator Moss. Mr. Peter Beardsley, vice president and general counsel of the American Trucking Association will be our witness now.

We will be glad to hear from you, Mr. Beardsley.

STATEMENT OF PETER T. BEARDSLEY, VICE PRESIDENT AND GENERAL COUNSEL, AMERICAN TRUCKERS ASSOCIATION

Mr. BEARDSLEY. Thank you, Senator.

Senator Moss. We will make your full statement a part of the record, and you may proceed in whatever manner you care to.

Mr. BEARDSLEY. All right, Senator. When I get to some of the statistical figures, I will refer to them, but not read them in.

Senator Moss. Thank you. That will be very acceptable.

Mr. BEARDSLEY. My name is Peter T. Beardsley, and I am a vice president, and the general counsel of American Trucking Associations, Inc. Our organization is the national trade association of the motor carrier industry. It represents all types of motor carriers, and has affiliated associations in every State and the District of Columbia. Its office is located at 1616 P Street NW., Washington, DC 20036.

As a part of our activities, we often take a position before Congress respecting proposals which, if enacted, would have a significant impact upon the trucking industry. Ordinarily, such proposals are the same as, or very similar to, others which have preceded them, or propose amendments to existing laws with which we are familiar.

We confess to a lack of familiarity, however, with no-fault insurance, if for no other reason than that the subject itself—at least in the form of proposed legislation—is relatively new. We assume that no-fault means essentially that regardless of the degree of negligence exhibited by the various drivers involved in an accident, each of them would be paid by his insurer for his net economic loss as that term is defined in S. 945.

Based on that assumption, we take no position at this time respecting the no-fault principle as such.

We believe that in view of the every substantial change which this bill proposes in the field of motor-vehicle accident insurance, it would be wise before seriously considering its enactment to await the results of experience under State no-fault laws such as that which recently became effective in Massachusetts, and those of other States which may be enacted.

In any event, S. 945 is not, in any practical sense, no-fault insofor as the trucking industry is concerned, and we have no alternative but to oppose it for that reason. If the bill were amended along the

lines of H.R. 7514, introduced by Chairman Moss of the Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce, we would find it much less objectionable.

We take no position on S. 946 or S. 947, or the resolution proposed by Secretary Volpe in his testimony before this committee on March 18, 1971, which is, I believe, Senate Concurrent Resolution 23.

Senator Moss. Yes.

Mr. BEARDSLEY. The interstate motor carriers subject to economic regulation by the Interstate Commerce Commission, and safety regulation by the Department of Transportation, fall into several categories. Over 15,000 for-hire carriers—common and contract—are subject to both economic and safety regulations.

There are additional thousands of for-hire carriers—mostly transporters of agricultural commodities—which are subject to safety regulation by DOT but exempt from ICC economic regulation. It is on behalf of the regulated carriers, rather than the exempt carriers that this statement is filed.

ATA also represents the interests of numerous private carriers of property through their membership in one or more of the ATA-affiliated State trucking associations, and this statement is filed on their behalf, too.

The trucking industry's concern for highway safety originated in a natural, humanitarian desire to reduce the tragedy of death and injury in traffic, and in a determination to improve the reputation of the industry as a safe, courteous partner on the road.

In addition, there is a business incentive for maintaining an extensive safety program. The millions of trucks of all kinds in daily use on streets and highways are constantly exposed to accident-producing situations which can result in loss or damage to other highway users, to industry drivers and vehicles, and to customer freight.

Such accidents have the potential of putting any motor carrier out of business because of the extremely high costs that are incurred through civil suits, workmen's compensation, vehicle repairs, and freight claims. Those costs are direct expenses to the carrier, regardless of the amount of its insurance coverage as truck insurance is written on a retrospective basis so that the premium for a given year is raised or lowered to reflect the accident cost experience for the previous year.

The loss potential faced by truck fleets and the retrospective method of rating insurance have been incentives for the conduct of carefully planned programs to prevent accidents.

Industry experience shows that driver selection is the key to the entire safety program, and so trucking companies try to insure that they do not "Hire their problems." In employment interviews and reference checks of prospective drivers, personnel officials use nationally approved guidelines which prescribe rigorous qualifications. Past employment, credit background, and traffic record are among the factors explored to determine an applicant's reliability, attitude, and willingness to accept responsibility for his vehicle and cargo, and for the welfare of other highway users.

The industry's driver selection program had its beginnings in the 1920's and was adopted as a national standard in 1940. In the 1950's it was further improved through an industry-sponsored study by the School of Public Health of Harvard University which was designed to provide more information about driver motivation.

After being hired, a driver trainee receives detailed classroom instruction in company policies, traffic regulations, safety requirements, knowledge of the vehicle, and techniques for safe driving.

To develop driving proficiency, he undergoes a lengthly probationary period starting with student trips in the company of an experienced driver. He learns how to handle smaller trucks at first, and eventually may drive an intercity tractor-trailer rig.

Throughout his employment, industry and fleet supervision is provided through road patrols, radar checks, safety meetings and conferences, and the use of recording devices and check stations.

The professional truckdriver is required to allow the code of defensive driving, which places responsibility upon him to drive in such a way that he commits no driving errors himself, and can protect himself against the mistakes of other drivers.

If he is involved in an accident his company rules the accident as preventable, or nonpreventable. A preventable accident is one in which the truck driver did not take every possible step to prevent the accident, regardless of whether or not he was legally in the right, and the other driver was legally wrong.

Under this concept of preventability the driver's attitudes and actions are brought under close scrutiny and control by the company, so that the driver who develops poor attitudes or poor driving habits is quickly retrained or released from employment.

The effectiveness of the industry's programs is reflected in the following National Safety Council accident figures:

	Percent of trucks involved in accidents	Truck percent of registered vehicles	Percent of cars involved in accidents	Car percent of registered vehicles
Year:				
1948	17.0	18.0	80.0	81.0
1969	11.5	16.6	85.1	80.8

These figures are taken from the National Safety Council's publication Accident Facts, 1949 and 1970 editions, pages 66 and 56, respectively. They demonstrate that the truck record for accident involvement has improved substantially over the period shown, whereas that of the passenger car has gotten worse.

The figures shown do not reflect mileage driven. When this factor is considered, the truck record is significantly better than that of the passenger cars. This is demonstrated by the following figures:

Intercity fleets: Total truck mileage	12,460,796,451
(Class I and II). (Ratio: 3.15 trucks involved per million miles): Total trucks involved in accidents	39,302
All trucks (ratio: 14.9 trucks involved per million miles):	
Total truck mileage	206,680,000,000
Total trucks involved in accidents	3,075,000
All passenger cars (Ratio: 26.8 passenger cars involved per million miles):	
Total passenger car mileage	849,633,000,000
Total cars involved in accidents	22,800,000

The class I and II trucks referred to in the first category are those for-hire vehicles subject to economic regulation by the Interstate Commerce Commission, and safety regulation by the Department of

Transportation. The mileage and accident figures are obtained from the pamphlet, "1969 Accidents of Large Motor Carriers of Property," Bureau of Motor Carrier Safety, Department of Transportation.

A class I carrier is one whose annual gross operating revenue is $1 million or more. A class II carrier is one whose annual gross operating revenue is $300,000, but less than $1 million. The second category "all trucks," covers just that. It includes, for example, farm trucks, trucks operated by the Federal Government, as well as a very large number of trucks not subject to economic regulation by the ICC, but subject to DOT safety regulation.

The mileage figures for both the second and third categories are those of the Department of Transportation—Highway Statistics, 1969, table VM-1, page 73—and the accident figures are those of the National Safety Council—Accident Facts, 1970 edition, page 56. 1969 figures are used, as they are the latest available from all sources.

The effect of the industry's safety programs has been to enable motor carriers to significantly reduce the heavy costs of accident involvement. But even though the carriers have done an outstanding job of controlling their vehicles and drivers, there are still a large number of truck accidents each year that are caused by others. A study by American Fidelity and Casualty Co. of truck-involved accidents in the 1950's showed that in 104,000 accidents with other vehicles, truckdrivers could not in any way have prevented 70 percent of them.

Over the years, the trucking industry has been in the forefront of highway user groups which have made a consistent and conscientious effort to reduce their contribution to highway accidents. That effort has involved the expenditure of large sums of money and a great deal of time and work.

Now it is proposed that the cost of highway accidents be assigned, not to those responsible for them, but to all highway users, without regard to their driving habits, or their concern for their own welfare, or that of other users of the road.

If there is to be a shift to a no-fault basis, we submit that if any segment of highway users should be singled out for favored treatment, it should be the motor carriers. But instead of being rewarded for their successful efforts to reduce highway accidents, S. 945 would subject them to discriminatory treatment.

We don't ask for favors, but we do ask for fair treatment. If the law is to provide that, except for catastrophic loss, no driver involved in an accident is to be considered responsible for it, the same rule should apply with respect to drivers of commercial vehicles.

There is certainly no equity in arbitrarily assigning to such vehicles a very high percentage of the costs resulting from any accident in which it is involved. The proposal is indeed a paradox—on the one hand, operators of commercial vehicles are told that no matter how negligent automobile drivers may be, they bear no responsibility when then cause an accident in which the operator's trucks are involved, but the truckowners will be assessed a major share of the cost resulting from the very same accidents. Technically, this may be no-fault insurance; practically, it is insurance which arbitrarily assigns a great majority of the blame and cost to operators of commercial vehicles involved in accidents.

Under the current fault system of compensating for accident losses, motor carriers usually bear all or part of the accident costs if their driver contributed in any degree to an accident. However, the system quite often protects the carriers when other drivers are totally responsible. Thus the present system provides incentive to the carriers to continue their programs of careful driver selection, training, and supervision, and it keeps insurance costs at a point which the carriers can afford and still stay in business.

To the contrary, section 5(7)(A) and (B) of S. 945 would hold motor carriers uniformly liable for a large percentage of all property damage and personal injury regardless of whether or not their trucks were actually responsible for accidents. This would result in discrimination against trucks because, through millions of miles of operation, they are constantly exposed to accidents resulting from the driving errors of others.

The truckdriver is a skilled professional who must meet strict physical requirements every 2 years and who is limited to a maximum of 10 hours of driving in any one duty period. The vehicle he operates is a highly sophisticated machine that is the subject of regularly scheduled inspections and preventive maintenance. Yet, on the highway, he is exposed to drivers who have varying degrees of ability and who quite often are pushing their stamina by attempting to cover 10, 15, and 20 hours of driving following an 8-hour workday.

The truckdriver is exposed to driving mistakes by the very young neophyte driver whose attitudes lack maturity, by the older driver who may lack the physical conditioning necessary to safe driving at high speeds, and, because a very substantial amount of over-the-road trucking occurs at night, to the drunken driver. As a result of this exposure, there is a strong likelihood that even the best and most defensive truckdriver can become involved in an accident that he can in no way avoid.

Under the provisions of this bill, the costs of such accidents would be largely borne by the motor carriers and their insurance costs would rise very substantially.

As an example of the inherent inequity of this bill which would hold the commercial vehicle largely or almost entirely responsible for an accident involving a passenger car, consider the cost results of an accident under the present system versus the system proposed by the bill:

(*a*) Truck and trailer unit, westbound, in extreme right lane of four-lane divided highway.

(*b*) Passenger car with four occupants, eastbound, loses control, comes through the dividing median and collides with the truck.

RESULT—ALL OCCUPANTS OF CAR SEVERELY INJURED. NO INJURY TO TRUCKDRIVER

Present system

Based on the premise that one who causes injury to another by negligent conduct should fairly and adequately compensate him for that injury, the truck operator would owe nothing.

S. 945

This bill requires payment of up to $1,000 per month for a total of 30 months for loss of earnings resulting from an accident, with no

specified limits on costs for medical, hospital, surgical, et cetera, services, and physical and occupational therapy and rehabilitation.

Assuming that the injured parties in this accident were disabled many months each, the total cost for the injuries could well be in the hundreds of thousands of dollars, by virtue of the expenses covered by economic loss under section 2(10) of the bill.

Under the terms of S. 945 (sec. 5(7)(A)) by which a larger vehicle, depending on its size, would be responsible for a substantial percentage of net economic loss, it is possible that the motor carrier would be required to pay upward of 90 percent of the loss incurred by the occupants of the passenger car.

While we assume the figure would be somewhat lower, the bill gives the Secretary of Transportation (sec. 5(7)(B)) complete discretion to assign to vehicles larger than an "ordinary passenger automobile" a percentage of responsibility for net economic loss sustained by occupants of other vehicles. And the bill clearly indicates, in the same section, that the Secretary could determine that such responsiblity would exceed 70 percent.

The definition of "ordinary passenger automobile" contained in the bill (sec. 5(7)(A)(i)) includes vehicles having a seating capacity of up to nine passengers. It is, therefore, clear that the cited example of costs which might be incurred by motor carriers because their vehicles are involved in accidents for which—under the present system—they could not be held responsible, is modest indeed.

S. 945 is contrary to the principle of no-fault insurance because it would penalize motor carriers by placing them under a fault system of insurance rather than a no-fault system. It would hold the carriers responsible for losses incurred by all parties to all accidents involving trucks as if the carriers' vehicles are always responsible for such accidents.

One of the claims made for no-fault insurance is that premium costs will be reduced, but S. 945, if enacted, would tremendously increase the costs of truck insurance because of the larger portion of accident costs that would be borne by insurance companies which supply truck insurance.

Under the retrospective rating plan, those costs will be shifted back to the motor carriers through an increase in premiums. The regulated for-hire trucking industry includes approximately 1,500 class I carriers, 2,000 class II carriers, and, in addition, 11,700 class III carriers (those whose annual gross revenues are less than $300,000 and whose fleets consist of a small number of vehicles).

All for-hire carriers operate on a very slim profit margin and many would be unable to absorb a sharp rise in insurance costs. The industry is faced with severe competition from railroads, airlines, freight forwarders, and, to some extent, water carriers. Because of the competition of other transport modes, for-hire carriers are by no means completely free to recoup increased expenses by increases in their rates.

I referred earlier to H.R. 7514, introduced in the House by Congressman Moss of California. As we read his bill, it would eliminate the provision of S. 945 which would require that large vehicles be charged with a very substantial portion of the costs of all accidents in which they are involved, which is the very antithesis of the no-fault principle.

Let me say that we earnestly hope—if Federal no-fault insurance legislation is enacted—it will follow the lines of H.R. 7514 in this respect.

There is another aspect of S. 945 which seems entirely out of keeping with the no-fault philosophy. I refer to section 5(5), providing that persons not occupants of motor vehicles may recover their net economic loss from the insurer of any motor vehicle involved in an accident.

First off, we think the approach suggested by Secretary Volpe in his appearance before this committee on March 18, 1971, is preferable. As we understand his proposal, the insurance coverage obtained by a motor vehicle owner would cover himself and all members of his family whenever they were involved in a motor vehicle accident, whether in the owner's vehicle, as occupants of another vehicle, or as pedestrians. This would leave the owner's insurance company additionally liable only for injury or death to uninsured passengers or pedestrians.

But this is not our main objection to section 5(5). We believe its language is so broad as to allow recovery by any member of a train crew, or passenger on a train, from the insurer of any motor vehicle involved in a grade-crossing accident.

Just as S. 945 requires owners of passengers cars and operators of trucks and buses to provide insurance to cover the net economic loss suffered by occupants of their vehicles, it should also require the railroads to assume the same obligation with respect to members of train crews and passengers on trains. This is no minor matter.

Statistics published by the Department of Transportation show the following respecting grade-crossing accidents, and fatalities and injuries resulting therefrom, for the years 1967–69.[1]

	Number of accidents	Fatalities	Injuries
Year:			
1967	3,932	1,632	3,812
1968	3,816	1,546	3,744
1969	3,774	1,490	3,669

If no-fault is to be the standard for recovery of net economic loss in accidents involving motor vehicles, railroads cannot in fairness be given a free ride at the expense of owners of passenger cars, trucks and buses.

Under S. 945 as presently worded, the Secretary of Transportation might well decide, in exercising his authority under section 5(7)(A), to assign 75 percent of the net economic loss incurred by a passenger-car driver in an accident with a truck or bus to the insurer of the latter vehicles. If the bill is enacted with this provision included, then, by the same token, it should vest the same authority in the Secretary to assign responsibility—on a similar basis—to railroad equipment involved in accidents with passenger cars, trucks and buses.

Senator Moss, that completes my direct statement.

Thank you very much.

Senator Moss. Well, thank you, Mr. Beardsley, for that fine statement.

[1] Accident Bulletin No. 138, Federal Railroad Administration, table 6, p. 2.

specified limits on costs for medical, hospital, surgical, et cetera, services, and physical and occupational therapy and rehabilitation.

Assuming that the injured parties in this accident were disabled many months each, the total cost for the injuries could well be in the hundreds of thousands of dollars, by virtue of the expenses covered by economic loss under section 2(10) of the bill.

Under the terms of S. 945 (sec. 5(7)(A)) by which a larger vehicle, depending on its size, would be responsible for a substantial percentage of net economic loss, it is possible that the motor carrier would be required to pay upward of 90 percent of the loss incurred by the occupants of the passenger car.

While we assume the figure would be somewhat lower, the bill gives the Secretary of Transportation (sec. 5(7)(B)) complete discretion to assign to vehicles larger than an "ordinary passenger automobile" a percentage of responsibility for net economic loss sustained by occupants of other vehicles. And the bill clearly indicates, in the same section, that the Secretary could determine that such responsiblity would exceed 70 percent.

The definition of "ordinary passenger automobile" contained in the bill (sec. 5(7)(A)(i)) includes vehicles having a seating capacity of up to nine passengers. It is, therefore, clear that the cited example of costs which might be incurred by motor carriers because their vehicles are involved in accidents for which—under the present system—they could not be held responsible, is modest indeed.

S. 945 is contrary to the principle of no-fault insurance because it would penalize motor carriers by placing them under a fault system of insurance rather than a no-fault system. It would hold the carriers responsible for losses incurred by all parties to all accidents involving trucks as if the carriers' vehicles are always responsible for such accidents.

One of the claims made for no-fault insurance is that premium costs will be reduced, but S. 945, if enacted, would tremendously increase the costs of truck insurance because of the larger portion of accident costs that would be borne by insurance companies which supply truck insurance.

Under the retrospective rating plan, those costs will be shifted back to the motor carriers through an increase in premiums. The regulated for-hire trucking industry includes approximately 1,500 class I carriers, 2,000 class II carriers, and, in addition, 11,700 class III carriers (those whose annual gross revenues are less than $300,000 and whose fleets consist of a small number of vehicles).

All for-hire carriers operate on a very slim profit margin and many would be unable to absorb a sharp rise in insurance costs. The industry is faced with severe competition from railroads, airlines, freight forwarders, and, to some extent, water carriers. Because of the competition of other transport modes, for-hire carriers are by no means completely free to recoup increased expenses by increases in their rates.

I referred earlier to H.R. 7514, introduced in the House by Congressman Moss of California. As we read his bill, it would eliminate the provision of S. 945 which would require that large vehicles be charged with a very substantial portion of the costs of all accidents in which they are involved, which is the very antithesis of the no-fault principle.

Let me say that we earnestly hope—if Federal no-fault insurance legislation is enacted—it will follow the lines of H.R. 7514 in this respect.

There is another aspect of S. 945 which seems entirely out of keeping with the no-fault philosophy. I refer to section 5(5), providing that persons not occupants of motor vehicles may recover their net economic loss from the insurer of any motor vehicle involved in an accident.

First off, we think the approach suggested by Secretary Volpe in his appearance before this committee on March 18, 1971, is preferable. As we understand his proposal, the insurance coverage obtained by a motor vehicle owner would cover himself and all members of his family whenever they were involved in a motor vehicle accident, whether in the owner's vehicle, as occupants of another vehicle, or as pedestrians. This would leave the owner's insurance company additionally liable only for injury or death to uninsured passengers or pedestrians.

But this is not our main objection to section 5(5). We believe its language is so broad as to allow recovery by any member of a train crew, or passenger on a train, from the insurer of any motor vehicle involved in a grade-crossing accident.

Just as S. 945 requires owners of passengers cars and operators of trucks and buses to provide insurance to cover the net economic loss suffered by occupants of their vehicles, it should also require the railroads to assume the same obligation with respect to members of train crews and passengers on trains. This is no minor matter.

Statistics published by the Department of Transportation show the following respecting grade-crossing accidents, and fatalities and injuries resulting therefrom, for the years 1967–69.[1]

	Number of accidents	Fatalities	Injuries
Year:			
1967	3,932	1,632	3,812
1968	3,816	1,546	3,744
1969	3,774	1,490	3,669

If no-fault is to be the standard for recovery of net economic loss in accidents involving motor vehicles, railroads cannot in fairness be given a free ride at the expense of owners of passenger cars, trucks and buses.

Under S. 945 as presently worded, the Secretary of Transportation might well decide, in exercising his authority under section 5(7)(A), to assign 75 percent of the net economic loss incurred by a passenger-car driver in an accident with a truck or bus to the insurer of the latter vehicles. If the bill is enacted with this provision included, then, by the same token, it should vest the same authority in the Secretary to assign responsibility—on a similar basis—to railroad equipment involved in accidents with passenger cars, trucks and buses.

Senator Moss, that completes my direct statement.

Thank you very much.

Senator Moss. Well, thank you, Mr. Beardsley, for that fine statement.

[1] Accident Bulletin No. 138, Federal Railroad Administration, table 6, p. 2.

I understand the objection that you have to the bill S. 945. The others you didn't comment on and didn't have any matter to present.

In this discussion that you had on the training of drivers, and therefore incentive to forestall accidents, to drive safely, don't insurance costs vary among companies depending on the record that they make of accidents?

Mr. BEARDSLEY. They surely do. Because of the retrospective system that I mentioned, Senator, if a company has a bad record, it is reflected next year in its premium.

Senator MOSS. So that sort of incentive would remain even if commercial trucks were required to continue to buy insurance; there would still be a great incentive to train drivers for safe driving, wouldn't there?

Mr. BEARDSLEY. I would hope there always would be regardless of what the state of the law was insurancewise or otherwise. that is the way it ought to be.

Senator MOSS. I would hope so, too, and I would expect there would be, but I was just pointing out that some economic incentive would remain there for the companies to do that. But other than the concern that you have that trucks are treated differently from passenger cars, you don't find any great difficulty with the bill. Is that right?

Mr. BEARDSLEY. No, sir. As I said at the outset of my testimony, this is something fairly new for ATA to be getting into. I recall this is the first time we had occasion to testify with respect to any legislation dealing with insurance, certainly in the Congress. And we are sort of feeling our way along, if I may say so.

We have a meeting of our executive committee coming up after the middle of June and we are going to put this subject on the agenda for further consideration. I have no way of knowing what the results will be, it may be just where we stand today, we may get some instructions to take a broader approach, so to speak. But so far our only instructions are to oppose S. 945 because of the provisions I stressed in my testimony.

Senator MOSS. Well, we surely appreciate your coming and we hope that when you have further considered it, if you arrive at a policy decision, you will communicate it to the committee and we will probably still be deeply involved in this, and when our transcript of our hearings is printed up, and you study them, if you have additoinal comments you think you would like to submit based on that, we would appreciate having that from you, too.

Mr. BEARDSLEY. Thank you very much.

Senator MOSS. Thank you, Mr. Beardsley.

We appreciate your appearance here today.

(The statement follows:)

STATEMENT OF PETER T. BEARDSLEY, VICE PRESIDENT AND GENERAL COUNSEL, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. Chairman and Members of the Subcommittee:

My name is Peter T. Beardsley, and I am a Vice-President, and the General Counsel of American Trucking Associations, Inc. Our organization is the national trade association of the motor carrier industry. It represents all [illegible] of motor carriers, and has affiliated associations in every state and the District of Columbia. Its office is located at 1616 P Street, N.W., Washington, D.C. [illegible]

As a part of our activities, we often take a position before Congress [illegible] ing proposals which, if enacted, would have a significant impact upon the [illegible]

ing industry. Ordinarily, such proposals are the same as, or very similar to, others which have preceded them, or propose amendments to existing laws with which we are familiar. We confess to a lack of familiarity, however, with "no-fault" insurance, if for no other reason than that the subject itself—at least in the form of proposed legislation—is relatively new. We assume that "no-fault" means essentially that regardless of the degree of negligence exhibited by the various drivers involved in an accident, each of them would be paid by his insurer for his "net economic loss" as that term is defined in S. 945. Based on that assumption, we take no position at this time respecting the "no-fault" principle as such.

We believe that in view of the very substantial change which this bill proposes in the field of motor-vehicle accident insurance, it would be wise before seriously considering its enactment to await the results of experience under State "no-fault" laws such as that which recently became effective in Massachusetts, and those of other States which may be enacted.

In any event, S. 945 is not, in any practical sense, "no-fault" insofar as the trucking industry is concerned, and we have no alternative but to oppose it for that reason. If the bill were amended along the lines of H.R. 7514, introduced by Chairman Moss of the Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce, we would find it much less objectionable.

We take no position on S. 946 or S. 947, or the resolution proposed by Secretary Volpe in his testimony before this Committee on March 18, 1971.

The interstate motor carriers subject to economic regulation by the Interstate Commerce Commission, and safety regulation by the Department of Transportation, fall into several categories. Over 15,000 for-hire carriers (common and contract) are subject to both economic and safety regulation. There are additional thousands of for-hire carriers (mostly transporters of agricultural commodities) which are subject to safety regulation by DOT but exempt from ICC economic regulation. It is on behalf of the "regulated" carriers, rather than the "exempt" carriers that this statement is filed. ATA also represents the interests of numerous private carriers of property through their membership in one or more of the ATA-affiliated State trucking associations, and this statement is filed on their behalf too.

The trucking industry's concern for highway safety originated in a natural, humanitarian desire to reduce the tragedy of death and injury in traffic, and in a determination to improve the reputation of the industry as a safe, courteous partner on the road.

In addition, there is a business incentive for maintaining an extensive safety program. The millions of trucks of all kinds in daily use on streets and highways are constantly exposed to accident-producing situations which can result in loss or damage to other highway users, to industry drivers and vehicles, and to customer freight. Such accidents have the potential of putting any motor carrier out of business because of the extremely high costs that are incurred through civil suits, workmen's compensation, vehicle repairs and freight claims. Those costs are direct expenses to the carrier, regardless of the amount of its insurance coverage, as truck insurance is written on a retrospective basis so that the premium for a given year is raised or lowered to reflect the accident cost experience for the previous year.

The loss potential faced by truck fleets and the retrospective method of rating insurance have been incentives for the conduct of carefully planned programs to prevent accidents.

Industry experience shows that driver selection is the key to the entire safety program, and so trucking companies try to insure that they do not "hire their problems." In employment interviews and reference checks of prospective drivers, personnel officials use nationally approved guidelines which prescribe rigorous qualifications. Past employment, credit background, and traffic record are among the factors explored to determine an applicant's reliability, attitude and willingness to accept responsibility for his vehicle and cargo, and for the welfare of other highway users.

The industry's driver selection program had its beginning in the 1920's and was adopted as a national standard in 1940. In the 1950's it was further improved through an industry-sponsored study by the School of Public Health of Harvard University which was designed to provide more information about driver motivation.

After being hired, a driver trainee receives detailed classroom instruction in company policies, traffic regulations, safety requirements, knowledge of the vehicle and techniques for safe driving. To develop driving proficiency he undergoes a lengthy probationary period starting with student trips in the company of an experienced driver. He learns how to handle smaller trucks at first, and eventually may drive an intercity tractor-trailer rig.

Throughout his employment, industry and fleet supervision is provided through road patrols, radar checks, safety meetings and conferences, and the use of recording devices and check stations.

The professional truck driver is required to follow the code of "defensive driving," which places responsibility upon him to drive in such a way that he commits no driving errors himself and can protect himself against the mistakes of other drivers. If he is involved in an accident his company rules the accident as "preventable" or "non-preventable." A preventable accident is one in which the truck driver did not take every possible step to prevent the accident, regardless of whether or not he was legally in the right and the other driver was legally wrong. Under this concept of preventability the driver's attitudes and actions are brought under close scrutiny and control by the company so that the driver who develops poor attitudes or poor driving habits is quickly retrained or released from employment.

The effectiveness of the industry's programs is reflected in the following National Safety Council accident figures:

Year	Percent of trucks involved in accidents	Truck percent of registered vehicles	Percent of cars involved in accidents	Car percent of registered vehicles
1948	17.0	18.0	80.0	81.0
1969	11.5	16.6	85.1	80.8

These figures are taken from the National Safety Council's publication, "Accident Facts," 1949 and 1970 editions, pp. 66 and 56, respectively. They demonstrate that the truck record for accident involvement has improved substantially over the period shown, whereas that of the passenger car has gotten worse. The figures shown do not reflect mileage driven. When this factor is considered, the truck record is significantly better than that of the passenger cars. This is demonstrated by the following figures:

Intercity fleets (class I and II)	Total truck mileage	12,460,796,451
	Total trucks involved in accidents	39,302
	Ratio of trucks involved per million miles	3.15
All trucks	Total truck mileage	206,680,000,000
	Total trucks involved in accidents	3,075,000
	Ratio of trucks involved per million miles	14.9
All passenger cars	Total passenger car mileage	849,633,000,000
	Total cars involved in accidents	22,800,000
	Ratio of passenger cars involved per million miles	26.8

The Class I and II trucks referred to in the first category are those for-hire vehicles subject to economic regulation by the Interstate Commerce Commission, and safety regulation by the Department of Transportation. The mileage and accident figures are obtained from the pamphlet, "1969 Accidents of Large Motor Carriers of Property," Bureau of Motor Vehicle Safety, Department of Transportation. A Class I carrier is one whose annual gross operating revenue is $1 million or more. A Class II carrier is one whose annual gross operating revenue is $300,000, but less than $1 million. The second category "all trucks," covers just that. It includes, for example, farm trucks, trucks operated by the federal government, as well as a very large number of trucks not subject to economic regulation by the ICC, but subject to DOT safety regulation. The mileage figures for both the second and third categories are those of the Department of Transportation (Highway Statistics, 1969, Table VM-1, p. 73), and the accident figures are those of the National Safety Council (Accident Facts, 1970 ed., p. 56). 1969 figures are used, as they are the latest available from all sources.

The effect of the industry's safety programs has been to enable motor carriers to significantly reduce the heavy costs of accident involvement. But even though

the carriers have done an outstanding job of controlling their vehicles and drivers, there are still a large number of truck accidents each year that are caused by others. A study by American Fidelity and Casualty Co. of truck-involved accidents in the 1950's showed that in 104,000 accidents with other vehicles, truck drivers could not in any way have prevented 70% of them.

Over the years, the trucking industry has been in the forefront of highway user groups which have made a consistent and conscientious effort to reduce their contribution to highway accidents. That effort has involved the expenditure of large sums of money and a great deal of time and work. Now it is proposed that the cost of highway accidents be assigned, not to those responsible for them, but to all highway users, without regard to their driving habits, or their concern for their own welfare, or that of other users of the road. If there is to be a shift to a "no-fault" basis, we submit that if any segment of highway users should be singled out for favored treatment, it should be the motor carriers. But insead of being rewarded for their succesful efforts to reduce highway accidents, S. 945 would subject them to discriminatory treatment. We don't ask for favors, but we do ask for fair treatment. If the law is to provide that, except for catastrophic loss, no driver involved in an accident is to be considered responsible for it, the same rule should apply with respect to drivers of commercial vehicles.

There is certainly no equity in arbitrarily assigning to such vehicles a very high percentage of the costs resulting from any accident in which it is involved. The proposal is indeed a paradox—on the one hand, operators of commercial vehicles are told that no matter how negligent automobile drivers may be, they bear no responsibility when they cause an accident in which the operator's trucks are involved, but the truck owners will be assessed a major share of the cost resulting from the very same accidents! Technically, this may be "no fault" insurance; practically, it is insurance which arbitrarily assigns a great majority of the blame (cost) to operators of commercial vehicles involved in accidents.

Under the current fault system of compensating for accident losses, motor carriers usually bear all or part of the accident costs if their drivers contributed in any degree to an accident. However, the system quite often protects the carrier when other drivers are totally responsible. Thus the present system provides incentive to the carriers to continue their programs of careful driver selection, training and supervision, and it keeps insurance costs at a point which the carriers can afford and still stay in business.

To the contrary, § 5(7) (A) and (B) of S. 945 would hold motor carriers uniformly liable for a large percentage of all property damage and personal injury regardless of whether or not their trucks were actually responsible for accidents. This would result in discrimination against trucks because, through millions of miles of operation, they are constantly exposed to accidents resulting from the driving errors of others.

The truck driver is a skilled professional who must meet strict physical requirements every two years and who is limited to a maximum of ten hours of driving in any one duty period. The vehicle he operates is a highly sophisticated machine that is the subject of regularly-scheduled inspections and preventive maintenance. Yet, on the highway, he is exposed to drivers who have varying degrees of ability and who quite often are pushing their stamina by attempting to cover 10, 15 and 20 hours of driving following an eight-hour work day. The truck driver is exposed to driving mistakes by the very young neophyte driver whose attitudes lack maturity, by the older driver who may lack the physical conditioning necessary to safe driving at high speeds, and, because a very substantial amount of over the-road trucking occurs at night, to the drunken driver. As a result of this exposure, there is a strong likelihood that even the best and most defensive truck driver can become involved in an accident that he can in no way avoid. Under the provisions of these bills, the cost of such accidents would be largely borne by the motor carriers and their insurance costs would rise very substantially.

As an example of the inherent inequity of these bills which would hold the commercial vehicle largely or almost entirely responsible for an accident involving a passenger car, consider the cost results of an accident under the present system versus the system proposed by the bills:

A. Truck and trailer unit, westbound, in extreme right lane of 4-lane divided highway.

B. Passenger car with 4 occupants, eastbound, loses control, comes through the dividing median and collides with the truck.

Result: All occupants of car severely injured, No injury to truck driver.

PRESENT SYSTEM

Based on the premise that one who causes injury to another by negligent conduct should fairly and adequately compensate him for that injury, the truck operator would owe nothing.

S. 945

This bill requires payment of up to $1,000 per month for a total of 30 months for loss of earnings resulting from an accident, with no specified limits on costs for medical, hospital, surgical, etc., services, and physical and occupational therapy and rehabilitation. Assuming that the injured parties in this accident were disabled many months each, the total cost for the injuries could well be in the hundreds of thousands of dollars, by virute of the expenses covered by "economic" loss under § 2(10) of the bill.

Under the terms of S. 945 (§ 5(7)(A)) by which a larger vehicle, depending on its size, would be responsible for a substantial percentage of net economic loss, it is possible that the motor carrier would be required to pay upwards of 90% of the loss incurred by the occupants of the passenger car. While we assume the figure would be somewhat lower, the bill gives the Secretary of Transportation (§ 5(7)(B)) complete discretion to assign to vehicles larger than an "ordinary passenger automobile" a percentage of responsibility for net economic loss sustained by occupants of other vehicles. And the bill clearly indicates, in the same section, that the Secretary could determine that such responsibility would exceed 70%. The definition of "ordinary passenger automobile" contained in the bill (§ 5(7)(A)(i)) includes vehicles having a seating capacity of up to nine passengers. It is, therefore, clear that the cited example of costs which might be incurred by motor carriers because their vehicles are involved in accidents for which—under the present system—they could not be held responsible, is modest indeed.

S. 945 is contrary to the principle of "no-fault" insurance because it would penalize motor carriers by placing them under a "fault" system of insurance rather than a "no-fault" system. It would hold the carriers responsible for losses incurred by all parties to all accidents involving trucks as if the carriers' vehicles are always responsible for such accidents.

One of the claims made for "no-fault" insurance is that premium costs will be reduced, but S. 945, if enacted, would tremendously increase the costs of truck insurance because of the larger portion of accident costs that would be borne by insurance companies which supply truck insurance.

Under the retrospective rating plan, those costs will be shifted back to the motor carriers through an increase in premiums. The regulated for-hire trucking industy includes appoximately 1,500 Class I carriers, 2,000 Class II carriers, and. in addition, 11,700 Class III carriers (those who annual gross revenues are less than $300,000 and whose fleets consist of a small number of vehicles). All for-hire carriers operate on a very slim profit margin and many would be unable to absorb a sharp rise in insurance costs. The industry is faced with severe competition from railroads, airlines, freight forwarders, and to some extent, water carriers. Because of the competition of other transport modes—for-hire carriers are by no means completely free to recoup increased expenses by increases in their rates.

I referred earlier to H.R. 7514, introduced in the House by Congressman Moss of California. As we read his bill, it would eliminate the provision of S. 945 which would require that large vehicles be charged with a very substantial portion of the costs of all accidents in which they are involved, which is the very antithesis of the "no fault" principle. Let me say that we earnestly hope—if federal "no fault" insurance legislation is enacted—it will follow the lines of H.R. 7514 in this respect.

There is another aspect of S. 945 which seems entirely out of keeping with the "no-fault" philosophy. I refer to § 5(5), providing that persons not occupants of motor vehicles may recover their net economic loss from the insurer of any motor vehicle involved in an accident. First off, we think the approach suggested by Secretary Volpe in his appearance before this Committee on March 18, 1971, is preferable. As we understand his proposal, the insurance coverage obtained by a motor vehicle owner would cover himself and all members of his family whenever they were involved in a motor vehicle accident, whether in the owner's vehicle, as occupants of another vehicle, or as pedestrians. This would leave the owner's insurance company additionally liable only for injury or death to uninsured passengers or pedestrians.

But this is not our main objection to § 5(5). We believe its language is so broad as to allow recovery by any member of a train crew, or passenger on a train, from the insurer of any motor vehicle involved in a grade-crossing accident. Just as S. 945 requires owners of passenger cars and operators of trucks and buses to provide insurance to cover the net economic loss suffered by occupants of their vehicles, it should also require the railroads to assume the same obligation with respect to members of train crews and passengers on trains. This is no minor matter. Statistics published by the Department of Transportation show the following respecting grade-crossing accidents, and fatalities and injuries resulting therefrom, for the years 1967–1969: [1]

Year	Number of accidents	Fatalities	Injuries
1967	3,932	1,632	3,812
1968	3,816	1,536	3,744
1969	3,774	1,490	3,669

If "no fault" is to be the standard for recovery of net economic loss in accidents involving motor vehicles, railroads cannot in fairness be given a free ride at the expense of owners of passenger cars, trucks and buses. Under S. 945 as presently worded, the Secretary of Transportation might well decide, in exercising his authority under § 5(7)(A), to assign 75% of the net economic loss incurred by a passenger car driver in an accident with a truck or bus to the insurer of the latter vehicles. If the bill is enacted with this provision included, then, by the same token, it should vest the same authority in the Secretary to assign responsibility—on a similar basis—to railroad equipment involved in accidents with passenger cars, trucks and buses.

Senator Moss. This concludes our witnesses for today.

This concludes our witnesses for today.

This committee will convene tomorrow at 10:15 here in this room to hear additional witnesses.

We are now in recess until tomorrow.

(Whereupon, at 3:20 p.m., the hearing was recessed, to reconvene at 1:15 a.m., Friday, May 14, 1971.)

[1] Accident Bulletin No. 138, Federal Railroad Administration, Table 6, p. 2.

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

FRIDAY, MAY 14, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 10:30 a.m. in room 5110, New Senate Office Building, Hon. Philip A. Hart, presiding.

Present: Senators Hart and Stevens.

Senator HART. The committee will be in order.

Senator Case of New Jersey had planned to join us this morning in order to introduce our first witness. He has sent word that the Foreign Relations Committee is discussing, as it always does, some world-shaking problem and has not yet resolved it; and he suggested that we go ahead.

So, I welcome for Senator Case and those of us on the committee here Mr. Eugene M. Haring of Newark, N.J. I should explain that I read through Mr. Haring's statement, and it sounded great.

We do welcome you.

May I ask that the summary biography of Mr. Haring be printed at this point in the record. It is a most impressive one. It lends additional weight to his testimony.

(The biography follows:)

BIOGRAPHICAL SKETCH OF EUGENE M. HARING

Princeton University; A.B., Summa Cum Laude, 1949 (Phi Beta Kappa).
Princeton University; A.M., Philosophy, 1951, (Woodrow Wilson Fellow 1949–50).
Harvard Law School; J.D., 1955.
McCarter & English, Newark, New Jersey; Associate, 1955–1961; Partner, 1961– .
American Judicature Society; Essex County (N.J.) Bar Association; New Jersey State Bar Association; American Bar Association; Harvard Law School Association of New Jersey (Vice President & Trustee); Summit (New Jersey) Civil Rights Commission, 1970–71; United States Navy, 1945–46.

STATEMENT OF EUGENE M. HARING, ATTORNEY, McCARTER & ENGLISH, NEWARK, N.J., AND MEMBER, NEW JERSEY LAWYERS COMMITTEE FOR NO-FAULT INSURANCE; ACCOMPANIED BY JOHN L. McGOLDRICK, ASSOCIATE

Mr. HARING. Thank you, Senator Hart.

On my left is John McGoldrick, my associate.

As I believe you know, I am a practicing lawyer with offices in Newark, N.J., although my practice extends throughout that State.

During a substantial part of my professional experience, I have been responsible for much of the litigation conducted by my firm, which is one of the largest in New Jersey. I have been responsible for a wide variety of litigation, including automobile negligence cases, life insurance, health insurance, disability insurance, and products liability cases. Because of my personal concern I am affiliated with a group of New Jersey lawyers from all parts of the State for the lawyers committee for no-fault insurance. This is an unfunded, voluntary group; it speaks solely for its members and, we believe, the public interest.

Cochairmen of this group are Charles Danzig, Woodruff J. English and Donald B. Kipp, all distinguished lawyers of broad experience in positions sensitive to the overall legal process in New Jersey.

In addition, among the sponsors of this group are Alfred C. Clapp, former Republican State senator and former presiding judge of the appellate division of New Jersey; and Bernard Shanley, New Jersey Republican national committeeman and former counsel to President Eisenhower.

This is not a political group. It is nonpartisan. It is comprised of both Republicans and Democrats.

The cochairmen of the New Jersey lawyers for no-fault insurance have approved a statement of position. It includes the following:

> The Committee believes that the present system of handling automobile negligence litigation has demonstrated itself to be deficient in logic, in law and in practice.
>
> The Committee urges that a new system—a no-fault system—be tried. The weaknesses of the existing system have been so abundantly demonstrated that it is clear that palliatives and patchwork will not alleviate, but can only aggravate, the serious problems which undeniably exist. Basic and extensive reform is required.
>
> The Committee speaks only for itself. The lawyers comprising the Committee do not purport to speak for the clients of any of the Committee members nor for any other organized group.
>
> It would be unfortunate indeed if the public were mislead by a vocal segment of the Bar to believe that all lawyers are insensitive to the urgent need for reform.

That is the end of the excerpt from the committee's statement.

Chief Justice Weintraub of the New Jersey Supreme Court is respected nationally as well as in his own State. Under the New Jersey constitution the chief justice of New Jersey is directly responsible for the administration of the courts and must be in close touch with the judicial process in all the courts of the State. Chief Justice Weintraub of the New Jersey Supreme Court has stated publicly that he favors some form of no-fault insurance.

The chief justice has pointed out that given today's traffic congestion, accidents are inevitable. Indeed, they are statistically predictable. Given the split second accident, resulting from inadvertence, the chief justice has said we cannot speak realistically of fault.

Chief Justice Weintraub has said that accordingly there is not a fair basis upon which to fix fault, that if he thought the fault system were just, he would not advocate no-fault. He has pointed out that accidents happen so quickly that witnesses simply cannot recall and reconstruct the facts.

The chief justice says that saving court time by a no-fault system is a mere incidental benefit, that he would not advocate no-fault merely to save court time, but that given the split second quality of accidents,

their inevitability and predictability, a no-fault plan is the just and equitable plan. His basis for advocating no-fault is fairness and justice.

Quite apart from the position of the lawyers' committee I would make a few personal comments from my experience as a New Jersey trial lawyer.

I should say, Senator, that I am not here representing any vested interest. I am not here for labor. I am not here for business. I am not here for the insurance industry. I am here on my own. I bought my own ticket on the railroad.

New Jersey is the most densely populated States in the Nation. The density of automobiles in New Jersey is the greatest in the Nation. Accordingly, the problems which arise from the present automobile liability system are particularly severe in that State.

What we do under the tort system as distinct from what some lawyers say we do is attempt to provide compensation—compensation for the injured—but within a fault framework.

Indeed, the principle of compensation becomes most evident in the usual settlement conference which precedes a jury trial, and by which process the vast majority of cases are disposed of. At least by the morning of trial it becomes plainly evident that fault is not some absolute moral principle. Fault is what a jury says.

Given a split second accident which occurred years ago, jury verdicts are predicably unpredictable. Hence the settlement conference, the trade of certainty for risk.

Under the present system drivers play roulette. If they have an accident, no matter how seriously injured they are, they may well get very little. They stand a slim chance of hitting the jackpot. The recovery depends on how much insurance a stranger buys.

In fact, we are operating under an internally inconsistent system. We are trying to move in two directions at once. On the one hand, we operate within a system designed to prove fault and to reward the innocent. On the other hand, we apply principles of compensation with little regard to fault.

The result is uncertain compensation and frequently inadequate compensation, provided by a highly expensive system which was designed to determine fault.

Basic protection, self-insurance, or, as it has come to be called no-fault insurance would do what insurance was originally supposed to do—spread the risk and provide a certainty of payment.

You are well aware that highly vocal, and, at times shrill, objection to no-fault insurance has come from members of the legal profession. The familiar system seems simpler and more comfortable. Undoubtedly, much objection, while entirely sincere, proceeds from sheer inertia and visceral opposition to change. You know from recent testimony that some of it proceeds from sheer self-interest.

But, the legal profession, after all, exists to serve the public and not the other way around.

My office is in Newark. That city and much of New Jersey is beset by those social and economic and racial problems which afflict urban areas throughout the Nation.

Problems with respect to environment, products liability, consumers' rights, and the accommodation of conflicting interests of economic and racial groups more and more require and demand the attention of our courts both on the civil and criminal side.

In New Jersey 83 percent of automobile liability cases are settled before verdict. Accordingly, our courts are used largely not for the trial of cases at all, for which they were designed. They are a marketplace for the arbitration and compromise of claims.

Frequently the talents called upon are not so much those of the trained lawyer or judge, but those to be found in a Turkish bazaar. The time of lawyers and of judges is used to decide somehow the trading value of a whiplash injury, a broken arm or the loss of a leg. Their time could be used more productively.

I submit that the legal profession in the United States is one of the most valuable assets this country has. Its energies and talent should be directed to the most important problems which we face. A system which diverts so much legal talent to automobile liability settlements and trials wastes a valuable national resource.

There are numerous no-fault plans. The bill before this committee, S. 945, combines good aspects of many of these plans. It would provide reasonable medical expenses, would reimburse the injured for necessary services and, very important, would provide all reasonable expenses for rehabilitation.

At the same time, it limits reimbursement for wage loss to $30,000. It does not eliminate recovery for catastrophic harm.

Thus, limits are set upon the coverage while the victim of catastrophe may bring a legal action to receive a prompt decision in a court uncluttered by thousands of small automobile liability cases.

Criticisms frequently heard of the State bills relate to the out-of-State accident and the out-of-State driver. While this problem is not insuperable on a State level, it would be eliminated by the proposed Federal bill.

Senator HART. I hate to interrupt, and yet I must welcome the distinguished Senator whom we talked about a few moments ago. I hate to interrupt because the testimony is powerful and I hope will be listened to widely.

Senator CASE. Mr. Chairman, you are most gracious.

I am always happy when I can introduce two people whom I like very much to each other. In this respect, this is no exception.

Mr. Haring is a partner of an old and distinguished firm.

I am enormously happy that I could come in before he finished. I am sorry I was not here when he started. But if you will permit me non pro tunc to present to you one of our distinguished lawyers representing the bar committee on no-fault insurance, I would like to have it entered in the record that I do so. When you and I have long since ceased to be here and come back and look at the record you will not remember that I came in after he started.

Senator HART. We will fix that record.

Mr. HARING. Senator Hart, we need a self-insurance system. We need a no-fault system. We need prompt and well-considered reform. I personally believe that this bill will provide it.

I should say, Senator, my longer statement I hope will be filed and be made a matter of record. I have read a summary of my longer statement, and I am open to any questions.

Senator HART. Mr. Haring, the statement will be printed in full.

I indicated, having had an opportunity to read much of the statement in advance, that it is a powerful plea for the kind of reform that

we are considering here. There is so much in it, brief though it is, that simply puts exclamation points behind so much of what we have heard.

I sense those of us who feel strongly the need for legislation will be excerpting without credit from it in the days and weeks ahead. That expression "drivers play roulette," for example, is really so true under our existing system; whether you are going to be hit by a drunken driver who is heavily insured or a careful driver who may for a moment have been guilty of some omission whose fault is questionable but who isn't insured is a matter of chance.

What I think I would refer to most frequently is the point you make in reply to the argument that a no-fault system rewards irresponsibility and somehow or another has socially unacceptable implications.

In your statement you address yourself to that. You label it an invalid doctrine and conclude by saying, "A no-fault system promotes family integrity, rehabilitation and the self-respect which comes with it." I hope that point will be more clearly understood by all of us as we plow this ground.

It is not easy, I am sure even from so distinguished a firm as yours, to voice opinions that in the sense are regarded by your fellow members at the bar as doing them a direct financial disservice. But you are not alone because the profession happily is coming forward to speak the need for this reform as they see it. But to have one of your standing—and those associated with you in the New Jersey lawyer's committee for no-fault insurance—such as your able chief justice, Chief Justice Weintraub—come forward inevitably will help us make progress. The cumulative effect of this I hope will be great.

Last week this committee heard from a younger lawyer, Robert Joost of Boston who had been associated with the Trial Lawyers Association for some years. Incidentally, his academic credentials I thought would be unmatched, but yours match them, I notice.

Mr. HARING. Thank you.

Senator HART. If there is no objection, I would like to insert in the record a letter that I received from a partner in a prominent Milwaukee firm endorsing the concept of no-fault at the Federal level. He said:

> To await action by the individual states is ludicrous and in the interim period there is likely to be a rather chaotic state of affairs even as there is now to some degree in accidents between automobiles of various legal jurisdictions.

He concludes by saying:

> I am well aware of the objections of lawyers to no-fault insurance. I can't help but feel that much of this complaint is based on the prospective loss of fees. This really is not a valid cause for objection.

This letter along with another from a lawyer who has been an insurance instructor in San Francisco and an orthopedic surgeon will be made a part of the record.

(The letters follow:)

MICHAEL, BEST & FRIEDRICH,
Milwaukee, Wis., April 6, 1971.

SENATOR PHILIP HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: *This is to endorse the concept of no-fault insurance on a Federal level. To wait action by the individual states is ludicrous and in the interim period there is likely to be a rather chaotic state of affairs even as there is now to some degree in accidents between automobiles of various legal juris-*

dictions. The automobile insurance game has reached the point where the rate structures threaten to collapse the whole automobile business. By way of example. I just received a notice from my insurance company declining to renew my insurance of my three cars. There has been no claim under my policy since the last renewal. Heretofore my annual premium has been in the order of $920. Now they offer to insure me through one of their affiliated companies at extremely low liability limits for an annual premium of $2,880, approximately triple rate for far less coverage with no claims or traffic violations since the policy was written! The only way I can beat that within that company's structure would be if I would buy my two children old automobiles and put minimal insurance coverage on them. This would then mean that two automobiles of questionable merit and with low coverage would be plying the highways instead of having the kids in proper cars with proper coverage. The insurance company will not recognize an exclusion of the children from specified cars within the family.

I am well aware of the objections of lawyers to no-fault insurance. I can't help but feel that much of this complaint is based on the prospective loss of fees. This really is not a valid cause for objection. Much of the trouble with insurance today relates back to legal fees and pumping up claims for pain and suffering, etc.

BAYARD H. MICHAEL.

NEAR, FRIEDMAN & CRAWFORD,
ATTORNEYS AT LAW,
San Francisco, Calif. March 25, 1971.

Senator PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: Thank you for sending me a copy of your bill for a national no-fault insurance plan.

I have read it and believe it will go a long way to correct the remedies that plague our present system. I do not believe the states, who are in general under the thumb of the insurance lobby and whose members are mostly attorneys, will ever pass adequate legislation. The support for no-fault insurance is growing daily. Enclosed is the March 24, 1971 editorial from the San Francisco Chronicle strongly endorsing a no-fault system.

I do have a few objections to your plan. Perhaps these objections are misfounded, but I believe they might be of some value to you.

1. One of your provisions is that the insurance companies cannot refuse to renew unless the insured has his license cancelled or he refuses to pay the premium. What is to stop the insurance company from raising premiums substantially to anyone they wish to not renew? They can always say the new premium is necessary for *this* particular risk. I see rates going up astronomically for anyone insurance companies decide is undesirable.

2. I think that your plans to let rates be established by a file and use (open competition) type rating law will also lead to rates going up dramatically. I have accumulated some evidence to show that states with file and use laws have higher insurance rates than those where prior approval is required. Some of this evidence is contained in an unpublished article I have written, and I have enclosed a copy of that article. If interested, I could send you some additional evidence along this line. I have little faith in the fact that the Department of Transportation will be collecting various rates for different classifications and promulgating them to the public. The public hardly ever sees these government handouts, and the rates will all be high even if they see them.

3. The basic problem I see with the plan as you propose it is that by making the no-fault insurance compulsory, you will be placing a great many Americans under a severe financial strain, and I believe will create a new breed of criminals, those who drive without insurance. Whereas I heartily approve of compulsory insurance for motorists, I belive it must be at a price all can afford. To make someone pay $200, $300, $500 or $1,000 for a yearly premium, when he has a limited income, is very harsh. The system which I believe could work best is an insurance plan where all must buy a certain minimum insurance which covers all medical bills without regard to fault. Such a plan has been operating in Puerto Rico since January 1, 1970 and is widely accepted there. I am sure you are familiar with the Social Protection Plan in Puerto Rico (it is briefly described in my enclosed article) and I feel it could be modified in a national plan by 1) substantially raising the loss of wages to the levels set by your bill and 2) only

allowing the tort remedy in cases of catastrophic loss as your bill does, although I believe your criteria a bit harsh.

I believe such a plan could sell in the states for $50 or less, and this would give the American consumer the break he has long sought. Under private companies, especially with a file and use law to regulate rates, I believe insurance rates will stay very high. The purported 30% reduction in liability rates will be more promise than reality, and although the victim will be infinitely better off, the consumer will still end up paying through the nose.

At the very least, a "watchdog commission" should follow the insurance company rates and determine what constitutes a fair rate of return, what part of investment income should be used in determining the rates, standardize the casualty insurance accounting systems, etc.

In the long run, you are leading a grass roots revolution in the insurance field, and I for one think the only way the consumer will ever get a fair break is when a government agency sells him a policy.

An article entitled "A Call For Adoption of the Puerto Rico Social Protection Plan in the United States" by Jean B. Aponte and Herbert S. Denenberg, professors at the University of Pennsylvania who drafted Puerto Rico's Plan is also enclosed.

I realize the fantastic political pressure that would be involved in getting the government to sell the insurance rather than private companies, but the nation is ready for a revolution, so why not go for a complete victory, rather than a compromise that will still place many consumers of auto insurance under an enormous economic burden?

Sincerely yours,

GILBERT FRIEDMAN.

[From the San Francisco Chronicle, March 24, 1971]

THE 'NO FAULT' INSURANCE PLAN

The Nixon administration, having in hand a $2 million two-year study by its Department of Transportation, has called for a drastic change in the system of automobile insurance under which drivers are now paying some $12 billion a year in premiums and getting back about 14.5 cents on the dollar to compensate for economic losses.

It has newly urged Congress to recommend the abandonment of the present tort-liability, or lawsuit system, and suggest that each State enact its own version of the so-called "no fault" system—a system which in essence discards considerations of negligence and promptly and automatically makes benefits available to all accident victims without attempting to establish legal liability.

Adherents of such a plan may not agree as to details, but there is complete agreement that the present system is not working and must be replaced. Insurance companies complain that they are losing millions; the insured complain of zooming rates, and studies by both the Government and the insurance associations reveal that millions of injured accident victims are being grossly underpaid for losses, while a minimal few are fantastically overpaid by sympathetic juries for so-called "general" damages.

The American Insurance Association, representing some 30 percent of the insurers and a pioneer advocate of no-fault insurance, says that under a "pure" no-fault plan. accident victims would promptly recover all medical and hospital costs, and would receive up to $1000 a month for loss of income, than in case of the death of a wage earner, survivors would receive funeral expenses and a continuing payment of the decedent's wages up to his life expectancy, and that an injured pedestrain would be covered by the car that hit him.

Various other benefits would accrue under such a system, the Association asserts, wherein insurance would be compulsory and no licensed driver would be refused coverage.

What is remarkable indeed is the claim that the cost to the motorist would be 30 per cent less than the premium rates now in effect—a boon made possible by the circumstances that no accident victim could sue or be sued. Thus the massive legal expenses incurred under the lawsuit system would be avoided and much of the approximately $3 billion a year that now goes to lawyers and investigators would become available for benefits that would comprise around 65 per cent of the premium fund instead of the 14.5 per cent now being paid.

This in some part at least explains why most lawyers and most bar associations oppose the no-fault system. In addition their hostility is based on charges that

"no fault" shifts responsibility for accidents from the guilty to the innocent, that it gives the uninsured guilty benefits that the insured driver pays for, that it forces the owner to pay deductbile losses, penalizes the car owners with large families, provides premium cuts for hot rodders, speeders and drunk drivers, confers immunity upon owners of commercial vehicles while shifting insurance costs to owners of private cars and eliminates property damages.

The "no-fault" advocates deny the major charges in full, and concede that some versions of the plan are susceptible in small part to the minor allegations. They argue further that the present system confers no direct benefits whatever upon the insured but actually protects the other fellow and does nothing for the insured but permit him to go into court and sue somebody.

The "no fault" concept is not new. It is, for instance in effect in Puerto Rico in a modified form which limits payments of salary and wages to 50 per cent, up to $50. Saskatchewan has a plan that compensates for property damage but puts a $1000 limit on medical and hospital expenses. In the United States, Massachusetts has the only no loss plan now in effect; with a medical limit of $2000, it was instituted in January and experience to date indicates a saving in premiums of $76 million for the year. Bills for a Federal plan are now before Congress and State plans are under consideration in various Legislatures, including California's.

How these plans will fare depends largely upon the depth and extent of public dissatisfaction with the present system, which is sharply rising. Thus "No Fault" insurance in various versions appears inevitable. In theory and from the limited experience available, it would also seem highly desirable.

THE PROFESSIONAL BUILDING.
Saginaw, Mich., March 31, 1971.

Sen. PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: Please accept my strong endorsement of your efforts to create a "no fault" automobile insurance system.

An inordinate amount of my time as an orthopaedic surgeon is taken to deal with insurance examinations, litigation, and court appearances in matters of automobile accidents and personal injury. I and my fellow orthopaedic surgeons could much better spend this time taking care of sick people.

Over the past few years I have been impressed by widespread opinion that justice is long delayed by cluttered court dockets. Surely removal of personal litigation from such legal proceedings would go a long way to free the courts to deal with more important matters.

Sincerely,

JOHN O. GOODSELL, M.D.

Senator HART. The orthopedic surgeon writes,

An inordinate amount of my time as an orthopedic surgeon is taken to deal with insurance examinations, litigation, and court appearances in matters of automobile accidents and personal injury.

And he concludes by suggesting that his skills could be better applied elsewhere.

Mr. HARING. I might say I think that is a very frequent reaction that I encounter with doctors.

Senator HART. It is the first time so far as I am aware of that in this set of hearings we have had this note introduced. I wasn't aware that it had this adverse effect on our society.

Having said all that, let me ask the question that so often is addressed us. "Why should I pay for damages to me if somebody who is a drunken driver hits me? Why propose a system that makes me pay for that?"

Mr. HARING. I think the virtue of such a system is, first, that you get paid and you know how much or can reasonably tell about how much you will get paid.

As far as the illustration of the drunken driver is concerned, which I think we have all heard in this debate again and again, I do not conceive that the function of the civil law is certainly primarily to punish and reward, and indeed juries at least in New Jersey are frequently instructed that they are not to award damages as punishment but simply as compensation. So, I think that compensation is what we need in today's automotive society.

As far as punishment, deterrence is concerned, that is as I conceive it primarily the job of the criminal law, and if the driver in your hypothesis is indeed drunk, he would be, at least in our State, punished severely indeed.

Senator HART. I am aware of no jurisdiction where the law would not mark him as one eligible for some sanctions.

There is another recurring theme in these hearings, and if you have a reaction to it we would be grateful.

When we step back a little from the day-to-day debates here, I think we would agree that there is a general acceptance of the idea that we should proceed to a no-fault system. There are some arguments as to form and so on.

Yes, the existing system is inadequate and inequitable; we will have a no-fault system. But let the States construct their systems. They would be more responsive to the character of their people and topography. If they don't move along then the Federal Government can act, and if later it is thought desirable that the Federal Government act we will have had the experience. Therefore, the Federal Government doesn't need to do anything right now.

Mr. HARING. Well, certainly I think many of us have traditionally though that the idea of experimentalism and pluralism which is supposed to proceed from State legislation is good. However, I think in this particular instance, and I might say I am speaking for myself here, the urgency of the need may very well override some sometimes sentimental thoughts with respect to State control.

Looking at it realistically, it would seem to me that the accomplishment of no-fault in the State, and I am referring to my State, faces a very rough road indeed.

We do have, for instance, an insurance commission which is supposed to be looking into this question, among others. It was unfunded for 13 months and one of the Trenton newspapers recently characterized its reception of Professor Keaton as disgraceful and said that the validity of its final report might be open to question.

Also, a segment of the bar has hired a paid lobbyist, and I saw yesterday in the Newark News on the train coming down here that the New Jersey Bar Association's section on civil procedure, which is meeting in Atlantic City this weekend—in fact right now—may propose such things as a paid lobbyist and other steps with which to fight no-fault.

I think with this type of thing going on in the States, and with the greater susceptibility of State legislatures to local pressure, taken together with the urgency of the need which I believe no-fault fills that Federal legislation may be the only way to get it soon enough and to perhaps prevent a number of States from suffering through some bad experiments.

Senator HART. Thank you, I was not aware of the recent events in New Jersey. But I think it is something that could be anticipated in many of the States.

entry into the tort liability system and in Illinois, no entry provision, but a limitation on intangible loss recovery once tort is entered and an offset for any mandatory first-party coverages? How are we going to get the data to analyze that kind of difference?

Because if we are going to experiment, and the argument is we will learn from experimentation, it seems to me we have to be assured we will be able to get that kind of information back.

Mr. WORTHINGTON. I think I can assure you the NAIC in its normal functions will be gathering this data through the work of its committees, through the analysis of the reports that are filed now with the insurance departments, and which are, some of which are created by private organizations.

Mr. SUTCLIFFE. Is that information oriented toward answering the kinds of questions that are being asked now, or is it more oriented toward a business operation within the existing liability system focus?

Mr. WORTHINGTON. The data we would collect, I would anticipate, would be data that would answer the questions we wanted to ask.

Mr. SUTCLIFFE. So you would have to go through some kind of reformulation.

Mr. WORTHINGTON. If the standard reporting techniques we have now are not adequate, we can easily change them to make them adequate. What I am saying basically, I suppose, is that we think we have a system set up now which could gather the information. If it doesn't, then we can modify it.

Mr. SUTCLIFFE. Will you undergo an examination of that prior to the time of finding out that it doesn't produce the information? I mean are you presently engaged in analyzing your reporting system to make sure that it does the job or will you soon be engaged in that endeavor?

Mr. WORTHINGTON. As soon as we know whether or not the Congress is going to allow us to experiment, we will immediately begin the procedures to comply with the stewardship that you have given us. I think our past record in the past few years in the NAIC at least, is indicative of the fact we will do an adequate job.

Mr. SUTCLIFFE. As to a more basic question about the need for experimentation, how much experimentation was undertaken to test the postinsolvency assessment plans that you have advocated be adopted and have been quite successful in getting adopted in many jurisdictions in this country? When you promulgated that model bill how much experimentation with that system had been undertaken before you set it in concrete, so to speak?

Mr. WORTHINGTON. Before we promulgated our model bill I think there were some six or seven States which already had a form of insolvency fund or form of guarantee fund, and we drafted our bill based on the experience that those other States had had over the past years.

Mr. SUTCLIFFE. Those were all preassessment plans, were they not?

Mr. WORTHINGTON. No; there is a plan like the one in New Jersey, I think—or was it Maryland?—Michigan and California had adopted before our model postassessment plan. One of the things that led us to try the postassessment approach was the experience that they had had with the preassessment plans, and the experience with preassessment plans was such that we felt that was not the proper way to go.

Mr. SUTCLIFFE. You mentioned your organization also includes members of the territories of this country. I noted that with interest. Have you had an opportunity to receive the views of the regulatory authorities from Puerto Rico and had a chance to evaluate that particular experiment?

Mr. WORTHINGTON. The insurance commissioner from Puerto Rico regularly attends our meetings and participates in our committee functions, and he is very vocal about his experiences in Puerto Rico and feels that it is an excellent program for his territory. He is an active participant.

Mr. SUTCLIFFE. Have you come to any conclusions based upon the experience in Puerto Rico as to any recommendation the NAIC would make to States who are going to undertake experiments in reforming their automobile compensation system?

Mr. WORTHINGTON. I think it is too early to draw any valid conclusions about the Puerto Rican situation and recommend them to other States on an official basis. Obviously most of us that are interested in it are going to look closely at it because it is an operating one, just like we will the Massachusetts plan.

Senator MOSS. Thank you for excusing me for a short time, and I am sure Mr. Sutcliffe has had a number of questions that have occured to us in listening to your testimony. One thing I wanted to ask, Mr. Worthington, is, you referred in your statement to the danger of an ill-considered national program for insurance reform. Given the Department of Transportation's study and the extensive congressional hearings, do you really think this—it is ill considered to have a bill of this type before us now?

Mr. WORTHINGTON. I suppose if I were to give a definition of what I mean by ill considered it would have to be something like this, that any proposal which would change the system which has been in effect as long as the tort system has been in effect in the United States without some measure of experimentation or some trial of a new system on a national basis would have to by definition, be ill considered.

We are not indicating that you have not studied it long enough or that learned people have not given their opinions, but rather we are just saying that by the very extent of the enormity of the program it ought to be tried someplace before it is put forth for the whole country.

Senator MOSS. Well, I wonder about the parallel between automobile insurance and health insurance. The administration recommends the State regulation in automobile insurance but recommends a national system of health insurance; why should one be treated one way and the other the other?

Mr. WORTHINGTON. We are trying to help them become consistent, Senator.

Senator MOSS. Which way?

Mr. WORTHINGTON. In favor of the State.

Senator MOSS. I was, of course, pleased to note that you recognized that there needs to be changes and there was a great change going on in the industry. Isn't it true that it is less likely that you can get a change effected in all of the State legislatures? State legislators serve for a minimum period of time, and they are all employed in other lines of employment, and, as has been said, they are subject perhaps

to lobbying pressures more strongly than national legislators. Doesn't that argue against depending on the States to make the changes?

Mr. WORTHINGTON. I think not, Senator, for a couple of reasons. One is that in recent years in reference to insurance matters the States have responded quite well to the problems as they have been called to our attention. Mr. Sutcliffe mentioned a proposed national guarantee fund. Some 38 States have now adopted a form of proposals which would protect people from insolvencies of insurers in the period of 18 months. We have reason to believe that nearly all States will have this kind of proposal in short order. And this is while Congress is still deciding whether or not to do it. So we have acted really more rapidly than the Congress has in this matter.

When the problem of conglomerates dipping into the surplus of insurance companies became prevalent we began to draft a model bill to regulate insurance-holding companies so the conglomerates and insurance interests could not, without regulatory involvement, dip in and take surplus which had been made for the benefit of the policyholders.

Nearly all insurance-holding companies in the United States are now effectively regulated by the insurance-holding company bill. There are others where we have not been so successful, but where there has been a major national problem we have responded. And my testimony before you is such that again I want to restate that if the States do not act, I would be one of the first people to ask Congress to act. But I think that the States are bearing their stewardship responsibility in reference to insurance regulation adequately and resourcefully, and that only until it can be shown that they are not should you move in and act.

And the bill that is proposed would alter significantly the regulation of insurance other than providing the kind of benefits you want to provide. We think we can provide those same benefits in an expeditious manner without thrusting on people the kind of duplicatory, regulatory mechanism which would have to be imposed.

Senator MOSS. Doesn't this no-fault problem really extend beyond State lines? It is not confined to any particular area or any particular group. Isn't this then a major policy decision of the type that ought to be made on the national level by the National Congress?

Mr. WORTHINGTON. I do not think that it should necessarily. For example, if a person in Iowa were to buy a policy under the proposed Iowa plan and travel to Illinois, or travel to New York, or travel to Massachusetts or Florida, somewhere else that had a different kind of plan, it would be a relatively easy matter for the insurance carriers writing policies in any State to put riders on the policy that would give the people the coverage which would be necessary for whatever State they were driving in just like they have to do with Canada now. I do not think that the crossing of State lines is as significant a problem as it might be; it could be handled with relatively little complication and little administrative problem.

The people in rural States, for example, have many different kinds of problems than those that live in the urban centers of our country. And the no-fault insurance program which would be adequate and which would be meaningful to the people in rural Iowa, for example,

ıay not be adequate and may not be appropriate for the people living ı Detroit or Manhattan or Los Angeles.

On the other side of the coin, if the bill is drafted to be in between oth of them, it really meets neither of their needs. We think they eed to be geared more definitely toward the people who will receive ıe benefits.

Senator Moss. Yes, but your rural resident of Iowa is not always riving around rural Iowa; he drives off to Chicago or Detroit or omeplace like that.

Mr. WORTHINGTON. Right. I am saying it is a relatively easy admin-ıtrative matter to include, as a provision of his policy, minimum overage for whatever State he happens to be driving in. A man who ommuted between one State and another State would obviously have n easy time getting his policy amended because that is something he ould just have to have. The companies can do it with little difficulty. he regulators can assist them in this; we are experienced in that ıatter already because we do it in other areas.

Senator Moss. But if one State has a no-fault rule and his insurance s written for a State that does not have that but has the traditional ort requirement—what law is applied to him? He is driving in a no-ault State, but his insurance policy is not geared to that; can this be asily adapted?

Mr. WORTHINGTON. Yes; it would. He would have a policy obviously n the State he lives in, which would meet those rules. And there vould be as a provision of that policy a rider that would say some-hing to the effect that the provisions of this policy shall meet the ninimum requirements for whatever State in which he may be in-olved in an accident, very simply.

Obviously the lawyers would make it longer and more complicated han that, but very simply that is what it would consist of. So if he vere in a no-fault State and had an accident in a fault State, he would ıave the minimum requirements in that State.

Senator Moss. There might be a little problem in the rule of law hey apply, the rule of proof and so on. But I acknowledge your view hat it could be readily adapted.

We do appreciate your coming to testify before the committee and ıreparing such a well documented and full statement that will be a reat addition to our record.

Thank you very much.

Thank you, gentlemen, for coming.

(The statement follows:)

TATEMENT OF LORNE R. WORTHINGTON, INSURANCE COMMISSIONER OF THE STATE OF IOWA, ON BEHALF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMIS-SIONERS

My name is Lorne R. Worthington. Today I am appearing on behalf of the tional Association of Insurance Commissioners, commonly referred to as the AIC, both as the Insurance Commissioner of the State of Iowa and as President the NAIC. Having its inception in and regular meetings since 1871, the NAIC the oldest voluntary association of state officials. It includes the principal urance regulatory authorities of the 50 states, the District of Columbia, and territories of the United States.

shall deal with each of the matters before your Committee separately and rt by giving my comments on the Uniform Motor Vehicle Insurance Act and Administration's proposed Concurrent Resolution.

to lobbying pressures more strongly than national legislators. Doesn't that argue against depending on the States to make the changes?

Mr. WORTHINGTON. I think not, Senator, for a couple of reasons. One is that in recent years in reference to insurance matters the States have responded quite well to the problems as they have been called to our attention. Mr. Sutcliffe mentioned a proposed national guarantee fund. Some 38 States have now adopted a form of proposals which would protect people from insolvencies of insurers in the period of 18 months. We have reason to believe that nearly all States will have this kind of proposal in short order. And this is while Congress is still deciding whether or not to do it. So we have acted really more rapidly than the Congress has in this matter.

When the problem of conglomerates dipping into the surplus of insurance companies became prevalent we began to draft a model bill to regulate insurance-holding companies so the conglomerates and insurance interests could not, without regulatory involvement, dip in and take surplus which had been made for the benefit of the policyholders.

Nearly all insurance-holding companies in the United States are now effectively regulated by the insurance-holding company bill. There are others where we have not been so successful, but where there has been a major national problem we have responded. And my testimony before you is such that again I want to restate that if the States do not act, I would be one of the first people to ask Congress to act. But I think that the States are bearing their stewardship responsibility in reference to insurance regulation adequately and resourcefully, and that only until it can be shown that they are not should you move in and act.

And the bill that is proposed would alter significantly the regulation of insurance other than providing the kind of benefits you want to provide. We think we can provide those same benefits in an expeditious manner without thrusting on people the kind of duplicatory, regulatory mechanism which would have to be imposed.

Senator MOSS. Doesn't this no-fault problem really extend beyond State lines? It is not confined to any particular area or any particular group. Isn't this then a major policy decision of the type that ought to be made on the national level by the National Congress?

Mr. WORTHINGTON. I do not think that it should necessarily. For example, if a person in Iowa were to buy a policy under the proposed Iowa plan and travel to Illinois, or travel to New York, or travel to Massachusetts or Florida, somewhere else that had a different kind of plan, it would be a relatively easy matter for the insurance carriers writing policies in any State to put riders on the policy that would give the people the coverage which would be necessary for whatever State they were driving in just like they have to do with Canada now. I do not think that the crossing of State lines is as significant a problem as it might be; it could be handled with relatively little complication and little administrative problem.

The people in rural States, for example, have many different kinds of problems than those that live in the urban centers of our country. And the no-fault insurance program which would be adequate and which would be meaningful to the people in rural Iowa, for example,

nay not be adequate and may not be appropriate for the people living n Detroit or Manhattan or Los Angeles.

On the other side of the coin, if the bill is drafted to be in between oth of them, it really meets neither of their needs. We think they ieed to be geared more definitely toward the people who will receive he benefits.

Senator Moss. Yes, but your rural resident of Iowa is not always lriving around rural Iowa; he drives off to Chicago or Detroit or omeplace like that.

Mr. WORTHINGTON. Right. I am saying it is a relatively easy administrative matter to include, as a provision of his policy, minimum overage for whatever State he happens to be driving in. A man who ommuted between one State and another State would obviously have n easy time getting his policy amended because that is something he vould just have to have. The companies can do it with little difficulty. The regulators can assist them in this; we are experienced in that natter already because we do it in other areas.

Senator Moss. But if one State has a no-fault rule and his insurance s written for a State that does not have that but has the traditional ort requirement—what law is applied to him? He is driving in a no-ault State, but his insurance policy is not geared to that; can this be asily adapted?

Mr. WORTHINGTON. Yes; it would. He would have a policy obviously n the State he lives in, which would meet those rules. And there vould be as a provision of that policy a rider that would say somehing to the effect that the provisions of this policy shall meet the ninimum requirements for whatever State in which he may be inolved in an accident, very simply.

Obviously the lawyers would make it longer and more complicated han that, but very simply that is what it would consist of. So if he vere in a no-fault State and had an accident in a fault State, he would ave the minimum requirements in that State.

Senator Moss. There might be a little problem in the rule of law hey apply, the rule of proof and so on. But I acknowledge your view hat it could be readily adapted.

We do appreciate your coming to testify before the committee and reparing such a well documented and full statement that will be a reat addition to our record.

Thank you very much.

Thank you, gentlemen, for coming.

(The statement follows:)

TATEMENT OF LORNE R. WORTHINGTON, INSURANCE COMMISSIONER OF THE STATE OF IOWA, ON BEHALF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

My name is Lorne R. Worthington. Today I am appearing on behalf of the tional Association of Insurance Commissioners, commonly referred to as the AIC, both as the Insurance Commissioner of the State of Iowa and as President the NAIC. Having its inception in and regular meetings since 1871, the NAIC the oldest voluntary association of state officials. It includes the principal urance regulatory authorities of the 50 states, the District of Columbia, and territories of the United States.

shall deal with each of the matters before your Committee separately and t by giving my comments on the Uniform Motor Vehicle Insurance Act and Administration's proposed Concurrent Resolution.

1. THE ISSUE

The Uniform Motor Vehicle Insurance Act would create a federally mandated motor vehicle insurance system predicated on the no fault concept for bodily injury. The statute, among other things, would prescribe the minimum coverage which motorists would be required to purchase. In contrast, although the Administration has tentatively endorsed the no fault concept, it has concluded that "mere speculation without actual observation of experience with a new plan is an inadequate basis for massive, uniform national reform: and that the federal assumption of the current state regulatory authority over automobile insurance poses great issues and consequences and is highly undesirable."[1] The Administration recommends that solutions, built upon specified general principles, evolve at the state level to permit experimentation and testing of different approaches. *Thus the basic issue is joined—i.e. what is the most appropriate approach to test and/or implement the no fault concept.*

2. NAIC POSITION ON THE NO FAULT CONCEPT

At the outset, let me indicate the perspective from which the NAIC, as an association of state insurance regulators, views the fault versus no fault concept. The tort liability system is a legal system which is separate and distinct from the automobile insurance system. When the first automobile insurance policy was written prior to 1900, the fault concept was well embedded. The automobile insurance system, and the regulation thereof, of necessity, has in large part been engrafted on and molded by the broader legal environment in which it finds itself. As a consequence, automobile insurance was originally premised on the concept of protecting a person from economic disaster resulting from legal liability—by defending against claims and paying those adjudged to be valid. Only incidentally was the combination of the legal and insurance systems thought of in terms of providing reparation to the victim. In more recent years, there has been a shift in concept. Increasing attention has been focused on the plight of the victim. The inquiry now centers on how dependent upon fault the reparation system should be.

Obviously, the questions being posed extend far beyond the interests of automobile insurance and its regulation. Numerous groups are interested in the ultimate result. These include the policyholder, the claimants, the legal profession, the providers of medical services, insurers, agents, unions, etc. Because of the many groups involved, the extensive diversity within such groups, and the complexity of the issues involved, a wide range of conflicting attitudes and objectives exists. The NAIC, following a comprehensive background study by its Central Office staff, adopted a position statement which, among other things, said that question of fault upon non fault "is an issue involving wide spread ramifications far beyond the traditional confines and insurance regulations . . .

" 'The decision as to whether the present system should be reformed is not a legal decision nor is it a statistical one; *it is a question of values.*'

"Thus the type of system adopted is a broad question of public policy.

"Thus NAIC, therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternative on a state-by-state basis."[2]

Our responsibility as regulators is a limited one. If private enterprise is chosen as the implementing mechanism (whether the third party legal system is retained, modified, or eliminated), our function would continue to be regulation in the interest of a sound, efficient, and equitable system on behalf of the insurance consuming public.

Incidentally, state insurance regulation has no vested interest in either eliminating or continuing the third party legal liability system for automobile insurance. We currently oversee both fault and no fault type coverages. What is ultimately in the best interest of the public is what we favor and support. The problem is determining what is ultimately in the public interest.

Let me add parenthetically that I personally favor the adoption of no fault laws on a state-by-state basis and that I think the need for such laws is of grave urgency.

---

[1] House Concurrent Resolution 241, 92nd Congress, 1st Sess. (1971).

[2] NAIC Statement of Position on Automobile Insurance, *Report of the Special Committee on Automobile Insurance Problems*, June 16, 1969, p. 17. The report was adopted by the NAIC in June 1969. In addition, the report contains the staff background study. A copy of the report is submitted for the record.

3. THE STATE-BY-STATE APPROACH

While we as insurance regulators will not be the ultimate arbiters as to what constitutes the most appropriate reparation system in terms of public policy objectives, we do occupy a unique vantage point for observing the existing system. State insurance departments regulate insurers, examine their operations, approve policy forms, review policyholder and claimholder complaints, and respond to all manner of consumer needs. Consequently, we have a continuing opportunity to closely observe the workings of the insurance mechanism and to do so from the public's viewpoint. Thus, in the sense, as well as from reviewing the studies made by the NAIC, DOT and individual insurance departments, we feel our observations will contribute to your deliberations.

The fault versus no fault concept poses numerous complex and difficult issues. Among the factors requiring primary consideration are finding a means to assure that payments are made promptly, that the distribution of claims payments is an equitable one, and that a greater percentage of each premium dollar is paid out to victims.

In addition, consideration must be given to: overlapping coverages and premiums, flexibility, and impact on rehabilitation. Implicit in these factors are conflicting attitudes and objectives. Public clamor over increased automobile insurance premiums has significantly added to the pressure for change. Proponents of no fault are urging that virtually all injuries be compensated regardless of fault. These are conflicting objectives—i.e. lower cost versus increased benefits. Thus a basic question becomes what benefits the public wants, what benefits the public is willing to forego, and what cost level the public is willing to accept.

The final report of the Department of Transportation, as well as Secretary Volpe's presentation, highlighted the multiplicity of options confronting us and the need for experimentation. For example, the report named six basic areas of consideration, each area involving numerous subconsiderations within itself: (1) the legal rule governing reparations, (2) the role of insurance, (3) the kinds of losses to be compensated, (4) private versus social insurance, (5) compulsory versus voluntary insurance, and (6) insurance and the loss minimization objectives.[3] Alternative approaches raised include (1) retain the status quo, (2) improve the present tort legal liability system (e.g. judicial reform, shift to comparative negligence, regulate contingency fees, etc.), (3) rely on evolutionary reform by combining fault and no fault coverages, (4) establish a total no fault system, and (5) utilize government insurance.[4]

In spite of the mass of research conducted, the general public has no clear concept of what is involved or the ramifications posed by the various alternative methods. The DOT report's section on public opinion makes this quite obvious:

"In general, these surveys indicate that *the public has mixed attitudes* about the performance of various aspects of the system, is generally ill-informed about the current system, and, on the whole, shows an openness to change when made aware of alternatives to the present system."[5] (Emphasis supplied)

In short, a clear and informed consensus has not yet emerged.

With these and other factors in mind, the NAIC has said:

"Because factors, concepts, values, and attitudes vary from locale to locale, this public policy decision can best be made on a state-by-state basis rather than at the federal level. This, in turn, affords the opportunity to test and experiment with different approaches on a limited basis. After a period of experience with different plans, the better solution(s) will emerge. *The NAIC, therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternatives on a state-by-state basis.* Whatever the system, the various state insurance regulators can regulate for the public interest most effectively because of the varied needs of a differing populace in the several states. *The public, by its responses to legislation and by the decisions it makes in the market place in accepting or rejecting various coverages and services offered, will ultimately settle the issue.*"[6] (Emphasis supplied)

This remains the judgment of the NAIC. Furthermore, it has been subsequently

[3] See DOT. *Motor Vehicle Crash Losses and their Compensation in the United States:* a Report to the President and Congress 101–111 (March 1971) (hereafter cited as the DOT Report).

[4] See *id* at 112–127.

[5] *Id* at 81.

[6] NAIC Statement of Position, note 2 supra at 17.

1. THE ISSUE

The Uniform Motor Vehicle Insurance Act would create a federally mandated motor vehicle insurance system predicated on the no fault concept for bodily injury. The statute, among other things, would prescribe the minimum coverage which motorists would be required to purchase. In contrast, although the Administration has tentatively endorsed the no fault concept, it has concluded that "mere speculation without actual observation of experience with a new plan is an inadequate basis for massive, uniform national reform: and that the federal assumption of the current state regulatory authority over automobile insurance poses great issues and consequences and is highly undesirable."[1] The Administration recommends that solutions, built upon specified general principles, evolve at the state level to permit experimentation and testing of different approaches. *Thus the basic issue is joined—i.e. what is the most appropriate approach to test and/or implement the no fault concept.*

2. NAIC POSITION ON THE NO FAULT CONCEPT

At the outset, let me indicate the perspective from which the NAIC, as an association of state insurance regulators, views the fault versus no fault concept. The tort liability system is a legal system which is separate and distinct from the automobile insurance system. When the first automobile insurance policy was written prior to 1900, the fault concept was well embedded. The automobile insurance system, and the regulation thereof, of necessity, has in large part been engrafted on and molded by the broader legal environment in which it finds itself. As a consequence, automobile insurance was originally premised on the concept of protecting a person from economic disaster resulting from legal liability—by defending against claims and paying those adjudged to be valid. Only incidentally was the combination of the legal and insurance systems thought of in terms of providing reparation to the victim. In more recent years, there has been a shift in concept. Increasing attention has been focused on the plight of the victim. The inquiry now centers on how dependent upon fault the reparation system should be.

Obviously, the questions being posed extend far beyond the interests of automobile insurance and its regulation. Numerous groups are interested in the ultimate result. These include the policyholder, the claimants, the legal profession, the providers of medical services, insurers, agents, unions, etc. Because of the many groups involved, the extensive diversity within such groups, and the complexity of the issues involved, a wide range of conflicting attitudes and objectives exists. The NAIC, following a comprehensive background study by its Central Office staff, adopted a position statement which, among other things, said that question of fault upon non fault "is an issue involving wide spread ramifications far beyond the traditional confines and insurance regulations . . .

" 'The decision as to whether the present system should be reformed is not a legal decision nor is it a statistical one; *it is a question of values.*'

"Thus the type of system adopted is a broad question of public policy.

"Thus NAIC, therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternative on a state-by-state basis."[2]

Our responsibility as regulators is a limited one. If private enterprise is chosen as the implementing mechanism (whether the third party legal system is retained, modified, or eliminated), our function would continue to be regulation in the interest of a sound, efficient, and equitable system on behalf of the insurance consuming public.

Incidentally, state insurance regulation has no vested interest in either eliminating or continuing the third party legal liability system for automobile insurance. We currently oversee both fault and no fault type coverages. What is ultimately in the best interest of the public is what we favor and support. The problem is determining what is ultimately in the public interest.

Let me add parenthetically that I personally favor the adoption of no fault laws on a state-by-state basis and that I think the need for such laws is of grave urgency.

---

[1] House Concurrent Resolution 241, 92nd Congress, 1st Sess. (1971).

[2] NAIC Statement of Position on Automobile Insurance, *Report of the Special Committee on Automobile Insurance Problems*, June 16, 1969, p. 17. The report was adopted by the NAIC in June 1969. In addition, the report contains the staff background study. A copy of the report is submitted for the record.

3. THE STATE-BY-STATE APPROACH

While we as insurance regulators will not be the ultimate arbiters as to what constitutes the most appropriate reparation system in terms of public policy objectives, we do occupy a unique vantage point for observing the existing system. State insurance departments regulate insurers, examine their operations, approve policy forms, review policyholder and claimholder complaints, and respond to all manner of consumer needs. Consequently, we have a continuing opportunity to closely observe the workings of the insurance mechanism and to do so from the public's viewpoint. Thus, in the sense, as well as from reviewing the studies made by the NAIC, DOT and individual insurance departments, we feel our observations will contribute to your deliberations.

The fault versus no fault concept poses numerous complex and difficult issues. Among the factors requiring primary consideration are finding a means to assure that payments are made promptly, that the distribution of claims payments is an equitable one, and that a greater percentage of each premium dollar is paid out to victims.

In addition, consideration must be given to: overlapping coverages and premiums, flexibility, and impact on rehabilitation. Implicit in these factors are conflicting attitudes and objectives. Public clamor over increased automobile insurance premiums has significantly added to the pressure for change. Proponents of no fault are urging that virtually all injuries be compensated regardless of fault. These are conflicting objectives—i.e. lower cost versus increased benefits. Thus a basic question becomes what benefits the public wants, what benefits the public is willing to forego, and what cost level the public is willing to accept.

The final report of the Department of Transportation, as well as Secretary Volpe's presentation, highlighted the multiplicity of options confronting us and the need for experimentation. For example, the report named six basic areas of consideration, each area involving numerous subconsiderations within itself: (1) the legal rule governing reparations, (2) the role of insurance, (3) the kinds of losses to be compensated, (4) private versus social insurance, (5) compulsory versus voluntary insurance, and (6) insurance and the loss minimization objectives.[3] Alternative approaches raised include (1) retain the status quo, (2) improve the present tort legal liability system (e.g. judicial reform, shift to comparative negligence, regulate contingency fees, etc.), (3) rely on evolutionary reform by combining fault and no fault coverages, (4) establish a total no fault system, and (5) utilize government insurance.[4]

In spite of the mass of research conducted, the general public has no clear concept of what is involved or the ramifications posed by the various alternative methods. The DOT report's section on public opinion makes this quite obvious:

"In general, these surveys indicate that *the public has mixed atttiudes* about the performance of various aspects of the system, is generally ill-informed about the current system, and, on the whole, shows an openness to change when made aware of alternatives to the present system."[5] (Emphasis supplied)

In short, a clear and informed consensus has not yet emerged.

With these and other factors in mind, the NAIC has said:

"Because factors, concepts, values, and attitudes vary from locale to locale, this public policy decision can best be made on a state-by-state basis rather than at the federal level. This, in turn, affords the opportunity to test and experiment with different approaches on a limited basis. After a period of experience with different plans, the better solution(s) will emerge. *The NAIC, therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternatives on a state-by-state basis.* Whatever the system, the various state insurance regulators can regulate for the public interest most effectively because of the varied needs of a differing populace in the several states. *The public, by its responses to legislation and by the decisions it makes in the market place in accepting or rejecting various coverages and services offered, will ultimately settle the issue.*"[6] (Emphasis supplied)

This remains the judgment of the NAIC. Furthermore, it has been subsequently

[3] See DOT. *Motor Vehicle Crash Losses and their Compensation in the United States:* a Report to the President and Congress 101–111 (March 1971) (hereafter cited as the DOT Report).

[4] See *id* at 112–127.

[5] *Id* at 81.

[6] NAIC Statement of Position, note 2 supra at 17.

Furthermore, to the extent that the purchasers of automobile insurance consider the relative insurance premiums attributable to damageability in purchasing their cars, the automobile insurance mechanism can contribute to driving those poorly designed cars out of the market and thereby reduce overall economic cost including that of insurance. This, of course, depends upon whether there is a corresponding rise—and to what extent—in cost of designing and manufacturing less damage prone cars and/or in personal injury damage.

Incidentally, it may be appropriate to note some of the factors insurance regulators will be watching as ratemaking based on damageability develops:

(1) Since most individual insurers are not large enough to develop credible statistics, they will find it necessary to pool their data in order to rate older models from real world experience. Insurance departments will be regulating this combining process to protect competition in rates.

(2) Insurance department personnel will be closely examining the results of the prescribed tests to satisfy themselves that there is jurisdiction for rating auto makes and models differently.

(3) Determining the susceptibility of new model cars to damage will require the use of advanced computer techniques. Since many insurers do not have the necessary facilities available they will be using data centrally determined. Departments will wish to satisfy themselves that this data is properly used.

(4) Ratemaking based on relative fragility will result in a different classification system. The departments will be watching these classifications closely to be certain they are equitable and that individual consumers are properly classified.

S. 976 attacks this overall problem head on by authorizing DOT to make tests, set minimum standards, make results available to insurers and regulators for ratemaking purposes, etc. The NAIC endorses the general concepts and objectives embodied in this bill. We would suggest, however, that the bill make explicit direction or authority for DOT to consult with both the insurance industry and the insurance regulators or a continuous basis so that the initial and future tests data compiled therefrom and other information will be developed in a form that is usable in automobile insurance ratemaking.

I would like to personally comment specifically on several provisions of S. 976 at this time:

(1) The provisions found in section 125 (b) and (c) are particularly significant and should be expanded to give the Secretary the widest possible powers and unquestioned authority to act in a direct and definitive manner.

(2) Section 127 is particularly important to insure regulators and I suggest that you amend the bill to provide for an official relationship between the Secretary and the State insurance commissioners in at least two areas: (*a*) the Secretary should be required to consult with representatives of the insurance commissioners from time to time and (*b*) the Secretary should be required to officially report his findings to the insurance commissioners of the various States.

I am confident that this kind of relationship will be welcomed by the commissioners and also that they will move rapidly to require implementation of rating techniques based on the damageability [illegible]

(3) Section 128 appears to also be a key section and I commend you for such a provision. It should be of great assistance in meeting consumer needs.

(4) The provision to section 501 that requires an independent system of automobile inspection, though idealistically sound, has a measure of impracticality involved in it in my opinion. To require the kind of expense involved in establishing the system contemplated in S. 976 is sure to generate enough opposition to stall if not stop the whole inspection program in many places.

I support your concept, but wonder if you shouldn't modify it to make the proposal more palatable and less expensive in order to receive the broadest support from the States.

I would also suggest there should be some official recognition made in the bill which would require that accident data collection systems be established to show the speed, the angle of impact, the frequency of automobile accidents, and other data which would be particularly important in determining the accuracy of the data which might be included in the damageability index.

In a very hurried way, Senator Moss, that concludes my formal testimony.

Senator Moss. Thank you, Mr. Worthington. I think we will have some questions.

I have to be absent for a short period of time.

Mr. Sutcliffe may have some questions while I am away and I will come back and follow up if there are some he didn't get to that I think ought to be in the record.

Moreover, I might suggest, since you have cooperated by summarizing that rather lengthy statement, it may be that after we have read it in full, we may want to submit a few questions to you, sending them to you in writing, to have you respond.

I am sure you would be glad to do that?

Mr. WORTHINGTON. We would have no objection to that, Senator, we would be pleased to.

Senator Moss. Thank you, and if you will excuse me, I will leave Mr. Sutcliffe here and ask if he has any questions he wants to ask in the interim.

Mr. SUTCLIFFE. Mr. Worthington, before we begin any questioning I want to ask whether or not the arrangement that Senator Moss suggested is satisfactory with you?

Mr. WORTHINGTON. I have no objection.

Mr. SUTCLIFFE. Thank you.

The argument that you pose, suggesting that the States be allowed to test various approaches certainly has some appeal from a theoretical standpoint. There are many unanswered questions in this area of considering automobile reform legislation. When you set about to experiment in the laboratory or in a State, do you need to have some guidelines as to the kind of experiment that should take place and the kinds of goals that you would hope would be met through the experimentation, particularly if you are trying to improve the present reparation system or do you think that it can just take place without that guideline, without that kind of direction, so in order to obtain the results of the experiment?

Could you comment generally on how you can undertake this on an experimental basis, assuming this is one of your arguments, and still end up with a valid experiment?

Mr. WORTHINGTON. I would be glad to.

To use as examples some proposals that are already before us, in Massachusetts they passed one form of a modified no-fault system, with some additional benefits. That plan is now in effect and we are seeing some interesting results. Not enough results are in yet to make a valid observation, I don't think, about the extent to which it meets the problems. But I think it is an excellent opportunity for us to gain some experience.

It is my understanding that in the State of Florida there is a very good opportunity that some form of no-fault bill will pass, which is much different than the one in Massachusetts.

Mr. SUTCLIFFE. Let me stop you right there, so I can understand.

I guess in any kind of experiment you will set it up and design it in such a fashion as to be able to test the results. Have the Massachusetts proponents of no-fault set up through their insurance regulatory mechanism or whatever a procedure whereby they can test the validity of their experiment, where they can get the information that would be useful from an experimental point of view, and if so, could you describe some of that for the committee?

Mr. WORTHINGTON. You are talking about——

Mr. SUTCLIFFE. Do you understand what I mean? In other words, you are saying there appears to be some beneficial results from an experimentation program in Massachusetts. What specifically has Massachusetts done to insure that the information which is coming out of Massachusetts about their plan has validity, measures costs, measures savings, measures redistribution of benefits to improve the problems highlighted in the Department of Transportation study?

Mr. WORTHINGTON. If you are asking was part of the program in Massachusetts a program that would require surveillance and analysis of statistics that might be developed to see how it works, I don't think that it was. There is no business, however, that I know of in the country, that generates more statistics and that has more adequate information about how it functions that are available to both the regulators and to the public, and my observation about the fact that it is providing some information that is interesting and shows it may be beneficial, is based on some of the statistics it has generated.

For example, one of the very interesting ones there has been the fact that there are fewer claims being filed now for physical damage.

Mr. SUTCLIFFE. We have had two explanations, you see. This is the reason I ask the question. Because if the approach to allowing for experimentation is going to be followed, then it seems to me that it is natural to ask what methods of collecting these statistics and validating those statistics are being provided.

We have been told by one group that the decrease in claims in the bodily injury area is a result of the constitutional test, and that the lawyers are simply holding back hoping that the constitutional challenge will be successful.

In another instance it has been explained to us that because of the unique situation in Massachusetts, many of the bodily injury claims reflected property damage claims, because it was a mandatory State

Now it seems to me that if we set out to experiment on a State-by-State basis, apart from whether or not that is a practical possibility, this committee would like to know what assurances we will have that the results from those experiments will produce meaningful information to other States or to the Federal Government in its analysis of the reform.

Mr. WORTHINGTON. I think you are asking is there going to be some supervisory person to look at it to see whether there are meaningful results?

Mr. SUTCLIFFE. Or is the NAIC itself recommending this kind of procedure to the States?

Mr. WORTHINGTON. One of the functions which I currently serve in in the NAIC as chairman of a committee called the Committee on Profitability of Liability and Property Companies. This committee is attempting to look and see what sort of things go into the determination of rates for insurance companies and how much money is sent back to the consumer, how much is generated as a result of their investments. And this kind of committee function in the NAIC will very well, I am sure, sort out the actual statistical and practical profit and public interest items that will result from the experimentations in the various States.

So I think I can say unequivocably that the NAIC, if the States continue to experiment in this manner, will watch closely to see what happens.

We have discussed briefly about whether we should attempt to design a model bill. And it is not an official policy of the NAIC, but the officers have generally agreed that at this point we should not try to design a model bill, but that rather we should observe what the different States are doing and collect the data about the effectiveness of their operations, and after a period of time then put the portions of their program which seem to work most effectively into some model guidelines that could be used by the States that are interested.

Let me go on a little bit about the experimentation. I would say the New York proposal is different than any other State proposal. Illinois has a plan before its legislature.

Mr. SUTCLIFFE. Does it differ, because it suggested that it could be done at either the State or Federal level?

Mr. WORTHINGTON. No; I think it has a completely different thrust, for example, than the one in Illinois or Iowa, because it basically does away with the tort system.

Our proposal is to preserve it, but give first-party coverage in all instances and let the insurance companies subrogate. I have said in the past and would say again that though my plan in Iowa is substantially different from the one in New York, I would hope New York would adopt their bill and give us a chance to gain some experience as a result of its operation.

I would hope Iowa and Illinois would adopt their bills, so we can compare our experience too.

Mr. SUTCLIFFE. To that point then, what mechanism would you create to monitor the cost benefit differences between the Massachusetts plan and the Illinois or Iowa plans? The cost differences, for example, between an inter-insurer subrogation provision or a cost offset provision, differences between, in Massachusetts, the $500 medical payment

entry into the tort liability system and in Illinois, no entry provision, but a limitation on intangible loss recovery once tort is entered and an offset for any mandatory first-party coverages? How are we going to get the data to analyze that kind of difference?

Because if we are going to experiment, and the argument is we will learn from experimentation, it seems to me we have to be assured we will be able to get that kind of information back.

Mr. WORTHINGTON. I think I can assure you the NAIC in its normal functions will be gathering this data through the work of its committees, through the analysis of the reports that are filed now with the insurance departments, and which are, some of which are created by private organizations.

Mr. SUTCLIFFE. Is that information oriented toward answering the kinds of questions that are being asked now, or is it more oriented toward a business operation within the existing liability system focus?

Mr. WORTHINGTON. The data we would collect, I would anticipate, would be data that would answer the questions we wanted to ask.

Mr. SUTCLIFFE. So you would have to go through some kind of reformulation.

Mr. WORTHINGTON. If the standard reporting techniques we have now are not adequate, we can easily change them to make them adequate. What I am saying basically, I suppose, is that we think we have a system set up now which could gather the information. If it doesn't, then we can modify it.

Mr. SUTCLIFFE. Will you undergo an examination of that prior to the time of finding out that it doesn't produce the information? I mean are you presently engaged in analyzing your reporting system to make sure that it does the job or will you soon be engaged in that endeavor?

Mr. WORTHINGTON. As soon as we know whether or not the Congress is going to allow us to experiment, we will immediately begin the procedures to comply with the stewardship that you have given us. I think our past record in the past few years in the NAIC at least, is indicative of the fact we will do an adequate job.

Mr. SUTCLIFFE. As to a more basic question about the need for experimentation, how much experimentation was undertaken to test the postinsolvency assessment plans that you have advocated be adopted and have been quite successful in getting adopted in many jurisdictions in this country? When you promulgated that model bill how much experimentation with that system had been undertaken before you set it in concrete, so to speak?

Mr. WORTHINGTON. Before we promulgated our model bill I think there were some six or seven States which already had a form of insolvency fund or form of guarantee fund, and we drafted our bill based on the experience that those other States had had over the past years.

Mr. SUTCLIFFE. Those were all preassessment plans, were they not?

Mr. WORTHINGTON. No; there is a plan like the one in New Jersey, I think—or was it Maryland?—Michigan and California had adopted before our model postassessment plan. One of the things that led us to try the postassessment approach was the experience that they had had with the preassessment plans, and the experience with preassessment plans was such that we felt that was not the proper way to go.

Mr. SUTCLIFFE. You mentioned your organization also includes members of the territories of this country. I noted that with interest. Have you had an opportunity to receive the views of the regulatory authorities from Puerto Rico and had a chance to evaluate that particular experiment?

Mr. WORTHINGTON. The insurance commissioner from Puerto Rico regularly attends our meetings and participates in our committee functions, and he is very vocal about his experiences in Puerto Rico and feels that it is an excellent program for his territory. He is an active participant.

Mr. SUTCLIFFE. Have you come to any conclusions based upon the experience in Puerto Rico as to any recommendation the NAIC would make to States who are going to undertake experiments in reforming their automobile compensation system?

Mr. WORTHINGTON. I think it is too early to draw any valid conclusions about the Puerto Rican situation and recommend them to other States on an official basis. Obviously most of us that are interested in it are going to look closely at it because it is an operating one, just like we will the Massachusetts plan.

Senator MOSS. Thank you for excusing me for a short time, and I am sure Mr. Sutcliffe has had a number of questions that have occured to us in listening to your testimony. One thing I wanted to ask, Mr. Worthington, is, you referred in your statement to the danger of an ill-considered national program for insurance reform. Given the Department of Transportation's study and the extensive congressional hearings, do you really think this—it is ill considered to have a bill of this type before us now?

Mr. WORTHINGTON. I suppose if I were to give a definition of what I mean by ill considered it would have to be something like this, that any proposal which would change the system which has been in effect as long as the tort system has been in effect in the United States without some measure of experimentation or some trial of a new system on a national basis would have to by definition, be ill considered.

We are not indicating that you have not studied it long enough or that learned people have not given their opinions, but rather we are just saying that by the very extent of the enormity of the program it ought to be tried someplace before it is put forth for the whole country.

Senator MOSS. Well, I wonder about the parallel between automobile insurance and health insurance. The administration recommends the State regulation in automobile insurance but recommends a national system of health insurance; why should one be treated one way and the other the other?

Mr. WORTHINGTON. We are trying to help them become consistent, Senator.

Senator MOSS. Which way?

Mr. WORTHINGTON. In favor of the State.

Senator MOSS. I was, of course, pleased to note that you recognized that there needs to be changes and there was a great change going on in the industry. Isn't it true that it is less likely that you can get a change effected in all of the State legislatures? State legislators serve for a minimum period of time, and they are all employed in other lines of employment, and, as has been said, they are subject perhaps

to lobbying pressures more strongly than national legislators. Doesn't that argue against depending on the States to make the changes?

Mr. WORTHINGTON. I think not, Senator, for a couple of reasons. One is that in recent years in reference to insurance matters the States have responded quite well to the problems as they have been called to our attention. Mr. Sutcliffe mentioned a proposed national guarantee fund. Some 38 States have now adopted a form of proposals which would protect people from insolvencies of insurers in the period of 18 months. We have reason to believe that nearly all States will have this kind of proposal in short order. And this is while Congress is still deciding whether or not to do it. So we have acted really more rapidly than the Congress has in this matter.

When the problem of conglomerates dipping into the surplus of insurance companies became prevalent we began to draft a model bill to regulate insurance-holding companies so the conglomerates and insurance interests could not, without regulatory involvement, dip in and take surplus which had been made for the benefit of the policyholders.

Nearly all insurance-holding companies in the United States are now effectively regulated by the insurance-holding company bill. There are others where we have not been so successful, but where there has been a major national problem we have responded. And my testimony before you is such that again I want to restate that if the States do not act, I would be one of the first people to ask Congress to act. But I think that the States are bearing their stewardship responsibility in reference to insurance regulation adequately and resourcefully, and that only until it can be shown that they are not should you move in and act.

And the bill that is proposed would alter significantly the regulation of insurance other than providing the kind of benefits you want to provide. We think we can provide those same benefits in an expeditious manner without thrusting on people the kind of duplicatory, regulatory mechanism which would have to be imposed.

Senator MOSS. Doesn't this no-fault problem really extend beyond State lines? It is not confined to any particular area or any particular group. Isn't this then a major policy decision of the type that ought to be made on the national level by the National Congress?

Mr. WORTHINGTON. I do not think that it should necessarily. For example, if a person in Iowa were to buy a policy under the proposed Iowa plan and travel to Illinois, or travel to New York, or travel to Massachusetts or Florida, somewhere else that had a different kind of plan, it would be a relatively easy matter for the insurance carriers writing policies in any State to put riders on the policy that would give the people the coverage which would be necessary for whatever State they were driving in just like they have to do with Canada now. I do not think that the crossing of State lines is as significant a problem as it might be; it could be handled with relatively little complication and little administrative problem.

The people in rural States, for example, have many different kinds of problems than those that live in the urban centers of our country. And the no-fault insurance program which would be adequate and which would be meaningful to the people in rural Iowa, for example,

ıay not be adequate and may not be appropriate for the people living n Detroit or Manhattan or Los Angeles.

On the other side of the coin, if the bill is drafted to be in between oth of them, it really meets neither of their needs. We think they eed to be geared more definitely toward the people who will receive he benefits.

Senator Moss. Yes, but your rural resident of Iowa is not always riving around rural Iowa; he drives off to Chicago or Detroit or omeplace like that.

Mr. WORTHINGTON. Right. I am saying it is a relatively easy admin-strative matter to include, as a provision of his policy, minimum overage for whatever State he happens to be driving in. A man who ommuted between one State and another State would obviously have n easy time getting his policy amended because that is something he ould just have to have. The companies can do it with little difficulty. he regulators can assist them in this; we are experienced in that atter already because we do it in other areas.

Senator Moss. But if one State has a no-fault rule and his insurance s written for a State that does not have that but has the traditional ort requirement—what law is applied to him? He is driving in a no-ault State, but his insurance policy is not geared to that; can this be asily adapted?

Mr. WORTHINGTON. Yes; it would. He would have a policy obviously n the State he lives in, which would meet those rules. And there ould be as a provision of that policy a rider that would say some-hing to the effect that the provisions of this policy shall meet the inimum requirements for whatever State in which he may be in-olved in an accident, very simply.

Obviously the lawyers would make it longer and more complicated han that, but very simply that is what it would consist of. So if he ere in a no-fault State and had an accident in a fault State, he would ave the minimum requirements in that State.

Senator Moss. There might be a little problem in the rule of law ey apply, the rule of proof and so on. But I acknowledge your view at it could be readily adapted.

We do appreciate your coming to testify before the committee and reparing such a well documented and full statement that will be a reat addition to our record.

Thank you very much.

Thank you, gentlemen, for coming.

(The statement follows:)

TATEMENT OF LORNE R. WORTHINGTON, INSURANCE COMMISSIONER OF THE STATE OF IOWA, ON BEHALF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMIS-SIONERS

My name is Lorne R. Worthington. Today I am appearing on behalf of the tional Association of Insurance Commissioners, commonly referred to as the AIC, both as the Insurance Commissioner of the State of Iowa and as President the NAIC. Having its inception in and regular meetings since 1871, the NAIC the oldest voluntary association of state officials. It includes the principal urance regulatory authorities of the 50 states, the District of Columbia, and territories of the United States.

shall deal with each of the matters before your Committee separately and t by giving my comments on the Uniform Motor Vehicle Insurance Act and Administration's proposed Concurrent Resolution.

1. THE ISSUE

The Uniform Motor Vehicle Insurance Act would create a federally mandated motor vehicle insurance system predicated on the no fault concept for bodily injury. The statute, among other things, would prescribe the minimum coverage which motorists would be required to purchase. In contrast, although the Administration has tentatively endorsed the no fault concept, it has concluded that "mere speculation without actual observation of experience with a new plan is an inadequate basis for massive, uniform national reform: and that the federal assumption of the current state regulatory authority over automobile insurance poses great issues and consequences and is highly undesirable."[1] The Administration recommends that solutions, built upon specified general principles, evolve at the state level to permit experimentation and testing of different approaches. *Thus the basic issue is joined—i.e. what is the most appropriate approach to test and/or implement the no fault concept.*

2. NAIC POSITION ON THE NO FAULT CONCEPT

At the outset, let me indicate the perspective from which the NAIC, as an association of state insurance regulators, views the fault versus no fault concept. The tort liability system is a legal system which is separate and distinct from the automobile insurance system. When the first automobile insurance policy was written prior to 1900, the fault concept was well embedded. The automobile insurance system, and the regulation thereof, of necessity, has in large part been engrafted on and molded by the broader legal environment in which it finds itself. As a consequence, automobile insurance was originally premised on the concept of protecting a person from economic disaster resulting from legal liability—by defending against claims and paying those adjudged to be valid. Only incidentally was the combination of the legal and insurance systems thought of in terms of providing reparation to the victim. In more recent years, there has been a shift in concept. Increasing attention has been focused on the plight of the victim. The inquiry now centers on how dependent upon fault the reparation system should be.

Obviously, the questions being posed extend far beyond the interests of automobile insurance and its regulation. Numerous groups are interested in the ultimate result. These include the policyholder, the claimants, the legal profession, the providers of medical services, insurers, agents, unions, etc. Because of the many groups involved, the extensive diversity within such groups, and the complexity of the issues involved, a wide range of conflicting attitudes and objectives exists. The NAIC, following a comprehensive background study by its Central Office staff, adopted a position statement which, among other things said that question of fault upon non fault "is an issue involving wide spread ramifications far beyond the traditional confines and insurance regulations . . .

" 'The decision as to whether the present system should be reformed is not a legal decision nor is it a statistical one; *it is a question of values.*'

"Thus the type of system adopted is a broad question of public policy.

"Thus NAIC, therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternative on a state-by-state basis."[2]

Our responsibility as regulators is a limited one. If private enterprise is chosen as the implementing mechanism (whether the third party legal system is retained, modified, or eliminated), our function would continue to be regulation in the interest of a sound, efficient, and equitable system on behalf of the insurance consuming public.

Incidentally, state insurance regulation has no vested interest in either eliminating or continuing the third party legal liability system for automobile insurance. We currently oversee both fault and no fault type coverages. What is ultimately in the best interest of the public is what we favor and support. The problem is determining what is ultimately in the public interest.

Let me add parenthetically that I personally favor the adoption of no fault laws on a state-by-state basis and that I think the need for such laws is of grave urgency.

---

[1] House Concurrent Resolution 241, 92nd Congress, 1st Sess. (1971).

[2] NAIC Statement of Position on Automobile Insurance, *Report of the Special Committee on Automobile Insurance Problems,* June 16, 1969, p. 17. The report was adopted by the NAIC in June 1969. In addition, the report contains the staff background study; a copy of the report is submitted for the record.

3. THE STATE-BY-STATE APPROACH

While we as insurance regulators will not be the ultimate arbiters as to what constitutes the most appropriate reparation system in terms of public policy objectives, we do occupy a unique vantage point for observing the existing system. State insurance departments regulate insurers, examine their operations, approve policy forms, review policyholder and claimholder complaints, and respond to all manner of consumer needs. Consequently, we have a continuing opportunity to closely observe the workings of the insurance mechanism and to do so from the public's viewpoint. Thus, in the sense, as well as from reviewing the studies made by the NAIC, DOT and individual insurance departments, we feel our observations will contribute to your deliberations.

The fault versus no fault concept poses numerous complex and difficult issues. Among the factors requiring primary consideration are finding a means to assure that payments are made promptly, that the distribution of claims payments is an equitable one, and that a greater percentage of each premium dollar is paid out to victims.

In addition, consideration must be given to: overlapping coverages and premiums, flexibility, and impact on rehabilitation. Implicit in these factors are conflicting attitudes and objectives. Public clamor over increased automobile insurance premiums has significantly added to the pressure for change. Proponents of no fault are urging that virtually all injuries be compensated regardless of fault. These are conflicting objectives—i.e. lower cost versus increased benefits. Thus a basic question becomes what benefits the public wants, what benefits the public is willing to forego, and what cost level the public is willing to accept.

The final report of the Department of Transportation, as well as Secretary Volpe's presentation, highlighted the multiplicity of options confronting us and the need for experimentation. For example, the report named six basic areas of consideration, each area involving numerous subconsiderations within itself: (1) the legal rule governing reparations, (2) the role of insurance, (3) the kinds of losses to be compensated, (4) private versus social insurance, (5) compulsory versus voluntary insurance, and (6) insurance and the loss minimization objectives.[3] Alternative approaches raised include (1) retain the status quo, (2) improve the present tort legal liability system (e.g. judicial reform, shift to comparative negligence, regulate contingency fees, etc.), (3) rely on evolutionary reform by combining fault and no fault coverages, (4) establish a total no fault system, and (5) utilize government insurance.[4]

In spite of the mass of research conducted, the general public has no clear concept of what is involved or the ramifications posed by the various alternative methods. The DOT report's section on public opinion makes this quite obvious:

"In general, these surveys indicate that *the public has mixed attitudes* about the performance of various aspects of the system, is generally ill-informed about the current system, and, on the whole, shows an openness to change when made aware of alternatives to the present system."[5] (Emphasis supplied)

In short, a clear and informed consensus has not yet emerged.

With these and other factors in mind, the NAIC has said:

"Because factors, concepts, values, and attitudes vary from locale to locale, this public policy decision can best be made on a state-by-state basis rather than at the federal level. This, in turn, affords the opportunity to test and experiment with different approaches on a limited basis. After a period of experience with different plans, the better solution(s) will emerge. *The NAIC, therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternatives on a state-by-state basis.* Whatever the system, the various state insurance regulators can regulate for the public interest most effectively because of the varied needs of a differing populace in the several states. *The public, by its responses to legislation and by the decisions it makes in the market place in accepting or rejecting various coverages and services offered, will ultimately settle the issue.*"[6] (Emphasis supplied)

This remains the judgment of the NAIC. Furthermore, it has been subsequently

[3] See DOT. *Motor Vehicle Crash Losses and their Compensation in the United States:* a Report to the President and Congress 101–111 (March 1971) (hereafter cited as the DOT Report).

[4] See *id* at 112–127.

[5] *Id* at 81.

[6] NAIC Statement of Position, note 2 supra at 17.

ard for determining liabilities which arise out of matters of common usage.

Like other activities to which the law has applied a strict liability standard, the operation of motor vehicles is an activity which can be defined with precision that makes it possible to establish it as an accounting unit. Accident rates and loss experiences can be, and have been, determined, making it an insurable activity. Moreover, those who have the money to purchase and operate automobiles can afford and should be required to purchase insurance. As with other activities to which the law has applied a strict liability standard, its use with automobiles would have the desirable effect of passing the inevitable costs of the activity on to those who benefit from it.

To summarize what I believe I have demonstrated, strict liability is a rule of the common law which has been applied over the centuries on an eclectic basis, depending upon how well it served the needs of society at the time. It is not the vestige of a primitive age, but instead is equally the product of an attuned and sensitive age, which has found the rule appropriate to modern conditions. Upon an overall appraisal it seems that it is the most desirable rule for assessing responsibility and providing compensation for automobile accidents.

DAMAGES: PAIN AND SUFFERING AND THE CONCEPT OF CATASTROPHIC LOSS

Critics of no-fault automobile insurance schemes frequently ascribe to those schemes the fixed and outdated schedules of allowances for injuries established by workmen's compensation statutes. They argue that the fault system utilizes an individualized and particularized measure of damages, which gives a refined and humanized justice. In particular, they argue that the damage rules used with the fault system are more desirable because they recognize and attempt to compensate for pain and suffering and disfigurement, which usually are not items of damage under workmen's compensation schemes.

Of course all these items of damages could be incorporated in a no-fault system if they are considered desirable and if we are willing to pay for them. The rigidity in damage allowances attributed to no-fault insurance is a rigidity manufactured by those who oppose the adoption of such a system rather than a rigidity which inheres in no-fault. The question is then how should compensation be determined under a no-fault system.

The Hart-Magnuson bill avoids much of the charged rigidity with its provision for awards of economic losses based upon the monthly earnings of the person injured. I agree with Dean Roddis of the University of Washington School of Law, who appeared before thi committee last week, that it would probably be better to set a limit higher than the $1,000 per month maximum established in the current draft of the bill, and to compensate for economic losses occurring over a longer period than 30 months. Indeed, as I shall develop later, I would allow recovery for all economic loss on a no-fault basis instead of relying on the traditional tort remedy as the bill now does.

I also believe the definition of earnings should be revised so as to permit computation upon the basis of probable future income rather than the actual income earned at the time of the accident in order to take care of those persons, such as students, who would probably have

had a substantial increase in income but for the accident. If the period of time for which compensation for economic loss is given on a no-fault basis is extended to 4 or 5 years, it would also be appropriate to give consideration to the fact that wage and salary rates will probably rise during that time.

As a technical matter of drafting, I think the bill might be improved upon by addition of a statement more clearly establishing that compensation in cases not involving death be made on an installment basis and that in death cases economic loss shall, or shall not, be reduced to present value.

I might interject a few words about collateral source rule that was mentioned earlier this morning.

It would seem to me there is nothing wrong with the provision in the bill taking advantage of the fact that there are other insurance schemes. I do not believe it is correct to say that the bill would allow the wrongdoer to have the benefit of the group health or medical insurance which the injured person buys. It is not the wrongdoer who is going to get the benefit, it is another insurance company that is going to get the benefit. Under our present scheme, the wrongdoer is not going to be sued unless he was insured. And even if we do come to—I would make a distinction, first, between those things which are insurance and those things which we should consider as assets of the plaintiff.

For example, a workman who is required to take sick leave, thereby reducing the amount of sick leave which he has in his bank, sick leave most certainly should not be required to do that. But if it is Blue Cross or some kind of medical coverage, I think we should certainly accept the hypothetical bill as drafted.

One of my classroom hypotheticals which I use with students who say you are allowing the wrongdoer the benefit of what the plaintiff bought, is, suppose the plaintiff were a man who had taken a first-aid course, and he had learned how to apply a tourniquet, and in an accident one of his arteries was cut. Suppose he manages to put the tourniquet on and therefore he doesn't die. Other people would have died if they hadn't known how to do it. Are we going to say he was entitled to recovery for wrongful death, because other people would have died? They wouldn't have had the foresight to take the course to prepare themselves for the possibility of the accident in the way you did? No. And I think the analogy is sufficiently strong to say the same thing is true for the person who has had the foresight to take out an accident insurance policy or medical and accident insurance policy.

The most controversial part of the bill is that now found in section 4, which preserves the traditional tort action for cases of catastrophic injury. Personally, I would be willing to substitute no-fault for all harm caused by automobile accidents, and limit the compensation to economic loss. The hybrid systems of no fault with a limited tort recovery have a political appeal, and defuse some of the arguments based upon cases involving disfigurement and much pain. But I believe the preservation of the tort remedy is inconsistent with the findings which led to proposals for adoption of no fault insurance.

It is probably a startling proposition for the professor of tort law to state that there is no sense to the awarding of damages for pain and suffering in automobile cases. But I believe that objective considera-

tion of the matter leads to the conclusion that in giving damages for noneconomic losses we are trying to make money do what money cannot do, make insurance companies' money do what many insurance companies cannot do.

We know that there is no market for pain, and the attempt to assign a dollar value to it is doomed to failure. Likewise, in cases of disfigurement, after we have done everything that can be done with medical care, I doubt that payment of money makes any sense.

Remember that the money paid in a case of disfigurement is almost certain to be the money of an insurance company and, hence, the money of the insurance-buying public. It is almost certain not to be the money of one who has been determined to be at fault. And no amount of money can undo the disfigurement or constitute adequate compensation for what has happened.

In discussing whether it makes any sense to award damages for pain and suffering or disfigurement. I am sometimes reminded of the accounts given by anthropologists of a practice of the natives of the New Guinea highlands. The New Guinea highland people live in a stone-age economy, subsisting primarily upon the many varieties of sweet potato which they grow and the few wild pigs which they catch.

If a person is killed, particularly if he is killed in battle, other members of the village express their condolences with the family in what seems to us a ghastly way. They cut off and send to the bereaved family fingers of little girls.

We ask what sense this could possibly make—how can the bereaved family any better support their loss because of fingers taken from little girls who had nothing to do with the death?

I suspect, however, that if we could get a sufficiently sophisticated New Guinea native, he might ask us what we thought we were accomplishing by giving money to compensate for pain and suffering or disfigurement.

He might also point out to us that they carefully select the ring fingers of girls so as not to interfere with their later productivity, and he might ask us if our use of pain and suffering damages does not prevent us from giving compensation for all economic loss suffered by victims of automobile accidents.

I suppose that in both cases we have an expression by society of its concern for what happened to the individual—a tangible demonstration of our concern.

I share that concern for what happens to members of our society, but I question whether the fault system is the best system for expressing that concern, considering that it bars or fails to provide compensation in such cases as well as permitting it.

I think that we are better able to show our concern if we proceed on the basis of asking no more than whether it was an automobile which caused the injury before we provide all that can be done by existing medical treatment.

True, it would be nice if we could do more in a tangible way, but not nice enough to lead me to believe that we should do it rather than provide compensation for all economic harm on a no-fault basis.

I would therefore strike from section 4 of the bill that language which preserves the common law tort action for cases of catastrophic harm and from section 7 that language which establishes a time limit

on the amount of earnings which can be included in the computation of economic loss.

Of course, if these purist views of a supporter of no-fault cannot be incorporated in the bill, I would give my support to the definition of catastrophic harm and the limitation which it imposes upon damages for pain and suffering.

Senator BAKER. Before you go on, may I ask a question on the other subject?

Do you feel, and does your statement imply, that the insurance industry in one way or the other could support the cost of strict liability no-fault insurance without limitation as to amount?

I am not implying anything. I just want your point of view.

Mr. PECK. I obviously have to make something of a guess. But I believe it could. A large part of the insurance expenditures are those made on the small claims where the economic loss is relatively small and the claimants receive in the settlements three, four and five items the amount of their economic loss. I think the reason for the overpayment is that under the existing rules it makes sense for the insurance companies to buy up that claim.

Senator BAKER. I understand that. But do you have any supporting data on the number of claims that are made and not paid, whether barred by contributory negligence or failure to sue or whatever. Do you have any basis for judging the total cost if we had no-fault without limitation?

Mr. PECK. I do not have them with me now. Dean Leon Green, who wrote one of the pioneering books on no-fault, did estimate that this could be accomplished. I think that Professor Conard's study at the University of Michigan would indicate the feasibility of this. I don't think that his study has a chapter or section devoted directly to this.

Senator, the studies of the insurance industry indicate that contributory negligence very seldom bars recovery. Most insurance companies will pay something even if they think their insured was only one-half at fault. And, for certain categories of cases, such as death, the studies indicate that they will make a payment even though they think their person had no fault at all. That makes sense, buy it up if you can.

Senator BAKER. I understand that. All I am after is a more narrow response and that is if you have any estimates of cost if we had no-fault and no limitation as to the amount of potential recovery.

Mr. PECK. I do not have those. Dean Leon Green did do the work and he reached the conclusion that it could be done.

Senator BAKER. My question was as to whether the insurance industry could cover these costs; your answer, as I understood it, was it could.

At some point I would like to explore whether the insurance industry could cover these costs; your answer, as I understood it, was it could.

At some point I would like to explore whether it should, which is a question I put to another witness, on whether or not we ought to broaden the base of support of these social obligations beyond just the operator of the motor vehicle.

Mr. PECK. Well, that might be. But, as I attempted to develop in the first part of my presentation, I believe that automobile accidents present a classic case for the use of strict liability. If we take another example, take the difference between rotary lawnmowers and reel lawnmowers.

Senator BAKER. Excuse me. It is late and I am imposing on the chairman's patience by putting these questions. So let me save the rest of it until later.

Mr. PECK. I am sorry. Let me go to the problem about Federal intervention.

FEDERAL INTERVENTION INTO REGULATION OF THE INSURANCE INDUSTRY—STATE EXPERIMENTATION WITH NO-FAULT INSURANCE

As I understand it, one of the major objections to the Hart-Magnuson bill is that it would involve the Federal Government in the regulation of the insurance industry, a subject which until now has been left largely to the State governments.

I have an appreciation for the value of local government, an appreciation which was heightened by my study of the highly centralized legal and governmental system of the Philippines. But I believe that the problem of no-fault automobile accident compensation is one which can be dealt with sensibly only on a Federal basis.

We have until now been able to get along with a system which depends upon State tort law because that law had a uniformity drawn from English common law. Even so, the amount of interstate travel has produced enough complications because of the differences in State law to provide very difficult and interesting cases for casebooks on the conflict of laws.

I believe that the statistics compiled by the National Safety Council will show that about one-seveneth of the fatal accidents involve drivers who were not residents of the States in which the accidents occurred, and that about one-twelfth of all accidents involve drivers who were not residents of the States in which the accidents occurred.

The higher ratio with respect to cases involving death probably reflects the high rate of speed of automobiles in interstate travel.

If we are now to embark upon a program of legislation of no-fault schemes, the absence of a single and agreed-upon model from which a draft is made insures that the result will be a tremendous confusion concerning which law governs and what system of compensation applies.

Given the amount of interstate travel involved and the interstate character of the insurance business, there is in my mind no doubt that the subject is an appropriate one for Federal regulation.

While I would worry as much as anyone about a camel's nose appearing in the tent, I can take consolation from the fact that icebergs still float with only a fraction of their bulk appearing above the water.

It is the nature of the problem and not the simile suggested which should determine the proper course of action.

It is suggested, however, that the subject should be left to the States so that we may have the advantages of 50 laboratory solutions to the problem and thus come up with what is the best system.

I should like to point out that a similar argument could have been made concerning the insurance scheme we know as social security, and that the history of social security in this country does not indicate that experimentation, change, and improvement need end because the statute enacted is Federal.

I would also point out that what we have permitted with respect to experimentation by States has sometimes resulted in State adherence to laboratory results which are clearly undesirable.

I refer, for example, to matters such as unemployment compensation and welfare, in which I believe the disparity in the level of benefits cannot be rationally defended, though it continues to persist.

More important, I have considerable doubts that the experimentation will take place, even though Massachusetts is currently providing us with one model of a no-fault system.

In an article which I published in 48 Minnesota Law Review 265 (1963) on the "Role of Courts and Legislatures in the Reform of Tort Law," I investigate the operation of State legislatures.

Generally speaking, State legislatures are composed of underpaid, part-time legislators, meeting for short periods of time, perhaps once every 2 years, working under unsatisfactory conditions and without adequate supporting staffs.

They are, I believe, particularly susceptible to the pressures of lobbyists, who, with considerable frequency, prevent the enactment of reforms.

Particularly is this so with regard to reform of tort law, because the opponents of reform—insurance companies, manufacturers, apartment house owners, et cetera—are well organized and capable of lobbying against reform, whereas the victims of notorious conduct are seldom organized or capable of lobbying for reform.

The conclusion which I reached—and, incidentally, it is the conclusion which Professor Keeton of the Keeton and O'Connell plan has reached—is that the area of tort law is one in which judicial activism is particularly appropriate.

The same analysis leads me to the conclusion that if interest in problems of tort law with interstate dimensions can be organized at the Federal level, the problem is one for Federal activism.

Consider what will probably happen with respect to those proposals of a no-fault system introduced into State legislatures. They will be met with the combined opposition of both plaintiff's and defendant's bar, as well as the opposition of some insurance companies.

I suppose that some companies engaged in transportation may also find it worthwhile to lobby against the no-fault proposal.

Lawyers in the legislatures will be quite friendly with the lawyers from "both sides" appearing before them.

Who will lobby for it? There is no organization or lobby of the victims of automobile accidents, and I do not expect one to be formed.

The problem is sufficiently complicated that the busy part-time legislator, lacking the assistance of an adequate staff, may easily conclude that the case for change has not been made with sufficient clarity.

I suppose a few might also think in terms of the effect of their vote upon the campaign contributions they will need for the next election.

The result will be either no action or, as happened in the State of Washington, reference of the matter to a council for study.

I believe that the draft of the Hart-Magnuson bill shows the expert work and understanding of your committee staff. I believe—or at least I hope—that you have heard enough about the problem of automobile accident compensation to know that a change must be made from our existing insured-fault system.

While I would like to see the bill embrace the no-fault concept to the exclusion of all tort liability, I believe enactment of the bill would be a substantial improvement in our law. I recommend that action to you.

Senator Moss. Thank you very much, Professor Peck. That certainly is a scholarly and well thought out paper, and one that impresses me considerably knowing you are in the field of torts, and knowing you know all of the ramifications of tort actions.

I was particularly interested when you talked about the pain and suffering and disfigurement angles of damages.

Is there any medical measure that has ever been developed on pain and suffering to evaluate it?

Mr. PECK. None that I know of, sir. I have talked to the neurologists of the University of Washington, in fact I have had them come to my torts class to discuss pain and we learn a little bit about it.

Pain, for example, exists only when tissue is being destroyed or irritated. When it has been totally destroyed, there is no more pain.

The pain which people suffer depends a great deal upon their psychological problems and varies tremendously with what the factors entirely unrelated to the injury which causes them to suffer pain. By that, I mean that the persons who has many problems in his life may be looking for sort of a trashcan into which he can throw all of the things that bother him. If he once gets that pain, that little tingling in his arm that perhaps is the remnants of a whiplash, for that person—that is the wife he doesn't like, that is the job he doesn't like, all of the things that have troubled him can now, somehow, get located in that terrific pain he has got there.

There is a tremendous variation in the amount of pain which people report to their doctors and in situations which the doctors think physiologically the pain should be the same.

Senator Moss. I ask that because I had a friend who was an insurance adjuster, and he used to tell me that if he got a case where he had pain in the sacroiliac, he just bought it at any price he could get, because there was no end to it. It never could be measured, and it was all subjective, and the thing to do was just get it settled at any cost.

And it seems to me that is what you are saying about the general concept of pain and suffering. It can't be measured, and besides, it isn't lessened at all by turning over a given number of dollars.

Mr. PECK. I would suppose if we provide, as the bill does, for all of the medical treatment that can be given to alleviate the pain, if there is still pain being suffered, I doubt very much that there can be any enjoyment of money at that time. And when it is over, something very bad has occurred, but it doesn't have a dollar value.

Senator Moss. Following up what Senator Baker had asked you earlier—by the way, he had to leave because of an appointment, and he wanted me to express his apologies. He did want to remain.

But, I understand that you suggest by your testimony that our society has become sufficiently affluent that we can afford a system of compensation that focuses on the individual and could cover all loss.

Is that right?

Mr. PECK. Yes.

Senator Moss. And you would not have any limitation on the length of time of treatment or loss of wages? You would have it extend as long as the person was actually prevented——

Mr. PECK. I suspect the provisions in the bill establishing a top-dollar limit does make some sense. I suppose most of those people who have a very high income level have probably taken out their own in-

surance scheme for the cases of catastrophic loss of income-earning capacity.

But, I do think, given the income levels in the United States today, and what we can expect them to rise to, that the maximum of $1,000 a month is too low.

My proposal is that we allow recovery without regard to the length of time for economic loss, and I am not suggesting that there should not be any limit on the amount that could be recovered each particular month.

Senator Moss. To what extent would you have access to the courts available to settle administrative disputes, for instance, as to the amount, for instance measuring the amount, the number of dollars for any particular medical procedure, anything of that sort?

Do you envisage any way there could be a settlement where there was a disagreement between the recipients and the administrator?

Mr. PECK. Oh, I suppose that the settlement process will be and should be used for most cases, as it is today. I suppose that we have also got to have a system in which ultimately, if there is disagreement, there will be judicial review.

In that respect, if we do provide a system in which the claimant, who disagrees with his insurance company over the percentage of his disability, is able to go to court, I suspect that some of the fears of practicing lawyers that they will not have any business, may be misplaced. If everybody injured is able to make a claim, not simply those who are able to prove fault on the other party's side as well as freedom of fault on their side there will probably be more claims and perhaps more disputes about exactly how severe the injury was.

It is also my impression that a good deal of the litigation, time spent in litigation under the tort system, does not relate to fault.

A good deal of it relates to how seriously was the victim injured, how permanent will his injuries be, and how incapacitating are they?

Those are things which I don't suppose we can eliminate.

Senator Moss. You are not fearful this will put all of the lawyers out of business then, if the bill is passed?

Mr. PECK. No, it is an old joke about the legal profession, that for every solution, there are problems.

Senator Moss. Mr. Sutcliffe has a question or two he wants to ask you.

Mr. SUTCLIFFE. Professor, in examining the thrust of your statement related to strict liability, you mention the way in which the strict liability rule has predominated, that we have adjusted over time for the negligence action, that we still had strict liability when we switched primarily to a negligence setup.

You also mention in your analysis that change in the tort law through a State legislature was a difficult process to accomplish.

I think the question that must be posed because of the statement that you have made today, is why don't we rely upon the judiciary to determine that the strict liability rules now apply to automobiles?

Let's assume that if we did rely upon the judiciary to make this determination, would it have a palliative effect on the present problems in our compensation system, since it is still a liability scheme, and not in any way demanding first-party coverages?

Mr. PECK. Well, of course, as I mentioned, the judiciary has done this with regard to products liability, or is in the course of doing it,

throughout the Nation. We are adopting strict liability for that problem.

I suspect there is a greater difficulty with automobile accidents in the matter of limitations which can be imposed upon the total liability, which we were just talking about.

If a court makes a change to some kind of a rule of strict liability, it can't set the limits such as the $1,000 or $1,500.

Mr. SUTCLIFFE. Let me stop you there and see if I understand you.

You are suggesting that the judicial mechanism can change its legal rules, but cannot change the insurance rules?

Mr. PECK. That is right.

And if the judiciary were to make the change, there would be many people owning automobiles, which have insurance policies written on the fault theory. They would be totally unprotected from the liabilities which the judiciary would impose upon them if it adopted the strict liability standard.

The change can be made so much better in a legislative way, in the way this bill proposes, requiring that insurance policies be written in certain ways to meet the problems. The judiciary could not do that in making the change in its rule of liability.

Mr. SUTCLIFFE. I appreciate your comments on that point.

Would you oppose the awarding of intangible loss recoveries on a first-party basis, assuming that there is a palliative, if not a corrective effect in the giving of money or the extending of the fingers of small children?

Mr. PECK. As I said, that can be made a part of a no-fault system. There is no reason why the noneconomic losses can't be part of the damage.

Mr. SUTCLIFFE. As a person with arbitration experience, would it be appropriate to submit this kind of determination to an arbitrator?

Mr. PECK. A good deal of that is done now with the insured motorist coverage in the standard policies.

It could be done by arbitration, certainly, I suppose, and indeed the present bill, I suppose, would permit the insurance companies to add coverage of that sort if the person buying the insurance wants to get it, or if he wants to get it for himself and the people riding in his car with him. I believe the present bill would permit the insurance companies to add that as an additional kind of insurance, which he could purchase if he wants to purchase it.

Mr. SUTCLIFFE. On an optional basis?

Mr. PECK. Yes.

Mr. SUTCLIFFE. In discussions we have had before this committee, there has been some suggestion that if we are going to fulfill a social function, we should put it on a basis larger than the automobile user.

My question to you, given the testimony that you have presented here about the wide use of automobiles, do you think that there would be a significant difference between a premium assessment, or a tax upon the automobile user as distinct from the general taxpayer?

Mr. PECK. Well, I think your question leads to what has been so well explored by Professor Calabresi of Yale Law School. He points out that one of the things that we should strive to do with the rules of law that we utilize is to establish a cost accounting system which makes

the American public realize how much they are paying for any particular product, and how much any particular activity costs.

To the extent that we have a general socialized accident or insurance scheme, we may end up making uneconomic decisions.

If we take an activity which can be an accounting unit and make it responsible for those accidents caused by that activity, we then price it and then people know what that activity costs them. Automobiles, I think, are different from a good number of other things.

One of Professor Calabresi's hypotheses, which I was going to mention to Senator Baker, is the difference between reel lawnmowers and rotary mowers. Reel mowers are much safer than rotary lawnmowers. But, when the customer goes into the store and he looks and he sees the higher price on the rotary lawnmower, he decides to buy the reel.

If he were really going to be getting the same thing, he should also buy an insurance policy for the additional harm that he might get from the rotary lawnmower.

And Calabresi's suggestion is we should try to have a system of law so that when a customer buys, he will make an informed and wise decision. The difficulty with lawnmowers is illustrated by the problem caused when the rotary lawnmower hits a glass beer bottle, and the flying glass cuts someone. Is the cost one, then, that goes to the rotary lawnmower industry, or the glass bottle manufacturers?

I think we can avoid that problem with automobiles because as I have suggested, they are an activity which can be defined with precision, and we can make it an accounting unit. And I don't think we can end up feeling there is any great injustice that comes from attaching responsibility for all of the accidents which occur to that activity.

Mr. SUTCLIFFE. Thank you very much, professor.

Senator MOSS. Thank you, Professor Peck. It has been a very interesting and stimulating paper that you have delivered to us, and we appreciate your coming to present it to the committee.

Mr. PECK. I thank you very much for the opportunity.

Senator MOSS. This committee will now stand in recess until 2 o'clock, when we have two very excellent witnesses to hear.

(Whereupon, at 12:20 p.m., the hearing was recessed, to reconvene at 2 p.m., this same day.)

AFTERNOON SESSION

Senator MOSS. The committee will come to order.

We will resume our hearings on S. 945, S. 946 and S. 976 and Concurrent Resolution 23.

Our first witness this afternoon is Mr. Lorne Worthington, insurance commissioner of the State of Iowa. He will be making his presentation on behalf of the National Association of Insurance Commissioners.

We are very glad to have you, Mr. Worthington. I see you have a very well prepared and rather thick document here. I hope there will be ways of summarizing and highlighting that.

STATEMENT OF LORNE WORTHINGTON, INSURANCE COMMISSIONER, STATE OF IOWA, AND PRESIDENT, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS; ACCOMPANIED BY JOHN S. HANSON, EXECUTIVE SECRETARY-DIRECTOR OF RESEARCH; AND ROBERT E. DINEEN, CONSULTANT

Mr. WORTHINGTON. Thank you, Senator. I will attempt to summarize it.

Senator MOSS. Thank you, sir. Would you identify the gentlemen with you?

Mr. WORTHINGTON. I would like to identify the gentlemen with me. On my right is Mr. John Hanson, the executive secretary of the National Association of Insurance Commissioners. On my left is Mr. Robert Dineen who is a special consultant to our organization.

Senator MOSS. We welcome you.

Mr. WORTHINGTON. My name is Lorne R. Worthington. I am appearing today on behalf of the National Association of Insurance Commissioners, which is commonly referred to as the NAIC. I am here both as insurance commissioner of Iowa and as president of the NAIC.

NAIC, for the record, had its inception in, and regular meetings since, 1871. The NAIC is the oldest voluntary association of State officials. It includes among its members the principal insurance regulatory authorities of the 50 States, the District of Columbia and the territories of the United States.

I will attempt to deal with each of the matters before your committee separately and start by giving my comments on the Uniform Motor Vehicles Insurance Act and the administration's proposed concurrent resolution.

Because our views on this matter are relatively well known, for summary purposes I am going to turn to the summary of our statement and read that at this time rather than go through the statement in any great detail, and then I will be pleased to answer any questions you might have in reference to the statement during the question period.

Senator MOSS. Thank you. The statement will go in the record in full in its regular order, and, so you may be sure it is a part of the record, everything that you have presented here.

Mr. WORTHINGTON. Thank you.

The basic issue with which we are confronted is the appropriate means to test and/or implement the no-fault concept as it applies to motor vehicles insurance.

Whether or not this concept or some variation should be adopted is a question of public policy which extends beyond the traditional confines of insurance and the regulation thereof. Whatever the decision, however, the State insurance departments have and continue to be prepared to regulate in the public interest.

The whole question involves a host of complex factors, conflicting objectives and a multiplicity of alternatives. As the DOT report documented, the public attitudes, and understandably so, are confused and mixed.

As a consequence, the NAIC opposes the enactment of the proposed no-fault legislation on a Federal national level and recommends the perimentation on a State-by-State basis to resolve the problems posed in a manner responsive to the public's choice in the marketplace re-

flecting its balance between benefits it wants at costs it is willing to pay.

A congressional mandate as to mandatory and uniform coverage would destroy flexibility, freeze in error, and preclude choice and self-determination.

Massive Federal involvement, particularly in light of the substantial cost implications, would seem to be premature.

Similarly, we express reservations as to the establishment of specific Federal guidelines or objectives since these would prejudge what the market has not yet passed upon and would tend to inhibit the range of consumer choice.

These comments are not to argue for the status quo nor against the no-fault concept set out in the proposed legislation. We agree that some change is needed, although the extent is subject to debate.

The NAIC supports utilizing the State-by-State approach to ascertain the best plan or plans. This process is already well underway as indicated by the already extensive activity at the State level.

Furthermore, the NAIC opposes legislation which interjects an extensive Federal regulatory mechanism over automobile insurance. Such would create duplicatory regulation, confusion and unnecessary taxpayer expenses.

I would like to read a quote from the statement of position adopted by the National Association of Insurance Commissioners in 1969. This is included in the text of my statement, Senator.

Because factors, concepts, values and attitudes vary from local to locale, this public policy decisions—

That is, fault or no-fault—

would best be made on a state-by-state basis rather than at the federal level. This in turn affords the opportunities to test and experiment with different approaches on a limited basis. After a period of experience with different plans, the better solution or solutions will emerge. The NAIC therefore opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternatives on a state-by-state basis. Whatever the system, the various state insurance regulators can regulate for the public interest most effectively because of the varied needs of the different populus in the several states.

The public, by its responses to legislation, and by the decisions it makes in the marketplace, in accepting or rejecting various coverages and services offered, will ultimately settle the issue.

Both Secretary Volpe's statement and the comprehensive DOT study clearly indicate that such intervention is not warranted so long as the States can continue to adjust to the changing environment.

Furthermore, the proposed statute with its mandatory uniformity and inflexibility would turn back the clock 25 years to re-create what the antitrust laws and the Senate Antitrust Monopoly Subcommittee have attempted to discourage these past many years.

In short, the NAIC endorses the administration's positions on experimenting with different approaches at the State level.

If Congress believes that some type of congressional action is necessary, we feel that the resolution approach is the most appropriate. However, the inclusion of specific Federal standards in such a resolution would be premature and would tend to inhibit the wide range of experimentation which it seeks to achieve.

64-345—71—pt. 4——14

On the other hand, the resolution could express the sense of Congress by pointing out the problems, taking cognizance of the various studies and conflicting objectives and calling upon the States, the industry, and other interested parties to develop and test solutions within a reasonable period of time, such as 5 years. Failure to do so could be construed as an invitation for Congress to undertake the task.

I might add parenthetically at this point, that should the States fail to act, I would personally seek opportunities to come and testify again before this committee and ask the Federal Government to move into an area which might not have been met by the States.

I am not suggesting that State inaction would mean forever inaction.

I would like to turn now to comments on group or mass merchandising. The proposed Motor Vehicle Group Insurance Act, S. 946, attempts to foster a legal climate in which automobile insurance could be marketed, free from various legal restraints.

To achieve this objection section 3(a) would prohibit any State from prohibiting, inhibiting, restricting, or conditioning the issuance and marketing of group insurance as defined by the statute. Thus, S. 946 poses two basic questions: One, the objective sought and, two, the means to implement the objective.

At this moment the NAIC position on mass marketing of automobile insurance is limited to a broad statement included in the statement of position adopted in June 1969, and we have brought a copy of that for you, Senator, if you would care to have it for the committee purposes.

Senator Moss. We would like to have that for our purposes. We will include it in the record by reference.

Mr. WORTHINGTON. Thank you.

I quote from that document.

> The mass merchandising of automobile insurance has the potential of decreasing the dollar cost of auto insurance to the public. The savings may well be a mere transfer of the cost to either an employer or to the policyholder in the form of reduced services. True group auto insurance, separate and distinct from mass merchandising, may also offer a potential avenue to make the existing system function more smoothly. Both mass merchandising and group underwriting are currently being pursued under a variety of plans in various states.
>
> The NAIC believes that a wide degree of experimentation will develop an array of alternatives and choices in the marketplace which will be consistent with the best interests of the insurance-buying public and the NAIC encourages such experimentation.

The subject is currently under review by our executive committee which has directed the NAIC central office staff to prepare a comprehensive report thereon. This report will be completed by our June meeting.

According to NAIC procedure, based upon this report and any other information submitted, the NAIC will adopt a specific position statement on the subject. When the staff study and position statement become available we will provide your committee with copies.

Thus, at this juncture, I cannot speak for the NAIC except in the broadest of terms. However, based upon my own personal experience in the Iowa Insurance Department and upon a reading of the first rough draft of the NAIC staff report, I can make the following personal observations.

I might add I have the first rough draft of the merchandising report with me, and though I will not refer to it directly, many of my views and conclusions have been generated as a result of the information I gained from a study of that draft.

1. THE GENERAL OBJECTIVE

First, as the staff study and the NAIC general statement suggests and, I believe, as a matter of general public policy the insurance consumer is entitled to the maximum choice possible, consistent with other goals of public policy, among the various competing alternative methods of distributing insurance which have a varying impact on the amount he pays and the services he receives.

This range of choice should embrace marketing not only by brokers, independent agents, exclusive agents, direct sellers (through salaried solicitors) and by mail, but also by various types of mass marketing techniques.

Whatever may be said for the reasons justifying the enactment of these early restrictive measures, that is, the need for "orderly marketing," the avoidance of unfair discrimnation between different classes of buyers of the same form of insurance, apprehension about the possibilities of abuse inherent in a new form of merchandising, desire to protect the survival of the small agent, the insurance counterpart of the small businessman in whom Congress has long taken an interest, we think that with the passage of time and changes in conditions, that is the advent of sophisticated and widespread advertising through the printed media, radio, TV, public acceptance of the advantage of more competition, improved regulatory techniques, et cetera, the time is ripe to strike down these measures. Today they are an anachronism completely out of tune with the times.

After reviewing the various arguments made, pro and con, by various agent groups, company groups, government officials, and representatives of the consumers, I think it may be said that on balance the case for artificial restraints on marketing techniques lacks sufficient force to justify their imposition.

This is not to say that I advocate mass marketing as the panacea to the automobile insurance problem or that it is even better than the other marketing methods.

What I am saying is that the consumer and the public should have the opportunity to make its own choice and not be found by some governmental fiat one way or another. To this extent it would seem that both myself and the NAIC concur with the general objectives of S. 946.

2. IMPLEMENTING THE OBJECTIVE

In attempting to achieve the objective of an appropriate regulatory climate for mass marketing of automobile insurance, great care must be taken to avoid creating on the one hand a duplication of regulatory supervision or, on the other, a void in regulatory authority.

Federal action

As to the question of a need for a Federal mandate, the various insurance agent groups, and others, have historically opposed mass mar-

keting of insurance coverage. This occurred when group life insurance was introduced around 1911.

Various restrictions were designed to promote orderly insurance marketing. The proponents of these measures were seriously mistaken if they believed their efforts would permanently preclude the growth of group insurance.

As time went on there was increased understanding and acceptance of the benefits of group life insurance, and later group health and hospitalization coverages, by the man on the street.

Competition between insurance companies was a major factor in freezing up the market. Federal tax concessions also played a significant role. Employer and union pressures for the benefits of this coverage became manifest. The States and regulatory agencies responded to these developments.

The barriers began to fall away and today group coverage is readily accessible throughout the Nation. No congressional intervention aimed at restrictive practices was necessary to achieve this result.

History is now repeating itself in the property and liability field. Here too, restrictions, fostered primarily by agent groups, were established, for example, in the form of fictitious fleet laws and more recently the so-called guideline legislation.

Once again pressure mounted to abolish such artificial restraints: for example, the attorney general's opinion in Michigan, Governor Rockefeller's veto of proposed guideline legislation in New York, the Connecticut Supreme Court decision, increased critical scrutiny by insurance departments of existing and future regulations and legislation, et cetera.

Perhaps the most significant indication of the changing climate was the retention of Booz, Allen & Hamilton to study mass merchandizing by the independent agents themselves. This study has now been released and it makes plain that mass marketing of the property and liability lines is here to stay and to grow.

Cognizant of the fundamental changes and pressures which are emerging, the NAIC executive committee requested the staff study referred to earlier. Early review of the report by the NAIC is expected.

Since the tentative findings of the staff seem to be generally consistent with the changed outlook against burdensome restrictions on this form of merchandising, further remedial action by the NAIC may be forecast.

In short, the pressures for change stemming from changed economic, social, and political conditions coupled with an "increasing amount of information and awareness have already "loosened" the former situation. Change is already occurring and will continue as it has in mass marketing of life insurance without Federal legislation.

Incidentally, the problems faced by the State in this area are not unique. Agents are not the only groups who have sought to use laws or regulations to maintain or improve their economic position. Farmers and unions, to mention a few, have long sponsored legislation to improve their economic lot. Congress has adopted such legislation even though the effect was to increase costs for the consumer.

When the pendulum swings too far—as it does from time to time with all legislation with economic overtones—public pressures are cre-

ated calling for a redressing of the balance and legislatures respond. So it is and will be with mass marketing.

Thus the same public pressures are at work on the State legislatures as are at work in Congress. The question of whether a Federal solution is desirable, then, rests on three questions: (1) will congressional action bring a more rapid and desirable solution, (2) can Federal action be taken in such a manner as to adequately protect the total insurance buying public and at the same time not create burdensome and conflicting regulatory machinery, and (3) will congressional action be such as to not preempt or take precedence over State actions that may encourage experimental and pilot programs?

If the answers to the above three questions are all affirmative, then I personally have no objections to the enactment of such a piece of legislation.

S. 946 has some provisions in it that would, in my opinion, require some of the above questions to be answered negatively and therefore if Congress is to act in this matter, I suggest that the bill be amended to assure that it is more workable.

Section 3(a), for example, provides that no State shall prohibit, inhibit or restrict—by fictitious group laws, by agency licensing requirements or by application of prohibitions against unfair discrimination—the issuance and marketing of group insurance.

Such a provision would free insurers from all restraints thereby opening the door to potential multiple abuse. Although in the past efforts—probably well intentioned but conceptually faulty—have been used to restrict the sale of group coverages through a narrow construction of the unfair discrimination statutes as applied to expense differentials due to different marketing mechanisms, this does not mean we must go to the other extreme and emasculate all prohibitions against unfair discrimination.

Under this language Congress would declare open season for unfair trade practices totally unrelated to these interpretations restricting the use of mass marketing. The law of the commercial jungle would prevail. For example, the New York Insurance Law (sec. 213, par. 10) provides that: "No such (life insurance) company shall issue any life insurance or annuity contract which shall not appear to be self-supporting on reasonable assumptions as to interest, mortality, and expense." Among other things, this is designed to prevent the sale of "loss leaders." It prevents an insured from transferring the costs of an inadequate or unbalanced price structure from one group of policyholders to another and is a device to prevent unfair discrimination. S. 946 would appear to prevent provisions of this type at least with respect to automobile insurance.

Such a result can only be expected when one sweeps away all restraints over the conduct of commercial affairs.

Section 2 (2) attempts to define the "group insurance" to which the act would apply. Such an effort is subject to inherent flaws.

First, mass marketing is in its infancy. Various insurers and sponsoring groups are experimenting with different types of coverages, distribution mechanism—or eligibility—requirements, et cetera, to determine what best meets the needs of the buyer, those insured, and the insurers. To provide the imposition of a rigid Fedral definition would

tend to freeze innovative efforts and retard the natural development of mass marketing to the detriment of the insured public.

Second. The definition is fairly rigorous against the freedom of the insurers to underwrite on an individual basis. As a consequence, especially in the incipient stage of mass marketing's development, insurer's may be unwilling to provide mass marketed coverage, particularly to small and medium size groups which are particularly vulnerable to volatile loss experience. Thus, rigorous elements in the definition tend to discourage the very development of coverage the act is intended to assist.

Incidentally, it is interesting to note that agents groups have employed the rigorous definition approach in their so-called "guide line" statutes at the State level as a technique to inhibit the mass marketing development. Furthermore, insurers marketing insurance on a mass basis with elements not incorporated in the definition would not be helped by this act.

Third. On the other hand, a too liberal definition, coupled with the sweeping prohibition against appropriate regulatory controls, would greatly expand the potential for abuse as discussed above.

Fourth. After group life insurance was introduced, a major approach to restricting its use was the development of the group life definition in 1917. Since then, much effort has been expended to amend and reduce the scope so that group life insurance would achieve its full potential. The proponents of the mass marketing concept might keep this experience in mind before attempting to repeat provisions such as those in S. 946.

3. TAX TREATMENT

Although S. 947 providing favorable Federal tax treatment for group automobile insurance is before another subcommittee, it is part of the overall package. As such, reference should be made to it.

In my personal opinion, not speaking now for NAIC, in order to promote wide usage of group coverage, there must be a tax break given similar to the one now in effect for other group insurance coverages. There are obvious problems in adoption of such a law such as the discrimination against those who do not have access to an employer group and I suggest that you work to find some way to minimize this kind of discrimination. In spite of that problem, however, I personally endorse legislation like that proposed in S. 947.

DAMAGEABILITY STATEMENT

The third area of interest before you today that I want to discuss is the proposed Motor Vehicle Information and Cost Savings Act which would permit the Department of Transportation to set minimum standards for reduction of economic loss resulting from property damage to motor vehicles involved in accidents. To develop these minimum standards, and for other purposes, the bill would require DOT to prescribe certain tests to be performed on all makes and models, the results of which would be publicly distributed by DOT and auto manufacturers and dealers.

Among those receiving the results would be insurance companies. DOT would be required to report to the President and Congress on

the subsequent use of these test results in insurance ratemaking. Comparisons in insurance costs by make and model would then be distributed by auto dealers. Finally, the bill would require DOT to set a standard for the States to establish motor vehicle inspection, registration, and uniform certificate of title programs.

The bill is in essence an expansion of a program established by Congress in the National Traffic and Motor Vehicle Safety Act of 1966. At that time attention was centered on the risk of death or injury to persons resulting from inadequate auto design and DOT's responsibility was limited to preventing or reducing personal injury or death.

Today we are focusing on a related problem—that is, the ever-increasing cost of auto insurance attributable to damageability of the automobiles and their repair cost.

In our mobile society, which lacks adequate mass transportation facilities, the automobile has become a necessity rather than a luxury. Consequently the cost of purchasing and operating the automobile is a significant social problem as both the automobile insurance industry and we as regulators are keenly aware.

There are many points at which costs could be reduced—for example, basic auto purchase prices, parking rates, gasoline prices—and certainly economic loss from property damage is one of them. Since much, though not all, economic loss to motor vehicles is paid for through the insurance mechanism, the cost of property damage, collision, and to some extent comprehensive coverages will respond to reductions in damage to motor vehicles involved in accidents. The cost of repair parts and labor are two very substantial items which influence the high cost of automobile insurance.

Insurance companies have manifested great concern about increasing repair costs for motor vehicles. Individually, they are seeking to encourage the purchase of damage resistant autos, to discourage purchase of muscle cars, and to encourage other loss reduction activities like safer driving and stiffer licensing standards.

Collectively, insurance companies are acting through several organizations and committees, most significantly the Insurance Institute for Highway Safety. They are attempting to measure the fragility of automobiles and to ascertain methods of reducing that fragility. Insurers, both individually and collectively, are proceeding to develop indexes of relative susceptibility to damage which could then be used for ratemaking purposes.

Insurance regulators are following these developments closely because we too realize the need for property loss reduction. The NAIC Committee on Property and Liability Insurance has held hearings on the progress of methods for determining relative fragility of motor vehicles. The NAIC, working with the individual States, is preparing to develop the needed regulatory techniques and statistics to implement the fragility index concepts in ratemaking.

Of course, the translating of damageability statistics into automobile insurance rates would not in itself result in lower overall costs in operating an automobile. It will, however, permit us to redistribute a greater proportion of the same overall economic losses from property damage to those persons who choose to purchase autos with greater susceptibility to damage.

Furthermore, to the extent that the purchasers of automobile insurance consider the relative insurance premiums attributable to damageability in purchasing their cars, the automobile insurance mechanism can contribute to driving those poorly designed cars out of the market and thereby reduce overall economic cost including that of insurance. This, of course, depends upon whether there is a corresponding rise—and to what extent—in cost of designing and manufacturing less damage prone cars and/or in personal injury damage.

Incidentally, it may be appropriate to note some of the factors insurance regulators will be watching as ratemaking based on damageability develops:

(1) Since most individual insurers are not large enough to develop credible statistics, they will find it necessary to pool their data in order to rate older models from real world experience. Insurance departments will be regulating this combining process to protect competition in rates.

(2) Insurance department personnel will be closely examining the results of the prescribed tests to satisfy themselves that there is jurisdiction for rating auto makes and models differently.

(3) Determining the susceptibility of new model cars to damage will require the use of advanced computer techniques. Since many insurers do not have the necessary facilities available they will be using data centrally determined. Departments will wish to satisfy themselves that this data is properly used.

(4) Ratemaking based on relative fragility will result in a different classification system. The departments will be watching these classifications closely to be certain they are equitable and that individual consumers are properly classified.

S. 976 attacks this overall problem head on by authorizing DOT to make tests, set minimum standards, make results available to insurers and regulators for ratemaking purposes, etc. The NAIC endorses the general concepts and objectives embodied in this bill. We would suggest, however, that the bill make explicit direction or authority for DOT to consult with both the insurance industry and the insurance regulators or a continuous basis so that the initial and future test data compiled therefrom and other information will be developed in a form that is usable in automobile insurance ratemaking.

I would like to personally comment specifically on several provisions of S. 976 at this time:

(1) The provisions found in section 125 (b) and (c) are particularly significant and should be expanded to give the Secretary the widest possible powers and unquestioned authority to act in a direct and definitive manner.

(2) Section 127 is particularly important to insure regulators and I suggest that you amend the bill to provide for an official relationship between the Secretary and the State insurance commissioners in at least two areas: (*a*) the Secretary should be required to consult with representatives of the insurance commissioners from time to time and (*b*) the Secretary should be required to officially report his findings to the insurance commissioners of the various States.

I am confident that this kind of relationship will be welcomed by the commissioners and also that they will move rapidly to require implementation of rating techniques based on the damageability study

(3) Section 128 appears to also be a key section and I commend you for such a provision. It should be of great assistance in meeting consumer needs.

(4) The provision to section 501 that requires an independent system of automobile inspection, though idealistically sound, has a measure of impracticality involved in it in my opinion. To require the kind of expense involved in establishing the system contemplated in S. 976 is sure to generate enough opposition to stall if not stop the whole inspection program in many places.

I support your concept, but wonder if you shouldn't modify it to make the proposal more palatable and less expensive in order to receive the broadest support from the States.

I would also suggest there should be some official recognition made in the bill which would require that accident data collection systems be established to show the speed, the angle of impact, the frequency of automobile accidents, and other data which would be particularly important in determining the accuracy of the data which might be included in the damageability index.

In a very hurried way, Senator Moss, that concludes my formal testimony.

Senator Moss. Thank you, Mr. Worthington. I think we will have some questions.

I have to be absent for a short period of time.

Mr. Sutcliffe may have some questions while I am away and I will come back and follow up if there are some he didn't get to that I think ought to be in the record.

Moreover, I might suggest, since you have cooperated by summarizing that rather lengthy statement, it may be that after we have read it in full, we may want to submit a few questions to you, sending them to you in writing, to have you respond.

I am sure you would be glad to do that?

Mr. WORTHINGTON. We would have no objection to that, Senator, we would be pleased to.

Senator Moss. Thank you, and if you will excuse me, I will leave Mr. Sutcliffe here and ask if he has any questions he wants to ask in the interim.

Mr. SUTCLIFFE. Mr. Worthington, before we begin any questioning I want to ask whether or not the arrangement that Senator Moss suggested is satisfactory with you?

Mr. WORTHINGTON. I have no objection.

Mr. SUTCLIFFE. Thank you.

The argument that you pose, suggesting that the States be allowed to test various approaches certainly has some appeal from a theoretical standpoint. There are many unanswered questions in this area of considering automobile reform legislation. When you set about to experiment in the laboratory or in a State, do you need to have some guidelines as to the kind of experiment that should take place and the kinds of goals that you would hope would be met through the experimentation, particularly if you are trying to improve the present reparation system or do you think that it can just take place without that guideline, without that kind of direction, so in order to obtain the results of the experiment?

Could you comment generally on how you can undertake this on an experimental basis, assuming this is one of your arguments, and still end up with a valid experiment?

Mr. WORTHINGTON. I would be glad to.

To use as examples some proposals that are already before us, in Massachusetts they passed one form of a modified no-fault system, with some additional benefits. That plan is now in effect and we are seeing some interesting results. Not enough results are in yet to make a valid observation, I don't think, about the extent to which it meets the problems. But I think it is an excellent opportunity for us to gain some experience.

It is my understanding that in the State of Florida there is a very good opportunity that some form of no-fault bill will pass, which is much different than the one in Massachusetts.

Mr. SUTCLIFFE. Let me stop you right there, so I can understand. I guess in any kind of experiment you will set it up and design it in such a fashion as to be able to test the results. Have the Massachusetts proponents of no-fault set up through their insurance regulatory mechanism or whatever a procedure whereby they can test the validity of their experiment, where they can get the information that would be useful from an experimental point of view, and if so, could you describe some of that for the committee?

Mr. WORTHINGTON. You are talking about——

Mr. SUTCLIFFE. Do you understand what I mean? In other words, you are saying there appears to be some beneficial results from an experimentation program in Massachusetts. What specifically has Massachusetts done to insure that the information which is coming out of Massachusetts about their plan has validity, measures costs, measures savings, measures redistribution of benefits to improve the problems highlighted in the Department of Transportation study?

Mr. WORTHINGTON. If you are asking was part of the program in Massachusetts a program that would require surveillance and analysis of statistics that might be developed to see how it works, I don't think that it was. There is no business, however, that I know of in the country, that generates more statistics and that has more adequate information about how it functions that are available to both the regulators and to the public, and my observation about the fact that it is providing some information that is interesting and shows it may be beneficial, is based on some of the statistics it has generated.

For example, one of the very interesting ones there has been the fact that there are fewer claims being filed now for physical damage.

Mr. SUTCLIFFE. We have had two explanations, you see. This is the reason I ask the question. Because if the approach to allowing for experimentation is going to be followed, then it seems to me that it is natural to ask what methods of collecting these statistics and validating those statistics are being provided.

We have been told by one group that the decrease in claims in the bodily injury area is a result of the constitutional test, and that the lawyers are simply holding back hoping that the constitutional challenge will be successful.

In another instance it has been explained to us that because of the unique situation in Massachusetts, many of the bodily injury claims reflected property damage claims, because it was a mandatory State

Now it seems to me that if we set out to experiment on a State-by-State basis, apart from whether or not that is a practical possibility, this committee would like to know what assurances we will have that the results from those experiments will produce meaningful information to other States or to the Federal Government in its analysis of the reform.

Mr. WORTHINGTON. I think you are asking is there going to be some supervisory person to look at it to see whether there are meaningful results?

Mr. SUTCLIFFE. Or is the NAIC itself recommending this kind of procedure to the States?

Mr. WORTHINGTON. One of the functions which I currently serve in in the NAIC as chairman of a committee called the Committee on Profitability of Liability and Property Companies. This committee is attempting to look and see what sort of things go into the determination of rates for insurance companies and how much money is sent back to the consumer, how much is generated as a result of their investments. And this kind of committee function in the NAIC will very well, I am sure, sort out the actual statistical and practical profit and public interest items that will result from the experimentations in the various States.

So I think I can say unequivocably that the NAIC, if the States continue to experiment in this manner, will watch closely to see what happens.

We have discussed briefly about whether we should attempt to design a model bill. And it is not an official policy of the NAIC, but the officers have generally agreed that at this point we should not try to design a model bill, but that rather we should observe what the different States are doing and collect the data about the effectiveness of their operations, and after a period of time then put the portions of their program which seem to work most effectively into some model guidelines that could be used by the States that are interested.

Let me go on a little bit about the experimentation. I would say the New York proposal is different than any other State proposal. Illinois has a plan before its legislature.

Mr. SUTCLIFFE. Does it differ, because it suggested that it could be done at either the State or Federal level?

Mr. WORTHINGTON. No; I think it has a completely different thrust, for example, than the one in Illinois or Iowa, because it basically does away with the tort system.

Our proposal is to preserve it, but give first-party coverage in all instances and let the insurance companies subrogate. I have said in the past and would say again that though my plan in Iowa is substantially different from the one in New York, I would hope New York would adopt their bill and give us a chance to gain some experience as a result of its operation.

I would hope Iowa and Illinois would adopt their bills, so we can compare our experience too.

Mr. SUTCLIFFE. To that point then, what mechanism would you create to monitor the cost benefit differences between the Massachusetts plan and the Illinois or Iowa plans? The cost differences, for example, between an inter-insurer subrogation provision or a cost offset provision, differences between, in Massachusetts, the $500 medical payment

entry into the tort liability system and in Illinois, no entry provision, but a limitation on intangible loss recovery once tort is entered and an offset for any mandatory first-party coverages? How are we going to get the data to analyze that kind of difference?

Because if we are going to experiment, and the argument is we will learn from experimentation, it seems to me we have to be assured we will be able to get that kind of information back.

Mr. WORTHINGTON. I think I can assure you the NAIC in its normal functions will be gathering this data through the work of its committees, through the analysis of the reports that are filed now with the insurance departments, and which are, some of which are created by private organizations.

Mr. SUTCLIFFE. Is that information oriented toward answering the kinds of questions that are being asked now, or is it more oriented toward a business operation within the existing liability system focus?

Mr. WORTHINGTON. The data we would collect, I would anticipate, would be data that would answer the questions we wanted to ask.

Mr. SUTCLIFFE. So you would have to go through some kind of reformulation.

Mr. WORTHINGTON. If the standard reporting techniques we have now are not adequate, we can easily change them to make them adequate. What I am saying basically, I suppose, is that we think we have a system set up now which could gather the information. If it doesn't, then we can modify it.

Mr. SUTCLIFFE. Will you undergo an examination of that prior to the time of finding out that it doesn't produce the information? I mean are you presently engaged in analyzing your reporting system to make sure that it does the job or will you soon be engaged in that endeavor?

Mr. WORTHINGTON. As soon as we know whether or not the Congress is going to allow us to experiment, we will immediately begin the procedures to comply with the stewardship that you have given us. I think our past record in the past few years in the NAIC at least, is indicative of the fact we will do an adequate job.

Mr. SUTCLIFFE. As to a more basic question about the need for experimentation, how much experimentation was undertaken to test the postinsolvency assessment plans that you have advocated be adopted and have been quite successful in getting adopted in many jurisdictions in this country? When you promulgated that model bill how much experimentation with that system had been undertaken before you set it in concrete, so to speak?

Mr. WORTHINGTON. Before we promulgated our model bill I think there were some six or seven States which already had a form of insolvency fund or form of guarantee fund, and we drafted our bill based on the experience that those other States had had over the past years.

Mr. SUTCLIFFE. Those were all preassessment plans, were they not?

Mr. WORTHINGTON. No; there is a plan like the one in New Jersey, I think—or was it Maryland?—Michigan and California had adopted before our model postassessment plan. One of the things that led us to try the postassessment approach was the experience that they had had with the preassessment plans, and the experience with preassessment plans was such that we felt that was not the proper way to go.

Mr. SUTCLIFFE. You mentioned your organization also includes members of the territories of this country. I noted that with interest. Have you had an opportunity to receive the views of the regulatory authorities from Puerto Rico and had a chance to evaluate that particular experiment?

Mr. WORTHINGTON. The insurance commissioner from Puerto Rico regularly attends our meetings and participates in our committee functions, and he is very vocal about his experiences in Puerto Rico and feels that it is an excellent program for his territory. He is an active participant.

Mr. SUTCLIFFE. Have you come to any conclusions based upon the experience in Puerto Rico as to any recommendation the NAIC would make to States who are going to undertake experiments in reforming their automobile compensation system?

Mr. WORTHINGTON. I think it is too early to draw any valid conclusions about the Puerto Rican situation and recommend them to other States on an official basis. Obviously most of us that are interested in it are going to look closely at it because it is an operating one, just like we will the Massachusetts plan.

Senator MOSS. Thank you for excusing me for a short time, and I am sure Mr. Sutcliffe has had a number of questions that have occured to us in listening to your testimony. One thing I wanted to ask, Mr. Worthington, is, you referred in your statement to the danger of an ill-considered national program for insurance reform. Given the Department of Transportation's study and the extensive congressional hearings, do you really think this—it is ill considered to have a bill of this type before us now?

Mr. WORTHINGTON. I suppose if I were to give a definition of what I mean by ill considered it would have to be something like this, that any proposal which would change the system which has been in effect as long as the tort system has been in effect in the United States without some measure of experimentation or some trial of a new system on a national basis would have to by definition, be ill considered.

We are not indicating that you have not studied it long enough or that learned people have not given their opinions, but rather we are just saying that by the very extent of the enormity of the program it ought to be tried someplace before it is put forth for the whole country.

Senator MOSS. Well, I wonder about the parallel between automobile insurance and health insurance. The administration recommends the State regulation in automobile insurance but recommends a national system of health insurance; why should one be treated one way and the other the other?

Mr. WORTHINGTON. We are trying to help them become consistent, Senator.

Senator MOSS. Which way?

Mr. WORTHINGTON. In favor of the State.

Senator MOSS. I was, of course, pleased to note that you recognized that there needs to be changes and there was a great change going on in the industry. Isn't it true that it is less likely that you can get a change effected in all of the State legislatures? State legislators serve for a minimum period of time, and they are all employed in other lines of employment, and, as has been said, they are subject perhaps

to lobbying pressures more strongly than national legislators. Doesn't that argue against depending on the States to make the changes?

Mr. WORTHINGTON. I think not, Senator, for a couple of reasons. One is that in recent years in reference to insurance matters the States have responded quite well to the problems as they have been called to our attention. Mr. Sutcliffe mentioned a proposed national guarantee fund. Some 38 States have now adopted a form of proposals which would protect people from insolvencies of insurers in the period of 18 months. We have reason to believe that nearly all States will have this kind of proposal in short order. And this is while Congress is still deciding whether or not to do it. So we have acted really more rapidly than the Congress has in this matter.

When the problem of conglomerates dipping into the surplus of insurance companies became prevalent we began to draft a model bill to regulate insurance-holding companies so the conglomerates and insurance interests could not, without regulatory involvement, dip in and take surplus which had been made for the benefit of the policyholders.

Nearly all insurance-holding companies in the United States are now effectively regulated by the insurance-holding company bill. There are others where we have not been so successful, but where there has been a major national problem we have responded. And my testimony before you is such that again I want to restate that if the States do not act, I would be one of the first people to ask Congress to act. But I think that the States are bearing their stewardship responsibility in reference to insurance regulation adequately and resourcefully, and that only until it can be shown that they are not should you move in and act.

And the bill that is proposed would alter significantly the regulation of insurance other than providing the kind of benefits you want to provide. We think we can provide those same benefits in an expeditious manner without thrusting on people the kind of duplicatory, regulatory mechanism which would have to be imposed.

Senator MOSS. Doesn't this no-fault problem really extend beyond State lines? It is not confined to any particular area or any particular group. Isn't this then a major policy decision of the type that ought to be made on the national level by the National Congress?

Mr. WORTHINGTON. I do not think that it should necessarily. For example, if a person in Iowa were to buy a policy under the proposed Iowa plan and travel to Illinois, or travel to New York, or travel to Massachusetts or Florida, somewhere else that had a different kind of plan, it would be a relatively easy matter for the insurance carriers writing policies in any State to put riders on the policy that would give the people the coverage which would be necessary for whatever State they were driving in just like they have to do with Canada now. I do not think that the crossing of State lines is as significant a problem as it might be; it could be handled with relatively little complication and little administrative problem.

The people in rural States, for example, have many different kinds of problems than those that live in the urban centers of our country. And the no-fault insurance program which would be adequate and which would be meaningful to the people in rural Iowa, for example

may not be adequate and may not be appropriate for the people living in Detroit or Manhattan or Los Angeles.

On the other side of the coin, if the bill is drafted to be in between both of them, it really meets neither of their needs. We think they need to be geared more definitely toward the people who will receive the benefits.

Senator Moss. Yes, but your rural resident of Iowa is not always driving around rural Iowa; he drives off to Chicago or Detroit or someplace like that.

Mr. WORTHINGTON. Right. I am saying it is a relatively easy administrative matter to include, as a provision of his policy, minimum coverage for whatever State he happens to be driving in. A man who commuted between one State and another State would obviously have an easy time getting his policy amended because that is something he would just have to have. The companies can do it with little difficulty. The regulators can assist them in this; we are experienced in that matter already because we do it in other areas.

Senator Moss. But if one State has a no-fault rule and his insurance is written for a State that does not have that but has the traditional tort requirement—what law is applied to him? He is driving in a no-fault State, but his insurance policy is not geared to that; can this be easily adapted?

Mr. WORTHINGTON. Yes; it would. He would have a policy obviously in the State he lives in, which would meet those rules. And there would be as a provision of that policy a rider that would say something to the effect that the provisions of this policy shall meet the minimum requirements for whatever State in which he may be involved in an accident, very simply.

Obviously the lawyers would make it longer and more complicated than that, but very simply that is what it would consist of. So if he were in a no-fault State and had an accident in a fault State, he would have the minimum requirements in that State.

Senator Moss. There might be a little problem in the rule of law they apply, the rule of proof and so on. But I acknowledge your view that it could be readily adapted.

We do appreciate your coming to testify before the committee and preparing such a well documented and full statement that will be a great addition to our record.

Thank you very much.

Thank you, gentlemen, for coming.

(The statement follows:)

STATEMENT OF LORNE R. WORTHINGTON, INSURANCE COMMISSIONER OF THE STATE OF IOWA, ON BEHALF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

My name is Lorne R. Worthington. Today I am appearing on behalf of the National Association of Insurance Commissioners, commonly referred to as the NAIC, both as the Insurance Commissioner of the State of Iowa and as President of the NAIC. Having its inception in and regular meetings since 1871, the NAIC is the oldest voluntary association of state officials. It includes the principal insurance regulatory authorities of the 50 states, the District of Columbia, and the territories of the United States.

I shall deal with each of the matters before your Committee separately and start by giving my comments on the Uniform Motor Vehicle Insurance Act and the Administration's proposed Concurrent Resolution.

1. THE ISSUE

The Uniform Motor Vehicle Insurance Act would create a federally mandated motor vehicle insurance system predicated on the no fault concept for bodily injury. The statute, among other things, would prescribe the minimum coverage which motorists would be required to purchase. In contrast, although the Administration has tentatively endorsed the no fault concept, it has concluded that "mere speculation without actual observation of experience with a new plan is an inadequate basis for massive, uniform national reform: and that the federal assumption of the current state regulatory authority over automobile insurance poses great issues and consequences and is highly undesirable."[1] The Administration recommends that solutions, built upon specified general principles, evolve at the state level to permit experimentation and testing of different approaches. *Thus the basic issue is joined—i.e. what is the most appropriate approach to test and/or implement the no fault concept.*

2. NAIC POSITION ON THE NO FAULT CONCEPT

At the outset, let me indicate the perspective from which the NAIC, as an association of state insurance regulators, views the fault versus no fault concept. The tort liability system is a legal system which is separate and distinct from the automobile insurance system. When the first automobile insurance policy was written prior to 1900, the fault concept was well embedded. The automobile insurance system, and the regulation thereof, of necessity, has in large part been engrafted on and molded by the broader legal environment in which it finds itself. As a consequence, automobile insurance was originally premised on the concept of protecting a person from economic disaster resulting from legal liability—by defending against claims and paying those adjudged to be valid. Only incidentally was the combination of the legal and insurance systems thought of in terms of providing reparation to the victim. In more recent years, there has been a shift in concept. Increasing attention has been focused on the plight of the victim. The inquiry now centers on how dependent upon fault the reparation system should be.

Obviously, the questions being posed extend far beyond the interests of automobile insurance and its regulation. Numerous groups are interested in the ultimate result. These include the policyholder, the claimants, the legal profession, the providers of medical services, insurers, agents, unions, etc. Because of the many groups involved, the extensive diversity within such groups, and the complexity of the issues involved, a wide range of conflicting attitudes and objectives exists. The NAIC, following a comprehensive background study by its Central Office staff, adopted a position statement which, among other things, said that question of fault upon non fault "is an issue involving wide spread ramifications far beyond the traditional confines and insurance regulations . . .

" 'The decision as to whether the present system should be reformed is not a legal decision nor is it a statistical one; *it is a question of values.*'

"Thus the type of system adopted is a broad question of public policy.

"Thus NAIC, therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternative on a state-by-state basis."[2]

Our responsibility as regulators is a limited one. If private enterprise is chosen as the implementing mechanism (whether the third party legal system is retained, modified, or eliminated), our function would continue to be regulation in the interest of a sound, efficient, and equitable system on behalf of the insurance consuming public.

Incidentally, state insurance regulation has no vested interest in either eliminating or continuing the third party legal liability system for automobile insurance. We currently oversee both fault and no fault type coverages. What is ultimately in the best interest of the public is what we favor and support. The problem is determining what is ultimately in the public interest.

Let me add parenthetically that I personally favor the adoption of no fault laws on a state-by-state basis and that I think the need for such laws is of great urgency.

---

[1] House Concurrent Resolution 241, 92nd Congress, 1st Sess. (1971).

[2] NAIC Statement of Position on Automobile Insurance, *Report of the Special Committee on Automobile Insurance Problems,* June 16, 1969, p. 17. The report was adopted by the NAIC in June 1969. In addition, the report contains the staff background study; a copy of the report is submitted for the record.

3. THE STATE-BY-STATE APPROACH

While we as insurance regulators will not be the ultimate arbiters as to what constitutes the most appropriate reparation system in terms of public policy objectives, we do occupy a unique vantage point for observing the existing system. State insurance departments regulate insurers, examine their operations, approve policy forms, review policyholder and claimholder complaints, and respond to all manner of consumer needs. Consequently, we have a continuing opportunity to closely observe the workings of the insurance mechanism and to do so from the public's viewpoint. Thus, in the sense, as well as from reviewing the studies made by the NAIC, DOT and individual insurance departments, we feel our observations will contribute to your deliberations.

The fault versus no fault concept poses numerous complex and difficult issues. Among the factors requiring primary consideration are finding a means to assure that payments are made promptly, that the distribution of claims payments is an equitable one, and that a greater percentage of each premium dollar is paid out to victims.

In addition, consideration must be given to: overlapping coverages and premiums, flexibility, and impact on rehabilitation. Implicit in these factors are conflicting attitudes and objectives. Public clamor over increased automobile insurance premiums has significantly added to the pressure for change. Proponents of no fault are urging that virtually all injuries be compensated regardless of fault. These are conflicting objectives—i.e. lower cost versus increased benefits. Thus a basic question becomes what benefits the public wants, what benefits the public is willing to forego, and what cost level the public is willing to accept.

The final report of the Department of Transportation, as well as Secretary Volpe's presentation, highlighted the multiplicity of options confronting us and the need for experimentation. For example, the report named six basic areas of consideration, each area involving numerous subconsiderations within itself: (1) the legal rule governing reparations, (2) the role of insurance, (3) the kinds of losses to be compensated, (4) private versus social insurance, (5) compulsory versus voluntary insurance, and (6) insurance and the loss minimization objectives.[3] Alternative approaches raised include (1) retain the status quo, (2) improve the present tort legal liability system (e.g. judicial reform, shift to comparative negligence, regulate contingency fees, etc.), (3) rely on evolutionary reform by combining fault and no fault coverages, (4) establish a total no fault system, and (5) utilize government insurance.[4]

In spite of the mass of research conducted, the general public has no clear concept of what is involved or the ramifications posed by the various alternative methods. The DOT report's section on public opinion makes this quite obvious:

"In general, these surveys indicate that *the public has mixed attitudes* about the performance of various aspects of the system, is generally ill-informed about the current system, and, on the whole, shows an openness to change when made aware of alternatives to the present system."[5] (Emphasis supplied)

In short, a clear and informed consensus has not yet emerged.

With these and other factors in mind, the NAIC has said:

"Because factors, concepts, values, and attitudes vary from locale to locale, this public policy decision can best be made on a state-by-state basis rather than at the federal level. This, in turn, affords the opportunity to test and experiment with different approaches on a limited basis. After a period of experience with different plans, the better solution(s) will emerge. *The NAIC, therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternatives on a state-by-state basis.* Whatever the system, the various state insurance regulators can regulate for the public interest most effectively because of the varied needs of a differing populace in the several states. *The public, by its responses to legislation and by the decisions it makes in the market place in accepting or rejecting various coverages and services offered, will ultimately settle the issue.*"[6] (Emphasis supplied)

This remains the judgment of the NAIC. Furthermore, it has been subsequently

[3] See DOT. *Motor Vehicle Crash Losses and their Compensation in the United States:* a Report to the President and Congress 101–111 (March 1971) (hereafter cited as the DOT Report).

[4] See *id* at 112–127.

[5] *Id* at 81.

[6] NAIC Statement of Position, note 2 supra at 17.

fortified by both Secretary Volpe's statement before the Senate Commerce committee [7] and by the DOT report which said:

"Moving in stages toward such a goal would allow us to test its virtues and discover its faults, thereby giving us new knowledge that could serve to modify the goal itself. A little observation is worth a great deal of speculation, and State experience with diverse plans will provide us with that opportunity for pilot project testing which must precede massive reform." [8]

Furthermore, Secretary Volpe said:

"First, it seems clear, at least to us, that *there remains much legitimate uncertainty about how far and how fast the public wants or is willing to go* in changing the reparations system. It is also clear that *there exists genuine and warranted concern as to the unknown and essentially unknowable price and cost implications of any major change in the system*, which of course would ultimately affect the cost and quality of service to consumers of insurance. Regulators and other responsible public officials would appear to share these feelings. We, ourselves, don't claim to have definite answers to these questions either. As a result, it seems to us that we should seek change through State action, but consistent with the broad outlines or principles of a system such as that described below. We need not and do not insist that a single reform system be imposed upon all the States. The experience of the States should have much to tell us about the most desirable final configuration of the motor vehicle reparations system." [9] (Emphasis supplied)

In brief, we simply don't know at this point what the answer or combinations of answers are. With all due respect to the advocates of the federal no-fault plan, we submit that no one knows the answers to these questions (and others which could be posed)—and until we do, no one knows what final form a national program should take.

4. CAVEATS ON FEDERAL MANDATED STANDARDS AND VOLUNTARY GUIDELINES

Secretary Volpe urged that change commence now and the Administration is supporting a joint concurrent resolution putting the states on notice that they are expected to resolve this problem within a reasonable period of time. We don't disagree that some change is needed, although the magnitude or direction of change is subject to intense debate.

a. *Immediate Uniform Massive Change is Premature.* At the one extreme the proposed Uniform Motor Vehicle Insurance Act would establish rigid statutory standards as to what must be in an automobile insurance policy. Such an approach has the practical effect of destroying flexibility and tends to freeze in limitations in coverage.[10] Perhaps even worse, the uniformity imposed would preclude the consuming public from the opportunity to register its choice over a meaningful period of time and thereby make the insurance mechanism responsible to the public's evolving concept as to the appropriate balance between benefits and costs.

b. *The Cost Factor.* No matter how hard we try, it is either impossible or foolhardy to ignore the ramifications of the cost of any given program or alternative. As the NAIC staff study pointed out:

"In appraising the worth of any system, a very important consideration is the cost of such system as compared to the cost of possible alternatives. Public clamor over increasing automobile insurance premium levels has significantly added to the pressure for change.

". . . the NAIC strongly supports efforts to reduce the cost of automobile insurance to the public to the extent that such reductions are consistent with other major objectives. It must be remembered that no program can meet all demands since the demands themselves are frequently in conflict. It is virtually impossible to pay more accident victims more dollars and reduce costs at the same time. Thus, whatever changes are recommended they should be evaluated with a view

[7] "Nor will I attempt to assess here the relative merits of all the various reform plans that have been offered as alternatives to the present system. In this thicket, there is plainly much less of a consensus; the complexity of the subject and its problems make possible an almost limitless number of combinations, permutations and variations of recovery rules, insurance coverages, etc." Statement of Secretary of Transportation John A. Volpe before the Senate Commerce Committee, March 18, 1971, p. 2.

[8] *DOT Report*, p. 133.

[9] Volpe's statement, note 7 supra at 3.

[10] The chief advantage of a standard policy is that it facilitates prior comparability. In the past, uniform terms have often led to uniform and non-competitive prices. Competition in policy terms usually leads to more innovative contrasts and broader terms.

towards *the best balance possible between conflicting objectives and particularly between the objectives of increased benefits and cost savings.*"[11] (Emphasis supplied)

As the DOT report noted, "consumer attitudes about automobile insurance have shown its cost to lead all other concerns."[12] Consequently any program which does not afford the consumer an opportunity to relate the benefits he desires to the costs he must pay may create more public dissatisfaction than it eliminates.

This point is particularly relevant to a program such as automobile insurance whose costs are bound to increase. The DOT report has recognized:

"Perhaps the most pervasive influence upon automobile insurance as a public issue in recent years has been inflation."[13]

In effect, an automobile insurance company is a mass purchaser of a variety of goods and services such as medical, hospital, lawyer and court services, wage replacements, repair goods and services, etc. As the cost of these elements increase, the cost of insurance must do the same.[14]

"If such costs continue to inflate (and there is little reason to hope otherwise), initial cost savings resulting from changing the system would soon be forgotten and public frustration with costs would arise anew. This suggests that, while efficiencies in the system are important, drastic changes aimed at reducing premium levels (or lessening increases) may result in only temporary relief.[15]

Much of the American motoring public is being led to believe that no fault is a panacea, bringing with it broader coverage, payment in all cases, and lower costs. The idea that something must be given up in order to get something else back has not yet registered in many quarters. The passage of the proposed legislation, without a preliminary period of trial and error during which the public would become educated as to its advantages and disadvantages and would be able to relate its wants to its costs by choice in the free market, could set the stage for massive public disenchantment with all who were connected with its enactment.

The establishment of minimum mandatory benefits, such as those being discussed, in a federal statute poses far reaching, long-term ramifications. In fact, the same can be said, although perhaps to a lesser extent, as to the establishment of federal guidelines to which the states should strive since such guidelines would tend to become the minimum norm of consumers' expectations as to what they are "entitled to: by right."

If the cost of such benefits exceeds what the public is willing to pay, federal subsidies may be necessary and you should be prepared to recognize that potential need.

c. *Cause for Skepticism.* Though we don't question the conviction of the proponents of this proopsed federal act as to the rightness of their solution, past experience with massive federal programs entitles us to voice some skepticism. For example, we launched into Medicare and Medicaid without an adequate exploration and testing to ascertain the cost implications; the impact on the delivery of health, etc. The program is now being devoured by expenses, the demand on medical facilities has skyrocketed, and now a few short years later persons are advocating scrapping these programs and launching into something else. In conjunction with national health plans it has been said:

"There must be a critical review not only of the estimated cost of such proposals but with the financing mechanisms as well as with the services which are expected to be provided. At the moment, in the rush to design these new proposals, it appears to be forgotten that the planners of Medicare and Medicaid grossly underestimated the cost of these programs. They also gave little heed to the existing shortage of health manpower and facilities which had been seriously aggravated by these new programs."[16]

This observation could apply with equal force to the proposals for federal automobile insurance reform. Forecasts as to the costs of this system are necessarily conjectural. It is only by a process of trial and error that the public will ascertain the true costs and only by experimental efforts at the state level can the best solution be found and earlier mistakes more readily rectified before they assume unmanageable proportions.

---

[11] NAIC Report, note 2 supra at 108.
[12] DOT Report at 138.
[13] *Id* at 61.
[14] E.g. over the past decade, doctors' fees and hospital daily service charges increased 58% and 155% respectively. *Id* at 61.
[15] NAIC report, note 2 supra 108.
[16] Wheatley, "Promises and Problems of National Health Insurance," an address before the American Pension Conference, N.Y., N.Y., March 1971.

This example, as well as other examples which could be named, is not cited in criticism of the results which were sought but rather as an example of what occurs when massive federal involvement and planning on a nationwide uniform basis in complex areas precedes or supersedes the market mechanism as an allocator of economic resources. Original concepts which were so convincingly put forth have often proved to be wrong, but the adverse consequences of the error have been "frozen in" over a period of time.

Let's avoid making a similar mistake as to automobile insurance, which involves 100 million automobile drivers and nearly all American families. This is the message Secretary Volpe is conveying when he emphasizes the need for experimentation. Certainly the Ontario Experience—where motorist rejected coverage combining the fault and no fault concepts put forth on a voluntary basis—should give one pause in mandating a fixed uniform standard on a nationwide basis.

d. *Federal Guidelines.* Although we support the state-by-state approach of the Administration, we do have reservations concerning the adoption of federal guidelines or objectives such as those in the proposed concurrent resolution. Such standards, in addition to the concern previously mentioned above as to the creation of certain expectations, tend to prejudge what the market place has not yet passed upon—e.g. the choice of an essentially no fault over a reformed fault system, the determination that automobile insurance should be the primary coverage, etc. Such standards tend to restrict the range in which proposed changes would fall and hence the range of consumer choice. This does not say that the choices implicit in the standards proposed are incorrect but rather they are premature. If there are to be minimum federal standards, we feel that broader standards which give greater meaning to experimentation should be adopted. The minimum criteria for any automobile insurance system as stated by the NAIC in its Statement of Position on Automobile Insurance could be a sample of the kind of federal standards that would be meaningful. [17] Nevertheless, a resolution by Congress expressing both the need and its will for prompt state action in exploring, testing and implementing improvements in the existing system would be an appropriate indication of the sense of Congress. This would serve notice on both the business and the states that progress is expected.

5. A TIME FOR CHANGE AND CURRENT MOMENTUM

All of this is not to argue for the status quo, nor to minimize the impact of the landmark DOT study, congressional hearings, academic works, state insurance departments' efforts and NAIC research. Quite to the contrary, each of these have significantly contributed to the emerging consensus that improvements are needed and have pointed out possible directions which should be considered and tested. Furthermore, the NAIC supports the Administration's position of recognizing not only the worth but the virtual necessity of a state-by-state approach until a clearer picture emerges as to the right answers—an answer which may vary from state to state or region to region.

To some proponents of the Uniform Motor Vehicle Insurance Act, the state-by-state approach is tantamount to doing nothing. This is incorrect. In addition to the "prod" from Congress in the form of a Congressional resolution, the states are receiving the same pressures for change that Congress receives. Few if any argue for the status quo. The basic research study is done. As of the early part of this month, we understand that no less than 28 states are now considering no fault or modified no fault legislation. (Other states have created study commissions. Some may be waiting to capitalize on the experimentation of others and others no doubt are waiting to see if Congress is going to preempt the field or give the states time to act.) The proposals range from the complete no

[17] "Whatever is decided as to the appropriate legal framework, the NAIC believes that any automobile insurance system should include as a minimum the following elements:

(*a*) ready access to insurance for all licensed drivers at prices which are reasonable with a means to purchase insurance through an assigned risk mechanism for those who cannot purchase it in the voluntary market.

(*b*) provision for prompt payment of basic economic loss and improved claims procedures

(*c*) provision for protection from insolvencies, uninsured motorists and hit-and-run drivers, etc.

(*d*) meaningful classifications which are broad enough to spread risks and yet not so broad as to lessen availability of coverage.

(*e*) a responsive and meaningful pricing and marketing system.

(*f*) protection for the insured against arbitrary and unfair cancellation and nonrenewal

(*g*) full disclosure of the nature of the coverage to the purchaser."

fault program of the American Automobile Insurance Association to those which primarily seek to improve the existing legal liability system such as the American Trial Lawyer's Reform package with all sorts of variations in between.

Secretary Volpe, in his statement before the Senate Commerce Committee said:

"Further change in the auto reparation system at the state level has clearly moved off dead center and would appear to be achieving some momentum. I could not have made that statement a year ago. I think this constructive move should be encouraged, perhaps guided and helped but not preempted by federal action." [15]

The activities mentioned above support the basis for the Secretary's beliefs and clearly demonstrate the heightened momentum. At this point, with so many different and sometimes conflicting ideas "floating around," and so much uncertainty as to what should be done, it is too early to predict what the states will and will not do. But events are moving sufficiently so, in our judgment, to warrant giving the states an adequate opportunity to act. If past experience is any guide, a variety of approaches will be tested and the best features of the various programs will emerge. At that point, the trend will be towards a more uniform system throughout the various states.

Of course, during the period of experimentation, we would be going through a phase when a number of different plans would be used in a number of different states. America is a mobile nation. Complications can be expected in the administration of a system as significant portions of the public journey across state lines. During this period, insurers operating across state borders will have to provide for the variation in coverage through appropriate endorsements. It will present some administrative problems for the insurers and regulatory problems for the states. But this is a small price to pay compared to the damage which could occur if an ill-considered national program was imposed upon the nation in one installment from the top.

6. FEDERAL REGULATORY INTERVENTION

Although most attention on the proposed Uniform Motor Vehicle Insurance Act has focused on the mandating of the no fault concept, the Act poses another fundamental issue—i.e. state versus federal regulation of automobile insurance. There can be no mistake as to the pervasive regulatory power vested in the Secretary of Transportation. For example, the Secretary would (1) determine and approve the financial substitutes for insurance (i.e. bonds, self insurance), (2) determine by rules and regulations the percentage of responsibility for net economic loss assigned to motor vehicles larger than ordinary passenger cars, (3) approve policy terms, conditions, exclusions, and deductibles, (4) promulgate a uniform statistical plan for compilation of claims and loss experience which every insurer must follow, (5) require standard uniform and standard minimal policy provisions, classes of risks, and rating territories, (6) prescribe rules and regulations under which insurers would submit premiums being charged for each class of risk in each rating territory, (7) make available a comparison of insurers' rates based upon claim and loss experience, (8) organize an assigned claims bureau in each state, and (9) make, amend, and repeal rules and regulations as he deems necessary.

Under existing state law, the insurance department possesses comprehensive regulatory authority over insurers doing business therein. For example, state regulation encompasses these elements: (1) the incorporation of companies (qualifications, capital and surplus requirements, etc.), (2) the specification of required reserves, (3) the specifications of the areas in which insurance assets may be invested, (4) the approval of policy forms, (5) the supervision or monitoring of rates (for adequacy, excessiveness and non-discrimination), (6) the collection of statistics and the making of reports, (7) the examination of companies to determine if reserves are adequate, investments comply with the law, claim practices are satisfactory, etc., (8) the licensing and supervision of those who sell insurance, and (9) provision for residual coverages such as the assigned risk plans.

The regulatory overlap is substantial and clear. Confusion, waste, an increasingly complex system, and extra cost to the taxpayer in administering the automobile insurance is bound to result. We submit that such a dual system is not in the public interest.

[15] Volpe's statement, note 7 supra at 4.

entry into the tort liability system and in Illinois, no entry provision, but a limitation on intangible loss recovery once tort is entered and an offset for any mandatory first-party coverages? How are we going to get the data to analyze that kind of difference?

Because if we are going to experiment, and the argument is we will learn from experimentation, it seems to me we have to be assured we will be able to get that kind of information back.

Mr. WORTHINGTON. I think I can assure you the NAIC in its normal functions will be gathering this data through the work of its committees, through the analysis of the reports that are filed now with the insurance departments, and which are, some of which are created by private organizations.

Mr. SUTCLIFFE. Is that information oriented toward answering the kinds of questions that are being asked now, or is it more oriented toward a business operation within the existing liability system focus?

Mr. WORTHINGTON. The data we would collect, I would anticipate, would be data that would answer the questions we wanted to ask.

Mr. SUTCLIFFE. So you would have to go through some kind of reformulation.

Mr. WORTHINGTON. If the standard reporting techniques we have now are not adequate, we can easily change them to make them adequate. What I am saying basically, I suppose, is that we think we have a system set up now which could gather the information. If it doesn't, then we can modify it.

Mr. SUTCLIFFE. Will you undergo an examination of that prior to the time of finding out that it doesn't produce the information? I mean are you presently engaged in analyzing your reporting system to make sure that it does the job or will you soon be engaged in that endeavor?

Mr. WORTHINGTON. As soon as we know whether or not the Congress is going to allow us to experiment, we will immediately begin the procedures to comply with the stewardship that you have given us. I think our past record in the past few years in the NAIC at least, is indicative of the fact we will do an adequate job.

Mr. SUTCLIFFE. As to a more basic question about the need for experimentation, how much experimentation was undertaken to test the postinsolvency assessment plans that you have advocated be adopted and have been quite successful in getting adopted in many jurisdictions in this country? When you promulgated that model bill how much experimentation with that system had been undertaken before you set it in concrete, so to speak?

Mr. WORTHINGTON. Before we promulgated our model bill I think there were some six or seven States which already had a form of insolvency fund or form of guarantee fund, and we drafted our bill based on the experience that those other States had had over the past years.

Mr. SUTCLIFFE. Those were all preassessment plans, were they not?

Mr. WORTHINGTON. No; there is a plan like the one in New Jersey, I think—or was it Maryland?—Michigan and California had adopted before our model postassessment plan. One of the things that led us to try the postassessment approach was the experience that they had had with the preassessment plans, and the experience with preassessment plans was such that we felt that was not the proper way to go.

Mr. SUTCLIFFE. You mentioned your organization also includes members of the territories of this country. I noted that with interest. Have you had an opportunity to receive the views of the regulatory authorities from Puerto Rico and had a chance to evaluate that particular experiment?

Mr. WORTHINGTON. The insurance commissioner from Puerto Rico regularly attends our meetings and participates in our committee functions, and he is very vocal about his experiences in Puerto Rico and feels that it is an excellent program for his territory. He is an active participant.

Mr. SUTCLIFFE. Have you come to any conclusions based upon the experience in Puerto Rico as to any recommendation the NAIC would make to States who are going to undertake experiments in reforming their automobile compensation system?

Mr. WORTHINGTON. I think it is too early to draw any valid conclusions about the Puerto Rican situation and recommend them to other States on an official basis. Obviously most of us that are interested in it are going to look closely at it because it is an operating one, just like we will the Massachusetts plan.

Senator MOSS. Thank you for excusing me for a short time, and I am sure Mr. Sutcliffe has had a number of questions that have occured to us in listening to your testimony. One thing I wanted to ask, Mr. Worthington, is, you referred in your statement to the danger of an ill-considered national program for insurance reform. Given the Department of Transportation's study and the extensive congressional hearings, do you really think this—it is ill considered to have a bill of this type before us now?

Mr. WORTHINGTON. I suppose if I were to give a definition of what I mean by ill considered it would have to be something like this, that any proposal which would change the system which has been in effect as long as the tort system has been in effect in the United States without some measure of experimentation or some trial of a new system on a national basis would have to by definition, be ill considered.

We are not indicating that you have not studied it long enough or that learned people have not given their opinions, but rather we are just saying that by the very extent of the enormity of the program it ought to be tried someplace before it is put forth for the whole country.

Senator MOSS. Well, I wonder about the parallel between automobile insurance and health insurance. The administration recommends the State regulation in automobile insurance but recommends a national system of health insurance; why should one be treated one way and the other the other?

Mr. WORTHINGTON. We are trying to help them become consistent, Senator.

Senator MOSS. Which way?

Mr. WORTHINGTON. In favor of the State.

Senator MOSS. I was, of course, pleased to note that you recognized that there needs to be changes and there was a great change going on in the industry. Isn't it true that it is less likely that you can get a change effected in all of the State legislatures? State legislators serve for a minimum period of time, and they are all employed in other lines of employment, and, as has been said, they are subject perhaps

to lobbying pressures more strongly than national legislators. Doesn't that argue against depending on the States to make the changes?

Mr. WORTHINGTON. I think not, Senator, for a couple of reasons. One is that in recent years in reference to insurance matters the States have responded quite well to the problems as they have been called to our attention. Mr. Sutcliffe mentioned a proposed national guarantee fund. Some 38 States have now adopted a form of proposals which would protect people from insolvencies of insurers in the period of 18 months. We have reason to believe that nearly all States will have this kind of proposal in short order. And this is while Congress is still deciding whether or not to do it. So we have acted really more rapidly than the Congress has in this matter.

When the problem of conglomerates dipping into the surplus of insurance companies became prevalent we began to draft a model bill to regulate insurance-holding companies so the conglomerates and insurance interests could not, without regulatory involvement, dip in and take surplus which had been made for the benefit of the policyholders.

Nearly all insurance-holding companies in the United States are now effectively regulated by the insurance-holding company bill. There are others where we have not been so successful, but where there has been a major national problem we have responded. And my testimony before you is such that again I want to restate that if the States do not act, I would be one of the first people to ask Congress to act. But I think that the States are bearing their stewardship responsibility in reference to insurance regulation adequately and resourcefully, and that only until it can be shown that they are not should you move in and act.

And the bill that is proposed would alter significantly the regulation of insurance other than providing the kind of benefits you want to provide. We think we can provide those same benefits in an expeditious manner without thrusting on people the kind of duplicatory regulatory mechanism which would have to be imposed.

Senator MOSS. Doesn't this no-fault problem really extend beyond State lines? It is not confined to any particular area or any particular group. Isn't this then a major policy decision of the type that ought to be made on the national level by the National Congress?

Mr. WORTHINGTON. I do not think that it should necessarily. For example, if a person in Iowa were to buy a policy under the proposed Iowa plan and travel to Illinois, or travel to New York, or travel to Massachusetts or Florida, somewhere else that had a different kind of plan, it would be a relatively easy matter for the insurance carriers writing policies in any State to put riders on the policy that would give the people the coverage which would be necessary for whatever State they were driving in just like they have to do with Canada now. I do not think that the crossing of State lines is as significant a problem as it might be; it could be handled with relatively little complication and little administrative problem.

The people in rural States, for example, have many different kinds of problems than those that live in the urban centers of our country. And the no-fault insurance program which would be adequate and which would be meaningful to the people in rural Iowa, for example,

may not be adequate and may not be appropriate for the people living in Detroit or Manhattan or Los Angeles.

On the other side of the coin, if the bill is drafted to be in between both of them, it really meets neither of their needs. We think they need to be geared more definitely toward the people who will receive the benefits.

Senator Moss. Yes, but your rural resident of Iowa is not always driving around rural Iowa; he drives off to Chicago or Detroit or someplace like that.

Mr. WORTHINGTON. Right. I am saying it is a relatively easy administrative matter to include, as a provision of his policy, minimum coverage for whatever State he happens to be driving in. A man who commuted between one State and another State would obviously have an easy time getting his policy amended because that is something he would just have to have. The companies can do it with little difficulty. The regulators can assist them in this; we are experienced in that matter already because we do it in other areas.

Senator Moss. But if one State has a no-fault rule and his insurance is written for a State that does not have that but has the traditional tort requirement—what law is applied to him? He is driving in a no-fault State, but his insurance policy is not geared to that; can this be easily adapted?

Mr. WORTHINGTON. Yes; it would. He would have a policy obviously in the State he lives in, which would meet those rules. And there would be as a provision of that policy a rider that would say something to the effect that the provisions of this policy shall meet the minimum requirements for whatever State in which he may be involved in an accident, very simply.

Obviously the lawyers would make it longer and more complicated than that, but very simply that is what it would consist of. So if he were in a no-fault State and had an accident in a fault State, he would have the minimum requirements in that State.

Senator Moss. There might be a little problem in the rule of law they apply, the rule of proof and so on. But I acknowledge your view that it could be readily adapted.

We do appreciate your coming to testify before the committee and preparing such a well documented and full statement that will be a great addition to our record.

Thank you very much.

Thank you, gentlemen, for coming.

(The statement follows:)

STATEMENT OF LORNE R. WORTHINGTON, INSURANCE COMMISSIONER OF THE STATE OF IOWA, ON BEHALF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

My name is Lorne R. Worthington. Today I am appearing on behalf of the National Association of Insurance Commissioners, commonly referred to as the NAIC, both as the Insurance Commissioner of the State of Iowa and as President of the NAIC. Having its inception in and regular meetings since 1871, the NAIC is the oldest voluntary association of state officials. It includes the principal insurance regulatory authorities of the 50 states, the District of Columbia, and the territories of the United States.

I shall deal with each of the matters before your Committee separately and start by giving my comments on the Uniform Motor Vehicle Insurance Act and the Administration's proposed Concurrent Resolution.

1. THE ISSUE

The Uniform Motor Vehicle Insurance Act would create a federally mandated motor vehicle insurance system predicated on the no fault concept for bodily injury. The statute, among other things, would prescribe the minimum coverage which motorists would be required to purchase. In contrast, although the Administration has tentatively endorsed the no fault concept, it has concluded that "mere speculation without actual observation of experience with a new plan is an inadequate basis for massive, uniform national reform: and that the federal assumption of the current state regulatory authority over automobile insurance poses great issues and consequences and is highly undesirable."[1] The Administration recommends that solutions, built upon specified general principles, evolve at the state level to permit experimentation and testing of different approaches. *Thus the basic issue is joined—i.e. what is the most appropriate approach to test and/or implement the no fault concept.*

2. NAIC POSITION ON THE NO FAULT CONCEPT

At the outset, let me indicate the perspective from which the NAIC, as an association of state insurance regulators, views the fault versus no fault concept. The tort liability system is a legal system which is separate and distinct from the automobile insurance system. When the first automobile insurance policy was written prior to 1900, the fault concept was well embedded. The automobile insurance system, and the regulation thereof, of necessity, has in large part been engrafted on and molded by the broader legal environment in which it finds itself. As a consequence, automobile insurance was originally premised on the concept of protecting a person from economic disaster resulting from legal liability—by defending against claims and paying those adjudged to be valid. Only incidentally was the combination of the legal and insurance systems thought of in terms of providing reparation to the victim. In more recent years, there has been a shift in concept. Increasing attention has been focused on the plight of the victim. The inquiry now centers on how dependent upon fault the reparation system should be.

Obviously, the questions being posed extend far beyond the interests of automobile insurance and its regulation. Numerous groups are interested in the ultimate result. These include the policyholder, the claimants, the legal profession, the providers of medical services, insurers, agents, unions, etc. Because of the many groups involved, the extensive diversity within such groups, and the complexity of the issues involved, a wide range of conflicting attitudes and objectives exists. The NAIC, following a comprehensive background study by its Central Office staff, adopted a position statement which, among other things said that question of fault upon non fault "is an issue involving wide spread ramifications far beyond the traditional confines and insurance regulations . .

" 'The decision as to whether the present system should be reformed is not a legal decision nor is it a statistical one; *it is a question of values.*'

"Thus the type of system adopted is a broad question of public policy.

"Thus NAIC, therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternative on a state-by-state basis."[2]

Our responsibility as regulators is a limited one. If private enterprise is chosen as the implementing mechanism (whether the third party legal system is retained, modified, or eliminated), our function would continue to be regulation in the interest of a sound, efficient, and equitable system on behalf of the insurance consuming public.

Incidentally, state insurance regulation has no vested interest in either eliminating or continuing the third party legal liability system for automobile insurance. We currently oversee both fault and no fault type coverages. What is ultimately in the best interest of the public is what we favor and support. The problem is determining what is ultimately in the public interest.

Let me add parenthetically that I personally favor the adoption of no fault laws on a state-by-state basis and that I think the need for such laws is of grave urgency.

---

[1] House Concurrent Resolution 241, 92nd Congress, 1st Sess. (1971).

[2] NAIC Statement of Position on Automobile Insurance, *Report of the Special Committee on Automobile Insurance Problems,* June 16, 1969, p. 17. The report was adopted by the NAIC in June 1969. In addition, the report contains the staff background study. A copy of the report is submitted for the record.

3. THE STATE-BY-STATE APPROACH

While we as insurance regulators will not be the ultimate arbiters as to what constitutes the most appropriate reparation system in terms of public policy objectives, we do occupy a unique vantage point for observing the existing system. State insurance departments regulate insurers, examine their operations, approve policy forms, review policyholder and claimholder complaints, and respond to all manner of consumer needs. Consequently, we have a continuing opportunity to closely observe the workings of the insurance mechanism and to do so from the public's viewpoint. Thus, in the sense, as well as from reviewing the studies made by the NAIC, DOT and individual insurance departments, we feel our observations will contribute to your deliberations.

The fault versus no fault concept poses numerous complex and difficult issues. Among the factors requiring primary consideration are finding a means to assure that payments are made promptly, that the distribution of claims payments is an equitable one, and that a greater percentage of each premium dollar is paid out to victims.

In addition, consideration must be given to: overlapping coverages and premiums, flexibility, and impact on rehabilitation. Implicit in these factors are conflicting attitudes and objectives. Public clamor over increased automobile insurance premiums has significantly added to the pressure for change. Proponents of no fault are urging that virtually all injuries be compensated regardless of fault. These are conflicting objectives—i.e. lower cost versus increased benefits. Thus a basic question becomes what benefits the public wants, what benefits the public is willing to forego, and what cost level the public is willing to accept.

The final report of the Department of Transportation, as well as Secretary Volpe's presentation, highlighted the multiplicity of options confronting us and the need for experimentation. For example, the report named six basic areas of consideration, each area involving numerous subconsiderations within itself: (1) the legal rule governing reparations, (2) the role of insurance, (3) the kinds of losses to be compensated, (4) private versus social insurance, (5) compulsory versus voluntary insurance, and (6) insurance and the loss minimization objectives.[3] Alternative approaches raised include (1) retain the status quo, (2) improve the present tort legal liability system (e.g. judicial reform, shift to comparative negligence, regulate contingency fees, etc.), (3) rely on evolutionary reform by combining fault and no fault coverages, (4) establish a total no fault system, and (5) utilize government insurance.[4]

In spite of the mass of research conducted, the general public has no clear concept of what is involved or the ramifications posed by the various alternative methods. The DOT report's section on public opinion makes this quite obvious:

"In general, these surveys indicate that *the public has mixed attitudes* about the performance of various aspects of the system, is generally ill-informed about the current system, and, on the whole, shows an openness to change when made aware of alternatives to the present system."[5] (Emphasis supplied)

In short, a clear and informed consensus has not yet emerged.

With these and other factors in mind, the NAIC has said:

"Because factors, concepts, values, and attitudes vary from locale to locale, this public policy decision can best be made on a state-by-state basis rather than at the federal level. This, in turn, affords the opportunity to test and experiment with different approaches on a limited basis. After a period of experience with different plans, the better solution(s) will emerge. *The NAIC, therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternatives on a state-by-state basis.* Whatever the system, the various state insurance regulators can regulate for the public interest most effectively because of the varied needs of a differing populace in the several states. *The public, by its responses to legislation and by the decisions it makes in the market place in accepting or rejecting various coverages and services offered, will ultimately settle the issue.*"[6] (Emphasis supplied)

This remains the judgment of the NAIC. Furthermore, it has been subsequently

[3] See DOT. *Motor Vehicle Crash Losses and their Compensation in the United States:* a Report to the President and Congress 101–111 (March 1971) (hereafter cited as the DOT Report).

[4] See *id* at 112–127.

[5] *Id* at 81.

[6] NAIC Statement of Position, note 2 supra at 17.

fortified by both Secretary Volpe's statement before the Senate Commerce committee [7] and by the DOT report which said:

"Moving in stages toward such a goal would allow us to test its virtues and discover its faults, thereby giving us new knowledge that could serve to modify the goal itself. A little observation is worth a great deal of speculation, and State experience with diverse plans will provide us with that opportunity for pilot project testing which must precede massive reform." [8]

Furthermore, Secretary Volpe said:

"First, it seems clear, at least to us, that *there remains much legitimate uncertainty about how far and how fast the public wants or is willing to go* in changing the reparations system. It is also clear that *there exists genuine and warranted concern as to the unknown and essentially unknowable price and cost implications of any major change in the system*, which of course would ultimately affect the cost and quality of service to consumers of insurance. Regulators and other responsible public officials would appear to share these feelings. We, ourselves, don't claim to have definite answers to these questions either. As a result, it seems to us that we should seek change through State action, but consistent with the broad outlines or principles of a system such as that described below. We need not and do not insist that a single reform system be imposed upon all the States. The experience of the States should have much to tell us about the most desirable final configuration of the motor vehicle reparations system." [9] (Emphasis supplied)

In brief, we simply don't know at this point what the answer or combinations of answers are. With all due respect to the advocates of the federal no-fault plan, we submit that no one knows the answers to these questions (and others which could be posed)—and until we do, no one knows what final form a national program should take.

4. CAVEATS ON FEDERAL MANDATED STANDARDS AND VOLUNTARY GUIDELINES

Secretary Volpe urged that change commence now and the Administration is supporting a joint concurrent resolution putting the states on notice that they are expected to resolve this problem within a reasonable period of time. We don't disagree that some change is needed, although the magnitude or direction of change is subject to intense debate.

a. *Immediate Uniform Massive Change is Premature.* At the one extreme the proposed Uniform Motor Vehicle Insurance Act would establish rigid statutory standards as to what must be in an automobile insurance policy. Such an approach has the practical effect of destroying flexibility and tends to freeze in limitations in coverage.[10] Perhaps even worse, the uniformity imposed would preclude the consuming public from the opportunity to register its choice over a meaningful period of time and thereby make the insurance mechanism responsible to the public's evolving concept as to the appropriate balance between benefits and costs.

b. *The Cost Factor.* No matter how hard we try, it is either impossible or foolhardy to ignore the ramifications of the cost of any given program or alternative. As the NAIC staff study pointed out:

"In appraising the worth of any system, a very important consideration is the cost of such system as compared to the cost of possible alternatives. Public clamor over increasing automobile insurance premium levels has significantly added to the pressure for change.

". . . the NAIC strongly supports efforts to reduce the cost of automobile insurance to the public to the extent that such reductions are consistent with other major objectives. It must be remembered that no program can meet all demands since the demands themselves are frequently in conflict. It is virtually impossible to pay more accident victims more dollars and reduce costs at the same time. Thus, whatever changes are recommended they should be evaluated with a view

[7] "Nor will I attempt to assess here the relative merits of all the various reform plans that have been offered as alternatives to the present system. In this thicket, there is plainly much less of a consensus; the complexity of the subject and its problems make possible an almost limitless number of combinations, permutations and variations of recovery rules, insurance coverages, etc." Statement of Secretary of Transportation John A. Volpe before the Senate Commerce Committee, March 18, 1971, p. 2.

[8] *DOT Report*, p. 133.

[9] Volpe's statement, note 7 supra at 3.

[10] The chief advantage of a standard policy is that it facilitates prior comparisons. In the past, uniform terms have often led to uniform and non-competitive prices. Competition in policy terms usually leads to more innovative contrasts and broader terms.

towards *the best balance possible between conflicting objectives and particularly between the objectives of increased benefits and cost savings.*"[11] (Emphasis supplied)

As the DOT report noted, "consumer attitudes about automobile insurance have shown its cost to lead all other concerns."[12] Consequently any program which does not afford the consumer an opportunity to relate the benefits he desires to the costs he must pay may create more public dissatisfaction than it eliminates.

This point is particularly relevant to a program such as automobile insurance whose costs are bound to increase. The DOT report has recognized:

"Perhaps the most pervasive influence upon automobile insurance as a public issue in recent years has been inflation."[13]

In effect, an automobile insurance company is a mass purchaser of a variety of goods and services such as medical, hospital, lawyer and court services, wage replacements, repair goods and services, etc. As the cost of these elements increase, the cost of insurance must do the same.[14]

"If such costs continue to inflate (and there is little reason to hope otherwise), initial cost savings resulting from changing the system would soon be forgotten and public frustration with costs would arise anew. This suggests that, while efficiencies in the system are important, drastic changes aimed at reducing premium levels (or lessening increases) may result in only temporary relief.[15]

Much of the American motoring public is being led to believe that no fault is a panacea, bringing with it broader coverage, payment in all cases, and lower costs. The idea that something must be given up in order to get something else back has not yet registered in many quarters. The passage of the proposed legislation, without a preliminary period of trial and error during which the public would become educated as to its advantages and disadvantages and would be able to relate its wants to its costs by choice in the free market, could set the stage for massive public disenchantment with all who were connected with its enactment.

The establishment of minimum mandatory benefits, such as those being discussed, in a federal statute poses far reaching, long-term ramifications. In fact, the same can be said, although perhaps to a lesser extent, as to the establishment of federal guidelines to which the states should strive since such guidelines would tend to become the minimum norm of consumers' expectations as to what they are "entitled to: by right."

If the cost of such benefits exceeds what the public is willing to pay, federal subsidies may be necessary and you should be prepared to recognize that potential need.

c. *Cause for Skepticism.* Though we don't question the conviction of the proponents of this proopsed federal act as to the rightness of their solution, past experience with massive federal programs entities us to voice some skepticism. For example, we launched into Medicare and Medicaid without an adequate exploration and testing to ascertain the cost implications; the impact on the delivery of health, etc. The program is now being devoured by expenses, the demand on medical facilities has skyrocketed, and now a few short years later persons are advocating scrapping these programs and launching into something else. In conjunction with national health plans it has been said:

"There must be a critical review not only of the estimated cost of such proposals but with the financing mechanisms as well as with the services which are expected to be provided. At the moment, in the rush to design these new proposals, it appears to be forgotten that the planners of Medicare and Medicaid grossly underestimated the cost of these programs. They also gave little heed to the existing shortage of health manpower and facilities which had been seriously aggravated by these new programs."[16]

This observation could apply with equal force to the proposals for federal automobile insurance reform. Forecasts as to the costs of this system are necessarily conjectural. It is only by a process of trial and error that the public will ascertain the true costs and only by experimental efforts at the state level can the best solution be found and earlier mistakes more readily rectified before they assume unmanageable proportions.

---

[11] NAIC Report, note 2 supra at 108.
[12] DOT Report at 188.
[13] *Id* at 61.
[14] E.g. over the past decade, doctors' fees and hospital daily service charges increased 58% and 155% respectively. *Id* at 61.
[15] NAIC report, note 2 supra 108.
[16] Wheatley, "Promises and Problems of National Health Insurance," an address before the American Pension Conference, N.Y., N.Y., March 1971.

Furthermore, to the extent that the purchasers of automobile insurance consider the relative insurance premiums attributable to damageability in purchasing their cars, the automobile insurance mechanism can contribute to driving those poorly designed cars out of the market and thereby reduce overall economic cost including that of insurance. This, of course, depends upon whether there is a corresponding rise—and to what extent—in cost of designing and manufacturing less damage prone cars and/or in personal injury damage.

Incidentally, it may be appropriate to note some of the factors insurance regulators will be watching as ratemaking based on damageability develops:

(1) Since most individual insurers are not large enough to develop credible statistics, they will find it necessary to pool their data in order to rate older models from real world experience. Insurance departments will be regulating this combining process to protect competition in rates.

(2) Insurance department personnel will be closely examining the results of the prescribed tests to satisfy themselves that there is jurisdiction for rating auto makes and models differently.

(3) Determining the susceptibility of new model cars to damage will require the use of advanced computer techniques. Since many insurers do not have the necessary facilities available they will be using data centrally determined. Departments will wish to satisfy themselves that this data is properly used.

(4) Ratemaking based on relative fragility will result in a different classification system. The departments will be watching these classifications closely to be certain they are equitable and that individual consumers are properly classified.

S. 976 attacks this overall problem head on by authorizing DOT to make tests, set minimum standards, make results available to insurers and regulators for ratemaking purposes, etc. The NAIC endorses the general concepts and objectives embodied in this bill. We would suggest, however, that the bill make explicit direction or authority for DOT to consult with both the insurance industry and the insurance regulators or a continuous basis so that the initial and future tests, data compiled therefrom and other information will be developed in a form that is usable in automobile insurance ratemaking.

I would like to personally comment specifically on several provisions of S. 976 at this time:

(1) The provisions found in section 125 (b) and (c) are particularly significant and should be expanded to give the Secretary the widest possible powers and unquestioned authority to act in a direct and definitive manner.

(2) Section 127 is particularly important to insure regulators and I suggest that you amend the bill to provide for an official relationship between the Secretary and the State insurance commissioners in at least two areas: (*a*) the Secretary should be required to consult with representatives of the insurance commissioners from time to time and (*b*) the Secretary should be required to officially report his findings to the insurance commissioners of the various States.

I am confident that this kind of relationship will be welcomed by the commissioners and also that they will move rapidly to require implementation of rating techniques based on the damageability studies

(3) Section 128 appears to also be a key section and I commend you for such a provision. It should be of great assistance in meeting consumer needs.

(4) The provision to section 501 that requires an independent system of automobile inspection, though idealistically sound, has a measure of impracticality involved in it in my opinion. To require the kind of expense involved in establishing the system contemplated in S. 976 is sure to generate enough opposition to stall if not stop the whole inspection program in many places.

I support your concept, but wonder if you shouldn't modify it to make the proposal more palatable and less expensive in order to receive the broadest support from the States.

I would also suggest there should be some official recognition made in the bill which would require that accident data collection systems be established to show the speed, the angle of impact, the frequency of automobile accidents, and other data which would be particularly important in determining the accuracy of the data which might be included in the damageability index.

In a very hurried way, Senator Moss, that concludes my formal testimony.

Senator Moss. Thank you, Mr. Worthington. I think we will have some questions.

I have to be absent for a short period of time.

Mr. Sutcliffe may have some questions while I am away and I will come back and follow up if there are some he didn't get to that I think ought to be in the record.

Moreover, I might suggest, since you have cooperated by summarizing that rather lengthy statement, it may be that after we have read it in full, we may want to submit a few questions to you, sending them to you in writing, to have you respond.

I am sure you would be glad to do that?

Mr. WORTHINGTON. We would have no objection to that, Senator, we would be pleased to.

Senator MOSS. Thank you, and if you will excuse me, I will leave Mr. Sutcliffe here and ask if he has any questions he wants to ask in the interim.

Mr. SUTCLIFFE. Mr. Worthington, before we begin any questioning I want to ask whether or not the arrangement that Senator Moss suggested is satisfactory with you?

Mr. WORTHINGTON. I have no objection.

Mr. SUTCLIFFE. Thank you.

The argument that you pose, suggesting that the States be allowed to test various approaches certainly has some appeal from a theoretical standpoint. There are many unanswered questions in this area of considering automobile reform legislation. When you set about to experiment in the laboratory or in a State, do you need to have some guidelines as to the kind of experiment that should take place and the kinds of goals that you would hope would be met through the experimentation, particularly if you are trying to improve the present reparation system or do you think that it can just take place without that guideline, without that kind of direction, so in order to obtain the results of the experiment?

Could you comment generally on how you can undertake this on an experimental basis, assuming this is one of your arguments, and still end up with a valid experiment?

Mr. WORTHINGTON. I would be glad to.

To use as examples some proposals that are already before us, in Massachusetts they passed one form of a modified no-fault system, with some additional benefits. That plan is now in effect and we are seeing some interesting results. Not enough results are in yet to make a valid observation, I don't think, about the extent to which it meets the problems. But I think it is an excellent opportunity for us to gain some experience.

It is my understanding that in the State of Florida there is a very good opportunity that some form of no-fault bill will pass, which is much different than the one in Massachusetts.

Mr. SUTCLIFFE. Let me stop you right there, so I can understand.

I guess in any kind of experiment you will set it up and design it in such a fashion as to be able to test the results. Have the Massachusetts proponents of no-fault set up through their insurance regulatory mechanism or whatever a procedure whereby they can test the validity of their experiment, where they can get the information that would be useful from an experimental point of view, and if so, could you describe some of that for the committee?

Mr. WORTHINGTON. You are talking about——

Mr. SUTCLIFFE. Do you understand what I mean? In other words, you are saying there appears to be some beneficial results from an experimentation program in Massachusetts. What specifically has Massachusetts done to insure that the information which is coming out of Massachusetts about their plan has validity, measures costs, measures savings, measures redistribution of benefits to improve the problems highlighted in the Department of Transportation study?

Mr. WORTHINGTON. If you are asking was part of the program in Massachusetts a program that would require surveillance and analysis of statistics that might be developed to see how it works, I don't think that it was. There is no business, however, that I know of in the country, that generates more statistics and that has more adequate information about how it functions that are available to both the regulators and to the public, and my observation about the fact that it is providing some information that is interesting and shows it may be beneficial, is based on some of the statistics it has generated.

For example, one of the very interesting ones there has been the fact that there are fewer claims being filed now for physical damage.

Mr. SUTCLIFFE. We have had two explanations, you see. This is the reason I ask the question. Because if the approach to allowing for experimentation is going to be followed, then it seems to me that it is natural to ask what methods of collecting these statistics and validating those statistics are being provided.

We have been told by one group that the decrease in claims in the bodily injury area is a result of the constitutional test, and that the lawyers are simply holding back hoping that the constitutional challenge will be successful.

In another instance it has been explained to us that because of the unique situation in Massachusetts, many of the bodily injury claims reflected property damage claims, because it was a mandatory State

Now it seems to me that if we set out to experiment on a State-by-State basis, apart from whether or not that is a practical possibility, this committee would like to know what assurances we will have that the results from those experiments will produce meaningful information to other States or to the Federal Government in its analysis of the reform.

Mr. WORTHINGTON. I think you are asking is there going to be some supervisory person to look at it to see whether there are meaningful results?

Mr. SUTCLIFFE. Or is the NAIC itself recommending this kind of procedure to the States?

Mr. WORTHINGTON. One of the functions which I currently serve in in the NAIC as chairman of a committee called the Committee on Profitability of Liability and Property Companies. This committee is attempting to look and see what sort of things go into the determination of rates for insurance companies and how much money is sent back to the consumer, how much is generated as a result of their investments. And this kind of committee function in the NAIC will very well, I am sure, sort out the actual statistical and practical profit and public interest items that will result from the experimentations in the various States.

So I think I can say unequivocably that the NAIC, if the States continue to experiment in this manner, will watch closely to see what happens.

We have discussed briefly about whether we should attempt to design a model bill. And it is not an official policy of the NAIC, but the officers have generally agreed that at this point we should not try to design a model bill, but that rather we should observe what the different States are doing and collect the data about the effectiveness of their operations, and after a period of time then put the portions of their program which seem to work most effectively into some model guidelines that could be used by the States that are interested.

Let me go on a little bit about the experimentation. I would say the New York proposal is different than any other State proposal. Illinois has a plan before its legislature.

Mr. SUTCLIFFE. Does it differ, because it suggested that it could be done at either the State or Federal level?

Mr. WORTHINGTON. No; I think it has a completely different thrust, for example, than the one in Illinois or Iowa, because it basically does away with the tort system.

Our proposal is to preserve it, but give first-party coverage in all instances and let the insurance companies subrogate. I have said in the past and would say again that though my plan in Iowa is substantially different from the one in New York, I would hope New York would adopt their bill and give us a chance to gain some experience as a result of its operation.

I would hope Iowa and Illinois would adopt their bills, so we can compare our experience too.

Mr. SUTCLIFFE. To that point then, what mechanism would you create to monitor the cost benefit differences between the Massachusetts plan and the Illinois or Iowa plans? The cost differences, for example, between an inter-insurer subrogation provision or a cost offset provision, differences between, in Massachusetts, the $500 medical payment

entry into the tort liability system and in Illinois, no entry provision, but a limitation on intangible loss recovery once tort is entered and an offset for any mandatory first-party coverages? How are we going to get the data to analyze that kind of difference?

Because if we are going to experiment, and the argument is we will learn from experimentation, it seems to me we have to be assured we will be able to get that kind of information back.

Mr. WORTHINGTON. I think I can assure you the NAIC in its normal functions will be gathering this data through the work of its committees, through the analysis of the reports that are filed now with the insurance departments, and which are, some of which are created by private organizations.

Mr. SUTCLIFFE. Is that information oriented toward answering the kinds of questions that are being asked now, or is it more oriented toward a business operation within the existing liability system focus?

Mr. WORTHINGTON. The data we would collect, I would anticipate, would be data that would answer the questions we wanted to ask.

Mr. SUTCLIFFE. So you would have to go through some kind of reformulation.

Mr. WORTHINGTON. If the standard reporting techniques we have now are not adequate, we can easily change them to make them adequate. What I am saying basically, I suppose, is that we think we have a system set up now which could gather the information. If it doesn't, then we can modify it.

Mr. SUTCLIFFE. Will you undergo an examination of that prior to the time of finding out that it doesn't produce the information? I mean are you presently engaged in analyzing your reporting system to make sure that it does the job or will you soon be engaged in that endeavor?

Mr. WORTHINGTON. As soon as we know whether or not the Congress is going to allow us to experiment, we will immediately begin the procedures to comply with the stewardship that you have given us. I think our past record in the past few years in the NAIC at least, is indicative of the fact we will do an adequate job.

Mr. SUTCLIFFE. As to a more basic question about the need for experimentation, how much experimentation was undertaken to test the postinsolvency assessment plans that you have advocated be adopted and have been quite successful in getting adopted in many jurisdictions in this country? When you promulgated that model bill how much experimentation with that system had been undertaken before you set it in concrete, so to speak?

Mr. WORTHINGTON. Before we promulgated our model bill I think there were some six or seven States which already had a form of insolvency fund or form of guarantee fund, and we drafted our bill based on the experience that those other States had had over the past years.

Mr. SUTCLIFFE. Those were all preassessment plans, were they not?

Mr. WORTHINGTON. No; there is a plan like the one in New Jersey, I think—or was it Maryland?—Michigan and California had adopted before our model postassessment plan. One of the things that led us to try the postassessment approach was the experience that they had had with the preassessment plans, and the experience with preassessment plans was such that we felt that was not the proper way to go.

Mr. SUTCLIFFE. You mentioned your organization also includes members of the territories of this country. I noted that with interest. Have you had an opportunity to receive the views of the regulatory authorities from Puerto Rico and had a chance to evaluate that particular experiment?

Mr. WORTHINGTON. The insurance commissioner from Puerto Rico regularly attends our meetings and participates in our committee functions, and he is very vocal about his experiences in Puerto Rico and feels that it is an excellent program for his territory. He is an active participant.

Mr. SUTCLIFFE. Have you come to any conclusions based upon the experience in Puerto Rico as to any recommendation the NAIC would make to States who are going to undertake experiments in reforming their automobile compensation system?

Mr. WORTHINGTON. I think it is too early to draw any valid conclusions about the Puerto Rican situation and recommend them to other States on an official basis. Obviously most of us that are interested in it are going to look closely at it because it is an operating one, just like we will the Massachusetts plan.

Senator MOSS. Thank you for excusing me for a short time, and I am sure Mr. Sutcliffe has had a number of questions that have occured to us in listening to your testimony. One thing I wanted to ask, Mr. Worthington, is, you referred in your statement to the danger of an ill-considered national program for insurance reform. Given the Department of Transportation's study and the extensive congressional hearings, do you really think this—it is ill considered to have a bill of this type before us now?

Mr. WORTHINGTON. I suppose if I were to give a definition of what I mean by ill considered it would have to be something like this, that any proposal which would change the system which has been in effect as long as the tort system has been in effect in the United States without some measure of experimentation or some trial of a new system on a national basis would have to by definition, be ill considered.

We are not indicating that you have not studied it long enough or that learned people have not given their opinions, but rather we are just saying that by the very extent of the enormity of the program it ought to be tried someplace before it is put forth for the whole country.

Senator MOSS. Well, I wonder about the parallel between automobile insurance and health insurance. The administration recommends the State regulation in automobile insurance but recommends a national system of health insurance; why should one be treated one way and the other the other?

Mr. WORTHINGTON. We are trying to help them become consistent, Senator.

Senator MOSS. Which way?

Mr. WORTHINGTON. In favor of the State.

Senator MOSS. I was, of course, pleased to note that you recognized that there needs to be changes and there was a great change going on in the industry. Isn't it true that it is less likely that you can get a change effected in all of the State legislatures? State legislators serve for a minimum period of time, and they are all employed in other lines of employment, and, as has been said, they are subject perhaps

to lobbying pressures more strongly than national legislators. Doesn't that argue against depending on the States to make the changes?

Mr. WORTHINGTON. I think not, Senator, for a couple of reasons. One is that in recent years in reference to insurance matters the States have responded quite well to the problems as they have been called to our attention. Mr. Sutcliffe mentioned a proposed national guarantee fund. Some 38 States have now adopted a form of proposals which would protect people from insolvencies of insurers in the period of 18 months. We have reason to believe that nearly all States will have this kind of proposal in short order. And this is while Congress is still deciding whether or not to do it. So we have acted really more rapidly than the Congress has in this matter.

When the problem of conglomerates dipping into the surplus of insurance companies became prevalent we began to draft a model bill to regulate insurance-holding companies so the conglomerates and insurance interests could not, without regulatory involvement, dip in and take surplus which had been made for the benefit of the policyholders.

Nearly all insurance-holding companies in the United States are now effectively regulated by the insurance-holding company bill. There are others where we have not been so successful, but where there has been a major national problem we have responded. And my testimony before you is such that again I want to restate that if the States do not act, I would be one of the first people to ask Congress to act. But I think that the States are bearing their stewardship responsibility in reference to insurance regulation adequately and resourcefully, and that only until it can be shown that they are not should you move in and act.

And the bill that is proposed would alter significantly the regulation of insurance other than providing the kind of benefits you want to provide. We think we can provide those same benefits in an expeditious manner without thrusting on people the kind of duplicatory, regulatory mechanism which would have to be imposed.

Senator MOSS. Doesn't this no-fault problem really extend beyond State lines? It is not confined to any particular area or any particular group. Isn't this then a major policy decision of the type that ought to be made on the national level by the National Congress?

Mr. WORTHINGTON. I do not think that it should necessarily. For example, if a person in Iowa were to buy a policy under the proposed Iowa plan and travel to Illinois, or travel to New York, or travel to Massachusetts or Florida, somewhere else that had a different kind of plan, it would be a relatively easy matter for the insurance carriers writing policies in any State to put riders on the policy that would give the people the coverage which would be necessary for whatever State they were driving in just like they have to do with Canada now. I do not think that the crossing of State lines is as significant a problem as it might be; it could be handled with relatively little complication and little administrative problem.

The people in rural States, for example, have many different kinds of problems than those that live in the urban centers of our country. And the no-fault insurance program which would be adequate and which would be meaningful to the people in rural Iowa, for example,

nay not be adequate and may not be appropriate for the people living n Detroit or Manhattan or Los Angeles.

On the other side of the coin, if the bill is drafted to be in between oth of them, it really meets neither of their needs. We think they eed to be geared more definitely toward the people who will receive he benefits.

Senator Moss. Yes, but your rural resident of Iowa is not always driving around rural Iowa; he drives off to Chicago or Detroit or omeplace like that.

Mr. WORTHINGTON. Right. I am saying it is a relatively easy administrative matter to include, as a provision of his policy, minimum coverage for whatever State he happens to be driving in. A man who commuted between one State and another State would obviously have n easy time getting his policy amended because that is something he would just have to have. The companies can do it with little difficulty. The regulators can assist them in this; we are experienced in that matter already because we do it in other areas.

Senator Moss. But if one State has a no-fault rule and his insurance s written for a State that does not have that but has the traditional ort requirement—what law is applied to him? He is driving in a no-fault State, but his insurance policy is not geared to that; can this be easily adapted?

Mr. WORTHINGTON. Yes; it would. He would have a policy obviously n the State he lives in, which would meet those rules. And there would be as a provision of that policy a rider that would say something to the effect that the provisions of this policy shall meet the minimum requirements for whatever State in which he may be involved in an accident, very simply.

Obviously the lawyers would make it longer and more complicated than that, but very simply that is what it would consist of. So if he were in a no-fault State and had an accident in a fault State, he would have the minimum requirements in that State.

Senator Moss. There might be a little problem in the rule of law hey apply, the rule of proof and so on. But I acknowledge your view hat it could be readily adapted.

We do appreciate your coming to testify before the committee and preparing such a well documented and full statement that will be a great addition to our record.

Thank you very much.

Thank you, gentlemen, for coming.

(The statement follows:)

STATEMENT OF LORNE R. WORTHINGTON, INSURANCE COMMISSIONER OF THE STATE OF IOWA, ON BEHALF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

My name is Lorne R. Worthington. Today I am appearing on behalf of the National Association of Insurance Commissioners, commonly referred to as the NAIC, both as the Insurance Commissioner of the State of Iowa and as President of the NAIC. Having its inception in and regular meetings since 1871, the NAIC is the oldest voluntary association of state officials. It includes the principal insurance regulatory authorities of the 50 states, the District of Columbia, and the territories of the United States.

I shall deal with each of the matters before your Committee separately and start by giving my comments on the Uniform Motor Vehicle Insurance Act and the Administration's proposed Concurrent Resolution.

1. THE ISSUE

The Uniform Motor Vehicle Insurance Act would create a federally mandated motor vehicle insurance system predicated on the no fault concept for bodily injury. The statute, among other things, would prescribe the minimum coverage which motorists would be required to purchase. In contrast, although the Administration has tentatively endorsed the no fault concept, it has concluded that "mere speculation without actual observation of experience with a new plan is an inadequate basis for massive, uniform national reform: and that the federal assumption of the current state regulatory authority over automobile insurance poses great issues and consequences and is highly undesirable."[1] The Administration recommends that solutions, built upon specified general principles, evolve at the state level to permit experimentation and testing of different approaches. *Thus the basic issue is joined—i.e. what is the most appropriate approach to test and/or implement the no fault concept.*

2. NAIC POSITION ON THE NO FAULT CONCEPT

At the outset, let me indicate the perspective from which the NAIC, as an association of state insurance regulators, views the fault versus no fault concept. The tort liability system is a legal system which is separate and distinct from the automobile insurance system. When the first automobile insurance policy was written prior to 1900, the fault concept was well embedded. The automobile insurance system, and the regulation thereof, of necessity, has in large part been engrafted on and molded by the broader legal environment in which it finds itself. As a consequence, automobile insurance was originally premised on the concept of protecting a person from economic disaster resulting from legal liability—by defending against claims and paying those adjudged to be valid. Only incidentally was the combination of the legal and insurance systems thought of in terms of providing reparation to the victim. In more recent years, there has been a shift in concept. Increasing attention has been focused on the plight of the victim. The inquiry now centers on how dependent upon fault the reparation system should be.

Obviously, the questions being posed extend far beyond the interests of automobile insurance and its regulation. Numerous groups are interested in the ultimate result. These include the policyholder, the claimants, the legal profession, the providers of medical services, insurers, agents, unions, etc. Because of the many groups involved, the extensive diversity within such groups, and the complexity of the issues involved, a wide range of conflicting attitudes and objectives exists. The NAIC, following a comprehensive background study by its Central Office staff, adopted a position statement which, among other things, said that question of fault upon non fault "is an issue involving wide spread ramifications far beyond the traditional confines and insurance regulations . . .

" 'The decision as to whether the present system should be reformed is not a legal decision nor is it a statistical one; *it is a question of values.*'

"Thus the type of system adopted is a broad question of public policy.

"Thus NAIC, therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternative on a state-by-state basis."[2]

Our responsibility as regulators is a limited one. If private enterprise is chosen as the implementing mechanism (whether the third party legal system is retained, modified, or eliminated), our function would continue to be regulation in the interest of a sound, efficient, and equitable system on behalf of the insurance consuming public.

Incidentally, state insurance regulation has no vested interest in either eliminating or continuing the third party legal liability system for automobile insurance. We currently oversee both fault and no fault type coverages. What is ultimately in the best interest of the public is what we favor and support. The problem is determining what is ultimately in the public interest.

Let me add parenthetically that I personally favor the adoption of no fault laws on a state-by-state basis and that I think the need for such laws is of grave urgency.

---

[1] House Concurrent Resolution 241, 92nd Congress, 1st Sess. (1971).

[2] NAIC Statement of Position on Automobile Insurance, *Report of the Special Committee on Automobile Insurance Problems*, June 16, 1969, p. 17. The report was adopted by the NAIC in June 1969. In addition, the report contains the staff background study. A copy of the report is submitted for the record.

3. THE STATE-BY-STATE APPROACH

While we as insurance regulators will not be the ultimate arbiters as to what constitutes the most appropriate reparation system in terms of public policy objectives, we do occupy a unique vantage point for observing the existing system. State insurance departments regulate insurers, examine their operations, approve policy forms, review policyholder and claimholder complaints, and respond to all manner of consumer needs. Consequently, we have a continuing opportunity to closely observe the workings of the insurance mechanism and to do so from the public's viewpoint. Thus, in the sense, as well as from reviewing the studies made by the NAIC, DOT and individual insurance departments, we feel our observations will contribute to your deliberations.

The fault versus no fault concept poses numerous complex and difficult issues. Among the factors requiring primary consideration are finding a means to assure that payments are made promptly, that the distribution of claims payments is an equitable one, and that a greater percentage of each premium dollar is paid out to victims.

In addition, consideration must be given to: overlapping coverages and premiums, flexibility, and impact on rehabilitation. Implicit in these factors are conflicting attitudes and objectives. Public clamor over increased automobile insurance premiums has significantly added to the pressure for change. Proponents of no fault are urging that virtually all injuries be compensated regardless of fault. These are conflicting objectives—i.e. lower cost versus increased benefits. Thus a basic question becomes what benefits the public wants, what benefits the public is willing to forego, and what cost level the public is willing to accept.

The final report of the Department of Transportation, as well as Secretary Volpe's presentation, highlighted the multiplicity of options confronting us and the need for experimentation. For example, the report named six basic areas of consideration, each area involving numerous subconsiderations within itself: (1) the legal rule governing reparations, (2) the role of insurance, (3) the kinds of losses to be compensated, (4) private versus social insurance, (5) compulsory versus voluntary insurance, and (6) insurance and the loss minimization objectives.[3] Alternative approaches raised include (1) retain the status quo, (2) improve the present tort legal liability system (e.g. judicial reform, shift to comparative negligence, regulate contingency fees, etc.), (3) rely on evolutionary reform by combining fault and no fault coverages, (4) establish a total no fault system, and (5) utilize government insurance.[4]

In spite of the mass of research conducted, the general public has no clear concept of what is involved or the ramifications posed by the various alternative methods. The DOT report's section on public opinion makes this quite obvious:

"In general, these surveys indicate that *the public has mixed attitudes* about the performance of various aspects of the system, is generally ill-informed about the current system, and, on the whole, shows an openness to change when made aware of alternatives to the present system."[5] (Emphasis supplied)

In short, a clear and informed consensus has not yet emerged.

With these and other factors in mind, the NAIC has said:

"Because factors, concepts, values, and attitudes vary from locale to locale, this public policy decision can best be made on a state-by-state basis rather than at the federal level. This, in turn, affords the opportunity to test and experiment with different approaches on a limited basis. After a period of experience with different plans, the better solution(s) will emerge. *The NAIC, therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternatives on a state-by-state basis.* Whatever the system, the various state insurance regulators can regulate for the public interest most effectively because of the varied needs of a differing populace in the several states. *The public, by its responses to legislation and by the decisions it makes in the market place in accepting or rejecting various coverages and services offered, will ultimately settle the issue.*"[6] (Emphasis supplied)

This remains the judgment of the NAIC. Furthermore, it has been subsequently

[3] See DOT, *Motor Vehicle Crash Losses and their Compensation in the United States:* a Report to the President and Congress 101–111 (March 1971) (hereafter cited as the DOT Report).

[4] See *id* at 112–127.

[5] *Id* at 81.

[6] NAIC Statement of Position, note 2 supra at 17.

fortified by both Secretary Volpe's statement before the Senate Commerce committee[7] and by the DOT report which said:

"Moving in stages toward such a goal would allow us to test its virtues and discover its faults, thereby giving us new knowledge that could serve to modify the goal itself. A little observation is worth a great deal of speculation, and State experience with diverse plans will provide us with that opportunity for pilot project testing which must precede massive reform."[8]

Furthermore, Secretary Volpe said:

"First, it seems clear, at least to us, that *there remains much legitimate uncertainty about how far and how fast the public wants or is willing to go* in changing the reparations system. It is also clear that *there exists genuine and warranted concern as to the unknown and essentially unknowable price and cost implications of any major change in the system*, which of course would ultimately affect the cost and quality of service to consumers of insurance. Regulators and other responsible public officials would appear to share these feelings. We, ourselves, don't claim to have definite answers to these questions either. As a result, it seems to us that we should seek change through State action, but consistent with the broad outlines or principles of a system such as that described below. We need not and do not insist that a single reform system be imposed upon all the States. The experience of the States should have much to tell us about the most desirable final configuration of the motor vehicle reparations system."[9] (Emphasis supplied)

In brief, we simply don't know at this point what the answer or combinations of answers are. With all due respect to the advocates of the federal no-fault plan, we submit that no one knows the answers to these questions (and others which could be posed)—and until we do, no one knows what final form a national program should take.

4. CAVEATS ON FEDERAL MANDATED STANDARDS AND VOLUNTARY GUIDELINES

Secretary Volpe urged that change commence now and the Administration is supporting a joint concurrent resolution putting the states on notice that they are expected to resolve this problem within a reasonable period of time. We don't disagree that some change is needed, although the magnitude or direction of change is subject to intense debate.

a. *Immediate Uniform Massive Change is Premature.* At the one extreme the proposed Uniform Motor Vehicle Insurance Act would establish rigid statutory standards as to what must be in an automobile insurance policy. Such an approach has the practical effect of destroying flexibility and tends to freeze in limitations in coverage.[10] Perhaps even worse, the uniformity imposed would preclude the consuming public from the opportunity to register its choice over a meaningful period of time and thereby make the insurance mechanism responsible to the public's evolving concept as to the appropriate balance between benefits and costs.

b. *The Cost Factor.* No matter how hard we try, it is either impossible or foolhardy to ignore the ramifications of the cost of any given program or alternative. As the NAIC staff study pointed out:

"In appraising the worth of any system, a very important consideration is the cost of such system as compared to the cost of possible alternatives. Public clamor over increasing automobile insurance premium levels has significantly added to the pressure for change.

". . . the NAIC strongly supports efforts to reduce the cost of automobile insurance to the public to the extent that such reductions are consistent with other major objectives. It must be remembered that no program can meet all demands since the demands themselves are frequently in conflict. It is virtually impossible to pay more accident victims more dollars and reduce costs at the same time. Thus, whatever changes are recommended they should be evaluated with a view

[7] "Nor will I attempt to assess here the relative merits of all the various reform plans that have been offered as alternatives to the present system. In this thicket, there is plainly much less of a consensus; the complexity of the subject and its problems make possible an almost limitless number of combinations, permutations and variations of recovery rules, insurance coverages, etc." Statement of Secretary of Transportation John A. Volpe before the Senate Commerce Committee, March 18, 1971, p. 2.

[8] *DOT Report*, p. 133.

[9] Volpe's statement, note 7 supra at 3.

[10] The chief advantage of a standard policy is that it facilitates prior comparisons. In the past, uniform terms have often led to uniform and non-competitive prices. Competition in policy terms usually leads to more innovative contrasts and broader terms.

towards *the best balance possible between conflicting objectives and particularly between the objectives of increased benefits and cost savings.*"[11] (Emphasis supplied)

As the DOT report noted, "consumer attitudes about automobile insurance have shown its cost to lead all other concerns."[12] Consequently any program which does not afford the consumer an opportunity to relate the benefits he desires to the costs he must pay may create more public dissatisfaction than it eliminates.

This point is particularly relevant to a program such as automobile insurance whose costs are bound to increase. The DOT report has recognized:

"Perhaps the most pervasive influence upon automobile insurance as a public issue in recent years has been inflation."[13]

In effect, an automobile insurance company is a mass purchaser of a variety of goods and services such as medical, hospital, lawyer and court services, wage replacements, repair goods and services, etc. As the cost of these elements increase, the cost of insurance must do the same.[14]

"If such costs continue to inflate (and there is little reason to hope otherwise), initial cost savings resulting from changing the system would soon be forgotten and public frustration with costs would arise anew. This suggests that, while efficiencies in the system are important, drastic changes aimed at reducing premium levels (or lessening increases) may result in only temporary relief.[15]

Much of the American motoring public is being led to believe that no fault is a panacea, bringing with it broader coverage, payment in all cases, and lower costs. The idea that something must be given up in order to get something else back has not yet registered in many quarters. The passage of the proposed legislation, without a preliminary period of trial and error during which the public would become educated as to its advantages and disadvantages and would be able to relate its wants to its costs by choice in the free market, could set the stage for massive public disenchantment with all who were connected with its enactment.

The establishment of minimum mandatory benefits, such as those being discussed, in a federal statute poses far reaching, long-term ramifications. In fact, the same can be said, although perhaps to a lesser extent, as to the establishment of federal guidelines to which the states should strive since such guidelines would tend to become the minimum norm of consumers' expectations as to what they are "entitled to: by right."

If the cost of such benefits exceeds what the public is willing to pay, federal subsidies may be necessary and you should be prepared to recognize that potential need.

c. *Cause for Skepticism.* Though we don't question the conviction of the proponents of this proopsed federal act as to the rightness of their solution, past experience with massive federal programs entities us to voice some skepticism. For example, we launched into Medicare and Medicaid without an adequate exploration and testing to ascertain the cost implications; the impact on the delivery of health, etc. The program is now being devoured by expenses, the demand on medical facilities has skyrocketed, and now a few short years later persons are advocating scrapping these programs and launching into something else. In conjunction with national health plans it has been said:

"There must be a critical review not only of the estimated cost of such proposals but with the financing mechanisms as well as with the services which are expected to be provided. At the moment, in the rush to design these new proposals, it appears to be forgotten that the planners of Medicare and Medicaid grossly underestimated the cost of these programs. They also gave little heed to the existing shortage of health manpower and facilities which had been seriously aggravated by these new programs."[16]

This observation could apply with equal force to the proposals for federal automobile insurance reform. Forecasts as to the costs of this system are necessarily conjectural. It is only by a process of trial and error that the public will ascertain the true costs and only by experimental efforts at the state level can the best solution be found and earlier mistakes more readily rectified before they assume unmanageable proportions.

---

[11] NAIC Report, note 2 supra at 108.
[12] DOT Report at 188.
[13] *Id* at 61.
[14] E.g. over the past decade, doctors' fees and hospital daily service charges increased 58% and 155% respectively. *Id* at 61.
[15] NAIC report, note 2 supra 108.
[16] Wheatley, "Promises and Problems of National Health Insurance," an address before the American Pension Conference, N.Y., N.Y., March 1971.

This example, as well as other examples which could be named, is not cited in criticism of the results which were sought but rather as an example of what occurs when massive federal involvement and planning on a nationwide uniform basis in complex areas precedes or supersedes the market mechanism as an allocator of economic resources. Original concepts which were so convincingly put forth have often proved to be wrong, but the adverse consequences of the error have been "frozen in" over a period of time.

Let's avoid making a similar mistake as to automobile insurance, which involves 100 million automobile drivers and nearly all American families. This is the message Secretary Volpe is conveying when he emphasizes the need for experimentation. Certainly the Ontario Experience—where motorist rejected coverage combining the fault and no fault concepts put forth on a voluntary basis—should give one pause in mandating a fixed uniform standard on a nationwide basis.

d. *Federal Guidelines.* Although we support the state-by-state approach of the Administration, we do have reservations concerning the adoption of federal guidelines or objectives such as those in the proposed concurrent resolution. Such standards, in addition to the concern previously mentioned above as to the creation of certain expectations, tend to prejudge what the market place has not yet passed upon—e.g. the choice of an essentially no fault over a reformed fault system, the determination that automobile insurance should be the primary coverage, etc. Such standards tend to restrict the range in which proposed changes would fall and hence the range of consumer choice. This does not say that the choices implicit in the standards proposed are incorrect but rather they are premature. If there are to be minimum federal standards, we feel that broader standards which give greater meaning to experimentation should be adopted. The minimum criteria for any automobile insurance system as stated by the NAIC in its Statement of Position on Automobile Insurance could be a sample of the kind of federal standards that would be meaningful. [17] Nevertheless, a resolution by Congress expressing both the need and its will for prompt state action in exploring, testing and implementing improvements in the existing system would be an appropriate indication of the sense of Congress. This would serve notice on both the business and the states that progress is expected.

5. A TIME FOR CHANGE AND CURRENT MOMENTUM

All of this is not to argue for the status quo, nor to minimize the impact of the landmark DOT study, congressional hearings, academic works, state insurance departments' efforts and NAIC research. Quite to the contrary, each of these have significantly contributed to the emerging consensus that improvements are needed and have pointed out possible directions which should be considered and tested. Furthermore, the NAIC supports the Administration's position of recognizing not only the worth but the virtual necessity of a state-by-state approach until a clearer picture emerges as to the right answers—an answer which may vary from state to state or region to region.

To some proponents of the Uniform Motor Vehicle Insurance Act, the state-by-state approach is tantamount to doing nothing. This is incorrect. In addition to the "prod" from Congress in the form of a Congressional resolution, the states are receiving the same pressures for change that Congress receives. Few if any argue for the status quo. The basic research study is done. As of the early part of this month, we understand that no less than 28 states are now considering no fault or modified no fault legislation. (Other states have created study commissions. Some may be waiting to capitalize on the experimentation of others and others no doubt are waiting to see if Congress is going to preempt the field or give the states time to act.) The proposals range from the complete no

[17] "Whatever is decided as to the appropriate legal framework, the NAIC believes that any automobile insurance system should include as a minimum the following elements:

(*a*) ready access to insurance for all licensed drivers at prices which are reasonable, with a means to purchase insurance through an assigned risk mechanism for those who cannot purchase it in the voluntary market.

(*b*) provision for prompt payment of basic economic loss and improved claims procedures.

(*c*) provision for protection from insolvencies, uninsured motorists and hit-and-run drivers, etc.

(*d*) meaningful classifications which are broad enough to spread risks and yet not so broad as to lessen availability of coverage.

(*e*) a responsive and meaningful pricing and marketing system.

(*f*) protection for the insured against arbitrary and unfair cancellation and nonrenewal.

(*g*) full disclosure of the nature of the coverage to the purchaser."

fault program of the American Automobile Insurance Association to those which primarily seek to improve the existing legal liability system such as the American Trial Lawyer's Reform package with all sorts of variations in between.

Secretary Volpe, in his statement before the Senate Commerce Committee said:

"Further change in the auto reparation system at the state level has clearly moved off dead center and would appear to be achieving some momentum. I could not have made that statement a year ago. I think this constructive move should be encouraged, perhaps guided and helped but not preempted by federal action." [15]

The activities mentioned above support the basis for the Secretary's beliefs and clearly demonstrate the heightened momentum. At this point, with so many different and sometimes conflicting ideas "floating around," and so much uncertainty as to what should be done, it is too early to predict what the states will and will not do. But events are moving sufficiently so, in our judgment, to warrant giving the states an adequate opportunity to act. If past experience is any guide, a variety of approaches will be tested and the best features of the various programs will emerge. At that point, the trend will be towards a more uniform system throughout the various states.

Of course, during the period of experimentation, we would be going through a phase when a number of different plans would be used in a number of different states. America is a mobile nation. Complications can be expected in the administration of a system as significant portions of the public journey across state lines. During this period, insurers operating across state borders will have to provide for the variation in coverage through appropriate endorsements. It will present some administrative problems for the insurers and regulatory problems for the states. But this is a small price to pay compared to the damage which could occur if an ill-considered national program was imposed upon the nation in one installment from the top.

6. FEDERAL REGULATORY INTERVENTION

Although most attention on the proposed Uniform Motor Vehicle Insurance Act has focused on the mandating of the no fault concept, the Act poses another fundamental issue—i.e. state versus federal regulation of automobile insurance. There can be no mistake as to the pervasive regulatory power vested in the Secretary of Transportation. For example, the Secretary would (1) determine and approve the financial substitutes for insurance (i.e. bonds, self insurance), (2) determine by rules and regulations the percentage of responsibility for net economic loss assigned to motor vehicles larger than ordinary passenger cars, (3) approve policy terms, conditions, exclusions, and deductibles, (4) promulgate a uniform statistical plan for compilation of claims and loss experience which every insurer must follow, (5) require standard uniform and standard minimal policy provisions, classes of risks, and rating territories, (6) prescribe rules and regulations under which insurers would submit premiums being charged for each class of risk in each rating territory, (7) make available a comparison of insurers' rates based upon claim and loss experience, (8) organize an assigned claims bureau in each state, and (9) make, amend, and repeal rules and regulations as he deems necessary.

Under existing state law, the insurance department possesses comprehensive regulatory authority over insurers doing business therein. For example, state regulation encompasses these elements: (1) the incorporation of companies (qualifications, capital and surplus requirements, etc.), (2) the specification of required reserves, (3) the specifications of the areas in which insurance assets may be invested, (4) the approval of policy forms, (5) the supervision or monitoring of rates (for adequacy, excessiveness and non-discrimination), (6) the collection of statistics and the making of reports, (7) the examination of companies to determine if reserves are adequate, investments comply with the law, claim practices are satisfactory, etc., (8) the licensing and supervision of those who sell insurance, and (9) provision for residual coverages such as the assigned risk plans.

The regulatory overlap is substantial and clear. Confusion, waste, an increasingly complex system, and extra cost to the taxpayer in administering the automobile insurance is bound to result. We submit that such a dual system is not in the public interest.

[15] Volpe's statement, note 7 supra at 4.

In this connection, it should be pointed out that the DOT report recognized that:

". . . the basic determinant of the size and nature of the compensation requirement, i.e., car crash losses, is almost entirely, if not completely, a function of outside forces—traffic law enforcement, safety measure, car design, driver licensing and education, highway design, etc. Loss costs, themselves, reflect the prices being charged in the market place for hospital and medical care, auto repair and replacement parts, legal services, the cost of vehicles, etc., and they, too, cannot be significantly influenced, at least directly, by the compensation mechanism." [19]

The NAIC earlier reached the same conclusion.

"(Traffic safety or the absence thereof, the economic climate within which automobile insurance functions and the legal system upon which it rests) have a fundamental impact on the cost and the operation of the automobile insurance system despite the fact that they are external to the system and not subject to that system's control. Nevertheless they comprise the framework within which the system functions. Although the insurance system has its defects, some of the basic problems are caused externally and can only be remedied outside the system. Congress, various federal agencies and administrations, the judicial system, the providers of medical services, the automotive industry, state activity or lack thereof in traffic safety, etc., all have contributed to the basic problems." [20]

Thus the insurance industry and the regulators thereof have had to function in a legal, social and economic environment not of its own choosing. The problems stemming from this environment should not be translated into discarding those operating within it as long as they commit themselves to adjust to a new environment when it comes about. The DOT report, at the outset, made this same point:

"The conclusions made about the present system and its operations should not be interpreted to reflect adversely on any of the participants. The subject under investigation was in fact the 'system' and not those who have tried to make it run and improve it. The conclusions are directed to the system." [21]

Furthermore, the Administration in the proposed resolution stated that "the principal problems and abuses with respect to automobile insurance stem from the defects in the system for compensating accident victims . . . rather than from defects in the insurance institution or in its regulation by the several states . . ." Consequently, shifting to a federal regulatory mechanism (even if federal guidelines or objectives are adopted) is not warranted nor recommended by the comprehensive studies made. As indicated earlier, the state insurance regulating mechanism has no vested interest other than its commitment to meeting the public needs in the extent to which the tort liability system is modified or eliminated. We regulate the providing of insurance now and can continue to do so on either a fault or no fault basis on either basis.

7. A PRACTICAL NOTE

As has been aptly pointed out elsewhere and referred to in this statement, inflation has been the prime cause in rate increases. Thus the basic responsibility for the problem generated rests in Washington. Public expenditures, increase in governmental activities, deficits, monetary policy, taxation, etc., all (with the exception of monetary policy) under the control of Congress largely determines the presence or absence of inflation.

This is not to say that improvements cannot or should not be made in the insurance mechanism at the state level. They should be made and they are being made. But the respite will only be temporary if inflation continues to take its inexorable toll. Efforts by Congress to deal with inflation, often hampered by political considerations, have not been effective thus far and there is national pessimism about the likelihood of any improvement in the picture.

SUMMARY—MASS MARKETING OF AUTOMOBILE INSURANCE

To summarize, the initial draft of the NAIC staff study on mass marketing suggests:

1. that insurance consuming public ought to be afforded the freedom of choice.
2. that pressures and events are moving in this direction now.

In addition, I personally believe:

1. that federal legislation of this type, if adopted, needs to be carefully considered so as to: a) adequately protect the total insurance buying public and at the same time not create burdensome and conflicting regulatory machinery

[19] *DOT Report*, p. iv.

[20] *Report of the NAIC Special Committee on Automobile Insurance Problems*, 15 (June 1969).

[21] DOT Report, p. iv.

and b) avoid preemption or to take precedence over state actions that may encourage experimental and pilot programs.

2. that S. 946 has some inherent defects working at cross purposes to the achieving of the basic objective of providing the insurance consuming public with a free choice within a responsible insurance market and that before adoption of such an Act you should correct the defects.

SUMMARY—DAMAGEABILITY STATEMENT

In summary, the NAIC believes that auto insurance ratemaking based on relative susceptibility to property damage in an accident, if perfected, offers a significant contribution to *equitable distribution of rates* among insureds and anticipates that a program such as one embraced by S. 976, whether enacted at the Federal or state level, offers significant potential for cost relief to automobile owners and policyholders.

Senator Moss. Mr. Peter Beardsley, vice president and general counsel of the American Trucking Association will be our witness now.

We will be glad to hear from you, Mr. Beardsley.

STATEMENT OF PETER T. BEARDSLEY, VICE PRESIDENT AND GENERAL COUNSEL, AMERICAN TRUCKERS ASSOCIATION

Mr. BEARDSLEY. Thank you, Senator.

Senator Moss. We will make your full statement a part of the record, and you may proceed in whatever manner you care to.

Mr. BEARDSLEY. All right, Senator. When I get to some of the statistical figures, I will refer to them, but not read them in.

Senator Moss. Thank you. That will be very acceptable.

Mr. BEARDSLEY. My name is Peter T. Beardsley, and I am a vice president, and the general counsel of American Trucking Associations, Inc. Our organization is the national trade association of the motor carrier industry. It represents all types of motor carriers, and has affiliated associations in every State and the District of Columbia. Its office is located at 1616 P Street NW., Washington, DC 20036.

As a part of our activities, we often take a position before Congress respecting proposals which, if enacted, would have a significant impact upon the trucking industry. Ordinarily, such proposals are the same as, or very similar to, others which have preceded them, or propose amendments to existing laws with which we are familiar.

We confess to a lack of familiarity, however, with no-fault insurance, if for no other reason than that the subject itself—at least in the form of proposed legislation—is relatively new. We assume that no-fault means essentially that regardless of the degree of negligence exhibited by the various drivers involved in an accident, each of them would be paid by his insurer for his net economic loss as that term is defined in S. 945.

Based on that assumption, we take no position at this time respecting the no-fault principle as such.

We believe that in view of the every substantial change which this bill proposes in the field of motor-vehicle accident insurance, it would be wise before seriously considering its enactment to await the results of experience under State no-fault laws such as that which recently became effective in Massachusetts, and those of other States which may be enacted.

In any event, S. 945 is not, in any practical sense, no-fault insofor as the trucking industry is concerned, and we have no alternative but to oppose it for that reason. If the bill were amended along the

lines of H.R. 7514, introduced by Chairman Moss of the Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce, we would find it much less objectionable.

We take no position on S. 946 or S. 947, or the resolution proposed by Secretary Volpe in his testimony before this committee on March 18, 1971, which is, I believe, Senate Concurrent Resolution 23.

Senator Moss. Yes.

Mr. BEARDSLEY. The interstate motor carriers subject to economic regulation by the Interstate Commerce Commission, and safety regulation by the Department of Transportation, fall into several categories. Over 15,000 for-hire carriers—common and contract—are subject to both economic and safety regulations.

There are additional thousands of for-hire carriers—mostly transporters of agricultural commodities—which are subject to safety regulation by DOT but exempt from ICC economic regulation. It is on behalf of the regulated carriers, rather than the exempt carriers that this statement is filed.

ATA also represents the interests of numerous private carriers of property through their membership in one or more of the ATA-affiliated State trucking associations, and this statement is filed on their behalf, too.

The trucking industry's concern for highway safety originated in a natural, humanitarian desire to reduce the tragedy of death and injury in traffic, and in a determination to improve the reputation of the industry as a safe, courteous partner on the road.

In addition, there is a business incentive for maintaining an extensive safety program. The millions of trucks of all kinds in daily use on streets and highways are constantly exposed to accident-producing situations which can result in loss or damage to other highway users, to industry drivers and vehicles, and to customer freight.

Such accidents have the potential of putting any motor carrier out of business because of the extremely high costs that are incurred through civil suits, workmen's compensation, vehicle repairs, and freight claims. Those costs are direct expenses to the carrier, regardless of the amount of its insurance coverage as truck insurance is written on a retrospective basis so that the premium for a given year is raised or lowered to reflect the accident cost experience for the previous year.

The loss potential faced by truck fleets and the retrospective method of rating insurance have been incentives for the conduct of carefully planned programs to prevent accidents.

Industry experience shows that driver selection is the key to the entire safety program, and so trucking companies try to insure that they do not "Hire their problems." In employment interviews and reference checks of prospective drivers, personnel officials use nationally approved guidelines which prescribe rigorous qualifications. Past employment, credit background, and traffic record are among the factors explored to determine an applicant's reliability, attitude, and willingness to accept responsibility for his vehicle and cargo, and for the welfare of other highway users.

The industry's driver selection program had its beginnings in the 1920's and was adopted as a national standard in 1940. In the 1950's it was further improved through an industry-sponsored study by the School of Public Health of Harvard University which was designed to provide more information about driver motivation.

After being hired, a driver trainee receives detailed classroom instruction in company policies, traffic regulations, safety requirements, knowledge of the vehicle, and techniques for safe driving.

To develop driving proficiency, he undergoes a lengthly probationary period starting with student trips in the company of an experienced driver. He learns how to handle smaller trucks at first, and eventually may drive an intercity tractor-trailer rig.

Throughout his employment, industry and fleet supervision is provided through road patrols, radar checks, safety meetings and conferences, and the use of recording devices and check stations.

The professional truckdriver is required to allow the code of defensive driving, which places responsibility upon him to drive in such a way that he commits no driving errors himself, and can protect himself against the mistakes of other drivers.

If he is involved in an accident his company rules the accident as preventable, or nonpreventable. A preventable accident is one in which the truck driver did not take every possible step to prevent the accident, regardless of whether or not he was legally in the right, and the other driver was legally wrong.

Under this concept of preventability the driver's attitudes and actions are brought under close scrutiny and control by the company, so that the driver who develops poor attitudes or poor driving habits is quickly retrained or released from employment.

The effectiveness of the industry's programs is reflected in the following National Safety Council accident figures:

	Percent of trucks involved in accidents	Truck percent of registered vehicles	Percent of cars involved in accidents	Car percent of registered vehicles
Year:				
1948	17.0	18.0	80.0	81.0
1969	11.5	16.6	85.1	80.8

These figures are taken from the National Safety Council's publication Accident Facts, 1949 and 1970 editions, pages 66 and 56, respectively. They demonstrate that the truck record for accident involvement has improved substantially over the period shown, whereas that of the passenger car has gotten worse.

The figures shown do not reflect mileage driven. When this factor is considered, the truck record is significantly better than that of the passenger cars. This is demonstrated by the following figures:

Intercity fleets: Total truck mileage	12,460,796,451
(Class I and II). (Ratio: 3.15 trucks involved per million miles): Total trucks involved in accidents	39,302
All trucks (ratio: 14.9 trucks involved per million miles):	
Total truck mileage	206,680,000,000
Total trucks involved in accidents	3,075,000
All passenger cars (Ratio: 26.8 passenger cars involved per million miles):	
Total passenger car mileage	849,633,000,000
Total cars involved in accidents	22,800,000

The class I and II trucks referred to in the first category are those for-hire vehicles subject to economic regulation by the Interstate Commerce Commission, and safety regulation by the Department of

Transportation. The mileage and accident figures are obtained from the pamphlet, "1969 Accidents of Large Motor Carriers of Property," Bureau of Motor Carrier Safety, Department of Transportation.

A class I carrier is one whose annual gross operating revenue is $1 million or more. A class II carrier is one whose annual gross operating revenue is $300,000, but less than $1 million. The second category "all trucks," covers just that. It includes, for example, farm trucks, trucks operated by the Federal Government, as well as a very large number of trucks not subject to economic regulation by the ICC, but subject to DOT safety regulation.

The mileage figures for both the second and third categories are those of the Department of Transportation—Highway Statistics, 1969, table VM-1, page 73—and the accident figures are those of the National Safety Council—Accident Facts, 1970 edition, page 56. 1969 figures are used, as they are the latest available from all sources.

The effect of the industry's safety programs has been to enable motor carriers to significantly reduce the heavy costs of accident involvement. But even though the carriers have done an outstanding job of controlling their vehicles and drivers, there are still a large number of truck accidents each year that are caused by others. A study by American Fidelity and Casualty Co. of truck-involved accidents in the 1950's showed that in 104,000 accidents with other vehicles, truckdrivers could not in any way have prevented 70 percent of them.

Over the years, the trucking industry has been in the forefront of highway user groups which have made a consistent and conscientious effort to reduce their contribution to highway accidents. That effort has involved the expenditure of large sums of money and a great deal of time and work.

Now it is proposed that the cost of highway accidents be assigned, not to those responsible for them, but to all highway users, without regard to their driving habits, or their concern for their own welfare, or that of other users of the road.

If there is to be a shift to a no-fault basis, we submit that if any segment of highway users should be singled out for favored treatment, it should be the motor carriers. But instead of being rewarded for their successful efforts to reduce highway accidents, S. 945 would subject them to discriminatory treatment.

We don't ask for favors, but we do ask for fair treatment. If the law is to provide that, except for catastrophic loss, no driver involved in an accident is to be considered responsible for it, the same rule should apply with respect to drivers of commercial vehicles.

There is certainly no equity in arbitrarily assigning to such vehicles a very high percentage of the costs resulting from any accident in which it is involved. The proposal is indeed a paradox—on the one hand, operators of commercial vehicles are told that no matter how negligent automobile drivers may be, they bear no responsibility when then cause an accident in which the operator's trucks are involved, but the truckowners will be assessed a major share of the cost resulting from the very same accidents. Technically, this may be no-fault insurance; practically, it is insurance which arbitrarily assigns a great majority of the blame and cost to operators of commercial vehicles involved in accidents.

Under the current fault system of compensating for accident losses, motor carriers usually bear all or part of the accident costs if their driver contributed in any degree to an accident. However, the system quite often protects the carriers when other drivers are totally responsible. Thus the present system provides incentive to the carriers to continue their programs of careful driver selection, training, and supervision, and it keeps insurance costs at a point which the carriers can afford and still stay in business.

To the contrary, section 5(7)(A) and (B) of S. 945 would hold motor carriers uniformly liable for a large percentage of all property damage and personal injury regardless of whether or not their trucks were actually responsible for accidents. This would result in discrimination against trucks because, through millions of miles of operation, they are constantly exposed to accidents resulting from the driving errors of others.

The truckdriver is a skilled professional who must meet strict physical requirements every 2 years and who is limited to a maximum of 10 hours of driving in any one duty period. The vehicle he operates is a highly sophisticated machine that is the subject of regularly scheduled inspections and preventive maintenance. Yet, on the highway, he is exposed to drivers who have varying degrees of ability and who quite often are pushing their stamina by attempting to cover 10, 15, and 20 hours of driving following an 8-hour workday.

The truckdriver is exposed to driving mistakes by the very young neophyte driver whose attitudes lack maturity, by the older driver who may lack the physical conditioning necessary to safe driving at high speeds, and, because a very substantial amount of over-the-road trucking occurs at night, to the drunken driver. As a result of this exposure, there is a strong likelihood that even the best and most defensive truckdriver can become involved in an accident that he can in no way avoid.

Under the provisions of this bill, the costs of such accidents would be largely borne by the motor carriers and their insurance costs would rise very substantially.

As an example of the inherent inequity of this bill which would hold the commercial vehicle largely or almost entirely responsible for an accident involving a passenger car, consider the cost results of an accident under the present system versus the system proposed by the bill:

(*a*) Truck and trailer unit, westbound, in extreme right lane of four-lane divided highway.

(*b*) Passenger car with four occupants, eastbound, loses control, comes through the dividing median and collides with the truck.

RESULT—ALL OCCUPANTS OF CAR SEVERELY INJURED. NO INJURY TO TRUCKDRIVER

Present system

Based on the premise that one who causes injury to another by negligent conduct should fairly and adequately compensate him for that injury, the truck operator would owe nothing.

S. 945

This bill requires payment of up to $1,000 per month for a total of 30 months for loss of earnings resulting from an accident, with no

specified limits on costs for medical, hospital, surgical, et cetera, services, and physical and occupational therapy and rehabilitation.

Assuming that the injured parties in this accident were disabled many months each, the total cost for the injuries could well be in the hundreds of thousands of dollars, by virtue of the expenses covered by economic loss under section 2(10) of the bill.

Under the terms of S. 945 (sec. 5(7)(A)) by which a larger vehicle, depending on its size, would be responsible for a substantial percentage of net economic loss, it is possible that the motor carrier would be required to pay upward of 90 percent of the loss incurred by the occupants of the passenger car.

While we assume the figure would be somewhat lower, the bill gives the Secretary of Transportation (sec. 5(7)(B)) complete discretion to assign to vehicles larger than an "ordinary passenger automobile" a percentage of responsibility for net economic loss sustained by occupants of other vehicles. And the bill clearly indicates, in the same section, that the Secretary could determine that such responsiblity would exceed 70 percent.

The definition of "ordinary passenger automobile" contained in the bill (sec. 5(7)(A)(i)) includes vehicles having a seating capacity of up to nine passengers. It is, therefore, clear that the cited example of costs which might be incurred by motor carriers because their vehicles are involved in accidents for which—under the present system—they could not be held responsible, is modest indeed.

S. 945 is contrary to the principle of no-fault insurance because it would penalize motor carriers by placing them under a fault system of insurance rather than a no-fault system. It would hold the carriers responsible for losses incurred by all parties to all accidents involving trucks as if the carriers' vehicles are always responsible for such accidents.

One of the claims made for no-fault insurance is that premium costs will be reduced, but S. 945, if enacted, would tremendously increase the costs of truck insurance because of the larger portion of accident costs that would be borne by insurance companies which supply truck insurance.

Under the retrospective rating plan, those costs will be shifted back to the motor carriers through an increase in premiums. The regulated for-hire trucking industry includes approximately 1,500 class I carriers, 2,000 class II carriers, and, in addition, 11,700 class III carriers (those whose annual gross revenues are less than $300,000 and whose fleets consist of a small number of vehicles).

All for-hire carriers operate on a very slim profit margin and many would be unable to absorb a sharp rise in insurance costs. The industry is faced with severe competition from railroads, airlines, freight forwarders, and, to some extent, water carriers. Because of the competition of other transport modes, for-hire carriers are by no means completely free to recoup increased expenses by increases in their rates.

I referred earlier to H.R. 7514, introduced in the House by Congressman Moss of California. As we read his bill, it would eliminate the provision of S. 945 which would require that large vehicles be charged with a very substantial portion of the costs of all accidents in which they are involved, which is the very antithesis of the no-fault principle.

Let me say that we earnestly hope—if Federal no-fault insurance legislation is enacted—it will follow the lines of H.R. 7514 in this respect.

There is another aspect of S. 945 which seems entirely out of keeping with the no-fault philosophy. I refer to section 5(5), providing that persons not occupants of motor vehicles may recover their net economic loss from the insurer of any motor vehicle involved in an accident.

First off, we think the approach suggested by Secretary Volpe in his appearance before this committee on March 18, 1971, is preferable. As we understand his proposal, the insurance coverage obtained by a motor vehicle owner would cover himself and all members of his family whenever they were involved in a motor vehicle accident, whether in the owner's vehicle, as occupants of another vehicle, or as pedestrians. This would leave the owner's insurance company additionally liable only for injury or death to uninsured passengers or pedestrians.

But this is not our main objection to section 5(5). We believe its language is so broad as to allow recovery by any member of a train crew, or passenger on a train, from the insurer of any motor vehicle involved in a grade-crossing accident.

Just as S. 945 requires owners of passengers cars and operators of trucks and buses to provide insurance to cover the net economic loss suffered by occupants of their vehicles, it should also require the railroads to assume the same obligation with respect to members of train crews and passengers on trains. This is no minor matter.

Statistics published by the Department of Transportation show the following respecting grade-crossing accidents, and fatalities and injuries resulting therefrom, for the years 1967–69.[1]

	Number of accidents	Fatalities	Injuries
Year:			
1967	3,932	1,632	3,812
1968	3,816	1,546	3,744
1969	3,774	1,490	3,669

If no-fault is to be the standard for recovery of net economic loss in accidents involving motor vehicles, railroads cannot in fairness be given a free ride at the expense of owners of passenger cars, trucks and buses.

Under S. 945 as presently worded, the Secretary of Transportation might well decide, in exercising his authority under section 5(7)(A), to assign 75 percent of the net economic loss incurred by a passenger-car driver in an accident with a truck or bus to the insurer of the latter vehicles. If the bill is enacted with this provision included, then, by the same token, it should vest the same authority in the Secretary to assign responsibility—on a similar basis—to railroad equipment involved in accidents with passenger cars, trucks and buses.

Senator Moss, that completes my direct statement.

Thank you very much.

Senator Moss. Well, thank you, Mr. Beardsley, for that fine statement.

[1] Accident Bulletin No. 138, Federal Railroad Administration, table 6, p. 2.

I understand the objection that you have to the bill S. 945. The others you didn't comment on and didn't have any matter to present.

In this discussion that you had on the training of drivers, and therefore incentive to forestall accidents, to drive safely, don't insurance costs vary among companies depending on the record that they make of accidents?

Mr. BEARDSLEY. They surely do. Because of the retrospective system that I mentioned, Senator, if a company has a bad record, it is reflected next year in its premium.

Senator MOSS. So that sort of incentive would remain even if commercial trucks were required to continue to buy insurance; there would still be a great incentive to train drivers for safe driving, wouldn't there?

Mr. BEARDSLEY. I would hope there always would be regardless of what the state of the law was insurancewise or otherwise. that is the way it ought to be.

Senator MOSS. I would hope so, too, and I would expect there would be, but I was just pointing out that some economic incentive would remain there for the companies to do that. But other than the concern that you have that trucks are treated differently from passenger cars, you don't find any great difficulty with the bill. Is that right?

Mr. BEARDSLEY. No, sir. As I said at the outset of my testimony, this is something fairly new for ATA to be getting into. I recall this is the first time we had occasion to testify with respect to any legislation dealing with insurance, certainly in the Congress. And we are sort of feeling our way along, if I may say so.

We have a meeting of our executive committee coming up after the middle of June and we are going to put this subject on the agenda for further consideration. I have no way of knowing what the results will be, it may be just where we stand today, we may get some instructions to take a broader approach, so to speak. But so far our only instructions are to oppose S. 945 because of the provisions I stressed in my testimony.

Senator MOSS. Well, we surely appreciate your coming and we hope that when you have further considered it, if you arrive at a policy decision, you will communicate it to the committee and we will probably still be deeply involved in this, and when our transcript of our hearings is printed up, and you study them, if you have additoinal comments you think you would like to submit based on that, we would appreciate having that from you, too.

Mr. BEARDSLEY. Thank you very much.

Senator MOSS. Thank you, Mr. Beardsley.

We appreciate your appearance here today.

(The statement follows:)

STATEMENT OF PETER T. BEARDSLEY, VICE PRESIDENT AND GENERAL COUNSEL, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. Chairman and Members of the Subcommittee:

My name is Peter T. Beardsley, and I am a Vice-President, and the General Counsel of American Trucking Associations, Inc. Our organization is the national trade association of the motor carrier industry. It represents all types of motor carriers, and has affiliated associations in every state and the District of Columbia. Its office is located at 1616 P Street, N.W., Washington, D.C. 20036.

As a part of our activities, we often take a position before Congress respecting proposals which, if enacted, would have a significant impact upon the truck-

ing industry. Ordinarily, such proposals are the same as, or very similar to, others which have preceded them, or propose amendments to existing laws with which we are familiar. We confess to a lack of familiarity, however, with "no-fault" insurance, if for no other reason than that the subject itself—at least in the form of proposed legislation—is relatively new. We assume that "no-fault" means essentially that regardless of the degree of negligence exhibited by the various drivers involved in an accident, each of them would be paid by his insurer for his "net economic loss" as that term is defined in S. 945. Based on that assumption, we take no position at this time respecting the "no-fault" principle as such.

We believe that in view of the very substantial change which this bill proposes in the field of motor-vehicle accident insurance, it would be wise before seriously considering its enactment to await the results of experience under State "no-fault" laws such as that which recently became effective in Massachusetts, and those of other States which may be enacted.

In any event, S. 945 is not, in any practical sense, "no-fault" insofar as the trucking industry is concerned, and we have no alternative but to oppose it for that reason. If the bill were amended along the lines of H.R. 7514, introduced by Chairman Moss of the Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce, we would find it much less objectionable.

We take no position on S. 946 or S. 947, or the resolution proposed by Secretary Volpe in his testimony before this Committee on March 18, 1971.

The interstate motor carriers subject to economic regulation by the Interstate Commerce Commission, and safety regulation by the Department of Transportation, fall into several categories. Over 15,000 for-hire carriers (common and contract) are subject to both economic and safety regulation. There are additional thousands of for-hire carriers (mostly transporters of agricultural commodities) which are subject to safety regulation by DOT but exempt from ICC economic regulation. It is on behalf of the "regulated" carriers, rather than the "exempt" carriers that this statement is filed. ATA also represents the interests of numerous private carriers of property through their membership in one or more of the ATA-affiliated State trucking associations, and this statement is filed on their behalf too.

The trucking industry's concern for highway safety originated in a natural, humanitarian desire to reduce the tragedy of death and injury in traffic, and in a determination to improve the reputation of the industry as a safe, courteous partner on the road.

In addition, there is a business incentive for maintaining an extensive safety program. The millions of trucks of all kinds in daily use on streets and highways are constantly exposed to accident-producing situations which can result in loss or damage to other highway users, to industry drivers and vehicles, and to customer freight. Such accidents have the potential of putting any motor carrier out of business because of the extremely high costs that are incurred through civil suits, workmen's compensation, vehicle repairs and freight claims. Those costs are direct expenses to the carrier, regardless of the amount of its insurance coverage, as truck insurance is written on a retrospective basis so that the premium for a given year is raised or lowered to reflect the accident cost experience for the previous year.

The loss potential faced by truck fleets and the retrospective method of rating insurance have been incentives for the conduct of carefully planned programs to prevent accidents.

Industry experience shows that driver selection is the key to the entire safety program, and so trucking companies try to insure that they do not "hire their problems." In employment interviews and reference checks of prospective drivers, personnel officials use nationally approved guidelines which prescribe rigorous qualifications. Past employment, credit background, and traffic record are among the factors explored to determine an applicant's reliability, attitude and willingness to accept responsibility for his vehicle and cargo, and for the welfare of other highway users.

The industry's driver selection program had its beginning in the 1920's and was adopted as a national standard in 1940. In the 1950's it was further improved through an industry-sponsored study by the School of Public Health of Harvard University which was designed to provide more information about driver motivation.

After being hired, a driver trainee receives detailed classroom instruction in company policies, traffic regulations, safety requirements, knowledge of the vehicle and techniques for safe driving. To develop driving proficiency he undergoes a lengthy probationary period starting with student trips in the company of an experienced driver. He learns how to handle smaller trucks at first, and eventually may drive an intercity tractor-trailer rig.

Throughout his employment, industry and fleet supervision is provided through road patrols, radar checks, safety meetings and conferences, and the use of recording devices and check stations.

The professional truck driver is required to follow the code of "defensive driving," which places responsibility upon him to drive in such a way that he commits no driving errors himself and can protect himself against the mistakes of other drivers. If he is involved in an accident his company rules the accident as "preventable" or "non-preventable." A preventable accident is one in which the truck driver did not take every possible step to prevent the accident, regardless of whether or not he was legally in the right and the other driver was legally wrong. Under this concept of preventability the driver's attitudes and actions are brought under close scrutiny and control by the company so that the driver who develops poor attitudes or poor driving habits is quickly retrained or released from employment.

The effectiveness of the industry's programs is reflected in the following National Safety Council accident figures:

Year	Percent of trucks involved in accidents	Truck percent of registered vehicles	Percent of cars involved in accidents	Car percent of registered vehicles
1948	17.0	18.0	80.0	81.0
1969	11.5	16.6	85.1	80.8

These figures are taken from the National Safety Council's publication, "Accident Facts," 1949 and 1970 editions, pp. 66 and 56, respectively. They demonstrate that the truck record for accident involvement has improved substantially over the period shown, whereas that of the passenger car has gotten worse. The figures shown do not reflect mileage driven. When this factor is considered, the truck record is significantly better than that of the passenger cars. This is demonstrated by the following figures:

Intercity fleets (class I and II)	Total truck mileage	12,460,796,451
	Total trucks involved in accidents	39,302
	Ratio of trucks involved per million miles	3.15
All trucks	Total truck mileage	206,690,000,000
	Total trucks involved in accidents	3,075,000
	Ratio of trucks involved per million miles	14.9
All passenger cars	Total passenger car mileage	849,633,000,000
	Total cars involved in accidents	22,800,000
	Ratio of passenger cars involved per million miles	26.8

The Class I and II trucks referred to in the first category are those for-hire vehicles subject to economic regulation by the Interstate Commerce Commission, and safety regulation by the Department of Transportation. The mileage and accident figures are obtained from the pamphlet, "1969 Accidents of Large Motor Carriers of Property," Bureau of Motor Vehicle Safety, Department of Transportation. A Class I carrier is one whose annual gross operating revenue is $1 million or more. A Class II carrier is one whose annual gross operating revenue is $300,000, but less than $1 million. The second category "all trucks," covers just that. It includes, for example, farm trucks, trucks operated by the federal government, as well as a very large number of trucks not subject to economic regulation by the ICC, but subject to DOT safety regulation. The mileage figures for both the second and third categories are those of the Department of Transportation (Highway Statistics, 1969, Table VM-1, p. 73), and the accident figures are those of the National Safety Council (Accident Facts, 1970 ed., p. 56). 1969 figures are used, as they are the latest available from all sources.

The effect of the industry's safety programs has been to enable motor carriers to significantly reduce the heavy costs of accident involvement. But even though

the carriers have done an outstanding job of controlling their vehicles and drivers, there are still a large number of truck accidents each year that are caused by others. A study by American Fidelity and Casualty Co. of truck-involved accidents in the 1950's showed that in 104,000 accidents with other vehicles, truck drivers could not in any way have prevented 70% of them.

Over the years, the trucking industry has been in the forefront of highway user groups which have made a consistent and conscientious effort to reduce their contribution to highway accidents. That effort has involved the expenditure of large sums of money and a great deal of time and work. Now it is proposed that the cost of highway accidents be assigned, not to those responsible for them, but to all highway users, without regard to their driving habits, or their concern for their own welfare, or that of other users of the road. If there is to be a shift to a "no-fault" basis, we submit that if any segment of highway users should be singled out for favored treatment, it should be the motor carriers. But insead of being rewarded for their succesful efforts to reduce highway accidents, S. 945 would subject them to discriminatory treatment. We don't ask for favors, but we do ask for fair treatment. If the law is to provide that, except for catastrophic loss, no driver involved in an accident is to be considered responsible for it, the same rule should apply with respect to drivers of commercial vehicles.

There is certainly no equity in arbitrarily assigning to such vehicles a very high percentage of the costs resulting from any accident in which it is involved. The proposal is indeed a paradox—on the one hand, operators of commercial vehicles are told that no matter how negligent automobile drivers may be, they bear no responsibility when they cause an accident in which the operator's trucks are involved, but the truck owners will be assessed a major share of the cost resulting from the very same accidents! Technically, this may be "no fault" insurance; practically, it is insurance which arbitrarily assigns a great majority of the blame (cost) to operators of commercial vehicles involved in accidents.

Under the current fault system of compensating for accident losses, motor carriers usually bear all or part of the accident costs if their drivers contributed in any degree to an accident. However, the system quite often protects the carrier when other drivers are totally responsible. Thus the present system provides incentive to the carriers to continue their programs of careful driver selection, training and supervision, and it keeps insurance costs at a point which the carriers can afford and still stay in business.

To the contrary, § 5(7) (A) and (B) of S. 945 would hold motor carriers uniformly liable for a large percentage of all property damage and personal injury regardless of whether or not their trucks were actually responsible for accidents. This would result in discrimination against trucks because, through millions of miles of operation, they are constantly exposed to accidents resulting from the driving errors of others.

The truck driver is a skilled professional who must meet strict physical requirements every two years and who is limited to a maximum of ten hours of driving in any one duty period. The vehicle he operates is a highly sophisticated machine that is the subject of regularly-scheduled inspections and preventive maintenance. Yet, on the highway, he is exposed to drivers who have varying degrees of ability and who quite often are pushing their stamina by attempting to cover 10, 15 and 20 hours of driving following an eight-hour work day. The truck driver is exposed to driving mistakes by the very young neophyte driver whose attitudes lack maturity, by the older driver who may lack the physical conditioning necessary to safe driving at high speeds, and, because a very substantial amount of over the-road trucking occurs at night, to the drunken driver. As a result of this exposure, there is a strong likelihood that even the best and most defensive truck driver can become involved in an accident that he can in no way avoid. Under the provisions of these bills, the cost of such accidents would be largely borne by the motor carriers and their insurance costs would rise very substantially.

As an example of the inherent inequity of these bills which would hold the commercial vehicle largely or almost entirely responsible for an accident involving a passenger car, consider the cost results of an accident under the present system versus the system proposed by the bills:

A. Truck and trailer unit, westbound, in extreme right lane of 4-lane divided highway.

B. Passenger car with 4 occupants, eastbound, loses control, comes through the dividing median and collides with the truck.

Result: All occupants of car severely injured. No injury to truck driver.

PRESENT SYSTEM

Based on the premise that one who causes injury to another by negligent conduct should fairly and adequately compensate him for that injury, the truck operator would owe nothing.

S. 945

This bill requires payment of up to $1,000 per month for a total of 30 months for loss of earnings resulting from an accident, with no specified limits on costs for medical, hospital, surgical, etc., services, and physical and occupational therapy and rehabilitation. Assuming that the injured parties in this accident were disabled many months each, the total cost for the injuries could well be in the hundreds of thousands of dollars, by virute of the expenses covered by "economic" loss under § 2(10) of the bill.

Under the terms of S. 945 (§ 5(7)(A)) by which a larger vehicle, depending on its size, would be responsible for a substantial percentage of net economic loss, it is possible that the motor carrier would be required to pay upwards of 90% of the loss incurred by the occupants of the passenger car. While we assume the figure would be somewhat lower, the bill gives the Secretary of Transportation (§ 5(7)(B)) complete discretion to assign to vehicles larger than an "ordinary passenger automobile" a percentage of responsibility for net economic loss sustained by occupants of other vehicles. And the bill clearly indicates, in the same section, that the Secretary could determine that such responsibility would exceed 70%. The definition of "ordinary passenger automobile" contained in the bill (§ 5(7)(A)(i)) includes vehicles having a seating capacity of up to nine passengers. It is, therefore, clear that the cited example of costs which might be incurred by motor carriers because their vehicles are involved in accidents for which—under the present system—they could not be held responsible, is modest indeed.

S. 945 is contrary to the principle of "no-fault" insurance because it would penalize motor carriers by placing them under a "fault" system of insurance rather than a "no-fault" system. It would hold the carriers responsible for losses incurred by all parties to all accidents involving trucks as if the carriers' vehicles are always responsible for such accidents.

One of the claims made for "no-fault" insurance is that premium costs will be reduced, but S. 945, if enacted, would tremendously increase the costs of truck insurance because of the larger portion of accident costs that would be borne by insurance companies which supply truck insurance.

Under the retrospective rating plan, those costs will be shifted back to the motor carriers through an increase in premiums. The regulated for-hire trucking industy includes appoximately 1,500 Class I carriers, 2,000 Class II carriers, and, in addition, 11,700 Class III carriers (those who annual gross revenues are less than $800,000 and whose fleets consist of a small number of vehicles). All for-hire carriers operate on a very slim profit margin and many would be unable to absorb a sharp rise in insurance costs. The industry is faced with severe competition from railroads, airlines, freight forwarders, and to some extent, water carriers. Because of the competition of other transport modes—for-hire carriers are by no means completely free to recoup increased expenses by increases in their rates.

I referred earlier to H.R. 7514, introduced in the House by Congressman Moss of California. As we read his bill, it would eliminate the provision of S. 945 which would require that large vehicles be charged with a very substantial portion of the costs of all accidents in which they are involved, which is the very antithesis of the "no fault" principle. Let me say that we earnestly hope—if federal "no fault" insurance legislation is enacted—it will follow the lines of H.R. 7514 in this respect.

There is another aspect of S. 945 which seems entirely out of keeping with the "no-fault" philosophy. I refer to § 5(5), providing that persons not occupants of motor vehicles may recover their net economic loss from the insurer of any motor vehicle involved in an accident. First off, we think the approach suggested by Secretary Volpe in his appearance before this Committee on March 18, 1971, is preferable. As we understand his proposal, the insurance coverage obtained by a motor vehicle owner would cover himself and all members of his family whenever they were involved in a motor vehicle accident, whether in the owner's vehicle, as occupants of another vehicle, or as pedestrians. This would leave the owner's insurance company additionally liable only for injury or death to uninsured passengers or pedestrians.

But this is not our main objection to § 5(5). We believe its language is so broad as to allow recovery by any member of a train crew, or passenger on a train, from the insurer of any motor vehicle involved in a grade-crossing accident. Just as S. 945 requires owners of passenger cars and operators of trucks and buses to provide insurance to cover the net economic loss suffered by occupants of their vehicles, it should also require the railroads to assume the same obligation with respect to members of train crews and passengers on trains. This is no minor matter. Statistics published by the Department of Transportation show the following respecting grade-crossing accidents, and fatalities and injuries resulting therefrom, for the years 1967–1969: [1]

Year	Number of accidents	Fatalities	Injuries
1967	3,932	1,632	3,812
1968	3,816	1,536	3,744
1969	3,774	1,490	3,669

If "no fault" is to be the standard for recovery of net economic loss in accidents involving motor vehicles, railroads cannot in fairness be given a free ride at the expense of owners of passenger cars, trucks and buses. Under S. 945 as presently worded, the Secretary of Transportation might well decide, in exercising his authority under § 5(7)(A), to assign 75% of the net economic loss incurred by a passenger car driver in an accident with a truck or bus to the insurer of the latter vehicles. If the bill is enacted with this provision included, then, by the same token, it should vest the same authority in the Secretary to assign responsibility—on a similar basis—to railroad equipment involved in accidents with passenger cars, trucks and buses.

Senator Moss. This concludes our witnesses for today.

This concludes our witnesses for today.

This committee will convene tomorrow at 10:15 here in this room to hear additional witnesses.

We are now in recess until tomorrow.

(Whereupon, at 3:20 p.m., the hearing was recessed, to reconvene at 1:15 a.m., Friday, May 14, 1971.)

[1] Accident Bulletin No. 138, Federal Railroad Administration, Table 6, p. 2.

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

FRIDAY, MAY 14, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 10:30 a.m. in room 5110, New Senate Office Building, Hon. Philip A. Hart, presiding.

Present: Senators Hart and Stevens.

Senator HART. The committee will be in order.

Senator Case of New Jersey had planned to join us this morning in order to introduce our first witness. He has sent word that the Foreign Relations Committee is discussing, as it always does, some world-shaking problem and has not yet resolved it; and he suggested that we go ahead.

So, I welcome for Senator Case and those of us on the committee here Mr. Eugene M. Haring of Newark, N.J. I should explain that I read through Mr. Haring's statement, and it sounded great.

We do welcome you.

May I ask that the summary biography of Mr. Haring be printed at this point in the record. It is a most impressive one. It lends additional weight to his testimony.

(The biography follows:)

BIOGRAPHICAL SKETCH OF EUGENE M. HARING

Princeton University; A.B., Summa Cum Laude, 1949 (Phi Beta Kappa).

Princeton University; A.M., Philosophy, 1951, (Woodrow Wilson Fellow 1949–50).

Harvard Law School; J.D., 1955.

McCarter & English, Newark, New Jersey; Associate, 1955–1961; Partner, 1961– .

American Judicature Society; Essex County (N.J.) Bar Association; New Jersey State Bar Association; American Bar Association; Harvard Law School Association of New Jersey (Vice President & Trustee); Summit (New Jersey) Civil Rights Commission, 1970–71; United States Navy, 1945–46.

STATEMENT OF EUGENE M. HARING, ATTORNEY, McCARTER & ENGLISH, NEWARK, N.J., AND MEMBER, NEW JERSEY LAWYERS COMMITTEE FOR NO-FAULT INSURANCE; ACCOMPANIED BY JOHN L. McGOLDRICK, ASSOCIATE

Mr. HARING. Thank you, Senator Hart.

On my left is John McGoldrick, my associate.

As I believe you know, I am a practicing lawyer with offices in Newark, N.J., although my practice extends throughout that State.

During a substantial part of my professional experience, I have been responsible for much of the litigation conducted by my firm, which is one of the largest in New Jersey. I have been responsible for a wide variety of litigation, including automobile negligence cases, life insurance, health insurance, disability insurance, and products liability cases. Because of my personal concern I am affiliated with a group of New Jersey lawyers from all parts of the State for the lawyers committee for no-fault insurance. This is an unfunded, voluntary group; it speaks solely for its members and, we believe, the public interest.

Cochairmen of this group are Charles Danzig, Woodruff J. English and Donald B. Kipp, all distinguished lawyers of broad experience in positions sensitive to the overall legal process in New Jersey.

In addition, among the sponsors of this group are Alfred C. Clapp, former Republican State senator and former presiding judge of the appellate division of New Jersey; and Bernard Shanley, New Jersey Republican national committeeman and former counsel to President Eisenhower.

This is not a political group. It is nonpartisan. It is comprised of both Republicans and Democrats.

The cochairmen of the New Jersey lawyers for no-fault insurance have approved a statement of position. It includes the following:

> The Committee believes that the present system of handling automobile negligence litigation has demonstrated itself to be deficient in logic, in law and in practice.
>
> The Committee urges that a new system—a no-fault system—be tried. The weaknesses of the existing system have been so abundantly demonstrated that it is clear that palliatives and patchwork will not alleviate, but can only aggravate, the serious problems which undeniably exist. Basic and extensive reform is required.
>
> The Committee speaks only for itself. The lawyers comprising the Committee do not purport to speak for the clients of any of the Committee members nor for any other organized group.
>
> It would be unfortunate indeed if the public were mislead by a vocal segment of the Bar to believe that all lawyers are insensitive to the urgent need for reform.

That is the end of the excerpt from the committee's statement.

Chief Justice Weintraub of the New Jersey Supreme Court is respected nationally as well as in his own State. Under the New Jersey constitution the chief justice of New Jersey is directly responsible for the administration of the courts and must be in close touch with the judicial process in all the courts of the State. Chief Justice Weintraub of the New Jersey Supreme Court has stated publicly that he favors some form of no-fault insurance.

The chief justice has pointed out that given today's traffic congestion, accidents are inevitable. Indeed, they are statistically predictable. Given the split second accident, resulting from inadvertence, the chief justice has said we cannot speak realistically of fault.

Chief Justice Weintraub has said that accordingly there is not a fair basis upon which to fix fault, that if he thought the fault system were just, he would not advocate no-fault. He has pointed out that accidents happen so quickly that witnesses simply cannot recall and reconstruct the facts.

The chief justice says that saving court time by a no-fault system is a mere incidental benefit, that he would not advocate no-fault merely to save court time, but that given the split second quality of accidents,

their inevitability and predictability, a no-fault plan is the just and equitable plan. His basis for advocating no-fault is fairness and justice.

Quite apart from the position of the lawyers' committee I would make a few personal comments from my experience as a New Jersey trial lawyer.

I should say, Senator, that I am not here representing any vested interest. I am not here for labor. I am not here for business. I am not here for the insurance industry. I am here on my own. I bought my own ticket on the railroad.

New Jersey is the most densely populated States in the Nation. The density of automobiles in New Jersey is the greatest in the Nation. Accordingly, the problems which arise from the present automobile liability system are particularly severe in that State.

What we do under the tort system as distinct from what some lawyers say we do is attempt to provide compensation—compensation for the injured—but within a fault framework.

Indeed, the principle of compensation becomes most evident in the usual settlement conference which precedes a jury trial, and by which process the vast majority of cases are disposed of. At least by the morning of trial it becomes plainly evident that fault is not some absolute moral principle. Fault is what a jury says.

Given a split second accident which occurred years ago, jury verdicts are predicably unpredictable. Hence the settlement conference, the trade of certainty for risk.

Under the present system drivers play roulette. If they have an accident, no matter how seriously injured they are, they may well get very little. They stand a slim chance of hitting the jackpot. The recovery depends on how much insurance a stranger buys.

In fact, we are operating under an internally inconsistent system. We are trying to move in two directions at once. On the one hand, we operate within a system designed to prove fault and to reward the innocent. On the other hand, we apply principles of compensation with little regard to fault.

The result is uncertain compensation and frequently inadequate compensation, provided by a highly expensive system which was designed to determine fault.

Basic protection, self-insurance, or, as it has come to be called no-fault insurance would do what insurance was originally supposed to do—spread the risk and provide a certainty of payment.

You are well aware that highly vocal, and, at times shrill, objection to no-fault insurance has come from members of the legal profession. The familiar system seems simpler and more comfortable. Undoubtedly, much objection, while entirely sincere, proceeds from sheer inertia and visceral opposition to change. You know from recent testimony that some of it proceeds from sheer self-interest.

But, the legal profession, after all, exists to serve the public and not the other way around.

My office is in Newark. That city and much of New Jersey is beset by those social and economic and racial problems which afflict urban areas throughout the Nation.

Problems with respect to environment, products liability, consumers' rights, and the accommodation of conflicting interests of economic and racial groups more and more require and demand the attention of our courts both on the civil and criminal side.

In New Jersey 83 percent of automobile liability cases are settled before verdict. Accordingly, our courts are used largely not for the trial of cases at all, for which they were designed. They are a marketplace for the arbitration and compromise of claims.

Frequently the talents called upon are not so much those of the trained lawyer or judge, but those to be found in a Turkish bazaar. The time of lawyers and of judges is used to decide somehow the trading value of a whiplash injury, a broken arm or the loss of a leg. Their time could be used more productively.

I submit that the legal profession in the United States is one of the most valuable assets this country has. Its energies and talent should be directed to the most important problems which we face. A system which diverts so much legal talent to automobile liability settlements and trials wastes a valuable national resource.

There are numerous no-fault plans. The bill before this committee, S. 945, combines good aspects of many of these plans. It would provide reasonable medical expenses, would reimburse the injured for necessary services and, very important, would provide all reasonable expenses for rehabilitation.

At the same time, it limits reimbursement for wage loss to $30,000. It does not eliminate recovery for catastrophic harm.

Thus, limits are set upon the coverage while the victim of catastrophe may bring a legal action to receive a prompt decision in a court uncluttered by thousands of small automobile liability cases.

Criticisms frequently heard of the State bills relate to the out-of-State accident and the out-of-State driver. While this problem is not insuperable on a State level, it would be eliminated by the proposed Federal bill.

Senator HART. I hate to interrupt, and yet I must welcome the distinguished Senator whom we talked about a few moments ago. I hate to interrupt because the testimony is powerful and I hope will be listened to widely.

Senator CASE. Mr. Chairman, you are most gracious.

I am always happy when I can introduce two people whom I like very much to each other. In this respect, this is no exception.

Mr. Haring is a partner of an old and distinguished firm.

I am enormously happy that I could come in before he finished. I am sorry I was not here when he started. But if you will permit me non pro tunc to present to you one of our distinguished lawyers representing the bar committee on no-fault insurance, I would like to have it entered in the record that I do so. When you and I have long since ceased to be here and come back and look at the record you will not remember that I came in after he started.

Senator HART. We will fix that record.

Mr. HARING. Senator Hart, we need a self-insurance system. We need a no-fault system. We need prompt and well-considered reform. I personally believe that this bill will provide it.

I should say, Senator, my longer statement I hope will be filed and be made a matter of record. I have read a summary of my longer statement, and I am open to any questions.

Senator HART. Mr. Haring, the statement will be printed in full.

I indicated, having had an opportunity to read much of the statement in advance, that it is a powerful plea for the kind of reform that

we are considering here. There is so much in it, brief though it is, that simply puts exclamation points behind so much of what we have heard.

I sense those of us who feel strongly the need for legislation will be excerpting without credit from it in the days and weeks ahead. That expression "drivers play roulette," for example, is really so true under our existing system; whether you are going to be hit by a drunken driver who is heavily insured or a careful driver who may for a moment have been guilty of some omission whose fault is questionable but who isn't insured is a matter of chance.

What I think I would refer to most frequently is the point you make in reply to the argument that a no-fault system rewards irresponsibility and somehow or another has socially unacceptable implications.

In your statement you address yourself to that. You label it an invalid doctrine and conclude by saying, "A no-fault system promotes family integrity, rehabilitation and the self-respect which comes with it." I hope that point will be more clearly understood by all of us as we plow this ground.

It is not easy, I am sure even from so distinguished a firm as yours, to voice opinions that in the sense are regarded by your fellow members at the bar as doing them a direct financial disservice. But you are not alone because the profession happily is coming forward to speak the need for this reform as they see it. But to have one of your standing—and those associated with you in the New Jersey lawyer's committee for no-fault insurance—such as your able chief justice, Chief Justice Weintraub—come forward inevitably will help us make progress. The cumulative effect of this I hope will be great.

Last week this committee heard from a younger lawyer, Robert Joost of Boston who had been associated with the Trial Lawyers Association for some years. Incidentally, his academic credentials I thought would be unmatched, but yours match them, I notice.

Mr. HARING. Thank you.

Senator HART. If there is no objection, I would like to insert in the record a letter that I received from a partner in a prominent Milwaukee firm endorsing the concept of no-fault at the Federal level. He said:

> To await action by the individual states is ludicrous and in the interim period there is likely to be a rather chaotic state of affairs even as there is now to some degree in accidents between automobiles of various legal jurisdictions.

He concludes by saying:

> I am well aware of the objections of lawyers to no-fault insurance. I can't help but feel that much of this complaint is based on the prospective loss of fees. This really is not a valid cause for objection.

This letter along with another from a lawyer who has been an insurance instructor in San Francisco and an orthopedic surgeon will be made a part of the record.

(The letters follow:)

MICHAEL, BEST & FRIEDRICH.
Milwaukee, Wis., April 6, 1971.

SENATOR PHILIP HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: *This is to endorse the concept of no-fault insurance on a Federal level. To wait action by the individual states is ludicrous and in the interim period there is likely to be a rather chaotic state of affairs even as there is now to some degree in accidents between automobiles of various legal juris-*

I understand the objection that you have to the bill S. 945. The others you didn't comment on and didn't have any matter to present.

In this discussion that you had on the training of drivers, and therefore incentive to forestall accidents, to drive safely, don't insurance costs vary among companies depending on the record that they make of accidents?

Mr. BEARDSLEY. They surely do. Because of the retrospective system that I mentioned, Senator, if a company has a bad record, it is reflected next year in its premium.

Senator MOSS. So that sort of incentive would remain even if commercial trucks were required to continue to buy insurance; there would still be a great incentive to train drivers for safe driving, wouldn't there?

Mr. BEARDSLEY. I would hope there always would be regardless of what the state of the law was insurancewise or otherwise. that is the way it ought to be.

Senator MOSS. I would hope so, too, and I would expect there would be, but I was just pointing out that some economic incentive would remain there for the companies to do that. But other than the concern that you have that trucks are treated differently from passenger cars, you don't find any great difficulty with the bill. Is that right?

Mr. BEARDSLEY. No, sir. As I said at the outset of my testimony, this is something fairly new for ATA to be getting into. I recall this is the first time we had occasion to testify with respect to any legislation dealing with insurance, certainly in the Congress. And we are sort of feeling our way along, if I may say so.

We have a meeting of our executive committee coming up after the middle of June and we are going to put this subject on the agenda for further consideration. I have no way of knowing what the results will be, it may be just where we stand today, we may get some instructions to take a broader approach, so to speak. But so far our only instructions are to oppose S. 945 because of the provisions I stressed in my testimony.

Senator MOSS. Well, we surely appreciate your coming and we hope that when you have further considered it, if you arrive at a policy decision, you will communicate it to the committee and we will probably still be deeply involved in this, and when our transcript of our hearings is printed up, and you study them, if you have additoinal comments you think you would like to submit based on that, we would appreciate having that from you, too.

Mr. BEARDSLEY. Thank you very much.

Senator MOSS. Thank you, Mr. Beardsley.

We appreciate your appearance here today.

(The statement follows:)

STATEMENT OF PETER T. BEARDSLEY, VICE PRESIDENT AND GENERAL COUNSEL, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. Chairman and Members of the Subcommittee:

My name is Peter T. Beardsley, and I am a Vice-President, and the General Counsel of American Trucking Associations, Inc. Our organization is the national trade association of the motor carrier industry. It represents all types of motor carriers, and has affiliated associations in every state and the District of Columbia. Its office is located at 1616 P Street, N.W., Washington, D.C. 20036.

As a part of our activities, we often take a position before Congress respecting proposals which, if enacted, would have a significant impact upon the truck-

ing industry. Ordinarily, such proposals are the same as, or very similar to, others which have preceded them, or propose amendments to existing laws with which we are familiar. We confess to a lack of familiarity, however, with "no-fault" insurance, if for no other reason than that the subject itself—at least in the form of proposed legislation—is relatively new. We assume that "no-fault" means essentially that regardless of the degree of negligence exhibited by the various drivers involved in an accident, each of them would be paid by his insurer for his "net economic loss" as that term is defined in S. 945. Based on that assumption, we take no position at this time respecting the "no-fault" principle as such.

We believe that in view of the very substantial change which this bill proposes in the field of motor-vehicle accident insurance, it would be wise before seriously considering its enactment to await the results of experience under State "no-fault" laws such as that which recently became effective in Massachusetts, and those of other States which may be enacted.

In any event, S. 945 is not, in any practical sense, "no-fault" insofar as the trucking industry is concerned, and we have no alternative but to oppose it for that reason. If the bill were amended along the lines of H.R. 7514, introduced by Chairman Moss of the Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce, we would find it much less objectionable.

We take no position on S. 946 or S. 947, or the resolution proposed by Secretary Volpe in his testimony before this Committee on March 18, 1971.

The interstate motor carriers subject to economic regulation by the Interstate Commerce Commission, and safety regulation by the Department of Transportation, fall into several categories. Over 15,000 for-hire carriers (common and contract) are subject to both economic and safety regulation. There are additional thousands of for-hire carriers (mostly transporters of agricultural commodities) which are subject to safety regulation by DOT but exempt from ICC economic regulation. It is on behalf of the "regulated" carriers, rather than the "exempt" carriers that this statement is filed. ATA also represents the interests of numerous private carriers of property through their membership in one or more of the ATA-affiliated State trucking associations, and this statement is filed on their behalf too.

The trucking industry's concern for highway safety originated in a natural, humanitarian desire to reduce the tragedy of death and injury in traffic, and in a determination to improve the reputation of the industry as a safe, courteous partner on the road.

In addition, there is a business incentive for maintaining an extensive safety program. The millions of trucks of all kinds in daily use on streets and highways are constantly exposed to accident-producing situations which can result in loss or damage to other highway users, to industry drivers and vehicles, and to customer freight. Such accidents have the potential of putting any motor carrier out of business because of the extremely high costs that are incurred through civil suits, workmen's compensation, vehicle repairs and freight claims. Those costs are direct expenses to the carrier, regardless of the amount of its insurance coverage, as truck insurance is written on a retrospective basis so that the premium for a given year is raised or lowered to reflect the accident cost experience for the previous year.

The loss potential faced by truck fleets and the retrospective method of rating insurance have been incentives for the conduct of carefully planned programs to prevent accidents.

Industry experience shows that driver selection is the key to the entire safety program, and so trucking companies try to insure that they do not "hire their problems." In employment interviews and reference checks of prospective drivers, personnel officials use nationally approved guidelines which prescribe rigorous qualifications. Past employment, credit background, and traffic record are among the factors explored to determine an applicant's reliability, attitude and willingness to accept responsibility for his vehicle and cargo, and for the welfare of other highway users.

The industry's driver selection program had its beginning in the 1920's and was adopted as a national standard in 1940. In the 1950's it was further improved through an industry-sponsored study by the School of Public Health of Harvard University which was designed to provide more information about driver motivation.

After being hired, a driver trainee receives detailed classroom instruction in company policies, traffic regulations, safety requirements, knowledge of the vehicle and techniques for safe driving. To develop driving proficiency he undergoes a lengthy probationary period starting with student trips in the company of an experienced driver. He learns how to handle smaller trucks at first, and eventually may drive an intercity tractor-trailer rig.

Throughout his employment, industry and fleet supervision is provided through road patrols, radar checks, safety meetings and conferences, and the use of recording devices and check stations.

The professional truck driver is required to follow the code of "defensive driving," which places responsibility upon him to drive in such a way that he commits no driving errors himself and can protect himself against the mistakes of other drivers. If he is involved in an accident his company rules the accident as "preventable" or "non-preventable." A preventable accident is one in which the truck driver did not take every possible step to prevent the accident, regardless of whether or not he was legally in the right and the other driver was legally wrong. Under this concept of preventability the driver's attitudes and actions are brought under close scrutiny and control by the company so that the driver who develops poor attitudes or poor driving habits is quickly retrained or released from employment.

The effectiveness of the industry's programs is reflected in the following National Safety Council accident figures:

Year	Percent of trucks involved in accidents	Truck percent of registered vehicles	Percent of cars involved in accidents	Car percent of registered vehicles
1948	17.0	18.0	80.0	81.0
1969	11.5	16.6	85.1	80.8

These figures are taken from the National Safety Council's publication, "Accident Facts," 1949 and 1970 editions, pp. 66 and 56, respectively. They demonstrate that the truck record for accident involvement has improved substantially over the period shown, whereas that of the passenger car has gotten worse. The figures shown do not reflect mileage driven. When this factor is considered, the truck record is significantly better than that of the passenger cars. This is demonstrated by the following figures:

Intercity fleets (class I and II)	Total truck mileage	12,460,796,451
	Total trucks involved in accidents	39,302
	Ratio of trucks involved per million miles	3.15
All trucks	Total truck mileage	206,680,000,000
	Total trucks involved in accidents	3,075,000
	Ratio of trucks involved per million miles	14.9
All passenger cars	Total passenger car mileage	849,633,000,000
	Total cars involved in accidents	22,800,000
	Ratio of passenger cars involved per million miles	26.8

The Class I and II trucks referred to in the first category are those for-hire vehicles subject to economic regulation by the Interstate Commerce Commission, and safety regulation by the Department of Transportation. The mileage and accident figures are obtained from the pamphlet, "1969 Accidents of Large Motor Carriers of Property," Bureau of Motor Vehicle Safety, Department of Transportation. A Class I carrier is one whose annual gross operating revenue is $1 million or more. A Class II carrier is one whose annual gross operating revenue is $300,000, but less than $1 million. The second category "all trucks," covers just that. It includes, for example, farm trucks, trucks operated by the federal government, as well as a very large number of trucks not subject to economic regulation by the ICC, but subject to DOT safety regulation. The mileage figures for both the second and third categories are those of the Department of Transportation (Highway Statistics, 1969, Table VM-1, p. 73), and the accident figures are those of the National Safety Council (Accident Facts, 1970 ed., p. 56). 1969 figures are used, as they are the latest available from all sources.

The effect of the industry's safety programs has been to enable motor carriers to significantly reduce the heavy costs of accident involvement. But even though

the carriers have done an outstanding job of controlling their vehicles and drivers, there are still a large number of truck accidents each year that are caused by others. A study by American Fidelity and Casualty Co. of truck-involved accidents in the 1950's showed that in 104,000 accidents with other vehicles, truck drivers could not in any way have prevented 70% of them.

Over the years, the trucking industry has been in the forefront of highway user groups which have made a consistent and conscientious effort to reduce their contribution to highway accidents. That effort has involved the expenditure of large sums of money and a great deal of time and work. Now it is proposed that the cost of highway accidents be assigned, not to those responsible for them, but to all highway users, without regard to their driving habits, or their concern for their own welfare, or that of other users of the road. If there is to be a shift to a "no-fault" basis, we submit that if any segment of highway users should be singled out for favored treatment, it should be the motor carriers. But insead of being rewarded for their succesful efforts to reduce highway accidents, S. 945 would subject them to discriminatory treatment. We don't ask for favors, but we do ask for fair treatment. If the law is to provide that, except for catastrophic loss, no driver involved in an accident is to be considered responsible for it, the same rule should apply with respect to drivers of commercial vehicles.

There is certainly no equity in arbitrarily assigning to such vehicles a very high percentage of the costs resulting from any accident in which it is involved. The proposal is indeed a paradox—on the one hand, operators of commercial vehicles are told that no matter how negligent automobile drivers may be, they bear no responsibility when they cause an accident in which the operator's trucks are involved, but the truck owners will be assessed a major share of the cost resulting from the very same accidents! Technically, this may be "no fault" insurance; practically, it is insurance which arbitrarily assigns a great majority of the blame (cost) to operators of commercial vehicles involved in accidents.

Under the current fault system of compensating for accident losses, motor carriers usually bear all or part of the accident costs if their drivers contributed in any degree to an accident. However, the system quite often protects the carrier when other drivers are totally responsible. Thus the present system provides incentive to the carriers to continue their programs of careful driver selection, training and supervision, and it keeps insurance costs at a point which the carriers can afford and still stay in business.

To the contrary, § 5(7) (A) and (B) of S. 945 would hold motor carriers uniformly liable for a large percentage of all property damage and personal injury regardless of whether or not their trucks were actually responsible for accidents. This would result in discrimination against trucks because, through millions of miles of operation, they are constantly exposed to accidents resulting from the driving errors of others.

The truck driver is a skilled professional who must meet strict physical requirements every two years and who is limited to a maximum of ten hours of driving in any one duty period. The vehicle he operates is a highly sophisticated machine that is the subject of regularly-scheduled inspections and preventive maintenance. Yet, on the highway, he is exposed to drivers who have varying degrees of ability and who quite often are pushing their stamina by attempting to cover 10, 15 and 20 hours of driving following an eight-hour work day. The truck driver is exposed to driving mistakes by the very young neophyte driver whose attitudes lack maturity, by the older driver who may lack the physical conditioning necessary to safe driving at high speeds, and, because a very substantial amount of over the-road trucking occurs at night, to the drunken driver. As a result of this exposure, there is a strong likelihood that even the best and most defensive truck driver can become involved in an accident that he can in no way avoid. Under the provisions of these bills, the cost of such accidents would be largely borne by the motor carriers and their insurance costs would rise very substantially.

As an example of the inherent inequity of these bills which would hold the commercial vehicle largely or almost entirely responsible for an accident involving a passenger car, consider the cost results of an accident under the present system versus the system proposed by the bills:

A. Truck and trailer unit, westbound, in extreme right lane of 4-lane divided highway.

B. Passenger car with 4 occupants, eastbound, loses control, comes through the dividing median and collides with the truck.

Result: All occupants of car severely injured, No injury to truck driver.

PRESENT SYSTEM

Based on the premise that one who causes injury to another by negligent conduct should fairly and adequately compensate him for that injury, the truck operator would owe nothing.

S. 945

This bill requires payment of up to $1,000 per month for a total of 30 months for loss of earnings resulting from an accident, with no specified limits on costs for medical, hospital, surgical, etc., services, and physical and occupational therapy and rehabilitation. Assuming that the injured parties in this accident were disabled many months each, the total cost for the injuries could well be in the hundreds of thousands of dollars, by virute of the expenses covered by "economic" loss under § 2(10) of the bill.

Under the terms of S. 945 (§ 5(7)(A)) by which a larger vehicle, depending on its size, would be responsible for a substantial percentage of net economic loss, it is possible that the motor carrier would be required to pay upwards of 90% of the loss incurred by the occupants of the passenger car. While we assume the figure would be somewhat lower, the bill gives the Secretary of Transportation (§ 5(7)(B)) complete discretion to assign to vehicles larger than an "ordinary passenger automobile" a percentage of responsibility for net economic loss sustained by occupants of other vehicles. And the bill clearly indicates, in the same section, that the Secretary could determine that such responsibility would exceed 70%. The definition of "ordinary passenger automobile" contained in the bill (§ 5(7)(A)(i)) includes vehicles having a seating capacity of up to nine passengers. It is, therefore, clear that the cited example of costs which might be incurred by motor carriers because their vehicles are involved in accidents for which—under the present system—they could not be held responsible, is modest indeed.

S. 945 is contrary to the principle of "no-fault" insurance because it would penalize motor carriers by placing them under a "fault" system of insurance rather than a "no-fault" system. It would hold the carriers responsible for losses incurred by all parties to all accidents involving trucks as if the carriers' vehicles are always responsible for such accidents.

One of the claims made for "no-fault" insurance is that premium costs will be reduced, but S. 945, if enacted, would tremendously increase the costs of truck insurance because of the larger portion of accident costs that would be borne by insurance companies which supply truck insurance.

Under the retrospective rating plan, those costs will be shifted back to the motor carriers through an increase in premiums. The regulated for-hire trucking industy includes appoximately 1,500 Class I carriers, 2,000 Class II carriers, and, in addition, 11,700 Class III carriers (those who annual gross revenues are less than $300,000 and whose fleets consist of a small number of vehicles). All for-hire carriers operate on a very slim profit margin and many would be unable to absorb a sharp rise in insurance costs. The industry is faced with severe competition from railroads, airlines, freight forwarders, and to some extent, water carriers. Because of the competition of other transport modes—for-hire carriers are by no means completely free to recoup increased expenses by increases in their rates.

I referred earlier to H.R. 7514, introduced in the House by Congressman Moss of California. As we read his bill, it would eliminate the provision of S. 945 which would require that large vehicles be charged with a very substantial portion of the costs of all accidents in which they are involved, which is the very antithesis of the "no fault" principle. Let me say that we earnestly hope—if federal "no fault" insurance legislation is enacted—it will follow the lines of H.R. 7514 in this respect.

There is another aspect of S. 945 which seems entirely out of keeping with the "no-fault" philosophy. I refer to § 5(5), providing that persons not occupants of motor vehicles may recover their net economic loss from the insurer of any motor vehicle involved in an accident. First off, we think the approach suggested by Secretary Volpe in his appearance before this Committee on March 18, 1971, is preferable. As we understand his proposal, the insurance coverage obtained by a motor vehicle owner would cover himself and all members of his family whenever they were involved in a motor vehicle accident, whether in the owner's vehicle, as occupants of another vehicle, or as pedestrians. This would leave the owner's insurance company additionally liable only for injury or death to uninsured passengers or pedestrians.

But this is not our main objection to § 5(5). We believe its language is so broad as to allow recovery by any member of a train crew, or passenger on a train, from the insurer of any motor vehicle involved in a grade-crossing accident. Just as S. 945 requires owners of passenger cars and operators of trucks and buses to provide insurance to cover the net economic loss suffered by occupants of their vehicles, it should also require the railroads to assume the same obligation with respect to members of train crews and passengers on trains. This is no minor matter. Statistics published by the Department of Transportation show the following respecting grade-crossing accidents, and fatalities and injuries resulting therefrom, for the years 1967–1969: [1]

Year	Number of accidents	Fatalities	Injuries
1967	3,932	1,632	3,812
1968	3,816	1,536	3,744
1969	3,774	1,490	3,669

If "no fault" is to be the standard for recovery of net economic loss in accidents involving motor vehicles, railroads cannot in fairness be given a free ride at the expense of owners of passenger cars, trucks and buses. Under S. 945 as presently worded, the Secretary of Transportation might well decide, in exercising his authority under § 5(7)(A), to assign 75% of the net economic loss incurred by a passenger car driver in an accident with a truck or bus to the insurer of the latter vehicles. If the bill is enacted with this provision included, then, by the same token, it should vest the same authority in the Secretary to assign responsibility—on a similar basis—to railroad equipment involved in accidents with passenger cars, trucks and buses.

Senator Moss. This concludes our witnesses for today.

This concludes our witnesses for today.

This committee will convene tomorrow at 10:15 here in this room to hear additional witnesses.

We are now in recess until tomorrow.

(Whereupon, at 3:20 p.m., the hearing was recessed, to reconvene at 1:15 a.m., Friday, May 14, 1971.)

[1] Accident Bulletin No. 138, Federal Railroad Administration, Table 6, p. 2.

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

FRIDAY, MAY 14, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 10:30 a.m. in room 5110, New Senate Office Building, Hon. Philip A. Hart, presiding.

Present: Senators Hart and Stevens.

Senator HART. The committee will be in order.

Senator Case of New Jersey had planned to join us this morning in order to introduce our first witness. He has sent word that the Foreign Relations Committee is discussing, as it always does, some world-shaking problem and has not yet resolved it; and he suggested that we go ahead.

So, I welcome for Senator Case and those of us on the committee here Mr. Eugene M. Haring of Newark, N.J. I should explain that I read through Mr. Haring's statement, and it sounded great.

We do welcome you.

May I ask that the summary biography of Mr. Haring be printed at this point in the record. It is a most impressive one. It lends additional weight to his testimony.

(The biography follows:)

BIOGRAPHICAL SKETCH OF EUGENE M. HARING

Princeton University; A.B., Summa Cum Laude, 1949 (Phi Beta Kappa).
Princeton University; A.M., Philosophy, 1951, (Woodrow Wilson Fellow 1949–50).
Harvard Law School; J.D., 1955.
McCarter & English, Newark, New Jersey; Associate, 1955–1961; Partner, 1961– .
American Judicature Society; Essex County (N.J.) Bar Association; New Jersey State Bar Association; American Bar Association; Harvard Law School Association of New Jersey (Vice President & Trustee); Summit (New Jersey) Civil Rights Commission, 1970–71; United States Navy, 1945–46.

STATEMENT OF EUGENE M. HARING, ATTORNEY, McCARTER & ENGLISH, NEWARK, N.J., AND MEMBER, NEW JERSEY LAWYERS COMMITTEE FOR NO-FAULT INSURANCE; ACCOMPANIED BY JOHN L. McGOLDRICK, ASSOCIATE

Mr. HARING. Thank you, Senator Hart.

On my left is John McGoldrick, my associate.

As I believe you know, I am a practicing lawyer with offices in Newark, N.J., although my practice extends throughout that State.

During a substantial part of my professional experience, I have been responsible for much of the litigation conducted by my firm, which is one of the largest in New Jersey. I have been responsible for a wide variety of litigation, including automobile negligence cases, life insurance, health insurance, disability insurance, and products liability cases. Because of my personal concern I am affiliated with a group of New Jersey lawyers from all parts of the State for the lawyers committee for no-fault insurance. This is an unfunded, voluntary group; it speaks solely for its members and, we believe, the public interest.

Cochairmen of this group are Charles Danzig, Woodruff J. English and Donald B. Kipp, all distinguished lawyers of broad experience in positions sensitive to the overall legal process in New Jersey.

In addition, among the sponsors of this group are Alfred C. Clapp, former Republican State senator and former presiding judge of the appellate division of New Jersey; and Bernard Shanley, New Jersey Republican national committeeman and former counsel to President Eisenhower.

This is not a political group. It is nonpartisan. It is comprised of both Republicans and Democrats.

The cochairmen of the New Jersey lawyers for no-fault insurance have approved a statement of position. It includes the following:

> The Committee believes that the present system of handling automobile negligence litigation has demonstrated itself to be deficient in logic, in law and in practice.
>
> The Committee urges that a new system—a no-fault system—be tried. The weaknesses of the existing system have been so abundantly demonstrated that it is clear that palliatives and patchwork will not alleviate, but can only aggravate, the serious problems which undeniably exist. Basic and extensive reform is required.
>
> The Committee speaks only for itself. The lawyers comprising the Committee do not purport to speak for the clients of any of the Committee members nor for any other organized group.
>
> It would be unfortunate indeed if the public were mislead by a vocal segment of the Bar to believe that all lawyers are insensitive to the urgent need for reform.

That is the end of the excerpt from the committee's statement.

Chief Justice Weintraub of the New Jersey Supreme Court is respected nationally as well as in his own State. Under the New Jersey constitution the chief justice of New Jersey is directly responsible for the administration of the courts and must be in close touch with the judicial process in all the courts of the State. Chief Justice Weintraub of the New Jersey Supreme Court has stated publicly that he favors some form of no-fault insurance.

The chief justice has pointed out that given today's traffic congestion, accidents are inevitable. Indeed, they are statistically predictable. Given the split second accident, resulting from inadvertence, the chief justice has said we cannot speak realistically of fault.

Chief Justice Weintraub has said that accordingly there is not a fair basis upon which to fix fault, that if he thought the fault system were just, he would not advocate no-fault. He has pointed out that accidents happen so quickly that witnesses simply cannot recall and reconstruct the facts.

The chief justice says that saving court time by a no-fault system is a mere incidental benefit, that he would not advocate no-fault merely to save court time, but that given the split second quality of accidents,

their inevitability and predictability, a no-fault plan is the just and equitable plan. His basis for advocating no-fault is fairness and justice.

Quite apart from the position of the lawyers' committee I would make a few personal comments from my experience as a New Jersey trial lawyer.

I should say, Senator, that I am not here representing any vested interest. I am not here for labor. I am not here for business. I am not here for the insurance industry. I am here on my own. I bought my own ticket on the railroad.

New Jersey is the most densely populated States in the Nation. The density of automobiles in New Jersey is the greatest in the Nation. Accordingly, the problems which arise from the present automobile liability system are particularly severe in that State.

What we do under the tort system as distinct from what some lawyers say we do is attempt to provide compensation—compensation for the injured—but within a fault framework.

Indeed, the principle of compensation becomes most evident in the usual settlement conference which precedes a jury trial, and by which process the vast majority of cases are disposed of. At least by the morning of trial it becomes plainly evident that fault is not some absolute moral principle. Fault is what a jury says.

Given a split second accident which occurred years ago, jury verdicts are predicably unpredictable. Hence the settlement conference, the trade of certainty for risk.

Under the present system drivers play roulette. If they have an accident, no matter how seriously injured they are, they may well get very little. They stand a slim chance of hitting the jackpot. The recovery depends on how much insurance a stranger buys.

In fact, we are operating under an internally inconsistent system. We are trying to move in two directions at once. On the one hand, we operate within a system designed to prove fault and to reward the innocent. On the other hand, we apply principles of compensation with little regard to fault.

The result is uncertain compensation and frequently inadequate compensation, provided by a highly expensive system which was designed to determine fault.

Basic protection, self-insurance, or, as it has come to be called no-fault insurance would do what insurance was originally supposed to do—spread the risk and provide a certainty of payment.

You are well aware that highly vocal, and, at times shrill, objection to no-fault insurance has come from members of the legal profession. The familiar system seems simpler and more comfortable. Undoubtedly, much objection, while entirely sincere, proceeds from sheer inertia and visceral opposition to change. You know from recent testimony that some of it proceeds from sheer self-interest.

But, the legal profession, after all, exists to serve the public and not the other way around.

My office is in Newark. That city and much of New Jersey is beset by those social and economic and racial problems which afflict urban areas throughout the Nation.

Problems with respect to environment, products liability, consumers' rights, and the accommodation of conflicting interests of economic and racial groups more and more require and demand the attention of our courts both on the civil and criminal side.

In New Jersey 83 percent of automobile liability cases are settled before verdict. Accordingly, our courts are used largely not for the trial of cases at all, for which they were designed. They are a marketplace for the arbitration and compromise of claims.

Frequently the talents called upon are not so much those of the trained lawyer or judge, but those to be found in a Turkish bazaar. The time of lawyers and of judges is used to decide somehow the trading value of a whiplash injury, a broken arm or the loss of a leg. Their time could be used more productively.

I submit that the legal profession in the United States is one of the most valuable assets this country has. Its energies and talent should be directed to the most important problems which we face. A system which diverts so much legal talent to automobile liability settlements and trials wastes a valuable national resource.

There are numerous no-fault plans. The bill before this committee, S. 945, combines good aspects of many of these plans. It would provide reasonable medical expenses, would reimburse the injured for necessary services and, very important, would provide all reasonable expenses for rehabilitation.

At the same time, it limits reimbursement for wage loss to $30,000. It does not eliminate recovery for catastrophic harm.

Thus, limits are set upon the coverage while the victim of catastrophe may bring a legal action to receive a prompt decision in a court uncluttered by thousands of small automobile liability cases.

Criticisms frequently heard of the State bills relate to the out-of-State accident and the out-of-State driver. While this problem is not insuperable on a State level, it would be eliminated by the proposed Federal bill.

Senator HART. I hate to interrupt, and yet I must welcome the distinguished Senator whom we talked about a few moments ago. I hate to interrupt because the testimony is powerful and I hope will be listened to widely.

Senator CASE. Mr. Chairman, you are most gracious.

I am always happy when I can introduce two people whom I like very much to each other. In this respect, this is no exception.

Mr. Haring is a partner of an old and distinguished firm.

I am enormously happy that I could come in before he finished. I am sorry I was not here when he started. But if you will permit me non pro tunc to present to you one of our distinguished lawyers representing the bar committee on no-fault insurance, I would like to have it entered in the record that I do so. When you and I have long since ceased to be here and come back and look at the record you will not remember that I came in after he started.

Senator HART. We will fix that record.

Mr. HARING. Senator Hart, we need a self-insurance system. We need a no-fault system. We need prompt and well-considered reform. I personally believe that this bill will provide it.

I should say, Senator, my longer statement I hope will be filed and be made a matter of record. I have read a summary of my longer statement, and I am open to any questions.

Senator HART. Mr. Haring, the statement will be printed in full.

I indicated, having had an opportunity to read much of the statement in advance, that it is a powerful plea for the kind of reform that

we are considering here. There is so much in it, brief though it is, that simply puts exclamation points behind so much of what we have heard.

I sense those of us who feel strongly the need for legislation will be excerpting without credit from it in the days and weeks ahead. That expression "drivers play roulette," for example, is really so true under our existing system; whether you are going to be hit by a drunken driver who is heavily insured or a careful driver who may for a moment have been guilty of some omission whose fault is questionable but who isn't insured is a matter of chance.

What I think I would refer to most frequently is the point you make in reply to the argument that a no-fault system rewards irresponsibility and somehow or another has socially unacceptable implications.

In your statement you address yourself to that. You label it an invalid doctrine and conclude by saying, "A no-fault system promotes family integrity, rehabilitation and the self-respect which comes with it." I hope that point will be more clearly understood by all of us as we plow this ground.

It is not easy, I am sure even from so distinguished a firm as yours, to voice opinions that in the sense are regarded by your fellow members at the bar as doing them a direct financial disservice. But you are not alone because the profession happily is coming forward to speak the need for this reform as they see it. But to have one of your standing—and those associated with you in the New Jersey lawyer's committee for no-fault insurance—such as your able chief justice, Chief Justice Weintraub—come forward inevitably will help us make progress. The cumulative effect of this I hope will be great.

Last week this committee heard from a younger lawyer, Robert Joost of Boston who had been associated with the Trial Lawyers Association for some years. Incidentally, his academic credentials I thought would be unmatched, but yours match them, I notice.

Mr. HARING. Thank you.

Senator HART. If there is no objection, I would like to insert in the record a letter that I received from a partner in a prominent Milwaukee firm endorsing the concept of no-fault at the Federal level. He said:

> To await action by the individual states is ludicrous and in the interim period there is likely to be a rather chaotic state of affairs even as there is now to some degree in accidents between automobiles of various legal jurisdictions.

He concludes by saying:

> I am well aware of the objections of lawyers to no-fault insurance. I can't help but feel that much of this complaint is based on the prospective loss of fees. This really is not a valid cause for objection.

This letter along with another from a lawyer who has been an insurance instructor in San Francisco and an orthopedic surgeon will be made a part of the record.

(The letters follow:)

MICHAEL, BEST & FRIEDRICH.
Milwaukee, Wis., April 6, 1971.

SENATOR PHILIP HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: *This is to endorse the concept of no-fault insurance on a Federal level. To wait action by the individual states is ludicrous and in the interim period there is likely to be a rather chaotic state of affairs even as there is now to some degree in accidents between automobiles of various legal juris-*

dictions. The automobile insurance game has reached the point where the rate structures threaten to collapse the whole automobile business. By way of example, I just received a notice from my insurance company declining to renew my insurance of my three cars. There has been no claim under my policy since the last renewal. Heretofore my annual premium has been in the order of $920. Now they offer to insure me through one of their affiliated companies at extremely low liability limits for an annual premium of $2,880, approximately triple rate for far less coverage with no claims or traffic violations since the policy was written! The only way I can beat that within that company's structure would be if I would buy my two children old automobiles and put minimal insurance coverage on them. This would then mean that two automobiles of questionable merit and with low coverage would be plying the highways instead of having the kids in proper cars with proper coverage. The insurance company will not recognize an exclusion of the children from specified cars within the family.

I am well aware of the objections of lawyers to no-fault insurance. I can't help but feel that much of this complaint is based on the prospective loss of fees. This really is not a valid cause for objection. Much of the trouble with insurance today relates back to legal fees and pumping up claims for pain and suffering, etc.

BAYARD H. MICHAEL.

NEAR, FRIEDMAN & CRAWFORD,
ATTORNEYS AT LAW,
San Francisco, Calif. March 25, 1971.

Senator PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: Thank you for sending me a copy of your bill for a national no-fault insurance plan.

I have read it and believe it will go a long way to correct the remedies that plague our present system. I do not believe the states, who are in general under the thumb of the insurance lobby and whose members are mostly attorneys, will ever pass adequate legislation. The support for no-fault insurance is growing daily. Enclosed is the March 24, 1971 editorial from the San Francisco Chronicle strongly endorsing a no-fault system.

I do have a few objections to your plan. Perhaps these objections are misfounded, but I believe they might be of some value to you.

1. One of your provisions is that the insurance companies cannot refuse to renew unless the insured has his license cancelled or he refuses to pay the premium. What is to stop the insurance company from raising premiums substantially to anyone they wish to not renew? They can always say the new premium is necessary for *this* particular risk. I see rates going up astronomically for anyone insurance companies decide is undesirable.

2. I think that your plans to let rates be established by a file and use (open competition) type rating law will also lead to rates going up dramatically. I have accumulated some evidence to show that states with file and use laws have higher insurance rates than those where prior approval is required. Some of this evidence is contained in an unpublished article I have written, and I have enclosed a copy of that article. If interested, I could send you some additional evidence along this line. I have little faith in the fact that the Department of Transportation will be collecting various rates for different classifications and promulgating them to the public. The public hardly ever sees these government handouts, and the rates will all be high even if they see them.

3. The basic problem I see with the plan as you propose it is that by making the no-fault insurance compulsory, you will be placing a great many Americans under a severe financial strain, and I believe will create a new breed of criminals, those who drive without insurance. Whereas I heartily approve of compulsory insurance for motorists, I belive it must be at a price all can afford. To make someone pay $200, $300, $500 or $1,000 for a yearly premium, when he has a limited income, is very harsh. The system which I believe could work best is an insurance plan where all must buy a certain minimum insurance which covers all medical bills without regard to fault. Such a plan has been operating in Puerto Rico since January 1, 1970 and is widely accepted there. I am sure you are familiar with the Social Protection Plan in Puerto Rico (it is briefly described in my enclosed article) and I feel it could be modified in a national plan by 1) substantially raising the loss of wages to the levels set by your bill and 2) only

allowing the tort remedy in cases of catastrophic loss as your bill does, although I believe your criteria a bit harsh.

I believe such a plan could sell in the states for $50 or less, and this would give the American consumer the break he has long sought. Under private companies, especially with a file and use law to regulate rates, I believe insurance rates will stay very high. The purported 30% reduction in liability rates will be more promise than reality, and although the victim will be infinitely better off, the consumer will still end up paying through the nose.

At the very least, a "watchdog commission" should follow the insurance company rates and determine what constitutes a fair rate of return, what part of investment income should be used in determining the rates, standardize the casualty insurance accounting systems, etc.

In the long run, you are leading a grass roots revolution in the insurance field, and I for one think the only way the consumer will ever get a fair break is when a government agency sells him a policy.

An article entitled "A Call For Adoption of the Puerto Rico Social Protection Plan in the United States" by Jean B. Aponte and Herbert S. Denenberg, professors at the University of Pennsylvania who drafted Puerto Rico's Plan is also enclosed.

I realize the fantastic political pressure that would be involved in getting the government to sell the insurance rather than private companies, but the nation is ready for a revolution, so why not go for a complete victory, rather than a compromise that will still place many consumers of auto insurance under an enormous economic burden?

Sincerely yours,

GILBERT FRIEDMAN.

[From the San Francisco Chronicle, March 24, 1971]

THE 'NO FAULT' INSURANCE PLAN

The Nixon administration, having in hand a $2 million two-year study by its Department of Transportation, has called for a drastic change in the system of automobile insurance under which drivers are now paying some $12 billion a year in premiums and getting back about 14.5 cents on the dollar to compensate for economic losses.

It has newly urged Congress to recommend the abandonment of the present tort-liability, or lawsuit system, and suggest that each State enact its own version of the so-called "no fault" system—a system which in essence discards considerations of negligence and promptly and automatically makes benefits available to all accident victims without attempting to establish legal liability.

Adherents of such a plan may not agree as to details, but there is complete agreement that the present system is not working and must be replaced. Insurance companies complain that they are losing millions; the insured complain of zooming rates, and studies by both the Government and the insurance associations reveal that millions of injured accident victims are being grossly underpaid for losses, while a minimal few are fantastically overpaid by sympathetic juries for so-called "general" damages.

The American Insurance Association, representing some 30 percent of the insurers and a pioneer advocate of no-fault insurance, says that under a "pure" no-fault plan. accident victims would promptly recover all medical and hospital costs, and would receive up to $1000 a month for loss of income, than in case of the death of a wage earner, survivors would receive funeral expenses and a continuing payment of the decedent's wages up to his life expectancy, and that an injured pedestrain would be covered by the car that hit him.

Various other benefits would accrue under such a system, the Association asserts, wherein insurance would be compulsory and no licensed driver would be refused coverage.

What is remarkable indeed is the claim that the cost to the motorist would be 30 per cent less than the premium rates now in effect—a boon made possible by the circumstances that no accident victim could sue or be sued. Thus the massive legal expenses incurred under the lawsuit system would be avoided and much of the approximately $3 billion a year that now goes to lawyers and investigators would become available for benefits that would comprise around 65 per cent of the premium fund instead of the 14.5 per cent now being paid.

This in some part at least explains why most lawyers and most bar associations oppose the no-fault system. In addition their hostility is based on charges that

"no fault" shifts responsibility for accidents from the guilty to the innocent, that it gives the uninsured guilty benefits that the insured driver pays for, that it forces the owner to pay deductbile losses, penalizes the car owners with large families, provides premium cuts for hot rodders, speeders and drunk drivers, confers inmmunity upon owners of commercial vehicles while shifting insurance costs to owners of private cars and eliminates property damages.

The "no-fault" advocates deny the major charges in full, and concede that some versions of the plan are susceptible in small part to the minor allegations. They argue further that the present system confers no direct benefits whatever upon the insured but actually protects the other fellow and does nothing for the insured but permit him to go into court and sue somebody.

The "no fault" concept is not new. It is, for instance in effect in Puerto Rico in a modified form which limits payments of salary and wages to 50 per cent. up to $50. Saskatchewan has a plan that compensates for property damage but puts a $1000 limit on medical and hospital expenses. In the United States, Massachusetts has the only no loss plan now in effect; with a medical limit of $2000, it was instituted in January and experience to date indicates a saving in premiums of $76 million for the year. Bills for a Federal plan are now before Congress and State plans are under consideration in various Legislatures, including California's.

How these plans will fare depends largely upon the depth and extent of public dissatisfaction with the present system, which is sharply rising. Thus "No Fault" insurance in various versions appears inevitable. In theory and from the limited experience available, it would also seem highly desirable.

THE PROFESSIONAL BUILDING,
Saginaw, Mich., March 31, 1971.

Sen. PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: Please accept my strong endorsement of your efforts to create a "no fault" automobile insurance system.

An inordinate amount of my time as an orthopaedic surgeon is taken to deal with insurance examinations, litigation, and court appearances in matters of automobile accidents and personal injury. I and my fellow orthopaedic surgeons could much better spend this time taking care of sick people.

Over the past few years I have been impressed by widespread opinion that justice is long delayed by cluttered court dockets. Surely removal of personal litigation from such legal proceedings would go a long way to free the courts to deal with more important matters.

Sincerely,

JOHN O. GOODSELL, M.D.

Senator HART. The orthopedic surgeon writes,

An inordinate amount of my time as an orthopedic surgeon is taken to deal with insurance examinations, litigation, and court appearances in matters of automobile accidents and personal injury.

And he concludes by suggesting that his skills could be better applied elsewhere.

Mr. HARING. I might say I think that is a very frequent reaction that I encounter with doctors.

Senator HART. It is the first time so far as I am aware of that in this set of hearings we have had this note introduced. I wasn't aware that it had this adverse effect on our society.

Having said all that, let me ask the question that so often is addressed us. "Why should I pay for damages to me if somebody who is a drunken driver hits me? Why propose a system that makes me pay for that?"

Mr. HARING. I think the virtue of such a system is, first, that you get paid and you know how much or can reasonably tell about how much you will get paid.

As far as the illustration of the drunken driver is concerned, which I think we have all heard in this debate again and again, I do not conceive that the function of the civil law is certainly primarily to punish and reward, and indeed juries at least in New Jersey are frequently instructed that they are not to award damages as punishment but simply as compensation. So, I think that compensation is what we need in today's automotive society.

As far as punishment, deterrence is concerned, that is as I conceive it primarily the job of the criminal law, and if the driver in your hypothesis is indeed drunk, he would be, at least in our State, punished severely indeed.

Senator HART. I am aware of no jurisdiction where the law would not mark him as one eligible for some sanctions.

There is another recurring theme in these hearings, and if you have a reaction to it we would be grateful.

When we step back a little from the day-to-day debates here, I think we would agree that there is a general acceptance of the idea that we should proceed to a no-fault system. There are some arguments as to form and so on.

Yes, the existing system is inadequate and inequitable; we will have a no-fault system. But let the States construct their systems. They would be more responsive to the character of their people and topography. If they don't move along then the Federal Government can act, and if later it is thought desirable that the Federal Government act we will have had the experience. Therefore, the Federal Government doesn't need to do anything right now.

Mr. HARING. Well, certainly I think many of us have traditionally though that the idea of experimentalism and pluralism which is supposed to proceed from State legislation is good. However, I think in this particular instance, and I might say I am speaking for myself here, the urgency of the need may very well override some sometimes sentimental thoughts with respect to State control.

Looking at it realistically, it would seem to me that the accomplishment of no-fault in the State, and I am referring to my State, faces a very rough road indeed.

We do have, for instance, an insurance commission which is supposed to be looking into this question, among others. It was unfunded for 13 months and one of the Trenton newspapers recently characterized its reception of Professor Keaton as disgraceful and said that the validity of its final report might be open to question.

Also, a segment of the bar has hired a paid lobbyist, and I saw yesterday in the Newark News on the train coming down here that the New Jersey Bar Association's section on civil procedure, which is meeting in Atlantic City this weekend—in fact right now—may propose such things as a paid lobbyist and other steps with which to fight no-fault.

I think with this type of thing going on in the States, and with the greater susceptibility of State legislatures to local pressure, taken together with the urgency of the need which I believe no-fault fills that Federal legislation may be the only way to get it soon enough and to perhaps prevent a number of States from suffering through some bad experiments.

Senator HART. Thank you, I was not aware of the recent events in New Jersey. But I think it is something that could be anticipated in many of the States.

Mr. HARING. I would certainly think so.

Senator HART. You make a point in your prepared statement that in New Jersey 88 percent of automobile liability cases are settled out of court, and you conclude by saying that courts are "a marketplace for the arbitration and compromise of claims."

The administrative director of the courts of Cook County, the chairman of the National Association of Trial Court Administrators, said substantially the same thing a few days ago testifying before the House on no-fault. He said in some courts around the country only 2 or 3 percent are decided by trial litigation. He said that this statistic indicates to him that the court is being used merely as a forum for the claims adjustment process, and concluded, "In no uncertain terms the taxpayer is subsidizing insurance companies to negotiate its own claims within public facilities and on judged time."

Is there any chance you can go over to Atlantic City on your way back to Newark and tell the boys that?

Mr. HARING. I think, Senator, that some of the statistics which are derivable from the report of the administrative director of New Jersey may support the point which you were just making. The most recent figures which are available in New Jersey are for the court year ending August 1970, and for that year 56 percent of all civil cases filed were automobile liability cases. There were almost 50,000 cases pending that year and 58 percent of those cases were automobile negligence cases. There figures apparently have kept rising, and I see no reason to believe that they will not keep rising. In other words, a greater and greater percentage of court time and of lawyer's time is being taken up by this area of litigation.

Senator HART. Really this reaches a little, but those who are concerned with the problem of law and order and are willing to listen suggest that there is more of a problem of solution than streetlights and more policemen. You point to the delay in the trial procedures of men and women charged with crime; you make the point that until there is a prompt disposition of an arrest you are contributing to a breakdown of law and order.

The principal contributor to the delay in the processing of the arrested person is the statistics that you and I have just been talking about.

Mr. HARING. Yes, I think that is true. I think it is certainly a fact, although I don't have the figures readily at hand, I believe most of us assume, and assume correctly that the criminal calendar certainly in the metropolitan areas such as the one I come from have become very heavy indeed. Criminal trials must be prompt. They should, I believe, be more prompt than they are.

Senator HART. And while judges and prosecutors in most cases do their very best to keep the criminal docket current, any court burdened with the kind of auto cases we are talking about is going to have an awful fight to stay abreast of its responsibility to move the criminal docket.

Mr. HARING. No question about that.

Senator HART. Had you given any thought to the possibility of providing on a first-party basis coverage for pain and suffering and catastrophic harm?

The reason we raise this question with you, we are talking about the burden of litigation and the uncertainty of it, and yet we are faced with the need to attempt to provide for recovery of pain and suffering in the so-called catastrophic type of injury, but rather than having that litigated on the tort basis, the suggestion is now surfacing that we ought to put that on a first-party basis, too. Do you have any reaction on that?

Mr. HARING. I do. I don't know how helpful it may be. The thing which I believe is disturbing about recoveries for pain and suffering is the incommensurability of pain and suffering and dollars. I, therefore, believe that payment of expenses and rehabilitation is more important, not only to society but quite probably to the individual concerned.

It is very difficult indeed to measure pain and suffering, and I suppose that first-party insurance which was for some predetermined amount over and above the wage loss and medical expenses could be provided if a person wanted to buy it.

I am aware that there has been testimony which would advocate an elimination of the catastrophic harm provisions of the bill before your committee.

I would think that pure and theoretic consistency might dictate the obligation of the catastrophic harm provisions.

On the other hand, I question whether consistency is always the aim of legislation and there is a tradition of recovery established here which I think many people in catastrophic cases might like to see continued.

Senator HART. Mr. McGoldrick, is there anything you would care to add as a result of our exchange?

Mr. MCGOLDRICK. No, I don't believe so, Senator.

Senator HART. Mr. Sutcliffe?

Mr. SUTCLIFFE. I have no questions of the witness.

Senator HART. Again, thank you, and I would hope you would convey our thanks to your associates for this kind of thoughtful testimony.

Mr. HARING. I certainly will, Senator, and I thank you for your very gracious reception.

(The statement follows:)

STATEMENT OF EUGENE M. HARING

My name is Eugene M. Haring. I am a practicing lawyer with offices in Newark, New Jersey. My practice extends throughout that state. During a substantial part of my professional experience, I have been responsible for much of the litigation conducted by my firm, which is one of the largest in New Jersey. I have been responsible for a wide variety of litigation, including automobile negligence cases, life insurance, health insurance, disability insurance, and products liability cases. In the course of this I have been responsible not only for the trial of cases, but also for the training of young lawyers in the litigation field. My professional experience has made me particularly aware of the effect of automobile negligence cases on the legal process in New Jersey.

Because of my personal concern I am affiliated with a group of New Jersey lawyers from all parts of the state, called The Lawyers Committee for No-Fault Insurance. This is an unfunded, voluntary group; it speaks solely for its members and, we believe, the public interest. Co-chairmen of this group are Charles Danzig, Woodruff J. English and Donald B. Kipp, all distinguished lawyers of broad experience in positions sensitive to the over-all legal process in New Jersey. In addition, among the sponsors of this group are Alfred C. Clapp, former Republican State Senator and former Presiding Judge of the Appellate Division of New

Jersey, and Bernard Shanley, New Jersey Republican National Committeeman and former counsel to President Eisenhower. This is not a political group. It is non-partisan. It is comprised of Republicans and Democrats.

The co-chairmen of the New Jersey Lawyers for No-Fault Insurance have approved a brief statement of position. It is as follows:

"The members of the Lawyers' Committee for No-fault Insurance, along with many others, are concerned with the consequences of our present methods of handling automobile liability litigation. Those consequences include court congestion, delay, expense, and inequities visited upon the public. The Committee fears that if prompt steps are not taken to rectify and reform existing practices and procedures, there will be a further loss of public confidence in our legal institutions and their responsiveness to changing needs.

"The Committee believes that the present system of handling automobile negligence litigation has demonstrated itself to be deficient in logic, in law and in practice.

"The present system relies upon ancient tort doctrines, developed long before the advent of the automobile. It combines these fault doctrines with the concept of third party insurance. The result is that courts and juries are used to find fault—so that someone other than the wrongdoer, namely the insurance company, will pay. Our Courts are thus overburdened and at times overwhelmed by cases inappropriate and unsuited to their historic function. The result is inequitable payments, or none at all, inordinate delay, unreasonable expense to the taxpayer and the policyholder, and the sacrifice of judicial time which would best be spent on issues of more widespread and compelling significance to the public.

"Recent statements by a vocal segment of the Bar—primarily those specializing in the trial of automobile negligence cases—may well have the effect of misleading the public to believe that lawyers as a class are opposed to change or improvement in the system which presently exists. The Lawyers' Committee for No-fault Insurance wishes to dispel any such impression.

"While the Lawyers' Committee approves the concept of no-fault insurance, it presently favors no specific no-fault plan over any other. It is convinced, however, that the present system of disposing of automobile cases—the use of intricate and expensive court machinery which was devised to deal with different types of problems—is less than satisfactory. The Committee believes that the existing system ill-serves the public for whose benefit the law, and lawyers, exist.

"Accordingly, the Committee urges that a new system—a no-fault system—be tried. The weaknesses of the existing system have been so abundantly demonstrated that it is clear that palliatives and patchwork will not alleviate, but can only aggravate, the serious problems which undeniably exist. Basic and extensive reform is required.

"The Committee speaks only for itself. The lawyers comprising the Committee do not purport to speak for the clients of any of the Committee members nor for any other organized group. Too frequently, professional organizations are accused of narrow or selfish attitudes towards specific problems confronting their profession. The Committee would impress upon the public that a significant segment of the Bar speaks for what it conceives to be the public interest.

"It seems to be agreed by all who have considered the problem that there is urgent need for reform. Most studies indicate that some form of no-fault insurance is the most reasonable road to reform. We believe that some form of no-fault insurance should and will ultimately be adopted in the automobile liability field. It would be unfortunate, indeed, if the public were misled by a vocal segment of the Bar to believe that all lawyers are insensitive to the urgent need for reform."

Under the New Jersey Constitution the Chief Justic of New Jersey is directly responsible for the administration of the courts and must be in close touch with the judicial process in all the courts of the State. Chief Justice Weintraub of the New Jersey Supreme Court has stated publicly that he favors some form of no-fault insurance. The Chief Justice has pointed out that given today's traffic congestion accidents are inevitable. Indeed they are statistically predictable. Given the split second accident, resulting from inadvertence, the Chief Justice has said we cannot speak realistically of fault. Chief Justice Weintraub has said that accordingly there is not a fair basis upon which to fix fault, that if he thought fault were just, he would not advocate no-fault. He has pointed out that accidents happen so quickly that witnesses simply cannot recall and reconstruct the facts. The Chief Justice says that saving court time by a no-fault system is a mere incidental benefit, that he would not advocate no-fault merely to have

court time, but that given the split second quality of accidents, their inevitability and predictability, a no-fault plan is the just and equitable plan. His basis for advocating no-fault is fairness and justice.

Quite apart from the position of the Lawyers' Committee, I would make a few personal comments from my experience as a New Jersey trial lawyer.

I am not here representing any vested interest. I am not here for labor. I am not here for business. I am not here for the insurance industry. I am here on my own. I bought my own ticket on the Penn Central.

New Jersey is the most densely populated state in the nation.[1] The density of automobiles in New Jersey is the greatest in the nation.[2] Accordingly, the problems which arise from the present automobile liability system are particularly severe.

The tort, or fault, system, combined with this great number of automobiles and third party insurance, have an intense impact on the courts, on lawyers and, most important, on the public.

During the New Jersey court year ended August 31, 1970, the last year for which figures are available, 56% of all civil cases filed were automobile negligence cases. Of the total of almost 50,000 cases pending, 58% were automobile negligence cases. These figures are rising; automobile cases are taking up a greater and greater percent of our court calendar. While 88% of the automobile cases were settled before verdict, they still accounted for more than 66% of all jury trials.[3]

What is this third party insurance system, this fault or tort system?

Under the tort or fault system in New Jersey, in order for an injured person to recover, fault must be proved, blame must be fixed. If fault is proved, then and only then, the defendant must pay. If the plaintiff, the injured party, was also at fault, he cannot recover.

We do not, in practice, operate under a pure fault system.

First of all, we all know that the guilty party, the wrongdoer, the person responsible for an accident, does not pay. His insurance company pays.

Secondly, what we do, as distinct from what some lawyers say, is attempt to provide compensation for the injured—but within a fault framework. Compensation, rather than fault finding, is the aim of financial responsibility laws, uninsured motorists laws, collision and medical payments insurance.

Indeed the principle of compensation becomes most evident in the usual settlement conference which precedes a jury trial, and by which process the vast majority of cases are disposed of.

At least by the morning of trial it becomes plainly evident that fault is not some absolute moral principle. It is what a jury says. Given a split second accident which occurred years ago, jury verdicts are predictably unpredictable. Hence, the settlement conference—the trade of certainty for risk.

Customarily a settlement conference involves the application of very practical considerations going well beyond the law applicable to the case. The seriousness of the plaintiff's injuries, the personalities and appearances of the witnesses, the extent of the defendant's insurance coverage, the common inability of the individual defendant to pay, the degree of the plaintiff's negligence, all have a most important bearing on how much the injured party will receive. Such considerations are more influential in determining the amount the injured party will receive than his specific economic loss. Thus, when receiving a case for a badly injured client, one of the first questions a lawyer asks is how much liability insurance the defendant carried. The serious case, such as brain damage, may be worth $10,000 or $100,000. It depends on the amount of insurance carried by the other driver. Therefore, drivers play a game of roulette. If they have an accident, no matter how seriously injured they are they may well get very little, but stand a slim chance of hitting the jackpot. The recovery depends on how much insurance a stranger buys.

In fact, we are operating under an internally inconsistent system. We are trying to move in two directions at once. On the other hand we operate within a system designed to prove fault and to reward the innocent. On the other hand we apply principles of compensation with little regard to fault.

The result is uncertain compensation and frequently inadequate compensation, provided by a highly expensive system which was designed to determine fault.

---

[1] See, e.g., Federal Highway Administration and Bureau of Census Statistics as quoted in World Almanac (Newspaper Enterprise Assn., Inc., 1970) p. 408, 700.

[2] *Ibid.*, p. 127, 700.

[3] Preliminary Report of the Administrative Director of the Courts for the Court Year 1969–70, (Administrative Office of the Courts, State House Annex, Trenton, N.J.).

Basic protection, self insurance, or as it has come to be called, "no fault insurance" would do what insurance was originally supposed to do—spread the risk and provide a certainty of payment.

You are well aware that highly vocal, and at times shrill, objection to no fault insurance has come from members of the legal profession. The familiar system seems simpler and more comfortable. Undoubtedly, much objection, while entirely sincere, proceeds from sheer inertia and visceral opposition to change. You know from recent testimony that some of it proceeds from sheer interest. But the duty of a profession, and particularly the legal profession, is to meet the needs of the public as they arise. The law—and lawyers—must adapt to change. The profession, after all, exists to serve the public, not the other way around.

The argument is frequently heard that no fault insurance would reward the negligent driver. This is an invalid argument. With the conditions of driving today there is not one of us who is an infallible driver. There is not one of us who has not made driving errors and thanked God that we and others escaped harm. Under the existing system if another car is involved when such an error is made. and if we receive serious injuries, we are subject to a most drastic form of retributive justice indeed. We may pay for our mistake by the loss of a limb, blindness, disfigurement, and, since we were at fault, receive no compensation whatsoever. On the other hand, a no fault system promotes family integrity, rehabilitation and the self respect which comes with it. This has obvious social benefits.

My office is in Newark. That city and much of New Jersey is beset by those social and economic and racial problems which afflict urban areas throughout the nation.

Problems with respect to environment, products liability, consumers' rights, and the accommodation of conflicting interests of economic and racial groups more and more require and demand the attention of our courts both on the civil and criminal side. The need for resolution of such problems is compelling. The time and careful attention of our courts to such problems is required. Cases involving important current social and economic issues have a far-reaching effect. The garden variety automobile liability case has no such effect. Our expensive judicial system should and must be used to a greater degree on problems of broad significance. Current problems are too compelling to tie up the time of juries and judges to decide which driver entered an intersection first.

Problems created by the glut of automobile liability cases are not quantitative alone. They are also qualitative.

You will recall that in New Jersey 88% of automobile liability cases are settled before verdict. Accordingly, our courts are used largely not for the trial of cases at all, for which they were designed. They are a marketplace for the arbitration and compromise of claims. Frequently the talents called upon are not so much those of the trained lawyer or judge but those to be found in a Turkish Bazaar. The time of lawyers and of judges is used to decide somehow the trading value of a whiplash injury, a broken arm or loss of a leg. Their time could be used more productively.

I submit that the legal profession in the United States is one of the most valuable assets this country has. Its energies and talent should be directed to the more important problems which we face. A system which diverts so much legal talent to automobile liability settlements and trials, wastes a valuable national resource.

There is something to be said for the experimentalism and pluralism resulting from state rather than federal legislation. On the other hand if our state is any example, pressures of certain interested groups may be more effective in defeating necessary legislation than they would be at the federal level. There are bills in the New Jersey legislature which would enact some form of no-fault insurance.[4] Debate within the State is escalating. A vocal segment of the Bar has hired a paid lobbyist. An Insurance Commission is investigating no-fault insurance. However. its reception to Professor Keeton was characterized by a Trenton newspaper as 'disgraceful." That newspaper raises questions about the Commission's objectivity and the validity of the report it will ultimately submit.[5] Obstacles to no-fault legislation in New Jersey may be formidable.

There is something to be said for no-fault legislation at the state level, if it can be enacted. There is something to be said for a Keeton-O'Connell type plan which preserves the right to sue in some cases. However, the situation as it presently

[4] Assembly, No. 2302, Introduced March 29, 1971; Assembly No. 2423 Introduced April 26, 1971.

[5] The Trenton *Trentonian*, April 16, 1971, p. 24.

exists is so bad, and the need for reform so great, that a sound no-fault plan, offering hope of prompt enactment, should be supported.

There are numrous no-fault plans, ranging from the Massachusetts Plan, with very low limites, to the Keeton-O'Connell Plan, with limits of $10,000.00 for lost wages and medical bills and $5,000.00 for pain and suffering, to the open-ended plan proposed by the Stewart Commission in New York, under which almost all suits for general damages, or pain and suffering, would be eliminated.

The Bill before this Committee, S.945, combines good aspects of all these Plans. It would provide all reasonable medical expenses, would reimburse the injured for necessary services, and—very important—would provide all reasonable expenses for rehabilitation. At the same time it limits reimbursement for wage loss to $30,000.00. It does not eliminate, as the New York Plan would, recovery for catastrophic harm. Thus, limits are set upon the coverage while the victim of catastrophe may bring a legal action to receive a prompt decision in a court uncluttered by thousands of small automobile liability cases.

Criticisms frequently heard of the State Bills relate to the out-of-state accident and the out-of-state driver. While this problem is not insuperable on a state level it would be eliminated by the proposed Federal Bill.

We need a self-insurance system. We need a no-fault system. We need prompt, well considered reform. I personally believe your Bill would provide it.

Senator HART. The committee had been hoping that Senator Spong of Virginia might have been able to join us at this time. He has asked me to express for the record his regrets that he could not join us to present a distinguished Virginian.

Senator Spong suggested to me that our next witness' long experience in the State legislature and at the bar gives him some rather unique background out of which some constructive suggestions should be anticipated.

Having spoken for Senator Spong, let me welcome Mr. George E. Allen of Richmond.

STATEMENT OF GEORGE E. ALLEN, ATTORNEY, ALLEN, ALLEN & ALLEN, RICHMOND, VA.; ACCOMPANIED BY CARY BRANCH

Mr. ALLEN. Mr. Chairman, I feel highly honored to be permitted to appear before a Committee of the greatest deliberative body in the world. I hope I may be able to be of little help to you.

Senator HART. Thank you, sir.

Mr. ALLEN. This is one of my partners, Mr. Cary Branch. He is not going to make a statement, but I understand questions may be fielded to him.

As you will observe, Mr. Chairman, my statement is divided into two parts; one, that the matter of automobile reparations should be left to the States at least temporarily until there is some experimentation, and the other will be on the merits.

May I ask that I be notified when I have spoken 10 minutes?

Senator HART. Yes.

May I state that your statement will be printed in the record in full.

Mr. ALLEN. I am just going to very briefly summarize it. But first I would like to give you a little information on myself.

I was graduated from the University of Virginia Law School in 1910. I have recently been awarded by the University of Virginia the degree of doctor of laws. I have practiced continually since 1910 in the various state and Federal courts through the U.S. Court of Appeals for the Fourth Circuit and the Supreme Court of the United States. I was elected State Senator in 1916 and served through 1920. I am recipient of Award for Distinguished Service in postgraduate

education of trial lawyers, The Law Science Institute, 1953; Award for Courageous Advocacy, American College of Trial Lawyers, 1965; co-author, "Torts" Annual Survey of Virginia Law, Virginia Law Review, December 1960. Faculty member in legal medicine and medico-legal litigation, the Law Science Institute, 1953–54. Member, American Bar Association, Virginia State Bar, the Virginia State Bar Association, Virginia Trial Lawyers' Association (president, 1960–61), Richmond Bar Association (vice-president, 1958–59, president, 1959–60), American Trial Lawyers Association (vice-president, 1951–53; member board of Governors, 1954–56; associate editor in personal injury law, 1951—, president, Virginia chapter, 1952–53), American Judicature Society. Fellow American College of Trial Lawyers. Fellow and cofounder, International Academy of Trial Lawyers (member, board of directors, 1954–56; dean, 1965).

This great country of ours extends from Canada to Mexico, the Atlantic to the Pacific, and then Hawaii and Alaska. It is comprised of 50 States with varying circumstances and conditions in the States. It presents an ideal situation for experimentation on this subject in any of the States and to see how the matter works.

We have a judicial system in Richmond which we think is far more adequate than any of the no-fault systems. I am going to briefly refer to that.

Whether you know it or not, in 1918 Virginia passed the first "no-fault" act.

Senator HART. What year was that?

Mr. ALLEN. 1918. It was confined exclusively to accidents in the industrial field. I was practicing law then and our principal practice in the personnel injury field was actions by employees against employers under the master-servant doctrine. This act, of course, abolished all those actions, but I thought that the act would be of benefit to the workers and the State as a whole and I voted for it and supported it strongly.

We were told that all you would have to do—all that a worker would have to do would be to present this claim to industrial commission and it would be paid. But the results did not prove out that way. The few sections of the Code of Virginia which contained the Workmen's Compensation Act contained 47 pages of annotations in fine print, two columns to the page on this act.

Mind you now, they are only cases that got into the court of appeals. Heaven knows how many were contested in the lower courts. The various and sundry phrases in the Workmen's Compensation Act were defined, interpreted and construed time and time again.

Now, with the adoption of this no-fault plan, the bill itself, I believe, contains 24 pages, and the various and sundry phrases, which are used are unknown to the law, and the flood of litigation that would ensue concerning the interpretation and definition of those different phrases in the application of the law would be beyond the comprehension of the finite mind.

In Virginia we think we should be left alone at least temporarily to work out our own system. We are all the time making changes in it. We have abolished some of the common law defenses. We are on the road to abolishing others. We have in our State exceptionally good judges who are courageous in exercising their powers to maintain or-

der. The General Assembly of Virginia is generous in giving us good judges, plenty of them.

Both sides of the bar under the rules of our practice are required to cooperate and disclose their full case to the other. If they do not, the court will make them. The result is both the lawyers for the plaintiff and defendant get together and make a full disclosure and over 90 percent of our cases are settled before trial for sums satisfactory to the parties, and in fact many of them are settled before suit is even filed.

As to the approximately 10 percent of the cases that are not settled without trial, perhaps half of them are decided for plaintiffs and maybe half for defendants, and then of those cases less than 5 percent of them ever get to the supreme court because we have a procedure which requires a person appealing to apply for an appeal and show good cause for one or he never gets in the court of appeals.

Now, half the applications for appeal—I have examined reports on this—are turned down to begin with, and the half that are granted—over half of them are affirmed. So you see the appellate judges do a pretty good screening job.

In Virgina we can get a trial even in a city like Richmond in 4 or 5 months after institution of the suit, and perhaps sooner in other sections of the State. We try a personal injury case in Virginia in less time than it takes to select a jury in many of the States. And that is because under our rules of practice and procedure lawyers are not allowed to examine jurors on the voir dire but very little. Lawyers are required to get all their information about jurors before they come to trial, and we have a man in our office whose business is to do that.

And when the trial lawyer goes to court to try a case he is handed a statement with check marks on it for striking off jurors. He has a right to strike three without cause, and then he can strike others by showing cause. So we select a jury in less than 5 or 10 minutes and get right on with the trial.

Now, my information is that most of the people who would be affected by this type of legislation consist of poor people, both blacks and whites, and middle class folks. I have been trying cases for a little bit—well, come June it will be exactly 60 years. I have never had to try but one case for a banker, never for an executive. Now, the reason is, either they do not have accidents or if they have them their prestige permits them to settle without even filing a suit, and insurance companies pay them off. That is the only way I can figure that out.

Now we see, therefore, that the legislation proposed here applies almost entirely to the poor people and the middle class people. But we do not know of anybody who has made a survey among those people as to what their preference is or whether or not they are satisfied as the law is administered in Virginia.

Now, if it be said that my views are selfishly motivated, I can only respond by saying that was not the case with the Workmen's Compensation Act. I worked for it and voted for its passage but was greatly disappointed in the result.

There is one late report on this subject that I think the committee ought to see, and it is just out I believe in March of this year, and that is the report of the American College of Trial Lawyers. That, as you know, is one of the most prestigious organizations of the bar in the

country. They studied the subject and the men who were appointed on that committee are among the brainiest lawyers in the United States from one end to the other of this country.

The report is fair and reasonable, and I submit it would be of interest to this committee, and I am going to leave a copy of this report on the table, some 25 or 30 copies of it.

Senator HART. We would appreciate receiving it in that quantity. My impression is we have available a copy, which was submitted by the American Bar Association when they testified.

Mr. ALLEN. This is the American College of Trial Lawyers I am talking about, and the American Bar Association, of course, has made a report, too.

Senator HART. Yes, but when the American bar's testimony was received, among the witnesses was a member of and spokesman for the American College of Trial Lawyers.

Mr. ALLEN. Yes, sir.

Now, in reference to my view being that of a trial lawyer, I am reminded of the most eloquent phrase of the late John F. Kennedy in his state of the Union message to the Congress: "Seek not what your country can do for you but what you can do for your country."

Believe it or not, I am motivated by the idea to do somehting for the working people, and our system needs improvement, but give us a chance to improve it and that will be done.

Just a moment on the merits of the case, the scope of this field is just simply tremendous.

I was chairman of the automobile law committee of the American Bar Association in 1960. I appointed a subcommittee at that time to deal with this very subject, and the committee was composed of very able men and the committee was chaired by FitzGerald Ames of California who later was designated as a judge out there and he is today a judge in California. He wrote the report. It is the best thing on the subject that I have ever seen, and it was written back in 1960.

Now, that report—I had a very difficult time finding it—I will just show you what it is, and I will be glad when I get back to have that copied and send as may copies up here as you would like. But you have not seen anything like that I am sure, and it goes right back yonder to 1960.

When we come to this no-fault insurance, there are apparently three groups of differing purposes under the no-fault. One is espoused by Travelers and Aetna Insurance Co., and a copy of Travelers' is attached, I think, to our statement.

Examination of their proposal would indicate less coverage and greater expense than is provided by an ordinary accident policy. Now, why is it—I know I have years ago carried accident policies that paid me if I got hurt driving an automobile or riding in an automobile or was struck by an automobile, paid me a substantial sum, paid me hospital and doctors' bills and loss of wages and things like that, and the premium was just unbelievably low for that type of insurance.

That would be no-fault, and the legislators of the States or the Congress could require a person to take out that type of policy before getting a license to drive a car, and that could be supplied and it would not interfere with our common law doctrine and the progress and development of the common law in the States.

Another group is represented by the plans of Professors Keaton and O'Connell and the present law of Massachusetts. Their objectives appear to eliminate small claims, reserve to more seriously injured persons their present rights and also provide some medical coverage and indemnity coverage to all. A person must certainly be naive if he thinks a policy can be written like that and reduce the premiums.

Now then, the third plan I believe is expressed very well in Senator Hart's bill, the effect of which would take from the innocent what they are entitled to recover and pay it over to the guilty who ought to carry insurance for his own protection in the way of some form of accident insurance.

I understand, too, that property damage accounts for about two-thirds of the premiums on these insurance policies. Well, that is not provided for in the bill. Are we to proceed at common law to recover property damage?

Now, Mr. Chairman, I believe that is about all I have to say, sir; and I thank you.

Senator HART. Mr. Allen, and we were joined by the able senator from Alaska, Mr. Stevens, just as you were beginning, and I know I speak for him, we not only welcome the information you have given us but we appreciate the opportunity to listen to someone who lived 60 years of trial experience, and speaking from that background your counsel is certainly entitled to the very highest consideration.

As you commented, my bill suggests that we approach it from a different point of view. You raise the only point I would like to respond to, not in the form of a question but by way of an explanation for the action that I suggest we ought to take.

You note that the Secretary of Transportation, Mr. Volpe, has recommended a change from the tort system for the reason that it is not working well in that some people obtain more than they should and others do not obtain as much as they should. You go on to say that is true, the jury system is not perfect, but it is the best that we have yet devised to resolve disputes between parties.

The figures that we have been able to develop, though, suggest that the inadequacy in the existing system is very substantial and of such size that I am persuaded we ought to move to the no-fault. The less seriously injured party, persons whose injuries are under $500 in terms of hospital, doctor and so on, a person with injuries accounting for $500 or less of economic loss are paid five times—averaging—are paid five times their economic loss. Those with more serious injuries, those whose economic loss exceeds $25,000 recover only a third of their economic loss.

Now, that to me is disturbing enough, but when you ask the next question, well, who are these people? Well, there are many categories that we can cast ourselves in as citizens, but if you had an eighth-grade education, we discover that you get 25 percent of your economic loss; if you have a college education you get 64 percent; and another way to describe these income brackets, if your income is less than $10,000 you recover substantially less of your economic loss than if you are in the above $10,000 bracket.

So it is a redistribution to eliminate this kind of disparity that persuades me to move for a no-fault.

Senator Stevens.

Senator STEVENS. I, too, join the chairman in expressing admiration for anyone who has been a member of the bar for as long as you have, Mr. Allen.

I have just spent the morning on some cases coming out of the Indian Claims Commission which are related to a certain extent where the Government is finally paying for great wrongs that were done in the past to some of our native people, our Indian people, and I think the fact that you have been practicing since 1918 we ought to listen to some of your counsel.

Mr. ALLEN. Since 1910.

Senator STEVENS. Since 1910.

I notice your comments concerning the experience of Virginia in the industrial accident field. On the other hand, the chairman certainly has a point in terms of those personal injury cases that affect injured people who are in the lower economic brackets. As a lawyer, do you think we could not devise a means to deal with that portion of the spectrum as we have in social security and others and not deal with these cases that deal with the higher economic brackets?

Mr. ALLEN. Certainly we could. I think a very cheap accident policy with coverage of persons driving in an automobile, riding in an automobile or being struck by an automobile, an accident policy like that can provide substantial sums and the motorist should be required to take such a policy before he gets a license to drive a car. That can be done.

Senator STEVENS. I think we are more interested in some of the expenses that are incurred by those people who are in that spectrum of the economic scale where the costs of their litigation come directly out of the direct injuries that they suffer, either personal or property damage, and that the cost of litigation comes out of what they recover. When you get to the higher spectrum I think you get into the concept of future earnings and perhaps some pain and suffering concepts that have led to the larger verdicts. But the cost of litigation does not come out of actual injury.

Do you see a difference in treating these personal injury cases for people in lower brackets?

Mr. BRANCH. In my experience of having represented people who are hurt, having defended claims asserted against people, I take issue with the thought that the richer people get more money than the poorer people. The reverse is true; if you have a given injury to someone in the higher income bracket, my experience is that the juries give them very little, because such injuries seldom affect their earning capacity. A bad knee of a lawyer would mean very little, but where you are dealing with a truckdriver a bad knee is very important.

You take a spine fusion and the settlement value of one of those injuries to an executive type who sits in a chair or a lawyer is hardly more than the actual loss to the time of recovery. But those injuries leave the workingman with permanent disability, and jurors in their verdicts take the future loss of earning capacity into consideration. So, opposed to the thought those in the lower income brackets usually obtain a good deal more for the same injury—any type of injury, except on involving a brain injury to an executive or something that would affect his earning capacity, but the run-of-the-mill cases, the

lower income people get a good deal more because any physical injury is more important to him than it is to the executive.

That is the general experience of myself and the insurance people with whom I deal.

Senator STEVENS. I appreciate your opinion.

As a lawyer who has practiced for 20 years, I happen to feel in the normal personal injury case where someone is in the very low portion of the economic spectrum, the cost of the litigation alone costs him more than someone in the higher spectrum.

Mr. BRANCH. The cost of litigation probably does. In the higher income brackets quite often they do not make a claim, and if they do they are able to handle it themselves and deal directly with the companies, because such claims and such injuries to them they do not consider as important as the same injury to the workingman in the trade, and the workingman in the trade apparently is the one who does not feel competent to deal with the companies so they employ the lawyers. But in any event they usually obtain, relatively speaking, one who works in the trade with an injury, that injury is much more important to him and he gets much better compensation for it than the one who does not work with his body, so to speak.

Senator STEVENS. Thank you very much, Mr. Chairman.

Senator HART. Mr. Allen, let me thank you also for reminding us of the experience that you had in Virginia when you enacted that workmen's compensation legislation which was followed by a massive series of arguments over what it meant. I would hope, given the reminder that you have provided us, that if we do move in their area and do write a Federal statute, that we will be able to use the dictionary wisely and hopefully learn from the lesson that you have recited.

Gentlemen, thank you very much.

Mr. ALLEN. Did I understand that you would want me to make some copies of this?

Senator HART. Yes, please.

Mr. ALLEN. I will leave you with copies from the trial lawyers association.

I am going to leave you something else. You said something about the position I took in the Workmen's Compensation Act. Read my book, "The Law as a Way of Life," and the chapter on my philosophy of life, and you will not be surprised that I took that position.

Senator HART. Thank you.

(The statement and appendixes follow:)

STATEMENT OF GEORGE E. ALLEN

THE FIELD OF AUTOMOBILE ACCIDENT REPARATIONS SHOULD BE LEFT TO THE STATES AT LEAST UNTIL THERE IS FURTHER EXPERIMENTATION IN THE FIELD

It has been a favorite thesis of Justices Brandeis and Frankfurter that the *states* are important laboratories for social experiment. This is not perhaps true equally for all legal problems, but it seems to us especially persuasive for auto reparations. Evaluation of auto plans involves assumptions about costs, claims consciousness, fraud, deterrence, settlement behavior, lawyer behavior—assumptions on which experience with actual operation will shed much light. Moreover, the change from the common law to a plan is likely to be an irreversible change; it will be difficult to retrace our steps if experience proves the change unwise. It would be imprudent therefore with things in this posture to change the tort law everywhere in one single giant step.

appointed to a judgeship in California. He wrote the report. It covers every phase of the subject and is well documented by both facts and figures. Just to give you some idea of the subjects discussed, the subject of Chapter 3 is "Workmen's Compensation and Automobile Compensation Plans, Not a Comparable Analogy." Chapter 4, "Court Congestion and Delay Can be Eliminated Without an Automobile Accident Compenation Commission." Chapter 5, "The Inadequacy of the Commisison System to Handle Automobile Accident Litigation." Chapter 8, "Court and Jury System Adequate to Determine With Reasonable Accuracy all Issues Presented in Automobile Accident Litigation." Chapter 10, "The Exclusion of Automobile Property Damage from the Benefits of the Proposed Compensation Plan Would Require Motorist to Carry Voluntary Public Liability Coverage at Additional Premium Cost." Chapter 13, "The Cost to the Taxpayer of Administering an Automobile Compensation Plan would be Greater than the Present Cost of Handling Automobile Accident cases Before Courts or Juries." Chapter 14, "Proposed Benefits under Automobile Compensation System would be Unconscionably Inadequate—to Provide Adequate Benefits would Result in Exorbitant Premiums." Chapter 15, "Average Attorneys' fees Recovered Under Present System of Handling Automobile Accident Cases is Fair Considering Contingency Risk Assumed by Attorneys and Recovery Procured for Client." Chapter 16, "Automobile Compensation Commission not Needed to Reduce Accidents or Promote Safety on Highways." Chapter 17, "Volume of Highway Accidents Does not Create any Economic Necessity for Special Legislation against this Type of Litigation." Chapter 18, "An Automobile Compensation System Would Create Multitudinous Conflict of Law Questions which Would Render Plan Unwieldy, Unjust and Unworkable." Chapter 19, "Constitutionality."

If the members of the Committee desire a copy of this report, I shall be glad to have copies made and delivered to them.

I have followed the progress of the various proposals for "no fault" insurance that have been made since Professor Keaton and O'Connell first wrote their book. Perhaps I have missed some particular study but if there has been one seeking the views of those people who were innocent of fault and who suffered injuries, such a study has escaped me. If no such study of that group of our citizens has been made, one would wonder why since they are the ones who are directly and adversely affected by the proposed legislation. Perhaps no such study was considered necessary because it can be acknowledged from the fact one is known as a plaintiff seeking damages for an injury wrongfully caused him, it can reasonably be assumed that not one of them throughout the land would favor the proposed bill of Senator Hart if the terms thereof were clearly explained to him. I can certainly state I have never met anyone asserting what he considered a just claim for damages who would favor such legislation.

There appears to be three groups of differing purposes all asserting their points of view under the banner of what has been termed "no fault" insurance. The objective of The Travelers and Aetna Insurance Companies who purport to support such a plan, is set forth in a statement of Travelers' position which, according to a talk I heard made by an Aetna underwriter, is generally the same as Aetna's objective. A copy of Travelers' position is attached as Appendix A. It should be noted or easily ascertained that accident (not including health) is the very cheapest form of insurance on the market. If such coverage were limited to accidents involving a particular car and limited further by a requirement that the company pay only medical expenses or lost wages in excess of or not payable from some other source available to the injured party, such limited coverage would obviously be so cheap that I don't know of any company making any effort to sell such coverage. However, it is relevant to note there is coverage available from Travelers as a rider on their auto polices that will pay $10,000 death benefit and $50 weekly indemnity unlimited up to age 65 for a yearly premium of $10. Medical expense coverage costs approximately $10 a year for $2,000 limit and $13 for $5,000. A Travelers' agent advises also there is available straight accident insurance (not limited to autos and to pay regardless of other insurance or benefits) for a yearly premium of $40 to $60 for weekly indemnity payments of $75. These weekly payments can be adjusted according to insured's income and premiums vary according to occupation.

When Travelers state that for such extremely limited coverage as they are proposing, they would want a premium of approximately 85% of the existing liability premium, their motive is readily apparent. If the law were to create such a market for the companies at such a premium as they are suggesting, that would truly be a bonanza to those companies. As indicated, however, the law would have to create their market because it is hardly likely that anyone would

want to pay any premium for coverage that in most instances would pay no benefit at all.

There is another group also proposing coverage under the term "no fault" insurance whose objective seems to be entirely different from the insurance companies' objective. This group includes those who believe in the plans of Professors Keaton and O'Connell and the present law in Massachusetts. Their objectives appear to be to eliminate small claims, reserve to the more seriously injured their present rights and to also provide some medical expense and indemnity coverage to all. They seem very naive to think that such a plan could reduce premiums. Professors Keaton and O'Connell announced at the time they made their original proposal they had failed to consult with or seek the advice of any claims man or trial attorney because they thought opinions from those sources would be biased and self-motivated. However, anyone who had some experience in dealing directly and face-to-face with injured claimants could have explained why the bills they were proposing would not have worked or accomplished the desired result.

At this point, I ask that we note the insurance companies' appeal from that part of the Massachusetts law calling for a reduction in premium and, at the instance of the companies, that provision was held unconstitutional, according to my information. It is also interesting to note that Governor Sargent in his address to the luncheon meeting of the Massachusetts Association of Independent Insurance Agents and Brokers said, in part:

"Inasmuch as most car owners carry the non-compulsory coverages, the cost of which may be four or more times the cost of bodily injury (no-fault) insurance, the net effect for many drivers has been to have a larger total auto insurance bill for 1971 than they had for 1970."

Many lawyers, I understand, are holding claims in Massachusetts pending final decision in the action that been filed attacking the constitutionality of the other part of the law adversely affecting injured people. And other claimants are assembling medical bills on their understanding the law requires them to do so to a total of $500 before they are granted the rights they are entitled to under the act. It is to be anticipated that Massachusetts and/or insurance companies writing business in that state face more serious problems in the months to come.

Senator Hart's bill titled "Uniform Motor Vehicle Insurance Act" apparently has as its primary objective more of a spread of available insurance dollars among all people injured in an accident and secondarily, or hopefully, some reduction in insurance premiums. This is the bill under consideration in the United States Senate and my remarks will now be directed only to this bill without dwelling any further on the other plans having differing objectives, even though known by the same term—"no fault."

To take from one innocently injured that which he is entitled to at common law, in order to provide something for others who cause the accident, is wrong in its basic philosophy. It is also a fact, perhaps not known to the committee, that the people who are to have their rights taken from them are largely those people working in the trades and whose abilities to work depend upon their physical strength and who are not in the upper income bracket of our society. I feel quite certain that any study or survey made of the plaintiffs seeking damages in the various courts throughout the land would reveal this statement to be true. It is certainly true on my personal experience and that of my partners and all other lawyers with whom I have any personal contact. The reason is obvious. When we think of a man who lives in a $40,000 home with three cars, one of which is for a child under 25, that individual feels that by his education and training, he is capable of handling his own claim, if he has one. He probably works at a desk job and sitting in an upholstered chair does not cause an injury to hurt him as it would the bricklayer or the carpenter or the auto mechanic. On the other hand, the man in the trades who suffers one of the injuries that may affect his working ability is quite concerned about his ability to continue to earn a living for his family and quite often is forced back to that laborious work by doctors who do not believe that any pain exists if it cannot be visually demonstrated. If the pending bill should accomplish the secondary purpose of reducing premiums, we would have the ironic fact established that we have taken away from the hard-working poor to reduce premiums for the rich who are paying high premiums for several cars, including one driven by a youngster.

All people involved in all of the accidents may be generally divided into two groups: those who are innocent and who are injured, and those others who are considered at fault in causing the accident. We should face the basic question directly and without evasive terminology and decide first which of those two

groups of people is society and most fair-minded men concerned about. If the question were posed that way, I suppose everyone would acknowledge more concern about the rights of the innocently injured than those who cause the accidents. It is on this point that those of us who work with the people who have been injured through no fault of their own cannot understand the proponents of the bill being proposed, since the bill takes from the innocent to give or provide for the guilty.

Having dealt with the people who were injured innocently for so many years, it follows that I have, of course, also dealt with those others against whom the claims are made—those who caused the accident. All of these people involved in accidents, both the innocent and those at fault, may also be divided into two general classes. There are those who have medical expense and wage loss benefits which they have either provided for themselves directly or have had provided for them by union contract, etc., and this group may generally be referred to as the responsible members of our society. The other group have not provided for themselves in such a manner nor do they work for employers who have so provided for them.

When we look at the provisions of the pending bill as applicable to those considered responsible, we see that those people would receive no benefits under this law unless they have what is termed catastrophic injury.

The proposed bill provides for a payment from this type of insurance only if the injured party does not have such benefits from other sources which, as seen, the responsible people do have. As to those people, how can a law that requires them to purchase and pay premiums for insurance that admittedly would pay them no benefits at all except for a harm termed "catastrophic," be justified?

Turning to the next question, would the average individual in that group of people who have no other health and accident benefits be particularly concerned about whether or not his doctors or the hospital were paid? As this point, it should be noted that despite some things we read, people who are injured and who do need medical attention are not denied such treatment because they have no money to pay for it. I have never known a hospital to refuse admittance to one brought to the emergency room by ambulance if such treatment was necessary because of the injuries then apparent. Follow-up care that is medically necessary is also available, perhaps not in the doctor's office but through the clinic; but, in any event, such treatment is rendered to those who need it by competent doctors. A check with hospitals and doctors generally would show that many such bills were incurred and written off unpaid when the injured party was unable to do so. Without unduly prolonging this subject, I hope the committee will accept my statement on my personal experience that such people who have no other insurance benefits usually are not particularly concerned with whether or not the doctor or hospital gets paid and when discussing settlement, the decisions are usually made by the injured people to settle or not according to how much would be paid to them from such a settlement. Thus, as to this group, we also see that they would not be particularly interested in the provisions of the proposed bill except that part that would pay them weekly indemnity, if they had been employed before they were injured and had no sick leave benefits, and such payments would mean only that they would not turn to welfare for assistance.

Along these lines, I think it can be fairly stated that except for what is termed catastrophic injuries, the benefits of the pending bill that would actually be paid would mean very little to those who are injured in accidents, whether at fault or not, but the doctors and hospitals would be pleased with these provisions. Again, it may be asked if denial of the rights of those who are innocently injured can be justified by referring to the benefits that would be paid to hospitals and doctors.

In any event, if it is indeed considered desirable to insist upon some coverage to protect economic losses sustained by the group who do not have other benefits, it would not be difficult or expensive to provide for such benefits in the existing policies. On this, I attach copy of the report and recommendations of the Committee of the Virginia Bar Association on Torts and Insurance, marked Appendix B. I also commend to the committee the report and recommendations of the special committee of the American College of Trial Lawyers on automobile accident reparations. We all know that simple med pay coverage is the very cheapest part of our policy even though such coverages pay on medical expenses without regard to whether such expenses are collectible from other sources. The insurance companies would probably oppose these, [illegible] tions broadening the scope of coverage because as we have seen, some of the

companies have as their objective limiting the coverage to practically no benefits for a 15% reduction of the existing premium. This involves a different subject but there is some question on the credibility of the companies' continuing statements of vast amount of "underwriting" losses. There is some question whether the statements are for the benefit of people who don't note the qualifying word "underwriting" before the word "loss." Whether the companies who make a great to-do about not writing new policies, such as Nationwide, is for the purpose of conditioning our legislators and the public to a change favorable to the industry is also a question. It can be noted that the insurance industry's magazine "Best" has reported the stock index of 18 fire and casualty companies have advanced 109% over the last 10 years—twice the 54% advance of Standard and Poor's index of 500 companies in industry generally. This should be sufficient answer to the companies when they do admit the profits they have made on investments and the insurance they write, but who say the return is not sufficient when the amount invested is considered.

The point is that on the complaints about unavailability of insurance, the companies cancelling, refusing to renew, ceasing to write new business, etc., those are problems very easily taken care of by state legislative action, if such is deemed advisable. The State of Virginia already has strict limitations on the company's right to cancel a policy and by the exercise of the same authority, the state can and has restricted the company's refusal to renew policies and to write new business. See Va. Code, § 38.1–381.5. It is the state that provides extra premium to be paid by those who have to go under assigned risk. The state has the authority to compel companies to write policies issued through the assigned risk and if the companies are making things difficult without justification, the state does not have to grant the company extra premium on those policies.

In any event, this sort of problem, to the extent it exists apparently in varying degrees throughout the different states, does not justify discarding our entire tort system that has existed for so long.

Secretary Volpe, Department of Transportation, has been quoted as resting his beliefs that the tort system should be changed upon his statement that it is not working well, in that some people obtain more than they should and others do not obtain as much as they should. That is acknowledged, since we have always said that our jury system is not perfect, but we have always added the admitted fact that it is the best system to resolve disputes between parties that has yet been devised. The same comments have been made concerning our political system and our system of free enterprise. If lack of perfection is to be considered a reason to abandon claims for damages by those injured without fault, then we should also abandon other parts of our system. Does the acknowledged fact that some guilty people are acquitted and some innocent people are found guilty in criminal court lead us to the conclusion we should abandon the system of criminal justice. Does the fact, equally acknowledged, that our lawmaking bodies from time to time pass bad laws and sometimes fail to pass good laws mean that we should abandon our system of government? Since admittedly, there is no perfection, the question is, are any defects in our present system of tort liability as great as would be the defects in the other system being proposed?

It has been said by some proponents of the so-called "no-fault" insurance that the question of who really was at fault cannot truly be answered. Again, we can admit there are some very few cases so close on liability that it is hard to tell whether the decision is truly right or not, but we who try cases have found that the juries are much better judges of such questions than anyone else or any other system. The fact is, however, that the overwhelming majority of cases do not cause any of the professionals in the business any problem. It is not hard to determine fault when one is shown to have disregarded a stop sign, hit another car in the rear, gone to the wrong side of the road, etc. A large part of the cases that go to trial are not really being tried on any question of liability but on a dispute between the parties on the cause, nature and extent of the injury and disability claimed.

Another point made by a proponent of the "no fault" system is that some of our courts have a large backlog where parties have to wait several years for a trial. Three of our large cities are usually mentioned in this connection. Such problems do not exist in Virginia and according to my colleagues I meet on the various seminars, they do not exist in most parts of the country. Solutions to the problems in those few large cities that have such problems have been suggested. Those of us who try cases generally cannot understand why in those few large cities it takes them longer to empanel a jury than it takes us to try an entire case to a conclusion here in Virginia. In any event, I would not think that any-

one would suggest that all of the tort laws and systems of civil justice throughout all of our states should be uprooted and innocent people denied their rights for the purpose of trying to solve problems largely of their own making in a very few of the large cities. Senator Hart has advised us that the Federal Judicial Center has pointed out motor accident litigation requires 11.4% of judge time in the Federal District Court and approximately 17% of the judge's time in state courts of general jurisdiction. I do not understand the significance of these figures. What about the flood of frivolous *habeas corpus* cases, creditor suits, etc.? Why should we say or suggest that the right of one who has suffered a disabling and painful injury is less important than the right of any other civil litigant?

The bill proposed would not alleviate any such problem because as indicated below, there are areas of built-in litigation in the proposed bill. On this subject, I would also refer the Committee to the letter of Chief Justice Tauro addressed to Governor Sargent of Massachusetts dated August 19, 1970, attached hereto, as Appendix C.

The bill introduced in the 91st Congress was changed and the one that now is under consideration defines "catastrophic harm" to mean that if one has less than a total disability, a permanent partial disability must be at least 70 percentum or more in order to have any rights preserved. I personally have never experienced a case of one having a disability less than total, but more than 70 per cent. I do know, however, that doctors are necessarily very imprecise in fixing percentages of disabilities and it is not unusual to have one doctor for the injured party testify to a larger per cent of disability and another doctor for the defense testify that the individual made a full and complete recovery with no disability. This approach is, in any event, fallacious.

The real question in any case is what the injury means to the individual, considering his work and other relevant factors. Consider a 45 year old truck-driver earning $15,000 a year, who as a result of a neck injury is left with a limitation of motion to the extent he cannot pass the ICC medical requirements. Physically, he would have a small degree of physical disability that would not be very important to a lawyer or a senator, but to this truck driver, that injury would be disastrous. If this bill were to pay him anything, considering his union benefits for a limited time, such payments would not continue very long and then who could suggest to him what he should do. If he were innocently injured, we could explain this law to him, but he would find small comfort in the thought the medical expenses of the wrongdoer had been paid, if such were not payable from other sources.

On the other hand, suppose the lawyer or senator had a throat injury that resulted only in loss of speech. Again, a small degree of physical disability, but a disaster, in terms of enjoyment of life and ability to work at our calling.

It has been suggested the bill has many areas of potential litigation. Who decides when a man should be able to return to work—the insurance doctor or the treating physician? Who decides whether an injury or condition is due to an accident? Remember, we have already pointed out the fact that a large number of cases involve disputes, not on the question of fault, but on medical questions. I have no statistics, but I believe the Industrial Commission decides as many cases involving such questions as are filed in courts of general jurisidiction.

We have noted the "net economic loss" approach means that the responsible members of our society will be required to buy this insurance although, admittedly, they would be paid no benefits at all. The provision that Blue Cross or other hospitalization plans and sick leave plans can provide their benefits are supplemental to this bill gives us no comfort. The individual still recovers nothing—he has simply paid premiums for this coverage that is, by its express terms, for the benefit of other insurance he also paid for.

Upon reflection, it now appears this bill before Congress, as opposed to the one originally introduced, is very close or it fits exactly the plans desired by Travelers and Aetna. We know their motive and cannot really be surprised or upset at any company's desire to increase earnings. The people, however, should not expect our lawmaking bodies to further such profit motives at the expense of those who suffer injuries through no fault on their part.

Touching again very briefly on that subject of people waiting a long time for their benefits under the present system, I think any lawyer or claims man dealing on a day-to-day basis with claimants would confirm me when I state that in any case where there is merit to the claim, the claimant could obtain more benefits than are provided for by the proposed bill immediately and simply by asking for them if that were all he wanted. I have already demonstrated how-

ever, that those who are innocently injured conscientiously feel, and properly so, that they are entitled to compensation for pain, the inconvenience and other damages resulting from their injury and it is on their election that they wait until the doctor can give them some assurance as to what the future holds in store for them before bringing their case on to a conclusion. This again illustrates that those who are injured without fault on their part would be deeply distressed to lose what to them is a very important right after the fact of such an injury.

There is one more point that should be made as forcefully as possible. Going back to the view of Professors Keaton and O'Connell that opinions of professionals in the business are not reliable, I noted in the paper a short while ago that a gentleman from Illinois appeared before a Congressional committee expressing similar thoughts directed to all of our state legislators. I believe I have already demonstrated that I do not personally believe, on behalf of all the people who are injured without fault on their part, that any such law should be passed, either *state* or *federal*, taking away rights that to those in the lower economic status are most precious. In any event, that gentleman from Illinois was reported to have urged the Congress to take over not only the regulation of insurance, but to abolish and take over the rights to sue and be sued that are now the prerogative of the various states and their local courts. As a basis of his opinion, that gentleman from Illinois suggested to this Committee, it was reported, that all of the legislators throughout the states could not be counted on to do what he thought should be done. His reason for this was his statistics showing what percentage of the various legislative bodies consist of members of the Bar. Aside from the sheer arrogance of that suggestion that his individual wisdom was superior to the collective wisdom of all of the legislative bodies throughout the states, he ignored the fact that Congress likewise has a certain percentage of their members who are lawyers. I would hope that this Committee would not give any weight to the thought of one who suggests that all lawyers in our various legislative bodies, whether they are those few who are involved in the trial of tort actions or not, would make their decisions on various proposals opposed to what they conscientiously felt to be in the best interest of the people. Of course, there is no one who can claim perfection, but I would hope that most of us would recognize that whether a lawyer or not, our state legislators are conscientious men who are very close to their constituents and who will vote on any bill according to their true belief as to what is best for the people.

The New York Law Journal, April 26, 1971, p. 1, reports that a poll of New York trial judges shows 99 out of 100 opposed to "no fault" legislation and 80% favored arbitration of small claims. I would expect a study of trial judges throughout the land would show a similar result. If such a large percentage of our judges, our lawyers and, as the gentleman of Illinois says, all of our state legislators, oppose this type of legislation, I would expect that gentleman to reconsider his personal point of view. At least he should consider the possibility such men know more about the subject than he.

In closing, I would urge that the people we are concerned with be treated fairly. When statements are made that "claims" will be paid promptly and without regard to fault, they should be told in simple language that those are not claims as we know them today, but are claims that would result in payments to doctors and hospitals or there would be no claims paid at all to those who have other benefits against what is termed "economic loss."

Remember we are thinking of simple, hard-working and honest people who cannot always detect the true meaning of sophisticated phrases and who must trust our leaders to treat them fairly. On behalf of those people, who, if innocently injured would lose what to them are very precious rights, I ask that this committee make its report opposing this bill under consideration.

APPENDIX A

Travelers Position on the Automobile Problem

Few subjects are generating more public and political comment than the present system of automobile insurance. And with good reason. It is based on a system of laws that are, in many cases, no longer appropriate in settling accident victim compensation. Claim settlements are too high for some, and too low for others. And, again because of the system, more dollars are spent on costs than should be in our view.

Automobile insurance rates are affected by many factors, among them: the number of automobiles on the road, highway design, the licensing of drivers,

automobile design, insurance competition and regulation, the laws concerning accidents, court decisions on compensation of accident victims, the costs of automobile repair and property replacement, and the system of insurance distribution.

Directly and through industry organizations we are working for improvement in many of these areas; for example, for better automobile and highway design, for stricter licensing requirements and better law enforcement. We are working for more open competition in setting insurance rates; for so-called file and use regulation. And, as quickly as laws permit, we are introducing mass merchandising—the system of selling automobile and other forms of insurance to individuals through their employers—as a means of lowering the costs of providing this insurance.

In addition, we are also working for changes in the laws governing automobile accidents and victim compensation on a state by state basis. We are supporting a modified "no-fault" automobile insurance plan. Our studies indicate that such a plan will allow us to lower rates on bodily injury insurance by approximately 15%.

Under the present system it is necessary to prove "fault" in an accident before a victim can be compensated. In some cases this is not possible, in others it means going to court. As a result, there are delays, some victims are not compensated at all, some are paid too little and others too much. Legal costs are sometimes high for both the accident victims and insurance companies.

The modified no-fault plan being supported by The Travelers would provide the following: a driver and his passengers who were in an accident would be compensated by his insurance company, without regard to fault, for up to $2,000 in medical and surgical expenses, lost wages, or the cost of hiring replacement services while injured. Such benefits would be paid after the benefits of health and welfare, and salary continuance plans. Wages would be compensated at 85% of normal level, reflecting the tax laws.

There would be no delays, no basis for court action, and no need to prove fault in any case in which the loss to an individual was $2,000 or less—a great percentage of cases at present. In cases in which there was loss of life, permanent disfigurement, dismemberment, permanent loss of a bodily function, or an economic loss to an individual of more than $2,000, an accident victim would keep the full right to court action, and to compensation for pain and suffering.

We believe there is an urgent need for change in the present system of automobile insurance, and are supporting those changes that we believe are in the interest of Travelers customers, Travelers shareholders and the public.

Virginia Bar Association Committee on Torts and Insurance
Report of Committee on Torts Insurance

To: The Virginia Bar Association.

I. INTRODUCTION

This Committee was appointed as a new Committee by President F. Waller Dudley, free to seek its own area of study within its framework of torts and insurance; however, it became apparent to the members of the Committee even before they met that the most pressing issue in the field of "Torts and Insurance" was that posed by the various "No Fault" proposals being made before the United States Congress and the various State Legislatures; and that we could find no more worthwhile undertaking than to study this issue with a view to making recommendations to the Executive Committee and membership of the Virginia Bar Association with respect thereto. The Committee, at its first meeting, proposed to:

> Make a thorough study of the subject of automobile accident reparations and seek to make recommendations to the Executive Committee and the membership of the Virginia Bar Association for consideration and, hopefully, adoption at the Annual Meeting at the Greenbriar on July 9, 1971.

The Committee's decision was clearly ambitious because of the great influx in recent years of proposals for automobile compensation plans. Five years ago, the Keaton-O'Connell "Basic Protection Plan" was being advocated but, since that time, more than a dozen alternative plans have been brought forward publicly. The sheer number and varying complexity of the plans made it virtually impossible to analyze and evaluate all of the various plans. Therefore, the

Committee sought to study the principal ones (including the "Massachusetts Plan" enacted in 1970, the "New York Stewart Plan", and those embraced in the bills introduced in the 91st Congress by Senator Hart) and the more comprehensive reports on the subject, with special reference to the report of the American Bar Association's Special Committee on Automobile Accident Reparations. Recently, the Committee membership received the report of the American College of Trial Lawyers on "Automobile Accident Reparation", which was felt to be one of the best.

The Committee met on three occasions: on October 30, 1970 in Richmond; on January 22, 1971 in Williamsburg, and on March 27th, 1971 in Richmond. The Committee has had spokesmen from the insurance industry appear before it in advocacy of and in opposition to the "No Fault" concept. Mr. Richard W. Galiher, Regional Representative for the American Bar Association, appeared before the Committee and explained the American Bar Association Report. Also, on invitation of the Committee, the 'Defense Council of Virginia,' the Virginia Bar Committee on "Basic Protection" and the Virginia Trial Lawyers Association sent a representative to our Committee meetings, and they made a substantial contribution to our efforts.

From the beginning, the Committee was of the opinion that lawyers and, in particular, the trial Bar, have a key role to play in public consideration of the issues proposed by these various insurance plans, whatever may be their individual views on the subject. The daily contact that trial lawyers have with automobile accident claims places them in a position to bring unique knowledge and experience to any discussion of these issues. In the Committee's view the fact that the Bar might have an economic interest in the matter should not disqualify it from taking an active role; but, after open-minded consideration of all recent proposals, should make its recommendation to legislators and the public on the basis of what mode of automobile reparations would best serve the public interest.

II. RESULTS OF STUDY—OPINIONS AND CONCLUSIONS

A. Problems within the present system

Chief complaints against the present system of auto reparations: (1) The high cost of insurance; (2) Unavailability of insurance; (3) Failure of many who suffer injury or loss to receive compensation.

1. The Committee is not convinced that the "No Fault" plans can offer a reduction in insurance premiums. These plans propose to compensate everyone suffering automobile injury for economic loss regardless of fault, economic loss being defined principally as medical bills and loss of income. To try to keep costs within acceptable limits, the "No Fault" plans propose to limit the benefits available to all victims, including those not at fault, in order to compensate those who are at fault. The United States Department of Transportation has stated that approximately forty percent (40%) of the people injured in automobile accidents recover nothing and that their collective economic loss approximates three billion dollars a year. Unless the benefits now being received by those not at fault are substantially reduced by virtue of the above mentioned limitations, payment of those allegedly not now being compensated must, of necessity, cause substantial increase in the overall cost of insurance.

Some plans adopt a two-level approach which abolishes the fault rule within the prescribed limits of loss/benefits but permit the tort action to stay alive if losses exceed this level or limit. The "Massachusetts Plan", for example, is of this structure in that it provides minimum "No Fault" benefits, but permits tort actions where the economic loss exceeds a certain sum. It is difficult to see how this could possibly reduce present insurance costs.

In addition, none of the "No Fault" plans purports to compensate for the cost of property damage to motor vehicles. Yet, property damage accounts for approximately two-thirds of the automobile insurance premiums paid today (California Commission Report). If such losses remain subject to the present system of recovery, no improvement in insurance cost can possibly be foreseen in this area.

2. The Committee feels that the Insurance Commission should act promptly on requests for rate increases to enhance availability of voluntary coverage. There was not sufficient time for the Committee to study the limited results and implications of "Open Competition", under which insurance companies are free to set their own rates. Insurance companies, although subject to regulation,

do not have a monopoly, as to public utilities and it may be that free competition would keep rates within reasonable bounds. The Committee feels that the "Open Competition" approach should be further studied for possible adoption for Virginia.

3. The American Bar Association Report and the report of the American College of Trial Lawyers both recommend that the "gaps" in our present system of compensation be reduced by adoption of a comparative negligence doctrine, abolition of the doctrine of gross negligence, and the elimination of the various charitable and governmental immunities. This Committee is not ready to recommend adoption of such proposals for fear that they might have an adverse effect on insurance premiums, but we recommend that they be further studied in detail.

The Committee does feel that the standard automobile policy in Virginia should contain mandatory medical pay and loss of income provisions. This would guarantee to everyone, regardless of fault, certain minimum benefits at little additional cost. These costs could be minimized by a change in the law of recoverable damages so as to automatically deduct the amount of monies recovered under these policy provisions from any recovery that may be effected by the injured party in an adversary claim.

B. The committee is philosophically opposed to the adoption of the "No Fault" plans being advocated

Information presented to the Committee indicated that the various "No Fault" plans would cost more (not less) than present insurance, or would substantially lower the benefits to which the innocent accident victim is now entitled. In the absence of significant offsetting advantage, we perceive no reason why the automobile accident victim should be singled out as entitled to less in damages for his injuries than those injured by some other means. The "Federal Employees Liability Act" applicable to railroad workers and the "Seamens Act" applicable to seamen, remain in effect, and there seems to be no movement to favor abolishing them in favor of some system of limited recovery. We feel that the automobile accident victim is as deserving of adequate recompense as is the railroad worker, the seaman, or other accident victims of our society.

Most of the "No Fault" proposals would take away the right of the accident victim, innocent or quilty, to collect for disability or pain and suffering. These are natural and proper bases of recovery and should not be prohibited without greater alternative benefit than the known "No Fault" plans would offer.

Finally, we believe that the established rules of tort law still have a valid place in our society, and that the public should not surrender lightly the principle of personal responsibility in automobile cases.

C. Highway Safety and Improved Automobile Design

The Committee feels that the Bar Association should work assiduously to strengthen laws that will tend to increase highway safety. For example, we felt that the Virginia Drunk Driving Laws are, in many ways, impracticable and difficult to enforce and have substantially reduced convictions of drunken drivers. Yet, there seems to be general agreement that alcohol is a factor in at least fifty percent (50%) of traffic fatalities. The recent increase in drug use constitutes a significant addition to the problem.

That strong sanctions, strictly enforced, do bring results, has been clearly established. The British adopted severe sanctions for drunk driving as a means of accident control and highway accidents were drastically reduced. Arkansas enacted a system of strict enforcement of drunk driver laws and there has been a corresponding reduction in traffic fatalities. Chicago had adopted a law providing mandatory jail sentences and suspension of license for one year for conviction under the influence; and, during the period of December 18, 1970 to January 8, 1971, highway fatalities were reduced by nearly two thirds. The positive impact of such measures on the problem of accident reparations is obvious. Our continuing and increased concern in this area is our public and professional obligation.

We were greatly impressed by the data offered by Company spokesmen indicative of the truly significant insurance savings that could be effectuated through improvement of car design for greater impact resistance and ease and economy of repair. Although this approach has less human appeal than the question of highway safety, its potential effect upon the problems of insurance coverage should not be underestimated.

III. RECOMMENDATIONS

The Committee recommends the following:

1. That all motorists in Virginia be required to carry insurance in addition to that now required by the statutes of Virginia, that would provide $1,000 medical pay benefits and disability payments of $60 per week for a maximum of 20 weeks. It was estimated that this coverage would cost $17.00;

2. That any amount paid pursuant to the terms of such mandatory coverage be deducted from the amount of any settlement or judgment which the injured party might obtain in an adversary proceeding;

3. That automobiles be designed to give the maximum safety to the occupants and automobile bumpers be designed so that property damage resulting to the automobile from relatively minor collisions would be eliminated or materially reduced, that to further this aim, legislation similar to Senate Bill No. 900, which has been passed by the legislature of Florida be passed by the legislature of Virginia. A copy of said Senate bill No. 900 is attached.

Allstate Insurance Company has stated publicly that they will reduce property damage premiums 20% upon enactment of this bill;

4. That continuing efforts should be made to improve highway safety and, in particular, promote laws and law enforcement to restrict the drunken driver;

5. That further study should be given as to whether allowing insurance companies to sell insurance on a competitive basis rather than have their rates regulated would result in reducing the costs of insurance and making it available to more people;

6. That every effort should be made to inform the public of the advantages of the present system over the proposed "No Fault" system and this Committee should request that the State Bar Association allocate funds that can be used for this purpose.

Respectfully submitted,

John J. Corson, IV, William B. Poff, Paul M. Shuford, Stanley E. Sacks, Frederick J. Larrick, John M. Hollis, Edward R. Slaughter, Jr., Leake I. Wornom, Jr., Willard J. Moody, Edward L. Breeden, III, Douglas K. Frith, Robert G. Coleburn, Archibald A. Campbell, W. H. Jolly, Henry H. McVey, III, Wilbur C. Allen, *Chairman.*

CHAPTER 70–420

SENATE BILL NO. 900

AN ACT relating to private passenger automobiles; defining "private passenger automobile;" creating a manufacturer's warranty as to standards of safety concerning the ability to sustain shock; providing, in lieu of the warranty, certification by the manufacturer of compliance with the energy absorption standards provided; providing an effective date

Be it Enacted by the Legislature of the State of Florida:

Definitions; warranty on sale and manufacture of automobiles; energy absorption system.—

Section 1. For the purposes of this act, the term "private passenger automobile" shall mean a four-wheeled motor vehicle designed principally for carrying passengers not for hire, for use on public roads and highways, and not designed for use principally as a dwelling or for camping.

Section 2. Every private passenger automobile manufactured on and after January 1, 1973, sold and licensed in the state of Florida, shall be sold subject to the manufacturer's warranty that it is equipped with an appropriate energy absorption system and that, without compromising existing standards of passenger safety, it can be driven, both front and rear, directly into a standard Society of Automotive Engineers (SAE J–850) test barrier at a speed of five (5) miles per hour without sustaining any damage to the automobile.

Section 3. Every private passenger automobile manufactured on and after January 1, 1975, sold and licensed in the State of Florida, shall be sold subject to the manufacturer's warranty that it is equipped with an appropriate energy absorption system and that, without compromising existing standards of passenger safety, it can be driven, both front and rear, directly into a standard Society of Automotive Engineers (SAE J–850) test barrier at a speed of ten (10) miles per hour without sustaining any damage to the automobile.

Section 4. The warranty provisions of this act shall not be applicable with respect to any private passenger automobile as to which the manufacturer files a written certification under oath with the Department of Motor Vehicles and Public Safety, on a form to be prescribed by that Department, that the particular make and model described therein complies with the applicable standards of this act.

Section 5. This act shall become effective on July 1, 1970.

Became a law without the Governor's approval.

Filed in Office Secretary of State July 8, 1970.

APPENDIX C

COMMONWEALTH OF MASSACHUSETTS,
THE SUPERIOR COURT,
Boston, Mass., August 19, 1970.

Hon. FRANCIS W. SARGENT,
Governor of the Commonwealth
State House
Boston, Mass.

DEAR GOVERNOR SARGENT. Since my most recent letter to you regarding the need for additional Superior Court justices, it has come to my attention that some opponents of legislation to enlarge the Superior Court contend that the recently enacted "no fault" insurance plan eliminates the need for additional Superior Court judges by doing away with a substantial portion of their workload. Unfortunately, nothing could be further from the truth.

Although the volume of automobile tort suits entered in the Superior Court is large in comparison to other types of entries, the fact is that proportionately few of them are ever tried. Consequently, they consume very little Superior Court judges' time. The minor cases remanded to the district and municipal courts and most of the remaining automobile cases are settled out of court.

A thoroughly documented study in 1966 revealed that only 13% of Superior Court judges' time in Suffolk County was devoted to the trial of automobile tort cases.

The major share of the court's time is used in processing serious criminal cases, land damage, zoning, equity, contract, products liability and medical malpractice suits, appellate review of administrative agencies such as licensing agencies, the Industrial Accident Board and the Civil Service Commission, petitions for extraordinary writs, commitments of narcotic addicts and sexually dangerous persons. *The "no fault" plan will have no effect whatsoever on these cases.* [Emphasis added]

Furthermore, the "no fault" plan applies only to relatively minor claims. These cases are customarily remanded to the district courts and only a minute percentage are ever appealed to and retried in the Superior Court. Their elimination from the judicial process will, therefore, have very little effect on the Superior Court. The more serious automobile tort cases will continue to require a Superior Court trial even under the "no fault" plan.

The Superior Court's workload may well be increased by Superior Court litigation involving the administration and application of the "no fault" plan.

The most critical problem confronting the Superior Court is not motor vehicle tort litigation but rather its spiraling criminal caseload and a constant increase in civil litigation. In no way will the enactment of the "no fault" insurance plan affect this problem. We simply do not have sufficient Superior Court judges to process with fairness, dignity and efficiency our caseload. The unconscionable accumulation of untried cases, civil as well as criminal, clearly demonstrates the need for additional Superior Court judges now. I fully concur with Chief Justice Burger's recent remarks to the American Bar Association in St. Louis:

"If ever the law is to have genuine deterrent effect on the criminal conduct giving us immediate concern, we must make some drastic changes. The most simple and obvious remedy is to give the courts the manpower and tools—including the prosecutors and defense lawyers—to try criminal cases within 60 days after indictment. *I predict it would sharply reduce the crime rate.*" [Emphasis added]

In short, I do not believe that the supporters of the "no fault" insurance plan can at this time properly list as one of its features a significant reduction in the business of the Superior Court. It is my considered judgment that [illegible] enactment of legislation which would give the court much needed help [illegible]

an untried theory and unproven facts would further jeopardize the ability of the Superior Court to effectively administer justice.

G. JOSEPH TAURO.

Senator HART. Next we will have the testimony reflecting the view of the Independent Mutual Insurance Agents Association of New York, New Jersey, and Connecticut, from the chairman of its national affairs committee, Mr. Charles L. Rue, Jr.

STATEMENT OF CHARLES L. RUE, JR., CPCU, CHAIRMAN, NATIONAL AFFAIRS COMMITTEE, INDEPENDENT MUTUAL INSURANCE AGENTS ASSOCIATION OF NEW YORK, NEW JERSEY, AND CONNECTICUT, TRENTON, N.J.; ACCOMPANIED BY ERIK A. NICOLAYSEN III, CPCU, PRESIDENT, ERIK A. NICOLAYSEN, INC., CHAPPAQUA, N.Y.; JOHN S. BRADY, PRESIDENT, WEBSTER'S INSURANCE SERVICE, INC., WATERBURY, CONN.; AND IRVING B. MICKEY, DIRECTOR OF COMMUNICATIONS, INDEPENDENT MUTUAL INSURANCE AGENTS, GLENMONT, N.Y.

Mr. RUE. Thank you, Mr. Chairman.

I am Charles L. Rue, CPCU, from Trenton, N.J. I would like to introduce to you, if I may, some of my companions here this morning.

On my right, Mr. Erik A. Nicolaysen, CPCU from Chappaqua, N.Y. On my left, Mr. John S. Brady, Waterbury, Conn. Both of these gentlemen have been on our auto study committee since 1968.

I also have with me Mr. Irving B. Mickey, director of communications for our association headquarters in Glenmont, N.Y.

Our three States, Mr. Chairman, represent about 3,500 agencies and 10,000 individual agents. Our three States serve approximately 5 million insured persons. I am serving currently as chairman of the three-States national affairs committee.

The objectives of our testimony today are twofold. One, to express our basic philosophy on the subject of automobile accident reparations reform and the related subjects encompassed by S. 945, S. 946, and S. 976, and, two, to comment on the few specific portions of these bills to which we object or which raise serious questions in our minds—I might add that these are relatively few because, by and large, we are very favorably disposed toward the objectives of this package of legislation.

First, on S. 945.

Our three associations, both individually and collectively, strongly support the concept of a first-party automobile accident reparations system and, in keeping with that philosophy, we will actively support any measure which represents a reasonable evolutionary step in that direction.

This position stems from an intensive study of accident reparation problems conducted by our three-State automobile study committee in 1968, the findings of which were published in the fall of that year.

We have appended a copy of that report to the official copies of this document. We will simply summarize our findings. I will not go through our objections to the tort system. They have already been eliminated by many other witnesses. Neither will I read the advantages of the first-party system since you are familiar with those.

Senator HART. Mr. Rue, the statement will be printed in the record in full, and the 1968 study which was a part of it will be printed also.

Mr. RUE. I would like to comment, however, on a primary versus secondary coverage.

On one point we take a very strong position. We believe that automobile insurance should occupy the primary coverage position in the settlement of any and all claims arising from automobile accidents. Conversely, it should not be placed in a position secondary to collateral coverages held by the insured.

We base this reasoning upon the following four points:

(*a*) Persons carrying valid automobile insurance who are injured in automobile accidents should not be required to exhaust benefits which they have accrued to protect themselves against natural illness or other mishaps.

(*b*) Administrative confusion resulting from a secondary coverage system would be monumental. It would be virtually impossible to devise a comprehensive rating system for automobile insurance which would mesh with the staggering number of accidents, health, medical and income protection plans offered through other sectors of the insurance industry.

Furthermore, shifting administrative costs of processing bodily injury claims to hospitalization insurers would not greatly reduce the administrative burden on the auto insurer since any accident causing significant injury will undoubtedly be accompanied by a considerable degree of property damage. Hence, the auto insurer is already in the act, and the additional administrative cost of processing the injury portion of the claim would be negligible.

(*c*) The economic cost of highway accidents should be borne entirely by highway users. Yet, a secondary coverage statute, while undoubtedly effecting some savings in automobile insurance premium. would simply shift the burden of highway economic losses to the rest of the public in the form of higher premiums for other hospitalization and/or medical insurance.

Needless to say, the accident and health insurers would probably respond quickly by excluding automobile accident losses from their own coverage, thus further muddying the waters.

(d) People buy automobile insurance to protect themselves against losses suffered in automobile accidents and that insurance alone should protect them fully against all such losses, except where covered by workmen's compensation.

Our position on S. 945;

With few exceptions, S. 945 is a major step toward our own ultimate goal. It is a farsighted measure which provides for virtually every contingency that might arise under such a system, and we commend you, Mr. Chairman, and your committee, for the research and the thought which went into its preparation.

However, we do object to and/or question the following four provisions of this bill:

(1) Section 2(12)(A), by definition of "net economic loss," places automobile insurance in a secondary position to collateral coverages, this is totally unacceptable to our associations for the reasons outlined immediately above and constitutes our principal objection to the bill as presently worded.

(2) Section 3 virtually mandates compulsory automobile insurance on a nationwide basis. While the concept has definite merit, particularly in the eyes of responsible citizens, we must question its enforceability.

Even in such States as New York, one of the pioneers in strict, compulsory automobile insurance, a significant number of uninsured drivers still find access to the highways.

Furthermore, to be totally objective, the responsible person would almost unquestionably insure himself, with or without a compulsory insurance law, and the person so irresponsible as to drive without coverage doesn't belong on the road at all.

Section 5(d)(1), in conjunction with section 5(a)(3)(B), provides virtually all of the protections for the insurance industry which we have repeatedly asked for in testimony before State legislative and/or insurance department hearing commission. We are most grateful for this.

We do, however, raise one point for your serious consideration. With the noted exclusions, all of which are subject to punitive action, this section of the bill is virtually a lifetime mandatory issue, guaranteed renewal and noncancellation provision.

The intent sounds fine—and I might add that our associations, in their own States, have been in the front lines of the battle to stop frivolous cancellation, nonrenewals and refusals to insure good risks. These are just as much a threat to our own livelihood as they are to the public.

But section 5(d)(1) of this bill represents overkill. There are many risks—the perpetual "fender-benders," for example, who are not subject to punitive action yet who cause enormous losses for insurance companies, losses ultimately passed on to the entire insured public.

This provision makes it mandatory for an insurer to cover these people for life.

True, the next subsection, section 5(d)(2), exempts an insurer who is facing insolvency. But can we legitimately force a private business to accept, without time limitation, business which will ultimately drive it into bankruptcy?

We question the constitutionality of such a requirement and, therefore, oppose this section of the bill as presently worded. We suggest instead a clause of similar intent but with a statutory limitation of perhaps 3 to 5 years, after which the insurance company, upon presentation of reasonable supporting evidence, could elect to discontinue coverage.

4. Section 7(a) would establish, at State level, an assigned claims plan. The objective is obvious and basically sound—namely, to deal with contingencies not otherwise covered in the basic law.

However, we do wish to point out that this provision will require the establishment of 50 new State agencies—or some lesser number, supplemented by a sizable new Federal agency—all of which will cost a considerable amount of money to operate.

Unfortunately we can offer no constructive alternative. But we do suggest that this mechanism be analyzed very carefully before implementation, with an eye toward making the basic law so comprehensive that the rare contingency can be handled within the framework of existing agencies, at little or no extra cost to or subsidy by the public.

In short, if S. 945 were amended to place the automobile insurance

in a primary coverage position and to soften the overly stringent mandatory issue requirements, we would view it as a model piece of legislation and support it enthusiastically.

SOME COMMENTS ON S. 946

To place our comments in proper perspective, we are compelled to open our discussion of S. 946 with a brief question of semantics.

This bill, as presently worded, deals only with group insurance. We wonder if that limitation is truly the intent of the sponsors. Group insuring is actually one of several types of marketing techniques commonly lumped together under the more general heading of "mass marketing." "Franchise" and "collective" marketing are other examples of the broad category.

Since our position on mass marketing is already clearly defined, and since the term encompasses group insurance, we will discuss S. 946 in the context of the broader terminology.

Our associations, individually, and collectively, are firmly committed to the principle of reasonable regulation of mass marketing. In fact, we actually originated the bills which led to a mass-marketing-guidelines statute in Connecticut and insurance department regulatory guidelines in New York State.

Before going any further, let me make one thing abundantly clear—despite some accusations to the contrary, our goal most assuredly is not to kill mass marketing—group insuring, if you prefer—or even to impede it. Quite to the contrary, we recognize it as a viable, modern sales technique which can bring significant savings to the insured public.

Furthermore—from a purely selfish standpoint—several of our own members have already acquired sizable mass marketing accounts, and many others are seeking a piece of that same action.

But, make no mistake—uncontrolled mass marketing invites a number of abuses which could prove highly detrimental to the insured public. In our estimation, the following five pose the greatest immediate threat:

1. General application of discriminatory underwriting practices whereby an insurer underwrites only those members of a group who, in that insurer's estimation, constitute the best risks. This is the practice commonly known as "cream skimming."

2. Arbitrary cancellation or nonrenewal of policies already issued to members of the group, leaving the victims to seek replacement coverage in an increasingly restricted marketplace. This is probably even more insidious than initial rejection.

3. Selective underwriting practices, which would deny coverage to youthful drivers, drivers over 65 years of age, certain ethnic minorities, inner-city property owners and similar groupings.

4. Failure to provide continuity of coverage to those persons leaving an insured group, for whatever the reason.

5. Unless completely separate recordkeeping is mandated and rating for each group based upon the experience of that group alone, the rest of the insured public could find itself subsidizing any group losses which might occur. These records, needless to say, should include a complete breakdown of management expenses at all levels to prevent

parent insurance companies from disguising in their own records, and passing along to their own clients, losses deliberately incurred through underpricing by subsidiary or "pup" companies.

Gentlemen, this is not just alarmism. These things do happen, and we are very slowly but very surely gathering examples. Without some safeguards the end result could be the creation of a very large and relatively uninsurable residual market comprised of group rejects and other people not fortunate enough to be insured through group or other mass-marketed plans. Many of these could hope for little more than assignment to high-cost assigned risk pools.

We think that the key to effective control lies in two words: "Guaranteed issue"—in other words, the requirement that an insurance company offering a group plan accept all eligible members of the group, without resorting to the discriminatory underwriting practices which we just outlined.

I will come back to this point in a minute.

S. 946 contains elements which we find both pleasantly surprising and paradoxical. Section 3 clearly conveys the intent of the measure—namely, to prohibit overly restrictive controls which would impede the natural evolution of group or other forms of mass marketing. Yet section 2(2) begins to approach the very guaranteed-issue requirement for which we have fought so vigorously in our own States. We view this as a major step in the right direction.

In fact, we respectfully suggest that with the addition of the following items, S. 946 would approach our own concept of a model mass marketing guidelines bill:

(1) A provision prohibiting compulsory participation in a group insurance plan as a condition of employment or group membership—in other words, protecting the group member from coercion by an employer or other group sponsor.

(2) A requirement that a person leaving the group, for whatever reason, be granted the privilege of continuing his coverage for a reasonable length of time or of converting it to a higher policy with the same insurer.

(3) The addition of the following exclusions to the guaranteed issue provision:

(*a*) Failure to pay premiums.

(*b*) Fraud or misrepresentation in the application for insurance.

(*c*) Termination of the group.

(*d*) Also, conviction within the previous 3 years of:

(1) Operating a motor vehicle while intoxicated or under the influence of drugs.

(2) Leaving the scene of an accident.

(3) Use of a motor vehicle in committing a felony.

(4) Operating a motor vehicle with the specific intent of causing injury or damage.

(5) Making false statements in the application for a motor vehicle operator's license.

(6) Operating a motor vehicle while the operator's license is suspended or revoked.

Please note that these exclusions are an extension of and completely in context with those granted in S. 945. They simply provide reasonable protection to the group insurer against the criminals, chronic of-

in a primary coverage position and to soften the overly stringent mandatory issue requirements, we would view it as a model piece of legislation and support it enthusiastically.

SOME COMMENTS ON S. 946

To place our comments in proper perspective, we are compelled to open our discussion of S. 946 with a brief question of semantics.

This bill, as presently worded, deals only with group insurance. We wonder if that limitation is truly the intent of the sponsors. Group insuring is actually one of several types of marketing techniques commonly lumped together under the more general heading of "mass marketing." "Franchise" and "collective" marketing are other examples of the broad category.

Since our position on mass marketing is already clearly defined, and since the term encompasses group insurance, we will discuss S. 946 in the context of the broader terminology.

Our associations, individually, and collectively, are firmly committed to the principle of reasonable regulation of mass marketing. In fact, we actually originated the bills which led to a mass-marketing-guidelines statute in Connecticut and insurance department regulatory guidelines in New York State.

Before going any further, let me make one thing abundantly clear—despite some accusations to the contrary, our goal most assuredly is not to kill mass marketing—group insuring, if you prefer—or even to impede it. Quite to the contrary, we recognize it as a viable, modern sales technique which can bring significant savings to the insured public.

Furthermore—from a purely selfish standpoint—several of our own members have already acquired sizable mass marketing accounts, and many others are seeking a piece of that same action.

But, make no mistake—uncontrolled mass marketing invites a number of abuses which could prove highly detrimental to the insured public. In our estimation, the following five pose the greatest immediate threat:

1. General application of discriminatory underwriting practices whereby an insurer underwrites only those members of a group who, in that insurer's estimation, constitute the best risks. This is the practice commonly known as "cream skimming."

2. Arbitrary cancellation or nonrenewal of policies already issued to members of the group, leaving the victims to seek replacement coverage in an increasingly restricted marketplace. This is probably even more insidious than initial rejection.

3. Selective underwriting practices, which would deny coverage to youthful drivers, drivers over 65 years of age, certain ethnic minorities, inner-city property owners and similar groupings.

4. Failure to provide continuity of coverage to those persons leaving an insured group, for whatever the reason.

5. Unless completely separate recordkeeping is mandated and rating for each group based upon the experience of that group alone, the rest of the insured public could find itself subsidizing any group losses which might occur. These records, needless to say, should include a complete breakdown of management expenses at all levels to prevent

parent insurance companies from disguising in their own records, and passing along to their own clients, losses deliberately incurred through underpricing by subsidiary or "pup" companies.

Gentlemen, this is not just alarmism. These things do happen, and we are very slowly but very surely gathering examples. Without some safeguards the end result could be the creation of a very large and relatively uninsurable residual market comprised of group rejects and other people not fortunate enough to be insured through group or other mass-marketed plans. Many of these could hope for little more than assignment to high-cost assigned risk pools.

We think that the key to effective control lies in two words: "Guaranteed issue"—in other words, the requirement that an insurance company offering a group plan accept all eligible members of the group, without resorting to the discriminatory underwriting practices which we just outlined.

I will come back to this point in a minute.

S. 946 contains elements which we find both pleasantly surprising and paradoxical. Section 3 clearly conveys the intent of the measure—namely, to prohibit overly restrictive controls which would impede the natural evolution of group or other forms of mass marketing. Yet section 2(2) begins to approach the very guaranteed-issue requirement for which we have fought so vigorously in our own States. We view this as a major step in the right direction.

In fact, we respectfully suggest that with the addition of the following items, S. 946 would approach our own concept of a model mass marketing guidelines bill:

(1) A provision prohibiting compulsory participation in a group insurance plan as a condition of employment or group membership—in other words, protecting the group member from coercion by an employer or other group sponsor.

(2) A requirement that a person leaving the group, for whatever reason, be granted the privilege of continuing his coverage for a reasonable length of time or of converting it to a higher policy with the same insurer.

(3) The addition of the following exclusions to the guaranteed issue provision:

(*a*) Failure to pay premiums.

(*b*) Fraud or misrepresentation in the application for insurance.

(*c*) Termination of the group.

(*d*) Also, conviction within the previous 3 years of:

(1) Operating a motor vehicle while intoxicated or under the influence of drugs.

(2) Leaving the scene of an accident.

(3) Use of a motor vehicle in committing a felony.

(4) Operating a motor vehicle with the specific intent of causing injury or damage.

(5) Making false statements in the application for a motor vehicle operator's license.

(6) Operating a motor vehicle while the operator's license is suspended or revoked.

Please note that these exclusions are an extension of and completely in context with those granted in S. 945. They simply provide reasonable protection to the group insurer against the criminals, chronic of-

in a primary coverage position and to soften the overly stringent mandatory issue requirements, we would view it as a model piece of legislation and support it enthusiastically.

SOME COMMENTS ON S. 946

To place our comments in proper perspective, we are compelled to open our discussion of S. 946 with a brief question of semantics.

This bill, as presently worded, deals only with group insurance. We wonder if that limitation is truly the intent of the sponsors. Group insuring is actually one of several types of marketing techniques commonly lumped together under the more general heading of "mass marketing." "Franchise" and "collective" marketing are other examples of the broad category.

Since our position on mass marketing is already clearly defined, and since the term encompasses group insurance, we will discuss S. 946 in the context of the broader terminology.

Our associations, individually, and collectively, are firmly committed to the principle of reasonable regulation of mass marketing. In fact, we actually originated the bills which led to a mass-marketing-guidelines statute in Connecticut and insurance department regulatory guidelines in New York State.

Before going any further, let me make one thing abundantly clear—despite some accusations to the contrary, our goal most assuredly is not to kill mass marketing—group insuring, if you prefer—or even to impede it. Quite to the contrary, we recognize it as a viable, modern sales technique which can bring significant savings to the insured public.

Furthermore—from a purely selfish standpoint—several of our own members have already acquired sizable mass marketing accounts, and many others are seeking a piece of that same action.

But, make no mistake—uncontrolled mass marketing invites a number of abuses which could prove highly detrimental to the insured public. In our estimation, the following five pose the greatest immediate threat:

1. General application of discriminatory underwriting practices whereby an insurer underwrites only those members of a group who, in that insurer's estimation, constitute the best risks. This is the practice commonly known as "cream skimming."

2. Arbitrary cancellation or nonrenewal of policies already issued to members of the group, leaving the victims to seek replacement coverage in an increasingly restricted marketplace. This is probably even more insidious than initial rejection.

3. Selective underwriting practices, which would deny coverage to youthful drivers, drivers over 65 years of age, certain ethnic minorities, inner-city property owners and similar groupings.

4. Failure to provide continuity of coverage to those persons leaving an insured group, for whatever the reason.

5. Unless completely separate recordkeeping is mandated and rating for each group based upon the experience of that group alone, the rest of the insured public could find itself subsidizing any group losses which might occur. These records, needless to say, should include a complete breakdown of management expenses at all levels to prevent

parent insurance companies from disguising in their own records, and passing along to their own clients, losses deliberately incurred through underpricing by subsidiary or "pup" companies.

Gentlemen, this is not just alarmism. These things do happen, and we are very slowly but very surely gathering examples. Without some safeguards the end result could be the creation of a very large and relatively uninsurable residual market comprised of group rejects and other people not fortunate enough to be insured through group or other mass-marketed plans. Many of these could hope for little more than assignment to high-cost assigned risk pools.

We think that the key to effective control lies in two words: "Guaranteed issue"—in other words, the requirement that an insurance company offering a group plan accept all eligible members of the group, without resorting to the discriminatory underwriting practices which we just outlined.

I will come back to this point in a minute.

S. 946 contains elements which we find both pleasantly surprising and paradoxical. Section 3 clearly conveys the intent of the measure—namely, to prohibit overly restrictive controls which would impede the natural evolution of group or other forms of mass marketing. Yet section 2(2) begins to approach the very guaranteed-issue requirement for which we have fought so vigorously in our own States. We view this as a major step in the right direction.

In fact, we respectfully suggest that with the addition of the following items, S. 946 would approach our own concept of a model mass marketing guidelines bill:

(1) A provision prohibiting compulsory participation in a group insurance plan as a condition of employment or group membership—in other words, protecting the group member from coercion by an employer or other group sponsor.

(2) A requirement that a person leaving the group, for whatever reason, be granted the privilege of continuing his coverage for a reasonable length of time or of converting it to a higher policy with the same insurer.

(3) The addition of the following exclusions to the guaranteed issue provision:

(*a*) Failure to pay premiums.

(*b*) Fraud or misrepresentation in the application for insurance.

(*c*) Termination of the group.

(*d*) Also, conviction within the previous 3 years of:

(1) Operating a motor vehicle while intoxicated or under the influence of drugs.

(2) Leaving the scene of an accident.

(3) Use of a motor vehicle in committing a felony.

(4) Operating a motor vehicle with the specific intent of causing injury or damage.

(5) Making false statements in the application for a motor vehicle operator's license.

(6) Operating a motor vehicle while the operator's license is suspended or revoked.

Please note that these exclusions are an extension of and completely in context with those granted in S. 945. They simply provide reasonable protection to the group insurer against the criminals, chronic of-

fenders, and other such risks which would not be insurable under any normal circumstances in the regular voluntary market.

Our only specific objection to S. 946 involves section 5. We believe that actual regulation of group and other forms of mass-marketed insurance should be retained at State level and, in keeping with this, that jurisdiction over violations should rest with State insurance commissioners and State courts rather than the Federal Government.

On S. 976 we have really only one comment. This bill lacks just one closing word: "Amen."

I would like to comment on our thoughts on State versus Federal jurisdiction. We would like to close this testimony with a brief statement of our position relative to the question of State versus Federal regulation of automobile insurance.

Please be advised that we are firmly committed to the principle of State regulation and control of insurance activities, within the context of Public Law 15 of 1945, the so-called McCarran Act.

This does not infer in any way that the Federal Government could not perform competently in this area. Furthermore, the concept of federally mandated standardization of automobile accident reparations laws possesses great merit.

However, we believe that continuation of State regulation and control offers three overwhelming advantages:

(1) Automobile accident problems and associated insurance problems have a definite regional flavor. They are directly influenced by population density, vehicle density, occupational pursuits of the area, weather patterns and similar factors.

Stated another way, you cannot compare insuring conditions in New York City with those of a Kansas farm community. Hence, we believe that regional or State regulation is simply more practical and would be more responsive to local needs.

(2) The State regulatory mechanism already exists and, for the most part, we believe it has been effective. Furthermore, it will continue to exist even if the Federal Government assumes jurisdiction over automobile insurance, because automobile insurance, after all, is only one area of a vast insurance picture. Why not utilize these existing facilities?

(3) Assumption of jurisdiction over automobile insurance by the Federal Government would require the establishment of a fairly large and highly complex new Federal agency. This would be a costly operation and the public would ultimately pay for it in the form of higher insurance premiums and/or higher taxes.

For disturbing implications of what could lie ahead, we need point only to those portions of S. 945 which call for the establishment of new agencies and appropriation of public funds.

Now—criticism is worthless unless constructive, and we do have a constructive suggestion. If S. 945 and S. 946 are indeed passed into law—and, remember that we would support them readily with the revisions noted above—then pass them in the form of standardized guidelines for implementation at State level, giving the States a reasonable period of time to do so.

The new crime insurance law provides ample precedent for such a course of action and we are convinced that it is the most practical and economical approach.

Thank you for permitting us to testify today. We hope that our suggestions will be of some value to you and that the outcome of these hearings will be a positive move in the direction of realistic and long-overdue automobile reparation reform. The public has waited too long.

Senator HART. Mr. Rue and gentlemen, thank you for a statement that I think reflects careful analysis of the proposals and a conclusion that is very clearly stated. In addition, thank you for the suggestions as to some changes that you would urge be made in our proposals here. I must confess when I saw the witness list this morning I did not anticipate this kind of endorsement of the legislation; and it becomes ever more persuasive.

Just one question from me. Where you say "amen" to the Motor Vehicle Information Act—and we thank you for that—the very last point you make in that section, to stay with this and the public will join you in this kind of expression "when they see the impact on their automobile insurance rates." I have felt that design and inspection of vehicles and repairability standards would permit the lowering of insurance rates. You make the same point, but this has been challenged. Are you satisfied that rates would go down?

Mr. RUE. Yes, I am. We already have one company which has publicly advertised quite widely that in fact they will automatically reduce rates on one item alone, the creation of a bumper that will withstand a reasonable bump, and this is but one item that is involved in the total automobile. It would seem to me to be an almost inevitable result of a more stringent construction regulation.

Senator HART. Senator Stevens.

Senator STEVENS. You make some comments about the assigned claims plan apart from the problems that you outlined in terms of proliferation of new agencies. Do you have any further comments concerning this proposal, and could you be more specific in terms of your suggestion that it needs to be done but cautiously?

Mr. NICOLAYSEN. Our feeling on the assigned claims plan is primarily with the no-fault concept self-motivation would bring about a much higher load carrying factor and considerably more people would buy it in the States where it is not compulsory. Therefore, the only time that we would be dealing under the assigned claims procedure is basically where we are dealing with a drunk driver or a few things like that, where conceivably through the existing mechanism coverage is not being provided.

We feel though as a practical matter that a large majority of the people will have it and as a result there is no need for a large proliferation of additional functions. We feel that the number of people who have them who would be falling in this category would be rather slim, and merely assigning the claims away through the companies it could be handled through the existing mechanism.

Senator STEVENS. Are you saying there is no need for the organization of an assigned claims bureau in each State?

Mr. NICOLAYSEN. No, we feel it could be handled on a rotation basis of the few categories that it would fall into after everything was taken care of. It could be handled by merely rotating it from one company to the next on a pass-around basis.

Senator STEVENS. I do not understand your answer.

Mr. NICOLAYSEN. We feel that the existing mechanism can handle the thing without an additional Federal level of bureaucracy by merely distributing the claims among individual companies and drawing up in the standards as to what would fall under this category.

Senator STEVENS. This provision says:

> If a default of the continued maintenance of an assigned claims bureau and assigned claims plan by any State in the manner considered by the secretary to be consistent with the provisions of this act, the secretary shall maintain such bureau and plan.

I take it that means they will be maintained at Federal expense. Are you implying that you think the industry itself is capable of undertaking such a bureau or clearinghouse on its own?

Mr. NICOLAYSEN. Yes, sir.

Senator STEVENS. What portion of the industry? I am trying to agree with you, but at the same time I would like to have you be specific. Who do you think would accept this responsibility? And if they won't accept it, who do you think we ought to impose it upon?

Mr. NICOLAYSEN. We think any automobile insurance company writing insurance in a given State would automatically belong to someone—they would be required to join the assigned risk plan in any given State, and it would be merely a matter in any claims that did not fall under the provisions of the existing no-fault concept, through a mechanism in the insurance department it would be merely assigned on a rotating basis following the companies based on their percentage of volume of business within a State.

We think this would be the most equitable situation and minimize large additional Federal framework.

Senator STEVENS. In other words you think this section should say something to the effect that the Secretary shall assure himself that there is an adequate assigned claims plan operating in a State. If there is not, he should require one. And if the State refuses to do it, then he should organize a bureau and impose the cost of that on the companies who are doing business in that State. Is that what you are saying in effect?

Mr. NICOLAYSEN. That is basically what we are saying; yes, sir.

Senator STEVENS. Thank you.

Senator HART. Mr. Sutcliffe.

Mr. SUTCLIFFE. Mr. Rue, in order to have for the record some more information, I would like to ask you some questions relating to your views of the impact upon your operations as an agent if no-fault insurance were mandated through Federal standards or through Federal legislation along the lines of S. 945.

Let me ask you just a couple of things and ask you to give us an indication, if you would, whether you think the costs of your operation would rise or fall and what the overall result for your agency's picture and your particular income would be.

Now, the amounts paid to agents for policies we are told may go down under a no-fault proposal. Do you agree or disagree with that statement?

Mr. RUE. I would say it is probable, yes.

Mr. SUTCLIFFE. Commissions would go down?

Mr. RUE. Yes.

Mr. SUTCLIFFE. At the present time how many uninsured motorists on the average are there throughout the country?

Mr. RUE. I do not know what the statistic is. I believe I read just recently that in New Jersey where they do not have compulsory insurance per se but a form not dissimilar from the concept runs something like 5 to 8 percent uninsured. That is an estimate.

Mr. SUTCLIFFE. I think that the Department of Transportation's studies say the national average without the compulsory element is 15 to 20 percent. Under S. 945 I would imagine that those people in order to operate their vehicles on the highway would have to obtain insurance.

Mr. RUE. Right.

Mr. SUTCLIFFE. So even though the commissions would go down as a percentage of the policy, maybe an increase of money or at least maintenance of the level would result by requiring those uninsured motorists to obtain insurance?

Mr. RUE. You are saying we are going to sell more units at a lower cost and come out just the same.

Mr. SUTCLIFFE. Is that a reasonable supposition?

Mr. RUE. It may be. We are dealing with several intangibles. No. 1, what is the reduction in the commission? If it is 2 percent, that is one thing; if it is 10 percent, that is something entirely different. I am sure there might very well be an increase in the volume of purchases.

I think it is equally fair to say that our workload, our staff workload in my office where we do a great deal of work in processing, handling, following up, and arbitrating claims would undoubtedly be reduced if not totally eliminated.

Mr. SUTCLIFFE. That would be under a no-fault concept similar to S. 945?

Mr. RUE. Yes.

Mr. SUTCLIFFE. Have you had an opportunity to evaluate the impact of a bill like S. 945 compared to the proposal of Massachusetts where you still have a fault determination, albeit not in the courts, but under an interinsurer subrogation basis?

In the Massachusetts plan as compared to this particular plan, will your costs in terms of your own office operation be less because you will not have to cooperate with the insurance company in terms of investigation of the accident and claims processing and accounting for your claims cost in the event of the interinsurer subrogations?

Mr. RUE. I am not honestly sure I can answer your question, because I have not made a physical evaluation of it. I come back to my original supposition. I would suspect there would be some reduction in my office cost simply because I would be eliminating all of the claims work that we do do or certainly quite a bit of it. Then dependent on what the change in the commission factor was, this will determine whether I am going to come out better or am going to come out worse.

I do not know that such a cost study is even possible finally at this point in time because there are many intangibles here. We just do not have anything concrete.

Mr. SUTCLIFFE. But at least you are not certain that it would automatically lead to a reduction in your own income here?

Mr. RUE. I do not think automatically it will, but then again there are other alternatives, too. If I spend less time in this field, I may

spend more in some other field. Obviously, since I support this position, I am not terribly worried that it is going to put me out of business. This is the road we are leading toward. There will be readjustments, there will be cost readjustments, there will be income readjustments, all these things I am sure, but I think at this point in time when we do not have figures to work with and from, I would say that I do not think it is going to hurt me particularly.

Mr. SUTCLIFFE. Are any of the agents' associations using the information that is apparently supposed to be coming from our experiments in Massachusetts to gather the kind of information that would give you answers to some of these questions about what the impact upon a particular agency would be under a no-fault plan as opposed to the existing situation?

Mr. BRADY. Our three-State auto study committee has been trying to collect all the information that it possibly can to determine how it would affect an agency and how it would affect an agency operation. This is basically the reason for our being in existence as an agency association. What we have tried to do is to have other agents research this program and to help out a member who is not possibly aware of all the changes that are happening. We are going to get this information.

As to the Massachusetts program, at this particular point we have requested as much as we can get from them, and we are not exactly sure what we are getting is really reflective of what is actually happening. They indicate that the situation is such that the volume of claims is down greatly. It does not appear to us at this particular point that all of the accidents that have occurred are currently being settled. I think there are a lot of things just waiting a desicion as to the constitutionality of that legislation.

So this is another intangible unfortunately. We can say yes, we are trying to do the best we can, but we do not know. We are trying to obtain all the information we can. So far everything new that has come down the pipe we have had in a few days, and our committees are meeting on a regular basis with that in mind.

Mr. SUTCLIFFE. You mentioned as a possible reaction to making automobile insurance secondary to private health insurance or any mandatory State-sponsored health insurance programs—one of the results you foresaw was an immediate elimination from the private health insurance sector of the automobile accident medical cost obligation. For the record, I would like to point out that upon the conclusions of the House Interstate and Foreign Commerce Committee's hearings, Blue Cross-Blue Shield informed Congressman Moss that they were not going in that direction but they were going in the opposite direction, to write within their policies the primary coverage, or would go in that direction if there was a private contract option available to them. So for the record and for your information, I repeat that at this time.

In your discussions of S. 946, the group merchandising bill, do your comments as to group insurance and the requirements that everybody within the group be eligible to participate in the group with certain exceptions that you enumerate relate to the true group operation as distinct from a mass marketing concept? In other words, are you drawing distinctions between mass marketing and group or true group merchandising.

Mr. BRADY. Yes, this is where you get in the semantics of it.

Mr. SUTCLIFFE. I think for the record——

Mr. BRADY. We are talking about true group operations.

Mr. SUTCLIFFE. And as to mass marketing operations, would you agree that there should be no restriction on mass marketing operations in terms of availability?

Mr. BRADY. Yes, in the sense of availability, yes. Our people are out soliciting right now.

Mr. SUTCLIFFE. It seems to me in this area we have certain unresolved questions as to what kind of parameters you place around the different operations, be it mass merchandising or be it true group merchandising. Are these things that might be best left to the regulatory process in terms of a flexibility of regulation to meet particular things as they arise?

Mr. RUE. Again, I think we are still talking in semantics. Essentially, the end result of all these various plans, it is the same form of group insurance by whatever name you want to call it. Our position has been that we are not opposed to this. We use the term "mass marketing" encompassing all of the variously named group, franchise, whatever. It is a thing that we have supported, but we do feel that we have to build certain protections in.

As a matter of fact, we have proposed such legislation in all of our States, not precluding mass merchandising but subjecting it to reasonable regulation in the interest of the public.

Mr. SUTCLIFFE. In S. 945 you suggest that to the extent it implicates the State insurance mechanism that it is best to eliminate that so that we don't create any kind of Federal regulation.

What specific aspects of S. 945 do you find as an intrusion into the State regulatory process? Is it those requirements that ask for a rationalization of some of the rating classifications and information as to true premium; is that the specific area of your objection in S. 945?

Mr. RUE. I am not sure I understand the question.

Mr. SUTCLIFFE. Let me put it another way, then. There is no authority in S. 945 to set rates for insurance policies. There is authority, however, to present information about insurance rating practices.

So, what I am asking you is this. Do you feel that the authority to require information to be gathered by the Department of Transportation and then promulgated to the public so they have an idea of how the insurance company is operating—do you find that an intrusion into the State regulatory process?

If not, where is the intrusion into the State regulatory process in S. 945 before this committee?

Mr. NICOLAYSEN. As long as the Senate bill restricts itself to a gathering of information. I personally don't feel that this is in any way detrimental to State regulation. However, I might point out that one of the items in here as an example is compulsory automobile insurance on a nationwide basis.

I come from New York where we have had a compulsory insurance plan for approximately 13 years which isn't working now and hasn't been working since the day it was instituted. The same thing could be said for North Carolina and Massachusetts. They essentially have the same procedures involved. As an example, in New York City it is perfectly possible to buy a forged P.S. 1 which permits you to register

your car and without any paperwork being filed that that insurance has ever been revoked or the fact that you don't have insurance or don't have an accident. There is no way that the Bureau of Motor. Vehicles would ever be aware of the fact that that person is driving without insurance.

Mr. SUTCLIFFE. Does that breakdown in the enforcement mechanism result from the lack of a uniform registration and titling law in New York?

Mr. NICOLAYSEN. No, because the working mechanism on the thing—as I understand, North Carolina has a title law, yet they are unable to enforce the compulsory aspect down there.

Frankly, in three States it has been attempted and in the three States there are all sorts of subterfuges which are turning loose uninsured motorists on the road. To talk about making it compulsory on the Federal level by implication is putting up a Federal bureaucracy to enforce this. This is why we question it is going to work.

Mr. SUTCLIFFE. So if that provision requiring mandatory writing prescribed to the extent possible the utilization of State authorities to enforce a Federal law, which can be done, that would then solve the problem of intrusion into the legitimate areas of State action.

Mr. NICOLAYSEN. I would think so. The main thing we are concerned about is an attempt to affect the rating mechanism at both the Federal and State law with the redundant licensing of insurance agents, et cetera, and many things that might arise from such a law of that nature.

Mr. SUTCLIFFE. One piece of legislation before this committee last year related to the insolvency problem. There was a specific prohibition against any requirements of Federal licensing and there was a prohibition against interfering with the present State operations in that area. If that kind of language were in the bill, would this become more acceptable to you to solve this intrusion problem?

Mr. NICOLAYSEN. As long as the Federal Government was merely restricting itself to information gathering in whatever form it chose to take——

Mr. SUTCLIFFE. And publication?

Mr. NICOLAYSEN. And publication. I don't think we would have any objection. The thing we are concerned about is duplication of facilities and duplication of paperwork as far as we are concerned by having to report to two organizations who are attending problems of that nature both for ourselves as individuals or as an association.

Mr. SUTCLIFFE. Are there any other portions of the bill that you would like to focus upon that might exemplify that kind of problem?

Mr. NICOLAYSEN. I don't really think so. The rest of them pertaining, as an example, to mandatory continued group coverage, and that is not really a matter that the Federal Government can be enforcing, so I don't think this will present any problems.

Mr. SUTCLIFFE. A final point. You mentioned the problem of an assigned claims plan.

Nationwide Insurance Co., in presentation of testimony before this committee on Tuesday suggested an industry-run reinsurance operation to take care of the assigned risk problem.

Could a similar facility, industry-run facility, take care of the assigned claims problem?

Mr. NICOLAYSEN. I see no particular reason why it couldn't. In fact, it could probably use the same facility. Unrelated to this particular thing, but we have been advocating in the fire pool arrangements that we go to a reinsurance treaty rather than the present type of setup we have whereby each company will individually issue policies and reinsure them back to the pool.

We have always advocated in most cases that some form of universal reinsurance of automobile underwriting can handle most of these problems relatively simply.

On the hospital primarily, to give you a little background of what we were thinking about when we were recommending it, I took two individual companies as an example and found that it was possible to have 600 variations of coverage with one company and over a thousand with another.

To attempt to set up actuarily where we are giving credit for this type of variety, just choosing the two companies when there are many hundreds of companies that write hospitalization, we felt created an actuarial problem. In addition, purely from an agent's viewpoint, FAA insured who has Blue Cross, for example, is involved in an automobile accident which involves ambulance, emergency room, and hospitalization, Blue Cross and Blue Shield will not pay for the ambulance or the emergency room; it will pay for some role in the hospitalization problem.

From the viewpoint of any agent, we have got to sit down and ascertain what coverage they have, what they are going to pay, what they are not going to pay, does he have group insurance, et cetera, and the paper workloading of attempting to have the hospitalization as primary we feel is going to necessitate that the agents are going to have to be paid more simply to cover trying to track down who has what and handle this type of paperwork situation. We are handling the property damage already. It is very simple for us to pay the medical right off the top of the property damage with little or no additional investigation.

Mr. SUTCLIFFE. To the extent that a national health insurance program, either one like the Kennedy bill which is State-managed or one like the administration has proposed which utilizes the private insurance industry, to the extent a plan like that would be proposed you would have no problems making that primary over the automobile insurance system in terms of the problems that you point out?

Mr. NICOLAYSEN. If it is a case of we are dealing with one monolithic plan which covers the entire United States, the answer is probably we wouldn't be able to, there wouldn't be any great difficulty. But with the proliferation of income disability, accident plans, hospitalization, Blue Cross-Blue Shield, major meds, et cetera, under the present system it is going to be a tremendous paper workload both for the public and the insurance industry under the proposed plan to try to integrate the two plans with any sort of reasonable consistency.

Mr. SUTCLIFFE. But if that integration and rationalization takes place through actions in the health insurance area, you would see no objection to having that as a primary source for that medical?

Mr. NICOLAYSEN. But again up to what the deductible was on the catastrophe insurance that is being proposed. We would still advocate

that the auto be primarily up to the level where you got to a Federal- or State-mandated comprehensive plan that would go into force, but we are still dealing with plans that will be issued to cover the gap between and Federal catastrophe insurance.

Mr. SUTCLIFFE. So the standard deductible approach would be one way to solve some of the paper workload?

Mr. NICOLAYSEN. Right, this would be correct. You would still have the question of whether or not, from a purely philosophical viewpoint, automobile ought to pay for auto rather than to attempt to foist it off on the general public as part of hospitalization.

Mr. SUTCLIFFE. That would really depend on what kind of a plan was put forth by the Government for health insurance operations, because if you internalize the cost under the health insurance program, you wouldn't lose anything then of the user tax internalization argument that you have just presented.

What I mean is, if you have a health insurance program that has internalized all costs and kept lids down appropriately, then you wouldn't have to worry about losing that aspect of it for the user tax approach in the auto industry?

Mr. NICOLAYSEN. Probably not, but as a purely philosophical viewpoint, I happen to feel if the person wants to drive a car, he should be responsible for all the costs thereof, including any and all insurance cost.

Mr. SUTCLIFFE. Thank you very much.

Senator HART. Gentlemen, before you leave, do you, who have not spoken yet, have any addition you would like to make for the record?

Mr. RUE. There is none, Mr. Chairman.

Senator HART. Thank you very much.

(The statements follow:)

STATEMENT OF CHARLES L. RUE, CPCU, CHAIRMAN, NATIONAL AFFAIRS COMMITTEE, IN BEHALF OF THE INDEPENDENT MUTUAL INSURANCE AGENTS ASSOCIATIONS OF CONNECTICUT, NEW JERSEY AND NEW YORK

I. INTRODUCTORY MATERIAL

My name is Charles L. Rue. I am an independent insurance agent and a Chartered property and casualty underwriter from Trenton, New Jersey. I am testifying today on behalf of the Independent Mutual Insurance Agents Associations of Connecticut, New Jersey and New York State, which, collectively, represent 3,500 agencies and 10,000 individual agents in these three states and service approximately 5,000,000 insured persons. I am currently Chairman of our three-state National Affairs Committee.

Objectives

The objectives of our testimony today are two-fold:

1. To express our basic philosophy on the subject of automobile accident reparations reform and the related subjects encompassed by Senate Bills 945, 946, and 976.
2. To comment on the few specific portions of these bills to which we object or which raise serious questions in our minds—I might add that these are relatively few, because, by and large, we are very favorably disposed toward the objectives of this package of legislation.

II. SENATE BILL 945 UNIFORM MOTOR VEHICLE INSURANCE ACT

IMA position on first party reparations

Our three associations, both individually and collectively, *strongly* [illegible] the concept of a first party automobile accident reparations system, and, in [illegible] with that philosophy, we will actively support any measure which [illegible] reasonable evolutionary step in that direction.

This position stems from an intensive study of accident reparation problems conducted by our three-state Automobile Study Committee in 1968, the findings of which were published in the fall of that year. To save the time of this committee, we are appending that report to the official copies of this document and will simply summarize our findings as follows:

1. Objections to tort system

Our objections to the present tort liability system hinge upon these six points:

a. Claim settlements have tended to be painfully slow, with delays ranging from several months to several years still occurring in cases of large claims associated with serious accidents.

b. Many accident victims presently receive no compensation for their losses, perhaps because of some insignificant degree of contributory negligence. Similarly, many are grossly underpaid for their losses.

c. A significant portion of many tort settlements is diverted to court costs and legal fees, never reaching the accident victim.

d. The tort system *appears* to be a factor in court congestion. Please note, however, that we *cannot* support this point statistically; and we are fully aware that many respected bar groups have compiled impressive evidence to the contrary. Nevertheless, whether our own limited evidence be circumstantial or purely intuitive, we are convinced in our own minds that far too many accident cases, particularly those involving relatively minor claims, are cluttering up our courts. Our own agent-client relationships tend to bear this out, but beyond this, we simply cannot debate the issue intelligently.

e. Fault itself, the basis of the tort system, is extremely difficult to prove in many cases, impossible to prove in some, and the process of proving it generates extremely high investigation costs for the insurance companies involved. To those who attempt to dispute this fact, we direct three simple questions: Why do virtually all accident cases require investigation? Why do so many cases wind up in the courts? Why are so many people engaged in the obviously lucrative business of claims investigation and adjustment?

f. Finally—despite its supposedly punitive nature, which places both the stigma and the liability for wrongdoing upon the guilty part, the tort system has apparently done little to reduce our disgraceful highway accident rate or remove chronic offenders from the road.

2. Advantages of first party system

Our studies lead us to believe that at least four major advantages would accrue from a first party system:

a. It would result in faster claim settlement. This is a decisive factor in the immediate aftermath of serious accidents, when medical and/or repair bills accumulate most rapidly, when victims most frequently find themselves confronted with financial crisis, and when funds are urgently needed for rehabilitation of seriously-injured persons.

b. It would lead to more equitable settlements, with *every* accident victim receiving reasonable compensation for his losses and a smaller portion of any settlement being eroded by litigation costs. In nothing else, this would keep many people off our burgeoning welfare rolls.

c. It would *probably* reduce court congestion, although we refer you immediately to our previous statement on this subject and our lack of statistical evidence.

d. It would eliminate the costly and difficult problem of proving fault before compensating the accident victim.

3. Primary versus secondary coverage

On one point we take a very strong position: We believe that Automobile Insurance should occupy the primary coverage position in the settlement of any and all claims arising from automobile accidents. Conversely, it should not be placed in a position secondary to collateral coverages held by the insured. We base this reasoning upon the following four points:

a. Persons carrying valid automobile insurance who are injured in automobile accidents should *not* be required to exhaust benefits which they have accrued to protect themselves against natural illness or other mishaps.

b. Administrative confusion resulting from a secondary coverage system would be monumental. It would be virtually impossible to devise a comprehensive rating system for automobile insurance which would mesh with the staggering number of accident, health, medical and income protection plans offered through other sectors of the insurance industry.

Furthermore, shifting administrative costs of processing bodily injury claims to hospitalization insurers would not greatly reduce the administrative burden on the auto insurer, since any accident causing significant injury will undoubtedly be accompanied by a considerable degree of property damage. Hence, the auto insurer is already in the act, and the additional administrative cost of processing the injury portion of the claim would be negligible.

c. The economic cost of highway accidents should be borne entirely by highway users. Yet, a secondary coverage statute, while undoubtedly effecting some savings in automobile insurance premium, would simply shift the burden of highway economic losses to the rest of the public in the form of higher premiums for other hospitalization and/or medical insurance. Needless to say, the accident and health insurers would probably respond quickly by excluding automobile accident losses from their own coverage, thus further muddying the waters.

d. People buy automobile insurance to protect themselves against losses suffered in automobile accidents, and that insurance alone should protect them fully against *all* such losses, except where covered by Workmen's Compensation.

POSITION ON SENATE BILL 945

With a few exceptions, Senate Bill 945 is a major step toward our own ultimate goal. Is is a farsighted measure which provides for virtually every contingency that might arise under such a system, and we commend Senator Hart and his committee for the research and the thought which went into its preparation.

However, we do object to and/or question the following four provisions of this bill:

1. Sec. 2(12) (A), by definition of "net economic loss," places automobile insurance in a secondary position to collateral coverages. This is totally unacceptable to our associations for the reasons outlined immediately above and constitutes our principal objection to the bill as presently worded.

2. Sec. 3 virtually mandates compulsory automobile insurance on a nationwide basis. While the concept has definite merit, particularly in the eyes of responsible citizens, we must question its enforceability. Even in such states as New York, one of the pioneers in strict, compulsory automobile insurance, a significant number of uninsured drivers still find access to the highways. Furthermore, to be totally objective, the responsible person would almost unquestionably insure himself, with or without a compulsory insurance law, and the person so irresponsible as to drive without coverage doesn't belong on the road at all.

3. Sec. 5(d)(I), in conjunction with Sec. 5(a)(3)(8), provides virtually all of the protections for the insurance industry which we have repeatedly asked for in testimony before state legislative and/or insurance department hearing commissions. We are most grateful for this.

We do, however, raise one point for your serious consideration. With the noted exclusions, all of which are subject to punitive action, this section of the bill is virtually a lifetime mandatory issue, guaranteed renewal and non-cancellation provision. The intent sounds fine—and I might add that our associations, in their own states, have been in the front lines of the battle to stop frivolous cancellation, non-renewals and refusals to insure good risks. These are just as much a threat to our own livelihood as they are to the public.

But Sec. 5(d)(I) of this bill represents overkill. There are many risks—the perpetual "fenderbenders", for example—who are not subject to punitive action yet who cause enormous losses for insurance companies, losses ultimately passed on to the entire insured public. This provision makes it mandatory for an insurer to cover these people for life. True—the next sub-section, Sec. 5(d) (2), exempts an insurer who is facing insolvency. But can we legitimately *force* a private business firm to accept, without time limitation, business which will ultimately drive it into bankruptcy?

We question the constitutionality of such a requirement and, therefore, oppose this section of the bill as presently worded. We suggest instead a clause of similar intent but with a statutory limitation of perhaps three to five years, after which the insurance company, upon presentation of reasonable supporting evidence, could elect to discontinue coverage.

4. Sec. 7(a) would establish, at state level, an "Assigned Claims Plan." The objective is obvious and basically sound—namely, to deal with contingencies not otherwise covered in the basic law. However, we do wish to point out that this provision will require the establishment of 50 new state agencies—or some lesser number, supplemented by a sizable new federal agency—all of which will cost

a considerable amount of money to operate. Unfortunately, we can offer no constructive alternative. But we do suggest that this mechanism be analyzed *very* carefully before implementation, with an eye toward making the basic law so comprehensive that the rare contingency can be handled within the framework of existing agencies, at little or no extra cost to or subsidy by the public.

In short, if Senate Bill 945 were amended to place the automobile insurance in a primary coverage position and to soften the overly-stringent mandatory issue requirements, we would view it as a model piece of legislation and support it enthusiastically.

III. SENATE BILL 946: MOTOR VEHICLE GROUP INSURANCE ACT IMA BASIC POSITION

To place our comments in proper perspective, we are compelled to open our discussion of Senate Bill 946 with a brief question of semantics.

This bill, as presently worded, deals *only* with "group" insurance. We wonder if that limitation is truly the intent of the sponsors. "Group" insuring is actually one of several types of marketing techniques commonly lumped together under the more general heading of "mass marketing." "Franchise" and "collective" marketing are other examples of the broader category. Since our position on "mass marketing" is already clearly defined, and since the term encompasses "group" insurance, we will discuss Senate 946 in the context of the broader terminology.

Our associations, individually and collectively, are firmly committed to the principle of reasonable regulation of mass marketing. In fact, we actually originated the bills which led to a mass marketing guidelines statute in Connecticut and Insurance Department regulatory guidelines in New York State.

Before going any farther, let me make one thing abundantly clear—despite some accusations to the contrary, our goal most assuredly is *not* to kill mass marketing ("group" insuring, if you prefer) or even to impede it. Quite to the contrary, we recognize it as a viable, modern sales technique which can bring significant savings to the insured public. Furthermore—from a purely selfish standpoint—several of our own members have already acquired sizeable mass marketing accounts, and many others are seeking a piece of the same action.

But make no mistake—uncontrolled mass marketing invites a number of abuses which could prove highly detrimental to the insured public. In our estimation, the following five pose the greatest immediate threat:

1. General application of discriminatory underwriting practices, whereby an insuror underwrites only those members of a group who, in that insuror's estimation, constitute the best risks. This is the practice commonly known as "cream skimming".
2. Arbitrary cancellation or non-renewal of policies already issued to members of the group, leaving the victims to seek replacement coverage in an increasingly restricted market-place. This is probably even more insidious than initial rejection.
3. Selective underwriting practices, which would deny coverage to youthful drivers, drivers over 65 years of age, certain ethnic minorities, inner-city property owners and similar groupings.
4. Failure to provide continuity of coverage to those persons leaving an insured group, for whatever the reason.
5. Unless completely separate record keeping is mandated and rating for each group based upon the experience of that group alone, the rest of the insured public could find itself subsidizing any group losses which might occur. Those records, needless to say, should include a complete breakdown of management expenses at all levels to prevent parent insurance companies from disguising in their own records, and passing along to their own clients, losses deliberately incurred through underpricing by subsidiary or "pup" companies.

Gentlemen, this is not just alarmism. These things do happen, and we are very slowly but very surely gathering examples. Without some safeguards, the end result could be the creation of a very large and relatively uninsurable residual market comprised of group rejects and other people not fortunate enough to be insured through group or other mass marketed plans. Many of these could hope for little more than assignment to high-cost assigned risk pools.

We think that the key to effective control lies in two words: "Guaranteed issue"—in other words, the requirement that an insurance company offering a group plan accept *all eligible* members of the group, without resorting to the discriminatory underwriting practices which we just outlined. I'll come back to this point in a moment.

POSITION ON SENATE BILL 946

Senate Bill 946 contains elements which we find both pleasantly surprising and paradoxical. Sec. 3 clearly conveys the intent of the measure—namely, to prohibit overly-restrictive controls which would impede the natural evolution of group or other forms of mass marketing. Yet Sec. 2(2) begins to approach the very "guaranteed issue" requirement for which we have fought so vigorously in our own states. We view this as a major step in the right direction.

In fact, we respectfully suggest that with the addition of the following items, Senate Bill 946 would approach our own concept of a model mass marketing guidelines bill:

1. A provision prohibiting compulsory participation in a group insurance plan as a condition of employment or group membership—in other words, protecting the group member from coersion by an employer or other group sponsor.

2. A requirement that a person leaving the group, for whatever reason, be granted the privilege of continuing his coverage for a reasonable length of time or of converting it to a regular policy with the same insurer.

3. The addition of the following exclusions to the guaranteed issue provision:

a. Failure to pay premiums.

b. Fraud or misrepresentation in the application for insurance.

c. Termination of the group.

d. Also, conviction within the previous three years of:

(1) Operating a motor vehicle while intoxicated or under the influence of drugs.

(2) Leaving the scene of an accident.

(3) Use of a motor vehicle in committing a felony.

(4) Operating a motor vehicle with the specific intent of causing injury or damage.

(5) Making false statements in the application for a motor vehicle operator's license.

(6) Operating a motor vehicle while the operator's license is suspended or revoked.

Please note that these exclusions are an extension of and completely in context with those granted in Senate Bill 945. They simply provide reasonable protection to the group insurer against the criminals, chronic offenders and other such risks which would not be insurable under any normal circumstances in the regular voluntary market.

Our only specific objection to Senate Bill 946 involves Section 5. We believe that actual regulation of group and other forms of mass marketed insurance should be retained at state level and, in keeping with this, that jurisdiction over violations should rest with state insurance commissioners and state courts rather than the federal government. I'll have more to say about our reasoning in a moment.

IV. SENATE BILL 976: MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

Gentlemen, this bill lacks just one closing word: Amen!

Improperly designed and maintained vehicles have been one of the basic causes of our automobile insurance difficulties and perhaps the primary cause of our high insurance rates. It appears at long last that someone has seen the light and is going to have the courage to do something about it—and incidentally, we believe that this particular problem can only be treated at federal level.

We hope you will stick to your guns, pass this bill now and continue to strengthen it in the future. You have our full support and our heartfelt thanks—and we know the public will join us when they see the impact on their automobile insurance rates.

V. STATE VERSUS FEDERAL JURISDICTION

We would like to close this testimony with a brief statement of our position relative to the question of state versus federal regulation of automobile insurance.

Please be advised that we are firmly committed to the principle of state regulation and control of insurance activities, within the context of Public Law 15 of 1945, the so-called McCarren Act.

This does *not* infer in any way that the federal government could not perform competently in this area. Furthermore, the concept of federally-mandated *standardization* of automobile accident reparations laws possesses great merit.

However, we believe that continuation of state regulation and control offers three overwhelming advantages:

1. Automobile accident problems and associated insurance problems have a definite regional flavor. They are directly influenced by population density, vehicle density, occupational pursuits of the area, weather patterns and similar factors. Stated another way, you cannot compare insuring conditions in New York City with those of a Kansas farm community. Hence, we believe that regional or state regulation is simply more practical and would be more responsive to local needs.

2. The state regulatory mechanism already exists and, for the most part, we believe it has been effective. Furthermore, it will continue to exist, even if the federal government assumes jurisdiction over automobile insurance, because automobile insurance, after all, is only one area of a vast insurance picture. Why waste these existing facilities?

3. Assumption of jurisdiction over automobile insurance by the federal government would require the establishment of a fairly large and highly complex new federal agency. This would be a costly operation, and the public would ultimately pay for it in the form of higher insurance premiums and/or higher taxes. For disturbing implications of what could lie ahead, we need point only to those portions of Senate Bill 945 which call for the establishment of new agencies and appropriation of public funds.

Now—criticism is worthless unless constructive, and we do have a constructive suggestion. If Senate Bills 945 and 946 are indeed passed into law—and remember that we would support them readily with the revisions noted above—then pass them in the form of standardized guidelines for implementation at state level, giving the states a reasonable period of time to do so. The new crime insurance law provides ample precedent for such a course of action, and we are convinced that it is the most practical and economical approach.

Thank you for permitting us to testify today. We hope that our suggestions will be of some value to you and that the outcome of these hearings will be a positive move in the direction of realistic and long overdue automobile reparations reform. The public has already waited too long.

A Report of the Auto Study Committee of the Independent Mutual Insurance Agents New York–New Jersey–Connecticut

FOREWORD

Faced with an angry, often confused din from an irate public and a perplexed, irresolute industry. IMA moved in the direction of a three-state committee geared for a high level study of the auto insurance problem in January, 1968.

Even as the IMA Auto Study Committee met for its first time on February 29 of this year, strong and forbidding forces were at work. A seemingly revolutionary of of auto insurance was being aggressively championed by two law professors by the names of Keeton and O'Connell. Certain legal groups were marshalling their forces to dissipate the drive of the two professors. Officials of the nation's courts were under fire and firing back. Associations of insurance companies and agents were groping defensively and inconclusively for facts, figures and a position. Newspapers and magazines were finding auto insurance an easy and entertaining open wound into which to rub salt. Legislators saw an unimpeachable cause to champion. Investigations into auto insurance began at all levels of state and federal government.

Through all this rancorous confusion, one note seemed to ring with unfailing clarity. There must be change! From the man on the street to the President of the United States, this much was clear. The question resolved itself into the further question: Who will do the changing? And what form would the change take?

Both questions were equally vexing. A profusion of plans for change quickly exploded on the muddy marketplace of ideas, with no one program galvanizing universal support. These deliberations, difficult and trying under the best of circumstances, were exacerbated by perhaps the ultimate horror—federal regulation. There was—and is—no dearth of advocates for a federal solution.

The pressure from legislators, press, various officials, public and others make a federal solution much more than an implausible menace. In fact, to a growing number of serious thinkers, the matter seems to boil down to this choice: Either the insurance industry will make changes or the federal government will step in and make changes.

It is little secret that the federal government might make changes unfavorable to the insurance industry. For many independent agents who rely on auto insurance as a large part of their income, the changes might be the death knell. Or, the changes might just be the death of the auto insurance industry—period. At any rate, it is highly unlikely that the public would be better served. We cherish the idea that private industry and private initiative at its best is better that a federal system at its best—insofar as auto insurance goes.

Having made the choice to attempt to change ourselves without government direction, we have been forced into a consideration of what changes would be best. That is, what changes would be best for both the insurance industry and the insurance-buying public the industry is committed to serve. Anything less would be doomed to failure from the start.

The matter of choice has not been easy nor has it been quick. Intelligent choice comes only from an intelligent consideration of alternatives. In the case of this committee, we believe that every known alternative has been carefully weighed. Not only have all the alternatives been weighed, but every conveivable combination of them has been deliberated and debated. And, what is more, this committee has made every human attempt to ponder the alternatives without preconceptions and prejudices.

Our deliberations have not been inconclusive. We have looked at—just to name a few—the Logan Plan, the Smith Plan, Guaranteed Benefits, the Saskatchewan Plan, the Chicago and Columbia Studies, Keeton-O'Connell, the Collins Plan, the Green Plan, the Ehrenzweig Proposal, the Massachusetts Broker's Plan, the Conard Study, the California Bar Proposal, Knock-for-Knock, the Nationwide effort, the Sharp Proposal, the Murray Plan, the Miley Plan, the Blum and Kalven Report, Ontario Plan, the Red Badge Plan, the Cooperators Plan, the General Accident and American Family Plans, the American Bar Proposal. We have looked at no-limit policies, Advanced Payments, compulsory med pay, adoption of comparative negligence, the ruling out of certain immunities, restriction of contingent fees. And we have looked even further.

And yet, when all criteria are considered and when every factor has been weighed, we must return to the basic thinking of those two professors by the names of Keeton and O'Connell. *What we are recommending is not their Basic Protection Plan as published and known back in February. What we are recommending is a first party system.* And the latest version of Basic Protection in Massachusetts incorporates far more of the features we feel are necessary to an equitable system for all concerned than any other plan or combination of plans.

In the following pages of this report, you will find the names of the various men who gave so generously of their time and thought to this committee, the reasons advanced by those opposed to the type of system we recommend, our reasons for supporting our conclusion and a description of the plan we recommend—which, by the way, includes some of the committee's own additions to the thinking of Professors Keeton and O'Connell.

The Auto Study Committee of the Independent Mutual Insurance Agents Association,

ROBERT W. BAYLIS, *Chairman,*
First Vice President of IMIA of N.Y.
HARRY L. ASHMORE, *Past President,*
IMIA of Connecticut–Danbury, Conn.
J. STANLEY BRADDOCK, *director,*
IMIA of New Jersey–Medford, N.J.

THE SYSTEM IMA RECOMMENDS

It should be clear that this committee is endorsing a first party system, first and last. What precise form it might eventually take we leave in the hands of intelligent evolution.

Acceptable minimum requirements for such a system include:

(1) Availability of increased limits (over Basic Protection);
(2) The option to buy back duplicating coverages;
(3) A pooling system whereby companies would get necessary credits;
(4) An individual's right to bring suit beyond the $10,000 waiver limit;
(5) The stipulation that any company offering Basic Protection must also offer liability insurance.

At this point in time, the first party plan that appears to have the greatest viability is Basic Protection as stated in Massachusetts House Bill 4830. This

optional plan has the near-unanimous backing of the IMA Auto Study Committee.

A brief description of Massachusetts House Bill 4820, in Professors Keeton and O'Connell's own words follows:

"Under this proposal, existing liability insurance status (requiring the purchase of motor vehicle Bodily Injury Liability insurance and encouraging the purchase of Property Damage Liability insurance) would remain in effect.

"Each Bodily Injury Liability insurance policyholder would be offered the option of electing Basic Protection insurance along with his liability insurance. When thereafter injured in an automobile accident, a person who had made this election would be entitled to have his net out-of-pocket losses up to $10,000 reimbursed by his own company, without regard to who was at fault in the accident. Within specified limits he would waive his rights to negligence claims against other drivers having insurance in a participating company. Ordinarily the policyholder's election would apply to all the members of his household. The waiver would apply to the extent of the first $5,000 of pain and suffering damages and the first $10,000 of other damages (such as wage losses and medical expenses, for which payments would be made under Basic Protection without regard to fault).

"The proposed statute requires that the policyholder's company, along with other companies writing automobile liability insurance in the state, participate in a pool that would guarantee that this company be credited with the cost savings resulting from his waiver of negligence claims: In turn, the statute requires that his company pass along to him, in the form of reduced premium charges, a fair share of all such cost savings. Thus, it is expected that the average Basic Protection policyholder could buy the combined package of Bodily Injury Liability insurance and Basic Protection insurance at less cost than he now pays, or would pay under the new system, for Bodily Injury Liability insurance only. The savings for the Basic Protection policyholder are further increased because he would no longer need Medical Payments and Uninsured Motorist Coverages, the benefits of which are included within Basic Protection.

"Similarly, each Property Damage Liability insurance policyholder would be offered the option of electing Vehicle-Damage Added Protection insurance along with his liability insurance. A person electing this coverage would be entitled to reimbursement from his own company for damage to his own car, without regard to who was at fault. This is a benefit comparable to that now paid under Collision insurance. He would waive his rights to negligence claims against other insured drivers for damage to his car. Through the pool, his company would be credited with the cost savings from his waiver of negligence claims, and in turn he would receive, in the form of a reduced premium, a fair share of all such cost savings. Thus, his combined premium for Property Damage Liability insurance and Vehicle-Damage Added Protection insurance would be lower than the combined premium for Property Damage Liability insurance and Collision insurance.

"If a person still preferred to be paid under the rules of the present system (for example, because he wanted to have a chance at pain and suffering damages, even in small cases) he could simply decline these optional new coverages (Basic Protection and Vehicle-Damage Added Protection), and he could still carry Medical Payments, Uninsured Motorist, and Collision coverages."

Two options Professors Keeton and O'Connell describe in a memorandum dated July 15, 1968, seem worthy of inclusion in any legislation. The first is called "General Damages Added Protection Coverage" and applies to pain, suffering, inconvenience and physical impairment. The second option is named "Net Loss Added Protection" and is designed, as its name implies, to provide greater net loss protection than the basic plan.

Other features of interest in the Massachusetts Bill, again to quote O'Connell and Keeton:

"*Periodic reimbursement.*—Basic Protection benefits are payable month by month as losses accrue, subject to lump-sum payments in special circumstances."

"*Reimbursements limited to net loss.*—Basic Protection benefits are designed to reimburse net out-of-pocket loss only; overlapping with benefits from other sources is avoided by subtracting these other benefits from gross loss in calculating net loss."

"*Loss consists of expense and work loss.*—Out-of-pocket loss for which Basic Protection benefits are payable consists of reasonable expenses incurred and work loss. Work loss consists of loss of income from work (for example, wages) and expense reasonably incurred for services in lieu of those the injured person would have performed without income. For example, the expenses of hiring

household help to do work a housewife had been doing before being disabled by by injury are reimbursable."

"*Deductible losses.*—The standard deductible of Basic Protection coverages excludes from reimbursable losses the first $100 of net loss of all types or 10 percent of work loss, whichever is greater. However, if two or more persons in one family are injured in an accident, the deductible is $100 for the entire family, or 10 percent of work loss, whichever is greater."

"*Standard limits of liability.*—The standard maximum liability of an insurance company on any Basic Protection policy is $10,000 per person for injuries sustained in one accident, with no per-accident limit. An additionsl limitation prevents liability for payments of more than $750 for work loss in any one month."

"*Optional exclusions.*—At the policyholder's option, an exclusion may deny benefits to any person who helped to cause his own injury be engaging in serious misconduct such as driving while intoxicated, racing, or driving without a license or without permission of the owner of the vehicle."

"*Bodily injury liability insurance companies must offer basic protection.*—Accompany writing automobile Bodily Injury Liability insurance must offer to each policyholder of such coverage the option of Basic Protection insurance. A policyholder cannot purchase this optional coverage unless he also purchases Bodily Injury Liability insurance."

"*Extraterritorial injuries.*—A Basic Protection insured is entitled to Basic Protection benefits regardless of whether his injury occurs inside or outside the state where the policy is written."

"*Claims against persons outside the system; subrogation.*—A Basic Protection insured is still entitled to bring his negligence claim in full against any driver who is not a qualified insured (i.e., any insured covered under the Bodily Injury Liability coverage of any policy with which Basic Protection was offered, whether or not it was elected.) The Basic Protection insured's own company, upon paying benefits, may be subrogated to the Basic Protection insured's negligence claim—that is, it may get back out of the claim against the other driver and his company what it pays to the injured person. Such subrogation recoveries serve to reduce premium charges for Basic Protection insurance."

"*Rehabilitation.*—Special provisions are made for paying costs of rehabilitation, including medical treatment and occupational training, and for imposing sanctions against a claimant when an offer of rehabilitation is unreasonably refused."

"*Claims and litigation procedures.*—In general, the Basic Protection system preserves present procedures, including jury trail, for settling and litigating disputed claims based on negligence; modifications adapt these procedures to the Basic Protection system and particularly to periodic payment of benefits."

"*Rules applicable if a victim dies.*—The benefits of Basic Protection extend to survivors when a motoring injury causes death; the extent to which waivers of negligence claims by Basic Protection insureds have effect when an injured person dies may depend upon state constitutions, statutes and judicial decisions: probably the waivers would be held effective at least to as great an extent as a release signed by an injured person after he was injured and before he died."

"*Property damage liability insurance companies must offer vehicle-damage added protection coverage.*—A company writing Property Damage Liability insurance must offer to each policyholder of such coverage the option of Vehicle-Damage Added Protection insurance. A policyholder cannot purchase this optional coverage unless he also purchases Property Damage Liability insurance."

"*Vehicle-damage added protection benefits not based on fault.*—Under this optional coverage, the owner of the insured car claims directly against his own insurance company for the damage to his car. In this respect the new coverage is like the Collision insurance that has long been offered in automobile insurance policies."

"*Waiver of negligence liability claims for damage to vehicles.*—A Vehicle-Damage Added Protection insured waives his negligence claims against qualified insureds for damage to his car, including claims for loss of use. The qualified insureds are all insureds under the Property Damage Liability coverage of any policy with which Vehicle-Damage Added Protection was offered, whether or not it was elected. The companies offering such policies must participate in a pooling arrangement to assure that the savings from these waivers are credited to Vehicle-Damage Added Protection policyholders and not to other policyholders."

"The insurance unit and marketing arrangements are not altered.—The insurance unit under the Basic Protection plan is the same as under the present system; ordinarily a policy will be issued on a vehicle described in the policy to the owner of that vehicle. *It is expected that the new coverages will be marketed in the same way as automobile negligence liability insurance* (Emphasis ours)."

COMMONLY CITED OBJECTIONS

Like all major issues of modern times, auto insurance reform has had its army of articulate adversaries. Again like other issues, the detractors are cast into their roles for a number of reasons.

Too many, it must be bluntly said, are simply fearful of change, and are constructing rationalizations to support their feelings. Still others disagree for a defensive sense of self-interest. Most take issue because they have a sincere desire to see justice done but have yet to fully appreciate the alternatives.

No matter what their motives, these critics have amassed an array of arguments against a Keeton-O'Connell-type approach. The most common say:

1. BP will not lower costs. Or, if it does, the savings will be so slight as to be totally inconsequential. Or, it may well raise costs.
2. BP may be unconstitutional. Just how and why even lawyers can not say.
3. It is not equitable to say there is no pain and suffering worth compensating below $5,000.
4. BP would not really expedite claim payments because the monthly payments would be extremely difficult to compute and distribute.
5. By preserving the tort system for large claims, BP would start an avalanche of large claims that would not cure, and might even compound, court congestion.
6. BP, with its broad definitions, will not cure fraud but be an open invitation to many an "unwitnessed accident." (So do M.P. and W.C.)
7. BP will cause an unequitable distribution of costs from those most likely to cause accidents to those most likely to collect the largest sums.
8. BP will cause a rating and actuarial nightmare. (Not true of accident insurance companies).
9. BP will result in all manner of interstate confusions and complications.
10. BP will doom the smaller and middle sized companies and their agents because, variously, of mass merchandising, of large administrative costs, of large retraining costs, of rating uncertainties. (Other feel BP wound stabilize industry).
11. Rates will be inadequate, excessive or unfairly discriminatory. (Same argument is often made against present rating methods).

The above list by no means catalogues every objection ever made against a Keeton-O'Connell type plan. But it touches on the major objections made by serious and well-intentioned thinkers and researchers.

All these criticisms, plus many more of not enough substance to deserve inclusion in the list, have been considered at great length and with the utmost gravity by this committee. Yet, in the opinion of this committee, these objections—whether taken slightly or as a whole—are insufficient.

Not only are they insufficient, but in many cases they are, in this committee's opinion, unfounded. We believe, that the plan we are recommending would create a rating and actuarial climate immeasurably superior to the present one—in short, the polar opposite of what the critics suggest. Nor can we give any credence to the ideas basic protection will pamper the reckless and irresponsible while harming the innocent and upright. Nor do we believe that it is inherently inviting to fraud or a flood of large tort actions. Nor do we believe there is any credible reason to suspect a first party system such as Basic Protection in its option version to be unconstitutional.

We find the other objections similarily lacking or baseless. Certain of these criticisms, it must be remembered, were addressed to a difficult form of Keeton-O'Connell than we are recommending. Because of this fact, many once-valid objections are no longer relevant or viable.

It is this very evolution of Keeton-O'Connell that has been one of its most enduring and exciting characteristics.

Now let us turn to the reasons we favor such a plan.

WHY WE FAVOR SUCH A PLAN

Basically, we favor the plan we've described because it is moral, just, humane, ultimately economical and profitable.

For the first time in our history, accident victims may be spared the ruinous degradation of slipping hopelessly into debt while waiting from a claim to be settled.

These same people will have a better chance of being rehabilitated surely and quickly because the money will be available—when it is needed.

The chances are good these people will enjoy the pleasant sensation of seeing their auto insurance bill reduced somewhat. If it stays the same, they will be happy to know they are buying fail-safe insurance and protection at no increase in cost. And, should their bill be raised ever so slightly, they can take pleasure at having gotten a greatly increased value at only a slight increase in cost. Whatever the price, they can have the immense satisfaction that comes from spending money for one's own welfare—not that of a stranger's.

In many instances, these people will be spared the incredible tedium and antagonism of the adversary system. No longer will people be forced to swear unswervingly to what they can neither swear to or remember exactly. Society can ill afford a machine that overmanufactures enmity and enemies.

The fact that accident victims are spared money and misery is of towering importance. Because its effects will reach throughout the whole system.

There is a strong chance the courts will become unclogged. Society will be spared the spending of needless welfare and relief monies for accident-created paupers. And life for the insurance agent and the industry as a whole will become easier as the present attacks from legislators, bureaucrats and the mass media subside.

Not the least of the beneficiaries of our plan will be insurance agents. Most importantly, the plan will put the agent back into the claim settling business. This in turn will give him more control of his business and the chance to offer a brand of service far more personal and effective than is presently possible.

Companies, too, should have reason to applaud such a plan. They will have fewer furious policyholders who thought the purchase of auto insurance meant the company who sold the policy was going to pay, no matter what, if an accident occurred. Likewise there will be fewer incensed third parties lodging indignant suits in court. Legal expenses will be likely to decrease.

Of particular benefit to the companies is the rating system such a plan would call into existence. Far from being inadequate or excessive, rates would be current, actuarially sound, and adequate for a healthy company. Political pressures on such a rating system would be anywhere from nil to nonexistent. Furthermore, the advent of realistic rates should do much to improve insurance company solvency.

For agent and company alike, the plan—as modified by this committee—features stabilizing factors amidst the change. Perhaps the most reassuring of these is the requirement that companies offering Basic Protection must also offer liability insurance. This means, in effect, that large life and A & H carriers will not rush in and suddenly scoop up an enormous part of auto insurance.

Adoption of this plan will also open up and improve markets. We feel this is an important point, because the availability of affordable insurance is essential to any viable system.

In conclusion, we feel there is every good human and business reason to try this first party system. It should do the greatest amount of good for the largest number of people. While it is so serving the public, the system will still permit healthy profits for agents and companies.

We can not pretend that the adoption of such a system will not cause certain inconveniences and some dislocations. These are the inherent byproducts of healthy change. It is only the sick that a healthy change hurts.

There is no better demonstration of our conviction than the way we recommend the plan should be offered—*voluntarily*. Naturally, certain savings and gains in effectiveness could be realized by making such a plan compulsory—and thus universal.

We feel the plan will be so overwhelmingly popular with insureds, companies, agents, brokers and insurance departments that it will quickly come into universal use.

In conclusion, we invite the active support of all IMA members and others in our industry for this plan. It will take a fight against certain entrenched elements if such a plan is to be put into practice. But it is a fight that, united, we can win. It is a fight that, indeed, we must win.

ROBERT W. BAYLIS, Chairman,
IMA Auto Study Committee.

Senator HART. Not so much of the need for lunch but because of a need to get to the floor for the introduction of some legislation, I am compelled to take a recess. Those who are here and from whom we have not yet heard, all are busy and are operating, in all likelihood, under the pressure of airplane reservations. I will suggest a recess until 1:30 p.m., and if at all possible—if we are lucky we will be back 5 or 10 minutes before that but certainly not later than 1:30 p.m. p.m.

(Whereupon, at 12:36 p.m., the hearing was recessed, to reconvene at 1:30 p.m., this same day.)

AFTERNOON SESSION

Senator HART. The committee will be in order.

We resume this afternoon welcoming the director of insurance of the State of Illinois, Mr. James Baylor, who is accompanied by Mr. Vincent Vaccarello, chief deputy director.

Gentlemen, thank you for the material which you have provided the committee. We will make as a part of the files all of the documents.

First, we will print in full your prepared testimony. As you go along, make any comments you might wish.

STATEMENT OF JAMES BAYLOR, DIRECTOR OF INSURANCE, STATE OF ILLINOIS, CHICAGO, ILL.; ACCOMPANIED BY VINCENT VACCARELLO, CHIEF DEPUTY DIRECTOR, ILLINOIS DEPARTMENT OF INSURANCE

Mr. BAYLOR. When we came, Mr. Hart, we anticipated we were going to be accompanying Governor Ogilvie. We regret he is not here. We know he regrets he is not here. He asked us to deliver a letter, it is addressed to Senator Magnuson.

Senator HART. Thank you very much. I will see that the chairman gets it.

It is appropriate to make this part of the record?

Mr. BAYLOR. Yes; I think so. I think it does set forth the Governor's views on the matter and we think they are important.

Senator HART. Fine, let's print it at this point.

(The letter follows:)

STATE OF ILLINOIS,
OFFICE OF THE GOVERNOR,
Springfield, Ill., May 12, 1971.

Hon. WARREN G. MAGNUSON,
Chairman,
Senate Commerce Commission,
Washington, D.C.

DEAR CHAIRMAN MAGNUSON: Last fall, I asked the Illinois Department of Insurance to make an extensive study of the auto reparations system in Illinois and to prepare recommendations for its improvement. *The Illinois Plan* for insurance reparations reform evolved from that study.

Although developed by the Illinois Department of Insurance independently of the Department of Transportation's Motor Vehicle Crash Losses Study, *The Illinois Plan* meets substantially the recommendations of that study. It is designed to help alleviate human anxiety, provide expanded benefits to accident victims, speed justice, reduce court backlog, and stabilize and possibly even reduce the spiraling cost of insurance.

I share Secretary Volpe's view that: "The experience of the States should have much to tell us about the most desirable final configuration of the motor vehicle reparations system."

There is substantial evidence the experience in the various states is not sufficiently the same to require absolutely uniform auto reparations reform. Though it may be desirable for one state to adopt a program to meet its particular situation, that program may or may not meet the needs of the people of other states.

Some argue that reparations standards imposed by the federal government are essential to motivate states which otherwise would not act. However, those same standards easily could become a detriment to those states where action is being taken on the state's own initiative. All too often federal proposals become minimums for accomplishment, while at the same time they stifle new approaches.

I realize the good intentions manifested in federal action, but I believe that there is not sufficient justification for a federal program at this time. It was only six weeks ago that the final recommendations of the Department of Transportation's two-year auto reparations study were made public. States should be given an opportunity to examine the data contained in that study and to evaluate the recommendations.

We in Illinois already have developed a program for state insurance reparations reform and are working for the enactment of the legislation to implement that program. Other states are doing the same.

I regret that I am unable to be with you today. However, I have asked James Baylor, Director of Insurance, and Vincent B. Vaccarello, Chief Deputy Director of the Department of Insurance, to extend my remarks and to answer any questions that you may have.

Thank you.

Sincerely,

RICHARD B. OGILVIE, *Governor.*

Mr. BAYLOR. In order to expedite matters, we have prepared a statement, and I would like to read it.

The Department of Insurance in Illinois is well aware of the condition of the automobile reparations system as it relates to the situation of Illinois automobile accident victims. Becoming informed through a study initiated by Governor Ogilvie, we have promulgated a program of reform—a change of that system to bring relief to that situation.

The fact is that in Illinois, and I believe other States, the leaders of government are going forward on all fronts to reduce the occurrence of auto accidents and to bring relief to their effects. Accident reparation is only one phase of that overall, coordinated program of action. We through our office and other government offices, are in constant contact with the people of our State. Thereby, we, more than others, can discern their attitude toward the efforts made to remedy their problem.

We have developed the Illinois plan, for which implementing legislation is before the Illinois General Assembly. It is a comprehensive approach to correct the deficiencies in the reparations system of our State as does no other proposal. Basic to it is the realization that the concept of tort liability is not fundamental to those deficiencies. They are a product of the administration of the reparations system. Our only goal in every consideration was to overcome the deficiencies. To the extent they lay in inadequate benefits, we would extend those benefits; to the extent they lay in the judicial process, we would streamline the procedures.

The Illinois plan will remove the reason to sue, not the right to sue. To do otherwise does not satisfy the needs nor meet the attitudes of the people of our State. The present reparations system is a product of individual State action on individual State initiative. Because it is not doing the job in Illinois that we believe it can and should

do is not a reason for changing the promulgating authority. It merely means that Illinois must get on with the job—and that, we are doing.

The States are capable of recognizing and providing for the needs of their peoples regarding reparations. The present system created by the States and the variations developed within the States reflect that ability to continue to do so. That Nebraska, Wisconsin, and other States provide for comparative negligence in contrast to Illinois, which is a contributory negligence State, indicates further the ability of the States to exercise judgment and do what their elected officials believe is best for them. Who, not responsible to the people of Illinois, could presume to decide their needs, much less dictate their satisfaction?

Particularly, is it important to retain a multi-State auto reparations system to avoid the disadvantages that would be inevitable if we had only one inflexible, uniform Federal program. Obviously there are some short-term advantages to uniformity. But the long-range inhibiting effects against change to obtain improvement, as that will become needed, are gross by comparison.

On a national basis, the differences between the States is not a deficiency of the whole reparations system. In practice, the differences are one of its strengths. Only where differences exist can realistic judgment be exercised to obtain improvement. Only when proposed changes can be evaluated in practice can they be established as advantageous and sound. Solely through action on a State-by-State basis is this possible. We have learned much by the action of Massachusetts in the reform of its reparations system. We believe they and others will learn much by the action we are taking in Illinois.

It is imperative to realize that the deficiencies of the present system are not the result of the actions of the individual States but the product of changes in the circumstances to which those actions apply. If it were true that the deficiencies are a result of Government action—or inaction—nonetheless would it be true, were the reparations system a function of the Federal Government rather than the several States.

We do not acknowledge a need for national standards for a reparations system on a State-by-State basis. Again in the short term there might be some advantages. The establishment of national standards might be an incentive or prod to action in some States that need to but otherwise would not respond. But also in the short term, national standards would, not might, have an inhibiting effect on the States which will accomplish their needs without them. National standards would set the minimum of accomplishment. And when they have been met, apathy at both the National and State level would destroy any attempt at innovation or improvement. Legislators, in whatever legislative body, know that apathy and the pressures against change are the strongest forces they must overcome. To add to that the limitation inherent in the existence of national standards could be disastrous to obtain improvements to meet the changing conditions of tomorrow and all the tomorrows to come.

While it is true that significant change in any institution under government is slow in the minds of its proponents, necessarily—and fortunately—is this so. Two points are particularly important:

First, there must be a realization that nonaction by the States in some instances describes a positive, not negative, attitude. There are

those who support a Federal reparations system only on the grounds the States will not act. The fact is that the circumstances that require change in States such as Illinois do not exist in some other parts of this Nation. That the cancer might develop is no reason to cut off the leg in anticipation to prevent its happening. I believe it would be a breach of faith to the people who elected Members to this Congress if the authority of the Federal Government were to impose on them a system not consistent with their needs merely because some States determined not to take action. And some apologists for a Federal system offer as proof that they proposed a reparations plan and "it died in committee." The only proper interpretation, I believe—rather than impugning the motives or integrity of the State legislators—is that by the nonadoption of the proposal before it, the enlightened State legislature was rejecting that as an acceptable solution or means of relief to the problem. Rejection as well as adoption should be regarded as positive action: the legislatures have recognized the inherent inadequacies in the arguments for those types of plans. It is no valid criticism of the Illinois plan that it does not meet the criteria that only its critics have established as the basis for an acceptable program.

Second, the recognition of the problem is evolutionary and the solutions for it must be sought out, a time-consuming process. The occurrence of divine revelation in such mundane matters as auto reparations is infrequent at best. In Illinois and in other States these changes are in the process of accomplishment. The DOT studies have been one of the greatest assets to all interested in obtaining relief to the problems; but their being the accomplishment of a Federal agency is no argument for Federal legislation as the remedy to the problems they identify.

In Illinois, and in other States, I believe, there is recognition among the public of the matters we are discussing here today. It is obvious that substantial effort is being made by all interested parties—the several branches of government, including the bar; the news media, not only in its reporting of the news but also in its editorial position: the insurance industry, which did not create the reparations system but works within it; and the consumer groups—to effect significant change to reach the same goals which will be obtained by the enactment of the Illinois plan.

One important point, as I read the reports of proceedings before the Congress in these matters, has not received the analysis it deserves: what the reparations system is. Basically it has two parts: (1) the determination of who should recover damages, how he would recover them, and in what amounts; (2) the resources for the recovery of those damages. They are two separate things yet so closely interwoven as to be one—the reparations system. If either becomes the object of the jurisdiction of the Federal Government, inevitably will become the other also. To expect that the Federal Government can control through Congress the first part of the reparations system while the States will regulate the second is to anticipate we have learned to unscramble the egg. If it is the purpose of Congress to assume regulation on the insurance industry, let that be proposed as such rather than let it occur as the inevitable result of a Federal reparations system.

We urge your recognition that Illinois, as a leader among States, typifies what can and will be done by all the States in the field of auto reparations; that at neither this time nor in the foreseeable future is there any reason for the Federal Government to preempt the field from the States nor to intercede through a program of Federal standards; that to do so would be unwarranted interference with what the States are more capable of doing and will do best for their respective citizens.

In support of some of these comments I have made, Senator Hart, we have included some of the materials in this booklet that you indicated earlier would be made part of the record, and I call them to your attention, if I may. We have included quite a collection—I don't know the number of pages, but it seems to be 10 or 12 at least—of editorial comments from the news media in Illinois, and every one of these comments has been strong in its support of the Illinois plan as the vehicle by which to bring relief to the problems of our Illinois citizens.

We have referred extensively here to the Illinois plan. The booklet here, the yellow booklet, goes into it extensively. Mr. Vaccarello, who was primarily the draftsman for the plan within the Department of Insurance, frankly, I think it could best be said that it was his genius that put together the elements which make up the Illinois plan, and I would like him to at least comment to you on these rather than ask you to read the whole book.

Mr. VACCARELLO. Senator, the plan which we have developed in Illinois, after a considerable amount of research, provides an equitable program for reform with respect to the deficiencies which have led to criticisms of the present auto reparations system.

The Illinois plan requires Illinois auto insurance companies to promptly pay every 30 days, and without regard to fault, up to $2,000 in medical benefits covering the span of 1 year, up to 85 percent of wage losses to a maximum of $150 per week for a period of 1 year, and over $4,000 for reimbursement of essential services, to all victims including pedestrians, on a first-party basis.

Our study of claims in Illinois demonstrate that 99 percent of the injured victims of automobile accidents in our State have under $2,000 of medical expense, while 99.8 percent of injured victims have less than $7,800 in wage losses. Thus, the Illinois plan would provide broad and comprehensive no-fault first-party coverages for an extremely large majority of injured Illinois victims.

However, the plan does not end there. The Illinois plan further provides that all insurers must also offer an additional aggregate of $50,000 of coverage to each policy holder on a no-fault excess basis. This excess coverage would extend the medical benefits and wage loss for 5 years, service loss benefits for 5 years, and provide dependent survivors benefits for a period of 5 years.

Our approach in this area is unique for another reason. The excess loss coverage can be purchased in Illinois under our provisions, instead of the currently mandatory uninsured motorist coverage. The contrast is dramatic for this reason: the uninsured motorist coverage which all Illinois motorists must now purchase pays up to $10,000 per person per accident; however, only in the event the person is injured by an uninsured vehicle and, secondly, only in the event that liability is

established. However, under the excess coverage which we are substituting for this, the excess coverage would pay up to $100,000 per accident, $50,000 per person for every injury incurred by an insured motorist, and whether or not there was liability on the part of the wrongdoer.

Despite all of these accomplishments within the plan, the plan does not deprive any person of his present right to sue. However, through the prompt payment of economic losses, both the need and the reason to sue are dramatically reduced, if not eliminated, in the vast majority of cases.

Secondly, the initiative to sue, to exaggerate, and to fradulently concoct claims on the part of both claimants and lawyers is lost through a limitation on the amount of pain and suffering awards which can be obtained in those cases where there is no serious injury.

In this fashion the plan meets the demonstrated deficiencies in this system while eliminating waste, and it promptly returns the savings to our policyholders in the form of needed benefits at a time when they need them the most.

It deals with remedies to the deficiencies in the system rather than abandoning or seriously and irreversibly altering that system. The heart of the Illinois plan lies in its abilities to offer these remedies without abandoning the rights of an individual. If we remove the need to sue, we do not have to drastically eliminate or alter the right to sue; and by starting with this flexibility we do not become irreversibly committed to the abandonment of a basically sound and just system, the system of justice through the right to a trial.

Even more significant and dramatic is the fact that all of the remedies, together with the preservation of rights, can be effectively and economically accomplished. I would like to point out here that some observations have been made concerning the Illinois plan and concerning the manner and the method by which it eliminates the incentive to sue.

In the Illinois plan we have a system where all of the benefits which are available to a plaintiff may not again be recovered in the event of any cause of action. Consequently, any benefits not only paid to him but recovered or available to him are deducted from the award. If the amount of the award is limited, such as we propose in the plan, then the incentive and the jackpot urge to sue are eliminated.

I would like to add, if I might, Senator, in addition to the statements which Director Baylor has made regarding the support which the plan has received—and if we might off this for the record since we received it this morning. It is a press release from the Illinois Defense Counsel, a group of some 350 of the more prominent attorneys in the State of Illinois. The board of directors of that association has unequivocably endorsed the Illinois plan for automobile reparation reform and stands fully ready, willing and able to do whatever is necessary to have that enacted into law.

Senator HART. Gentlemen, thank you. Thank you first for the depth of the presentation as reflected in the materials you have given us, and the useful summary of your position.

As you have described the Illinois plan and to the extent I understand it, I would think it would be an improvement over the existing

system, and I would agree with the director's statement that divine revelation is not claimed by—I hope—not claimed by anybody.

But I have the concern that while the Illinois plan would represent the improvement that you have described, it would be at a considerable increase in cost to the buyers of that insurance. Now, improvements often come with the cost that reflects improved quality and the satisfaction, but the test is whether the same improvements could be obtained with a lesser cost to the buyer.

Mr. VACCARELLO. Senator, our studies have demonstrated that the Illinois plan can be enacted into legislation and the first-party benefits—no-fault benefits made available to current policyholders in the State of Illinois at no general additional cost whatsoever, and if the plan succeeds—and I hate to use the word "if," but I have been told many times in the past not to be too presumptuous—but if the plan succeeds as we anticipate it will, there should be considerable savings.

I would like to point out, for example, one case which we studied and one alone as an example of that. At the present time, in the State of Illinois, with a minor back sprain in a rear end collision, an average medical bill of $200, average lost wages of $300, and total specials of $500, the settlement average is $1,500. That breaks down as $500 in reimbursement of the specials, $1,000 as pain and suffering.

The distribution, ordinarily, in the average case, is $200 to the doctor, $500 to the lawyer, and $800 to the client. But the cost to the system is greater than the $1,500 alone. The costs to the system include the additional $200 paid by the first-party carrier for the medical bills of the claimant, so that we have a total cost to the system of $1,700 simply in terms of money which changes hands.

Under the Illinois plan the medical bill of $200 would be paid by the first-party carrier. The lost wages of $300 would be paid by the first-party carrier. The claimant would still have the right to make a claim for $100 in pain and suffering, which we do not believe he will make.

Our studies demonstrate when we checked out the collision deductibles, for example, that even in those cases, Senator, where a person had lost $100 out of his pocket, the claim for the deductible was almost never pressed. Using this as an analogy, I would say when the claimant has been paid his out-of-pocket completely and has only a maximum of $100 which he could recover, that he is not going to press that, either. But, nevertheless, if he is paid, we are talking about $600 and an $1,100 savings on that one average case alone.

Not only is it a savings in terms of the money which changes hands, it is a saving, also, in claims administration costs. It is a savings in personnel. It is a savings in litigation investigation. It is a savings with respect to the judicial system. And I would submit further that we probably would not be paying $200 in medical or $300 in lost wages under the Illinois plan because at the present time today, with the deficiencies that exist in the system and with the often heard demand, "You are not even giving me three times specials," we known that the amount of the ultimate settlement is geared to the specials and, consequently, the incentive exists to build the medical specials and the lost wages. Now, there is no incentive to build under the Illinois plan. There is no need to build. There is no motivation, no encouragement. Consequently, I would submit that the medical bill will be $50 instead of $200 in that case, and that the lost wages might be perhaps $50 or maybe

nothing, because there is no jackpot at the end of the rainbow anymore. If he goes to court and sues and he can only collect 50 percent of his medical bill as the total amount of his award, I would submit that there are not too many lawyers that would handle the case, not for a $33 fee or even a $100 fee.

Senator HART. I think it would be useful, and I would ask Mr. Sutcliffe to develop as well as we can here—to the extent questions may be asked which would require some homework for you to provide for the record—to nail down the degree to which there is basis for this suggestion of yours, and I think we have given you some tables that Mr. Sutcliffe will use to discuss it.

Rather than holding it for the conclusion of his questions, I would ask the director to comment on a study that he has already commented on generally, namely, the Volpe Department of Transportation study. Much of your testimony counsels against the application of either national standards or national law. I would ask you to react to this next sentence.

My impression is that it is only a question of degree, State by State, in the inadequacies and failures of the existing system. I think that in all 50 States we could make a case that, as you discovered in Illinois when you made your analysis, there is much that should be improved.

Now, the final report of the Department of Transportation has this comment on page 141:

> Ultimately, the systems of the several States must be compatible. Although there are means available to overcome great diversity, these are cumbersome and a reasonable degree of national uniformity seems best for a number of reasons. Since motor vehicle travel in interstate activity is of major proportions, minimum standards for accident reparations involving all the motoring public, wherever they travel, would constitute sound public policy. If the basic reparation system would be left to individual State initiative without some encouragement and guidance and, at least in an advisory sense, the direction on a national perspective, meaningful change might be exceedingly slow in coming.

Mr. BAYLOR. I think what Secretary Volpe is talking about there is guidelines as I distinguish that from standards. Further, I think when he talks about compatibility, we think that there can be compatibility. For instance, we think the Illinois plan would certainly have compatibility with the Massachusetts plan. We think that the Massachusetts plan does not serve our citizens, but if Massachusetts thinks it serves theirs, fine.

For instance, we do not provide for deductibles or waiting periods. We think a system that offers a man a chance to have a $2,000 deductible in an effort to reduce his premium, and then he has an accident, which in Illinois, according to our statistics, his economic loss would not even reach the deductible that he had chosen. After all, Massachusetts developed a system that does not—and they have changed everything to take care of a situation where the man himself will not obtain a recovery. Well, if Massachusetts wants to do that and if they think that is for their best interests, fine. But we did not think it would work for illinois.

Now, after this is done, we hope Massachusetts—or we anticipate Massachusetts will recognize the benefit in the system we have chosen. But think how bad it would have been if we had a Federal system which adopted the Massachusetts approach and then applied that to Illinois where we think it is not a useful thing. This is the type of thing I am talking about.

Mr. VACCARELLO. Senator, if I might add, interestingly enough, during the 7 months which I spent working on this, I had reached the stage on several occasions where I thought we had some rather good remedies, and I discussed some of these approaches with members of the bar in Chicago, and they felt that these appeared to be good approaches. I then had meetings with downstate lawyers and found out that they did not feel these were good approaches because they did not address themselves to problems which existed downstate.

Illinois has a tremendous heavily industrialized area north, and many of our people to the south are farmers. In the north they have other benefits. In the south they have not. Consequently, we found ourselves facing perhaps somewhat the same situation in one State that exists on a State-by-State level, but we did feel that we could come up with remedies here and we feel we have provided what should work.

Senator HART. If your can recall, what specifically did you think tentatively to be a good plan and which the Chicago bar thought to be a good plan and then you discovered maybe it would not work downstate?

Mr. VACCARELLO. I will give you two examples. One is arbitration. We have provided in our plan for a system of mandatory arbitration in order to eliminate court congestion or reduce the backlog so our judges in Illinois can re-establish their priorities to more adequately handle other judicial demands. Downstate, in many of the counties, there is no backlog problem. You can go to trial as soon as you want. Consequently, when we attempted to put in a mandatory arbitration, it would have established a system on top of a system without the need, and was subject to a great deal of criticism.

Another is the matter of collateral benefits. In some States and some areas of our State people have a great deal of protection outside of the motoring insurance system. In other parts of our State, involving equally as large a number of our people, they have no such other protection.

These are two of the differences that just immediately pop into my mind.

Senator HART. Mr. Sutcliffe.

Mr. SUTCLIFFE. Thank you, Senator.

At this point, perhaps, in the record, we could insert these two charts that we will be talking about if we may.

Senator HART. Yes. I would.

(The charts follow:)

BENEFIT INCREASE PROJECTED

[Amount in billions]

	[illegible]			[illegible]		
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Net benefits paid	[illegible]			[illegible]		
Compensable economic loss	[illegible]			[illegible]		
Percent of loss paid	[illegible]			[illegible]		
Percent paid for economic loss	[illegible]			[illegible]		

[1] Modified to include property damage in the [illegible] base.
[2] Benefits paid, less benefits for pain and suffering, compared to compensable economic loss.
[3] Based on nationwide estimate of [illegible] percent of benefits paid are for compensation of pain and suffering.

[In billions]

	1970	S. 945 [1]	Olgivie plan
Insurance overhead	5.5		
Selling costs			
Claims:			
Investigation			
Processing			
Payment			
Other:			
Actuarial costs			
Regulatory costs			
Lawyers fees and other litigation costs	1.5		
Defense costs			
Plaintiff costs			
Limitation on pain and suffering recovery			

[1] Modified to include property damage on a first party basis.

Mr. SUTCLIFFE. This would be the "Cost of Benefit Delivery" chart and the "Benefits Increase Projected" chart. Now, these charts are simply to serve as a guide for discussion to be able to ascertain your impression about costs. The figures that are presented in summary form are from the Department of Transportation study as updated to 1970.

Mr. VACCARELLO. Which chart are you referring to?

Mr. SUTCLIFFE. This would be the figures that are actually filled in on both charts. We have blank places and the ones that are filled in are from updated figures provided by *Best's Aggregates and Averages*, 1970 edition, that have just become available.

Now, I understand that it is your assertion that the present gap in the automobile compensation system related particularly to bodily injury which pays in benefits $2.8 billion of the $6.5 billion of loss would be about 99 percent corrected under the Illinois plan because of the mandating of first party no fault coverages, and that that increase in benefits could be paid for through resulting savings that you make in the liability system which you preserve. Is that a fair statement?

Mr. VACCARELLO. Yes, it is.

Mr. SUTCLIFFE. Now, to understand as best we can these statements, let me go through the chart with you, not asking you to fill in specific dollar amounts at this point, but asking you to fill in specific dollar amounts or approximations to the best extent you can for the record following these hearings. At this point, simply indicate plus or minus, indicating an increase in cost under your plan and under a plan similar to the one proposed in S. 945, and we will stick to the bodily injury area at this point.

Mr. VACCARELLO. These are strictly actuarial computations, are they not, these computations?

Mr. SUTCLIFFE. These computations are really what the present system is.

Mr. BAYLOR. Is this Illinois, by the way, or nationwide?

Mr. SUTCLIFFE. This would be nationwide for the total picture, and if you think there is a significant disparity between the ratios of these figures to Illinois, point that out. We do not have to do that at this point. What I wanted to do at this point is to see whether you think there will be a price savings or an increased cost because of the plan and a brief explanation of why you think there will be a savings or an increase.

Let me start with insurance overhead, which is one of the places that you are going to try to save money, I would imagine, through the institution of your no-fault benefit system.

Now, do you believe that selling costs will go up or down under the Olgivie plan?

Mr. BAYLOR. I do not have any real opinion on that. Without regard to—I know this is getting off the subject of what you want—you are talking about costs. But we think one of the significant features of this plan is that by having a stabilization of insurance benefits, we are going to increase the availability. Now, availability and price are two very significant problems of the same problem, which is the market; but at least I do not have any opinion as to whether the selling costs would go up or down.

Mr. SUTCLIFFE. By selling costs, I mean those costs of marketing the product, not what the cost of the product is; because if we have already supposed at least on an overall basis it will stay the same or decrease because we are paying for increased benefits out of savings within the system itself.

Mr. BAYLOR. I do not think there is going to be any significant change in the selling cost, that I am aware of offhand.

Mr. SUTCLIFFE. You think it would be a constant. OK. Under S. 945 of the legislation before this committee, do you project an increase, decrease, or a constant as far as selling costs?

Mr. VACCARELLO. We have not made a study, either an actuarial or a management or administrative study, of the costs involved in S. 945.

Mr. SUTCLIFFE. Then from here on out we will only treat of the Olgivie plan. I thought in your 7-month study you may have been able to analyze some of the costs in the other studies. If you could provide that information for the record it would be appreciated.

Mr. BAYLOR. I think we can. Mr. Lewis Roberts is going to be testifying in Springfield on Monday to our Illinois State Senate Committee which is considering this. He has very extensive actuarial studies and he is really the person responsible for developing an awful lot of this information, and I am sure we can get the kind of information you are talking about more readily from him. We can make some guesses on it.

Mr. SUTCLIFFE. Let's try for the guess. As far as claims investigation, will that cost increase or decrease?

Mr. VACCARELLO. Decrease significantly.

Mr. SUTCLIFFE. On what basis?

Mr. VACCARELLO. On the basis that you will hardly need any investigation to speak of.

Mr. SUTCLIFFE. What about the uninsured subrogation procedure? How will the companies determine which parties are at fault?

Mr. VACCARELLO. There is no significant amount of money involved in subrogation procedures against uninsured motorists.

Mr. SUTCLIFFE. I am not talking about the money involved or subrogation under uninsured motorists. In the first party benefit payment, in order to preserve the rating system as explained by Mr. Kemper previously, the insurers will get together and decide who was at fault. Now, you say there will be a significant savings in claims investigation. If fault has to be determined, where will that savings originate?

Mr. VACCARELLO. Where you have a situation where you are dealing with a liquidated amount, which is the case in the large majority of claims under the Illinois plan which do not involve permanency, you do not have the prospect of facing an injury verdict of $1,000 to $5,000. I mean, you are dealing with a liquidated claim just as you are in a property damage claim. You have so much damage and so much which is recoverable and that is it.

I am sure, as you know, most of the property damage claims are handled on a very inexpensive basis with a minimal amount of investigation. They are handled primarily by statements from the policy holder which would be required in any type of claim under any type of system. and perhaps a police report if there is a question as to liability.

Mr. SUTCLIFFE. But to the extent that you still are determining fault. would it be a fair statement to say that if claims investigation costs would decrease dramatically, in a situation where the causation aspects of the accident do not have to be investigated, that there would even be a further decrease in investigation costs?

Mr. VACCARELLO. You are talking about under our plan?

Mr. SUTCLIFFE. We are trying to weigh alternatives. as Senator Hart has suggested. Let's just take a plan that did not require the ascertaining of fault, either between insurers or in the tort suit context.

Mr. VACCARELLO. Does your plan not ascertain the determination of fault?Is not the concept reserved where there is permanency? So you would have to investigate whether or not there is any permanency also, and you would have to investigate the liability.

Mr. SUTCLIFFE. Yes, but in a narrower category than under your bill. I am simply trying to get an ascertainment of cost differentials.

Mr. VACCARELLO. I do not know what the cost differentials would be comparing your bill to the Illinois plan. However, I can say that under the Illinois plan a major portion of the investigation costs. the claims processing costs, the administrative costs, the litigation costs would be eliminated, no question in my mind whatsoever.

Mr. SUTCLIFFE. Then if you could, on the basis of using this chart and your reductions in all of the claims and procedures, provide us with an explanation and any guesses you have as to how much—since you must have some guesses if you concluded that savings within this portion would help pay for any increase in benefits that would be paid.

Now, as to lawyers' fees and litigation costs, you can see at the present time it is $1.5 billion.

Mr. VACCARELLO. How about actuarial and regulatory costs?

Mr. SUTCLIFFE. I think, if you would provide those for the record—I would assume you do not have any exact figures on this.

Mr. VACCARELLO. There are savings there, also.

Mr. SUTCLIFFE. You would indicate a savings in actuarial and regulatory costs, perhaps the selling cost no change—or you will provide that for the record—for investigation, claims processing, administrative costs, and payment of claims for other costs such as actuarial costs and regulatory costs, also you would project a decrease.

Mr. VACCARELLO. Right, because you are dealing with actual and liquidated items rather than projected possible or probable costs.

Insofar as regulation, I would suspect a tremendous savings at least in one area. At the present time we investigate companies to determine their respective solidity; that is, to see their financial condition. To a large extent, their financial condition is dependent upon the accuracy

of their claims reserves. Under a system which proposes that a majority of claims be handled out of immediate payment basis, there is no 4- or 5-year delay, no buildup of reserves, no change in the amount of liabilities, and so forth.

Mr. SUTCLIFFE. So this would be very beneficial to the solvency situation in Illinois?

Mr. VACCARELLO. Yes.

Mr. BAYLOR. There is another element in this, and that is processing of complaints. Whenever you have this give-and-take of who is at fault it gets terribly subjective. I suppose we process some 25,000 complaints a year in our department, and to a great extent these arise out of these liability cases, and we think that when you diminish the liability problem and you reduce the damages up to a liquidated basis we are going to be able to save a substantial portion of that complaint field. But again, it is not going to be the kind of money that is going to make much of a change in the Illinois State budget, I will tell you that, much less the Federal.

Mr. SUTCLIFFE. So you are certainly, through limitations that you build into the tort cencept—although you have not in any way legally built in limitations on the tort concept—you are going to effectuate a considerable amount of savings in your plan?

Mr. BAYLOR. Yes.

Mr. SUTCLIFFE. Perhaps you could provide then, out of the $1.5 billion that we are presently spending for lawyers fees and other litigation costs, what your approximate guesses as to reductions would be for defense costs, plaintiffs costs and other litigation expenses—court expenses and so forth.

Mr. BAYLOR. I think that is terribly important because there is not only the actual cost that goes into this litigation expense, but there is this taxpayers' cost to maintain the system, and I think that they are undoubtedly implicit in the S. 945, the idea that we are not going to carry on these tremendous governmental structures to process claims, which is what the court process is frequently. $250 an hour is what Ben Mackow says it costs to run the Cook County court. We anticipate some tremendous savings on the Cook County system alone, just on that basis alone, which is not in here but we will send it in to you.

Mr. SUTCLIFFE. Also, if you could provide for the record an explanation—explain how those savings will result, even though you, theoretically at least, are preserving the tort liability system intact.

Mr. VACCARELLO. Well, I can give you several ways right now in which they will result. For example, not all insurers in Illinois today belong to a mandatory intercompany arbitration, binding arbitration. This is outside of the judicial system. Consequently, a significant amount of money is spent to subrogate. Lawyers are hired and so forth.

Now, under the Illinois plan, these are handled outside of the judicial system without attorneys. Any claim by an insurance company against another insurance company, they have to settle it between themselves.

Mr. SUTCLIFFE. This is where in your prepared statement you used an expression "knock for a knock."

Mr. VACCARELLO. No. "Knock for knock" is a complete and total abandonment of the right of one company to obtain reimbursement from another company.

Mr. SUTCLIFFE. But in essence, when you have offsetting claims, is that where you do not even have to use the arbitration process?

Mr. VACCARELLO. Right. Companies are free to engage in that if they feel that one offsets the other, yes. But what I am talking about is under the present system, if I pay collision damages and I attempt to subrogate, I have to hire a lawyer and I have to go to court. Under the Illinois plan, I do not have to hire a lawyer and I do not have to go to court. The same girl who handled the property damage file of the collision loss goes to the photostat machine and makes a copy of the file and sends it in to the private system of intercompany arbitration and a few weeks later some decision will be forthcoming. So we have a tremendous savings there alone.

The judicial arbitration versus the current court system provides a dramatic example of savings. I think they estimated in Philadelphia that the average cost per case disposed of under judicial arbitration, supervised arbitration, is $65 to $70, whereas the director testified—I do not know if Mr. Mackow was here before this committee—but the court in Cook County spends $250 an hour, and I do not know of any case they have disposed of in 1 hour.

Mr. SUTCLIFFE. Mr. Mackow also pointed out that the courtroom is not really used for litigation but for a forum of settlement.

Under your particular plan with the tort system preserved, you suggest that it would not be worth a lawyer's time to pursue a tort claim in the low amounts that you have described. Because of your limitations on pain and suffering awards, his recovery would not be significant.

Now, is this true even if you go through the settlement process? In other words, what I am asking you, I think a lot of claims at the lower end of the spectrum are bought up right now because it is cheaper for insurance companies to buy them up than it is to confront the possibility of litigation. Under your plan, will you provide us with information as to why that cost will be significantly reduced—why that settlement cost would be significantly reduced?

Mr. VACCARELLO. All right.

Mr. SUTCLIFFE. You can do this for the record. I think it would probably be best if you do this for the record.

(The following information was subsequently received for the record:)

BENEFIT INCREASE PROJECTED, ILLINOIS [1]

[In percent allocation of B.I. premium dollar]

	1970	Illinois plan
Acquisition costs	18	18
Company expense	16	[2] 16
General damages	25	15
Economic loss (medical, lost wage, etc.)	17	39
Litigation expense	24	8
Total	100	96
Remainder		4

[1] These are pure actuarial projections of the manner in which the B.I. premium dollar currently paid will be re-allocated under the Illinois Plan, and do not include savings in management, administration of claims, etc.

[2] These costs should be reduced due to the change in claims handling procedures resulting from intercompany arbitration, judicially supervised arbitration of small claims, elimination of unliquidated damage claims for pain and suffering in cases where there is no permanent disability, etc.

Note: Savings should also be realized in medical payments coverages through the elimination of the incentive to "beat" medicals to support a B.I. settlement demand.

Mr. VACCARELLO. All right.

Mr. SUTCLIFFE. As you can see, the last item on that chart is the limitation on pain and suffering recovery and what the cost savings is. If you could give us some approximation of what cost savings you anticipate on the limitations on pain and suffering recovery where you have 50 percent for under $500 and 100 percent for over $500 with the category of catastrophic categories where there is no formal limitation——

Mr. BAYLOR. We will do that.

Mr. SUTCLIFFE. Turning to the benefit increase projected chart for just a moment—and again, since you have not had an opportunity to study the implications of the bill set up like S. 945, we will discuss it simply in terms of the Illinois plan and assume that the Illinois plan is operating nationally or break it out, if you have the Illinois figure. The net benefits paid right now are $2.8 billion; compensable economic loss, $6.5 billion. Please explain where, under the Illinois plan, you think you will get to, in other words, in terms of the net benefits paid and the compensable economic loss suffered, percent of loss paid, and then what percent of that loss paid is reflected by economic loss alone rather than a combination of economic loss and pain and suffering.

As you can see, under the present system we do pay $2.8 billion in benefits to cover economic loss of $6.5 billion, or 43 percent, but we have learned that of that 43 percent, 60 percent of that is for pain and suffering, not for compensation of economic loss. So we really have an economic loss compensation of only 18 percent, and these, again, are approximations based upon information that has been provided us. So if you could simply fill in that chart for us.

I guess the question has to be asked is this: If you have not had an opportunity to evaluate the cost implications of S. 945, I think the question has to be posed—how can you be certain that the Ogilvie plan is the most cost-effective plan for the State of Illinois?

Mr. BAYLOR. I think it is important in our consideration of this whole thing has not been just costs, has not been just benefits. A Cadillac costs an awful lot more than a Chevy Impala, but it does not necessarily mean it is a better or less car. I think you have to put all the different priorities into it to determine whether the cost—maybe the cost of our program does not go down as much as the cost would go down under S. 945, but the benefits obtainable under our program are greater, and in the sense of priorities of the people of Illinois they would rather have the benefits without that ultimate saving in cost.

Mr. SUTCLIFFE. Let me address myself to that point then, so we can understand one another. We have projected—and it has been verified subject always to unverification, if I can use that word—that the compensable economic loss suffered in this country would be paid up to 99.6 percent under S. 945. Your projections for your plan were 99 percent. That is coverage of economic loss.

Now, we have limitations on pain and suffering benefits that in some respects parallel yours in the catastrophic area; and in another area, we do not allow for pain and suffering recovery at the lower end of the spectrum. So, to that extent, we have constricted benefits more than the benefits you have used. But as far as other advantages

of your system, such as preserving the present rate mechanism, you could still adopt S. 945 and simply allow for inter-insurer subrogation if you wanted to maintain the present rating procedure.

So I think it is important to understand why Illinois has elected and felt that in its policy decisions it is important to preserve that area of benefit for pain and suffering which might have a higher cost, and if you could present that kind of reasoning to the committee to explain why that higher cost may have been preserved, on what basis, then it would be very, very helpful to us in our examination of this problem.

Mr. BAYLOR. Excellent. And I think we can tell you a lot about the factors that went into it. One of the reasons that I emphasized in my written presentation—I talked a little bit about the attitudes of people, and I think the attitudes of people in Illinois are important. We realize certainly that when a program to eliminate the right to sue was presented to the State legislature, the so-called Connell-Keaton program, Mr. Sariano—Representative Sariano did not get to first base. He was criticized severely by the newspapers. They did not like it, and the reaction of the public was not favorable.

We did not eliminate that right to sue and we obtained much encouragement from the newspapers. So I think it is important to consider the attitudes of the people as well as the dollar effects of it.

Mr. VACCARELLO. I think one principle that I would like to add is this. Our approach is studying this was to ask ourselves whether or not we could deal with what had been demonstrated to us as deficiencies which led to criticisms of this system, and we sought to remedy those deficiencies and not necessarily abandon the system. In other words. take care of the symptoms and the problem, not merely the symptoms.

Mr. SUTCLIFFE. But, in essence, you have told us that you are, for the most part, abandoning the tort liability system, in practice if not in theory.

Mr. VACCARELLO. We sought to eliminate the encouragement that existed within the system to build up claims, to exaggerate claims, what I like to refer to as eliminating the jackpot urge motivation, so to speak, and I would offer to you as a parallel the deductibles under the collision system again, that where a person has collision insurance and he has a deductible he seldom reverts, if ever, to the judicial system to collect his deductible, and yet that deductible comes straight out of his pocket.

Now, if a significant number of cases are of the type where if he went to court he could not collect more than $100 if he wanted to. what would compel him to go to court? What would compel him to hire a lawyer and what would make anyone think he could find a lawyer who would take the case? If you could go to court and only collect $100, $200, $300, who would take the case? Now we are talking not about out-of-pocket loss; we are talking about, if I might use the word loosely, the profit over and above his economic loss for which he has been compensated.

Mr. SUTCLIFFE. Well, why do you have to go through such a tortuous process to do this? Why can you not just say compensate him for his economic loss?

Mr. VACCARELLO. Why do we have to eliminate his——

Mr. SUTCLIFFE. You have, in effect, told him that you have eliminated his right, not legally but in practice.

Mr. BAYLOR. I think the people of Illinois attitude is such that—"Don't mess with our rights. We may not choose to exercise them, but our rights are not to be taken away by your judgment. Let us decide whether we want to exercise the right."

Mr. SUTCLIFFE. But by your plan you have said that that judgment, because of economic considerations, will always have to be in the negative at this lower end.

Mr. BAYLOR. No. I think we misspoke if we indicated it would always have to be in the negative. There are a variety of reasons that people might want to bring an action. We do not say that always——

Mr. SUTCLIFFE. But then you have got your cost problems again if, in fact, it is going to permit this litigation. Then your cost savings that you projected are not valid.

Mr. BAYLOR. Mr. Sutcliffe, the problem that we have developed out of the administration of this tremendous burden that has been put upon a system that was never designed to carry the load, but we did not have any problems until the burden got to be so great. I cannot quote you statistics. Illinois has had the problem for a long time, I will admit, but we have not had this serious problem for that long a time.

Mr. SUTCLIFFE. Well, I certainly appreciate your comments and we will look forward to the study of the cost information you can provide the committee and the information explaining the decisions which caused you to offer this particular plan. I think this will be very helpful to our understanding of what has transpired.

Mr. BAYLOR. The other thing I did want to mention, you see, we have changed the system a little bit, too. That provision for arbitration is significant to the cost factor as differentiated from having to process that right through a court system.

Mr. SUTCLIFFE. Except perhaps in downstate Illinois.

Mr. BAYLOR. Well, they do not have that major a cost problem in downstate Illinois.

Mr. VACCARELLO. You mentioned costs, Mr. Sutcliffe, and I would just like to point this out, that you know you can reduce the cost by, let's say, building in a deductible, right?

Mr. SUTCLIFFE. That is certainly one way.

Mr. VACCARELLO. And you can build in a deductible that would result in 50 percent of the claimants never getting paid anything from anybody.

Mr. SUTCLIFFE. Which is our present system. I mean that under our present system, 50 percent not getting paid anything.

Mr. VACCARELLO. The point I am getting at is there are a number of ways of reducing the cost, but do we achieve an equitable and a just balance between the needs of the people and the problems and efficiency in the system?

Mr. SUTCLIFFE. I think that is a concern that should always be focused upon.

Senator HART. I have only one final comment and if you wish to react to it——

Mr. BAYLOR. We always react to every comment. I assure you.

Senator HART. I was struck by your comment that there are two aspects of the insurance reparation system; one you characterized as

who, how and what amounts to compensation delivered; and two, the resources; and to separate the two between I imagine the State and the Federal level of government would be to try to unscramble the egg.

I am struck by the analogy of the present efforts of revenue sharing which exactly reverses the roles and has the Federal Government supplying the resources and the States to determine who, how and what amounts that money is paid. To the extent that we are philosophically endorsing the concept of revenue sharing, it is not inconsistent with the approach of separating the who, how, and what amounts from the resources in the insurance approach.

Mr. BAYLOR. I think what I am getting at there is to suggest if the Federal Government—now, I realize that in S. 945 you have not established an authority over promulgating the rates. But we can anticipate that as the system will develop under S. 945, and inevitably if you are going to set forth a program and what the policies are going to provide, the next thing is going to have to be a promulgation of that and the regulatory function of the States over a system that is being promulgated by the Federal Government is really relatively inconsistent, and eventually, I thing we cannot have one setting one system and the other regulating it. I think that was my point.

Senator HART. Thank you very much.

Mr. BAYLOR. I do not know much about the revenue sharing. I wish I knew more.

Mr. VACCARELLO. Senator, if I might add, the director referred to innovation at a State level, and I would like to take this opportunity, since I know you are interested in the subject, to demonstrate that we in Illinois have been innovative.

One of those areas which demonstrates an innovation is the insolvency guarantee fund. We are in the process of enacting and have received every assurance that we will be shortly passing a law in Illinois, an insolvency deposit security act, which not only ties in the insolvency in the event of insolvency but, under our bill, all Illinois insurance companies will be required to make deposits up to $12 million to guarantee payment of their claims, and hopefully that will not only give us a bill which will deal with insolvency, but will give us protection methods for the citizens of Illinois that will prevent the insolvencies—in addition to other pieces of legislation.

Senator HART. How many solvency guarantee funds are there?

Mr. BAYLOR. We do not know of any—insolvency guarantee funds; 25 or 26, something like that.

Mr. SUTCLIFFE. The last figure we were given was 38.

Senator HART. I am sure Senator Magnuson, the chairman, would want me to express his appreciation to the Governor for that letter and your testimony.

Mr. BAYLOR. Thank you very much, and we are very pleased with your interest in the program. Thank you, sir.

For the purpose of the record, sir, may we introduce the support which we have received from the Illinois Defense Counsel in this matter?

Senator HART. Yes.

(The material follows:)

ILLINOIS DEFENSE COUNSEL,
LAW, EQUITY, JUSTICE,
May, 14 1971.

At a recently called special meeting, the Illinois Defense Counsel Board of Directors has unequivocally endorsed the Illinois Plan for Automobile Reparations System Reform, recently proposed by the Illinois Department of Insurance and currently before the Illinois Senate Judiciary Subcommittee. The Director of Insurance and members of the subcommittee: Everett E. Laughlin, Philip J. Rock (Co-Chairmen), John G. Gilbert and Thomas C. Hynes, have been informed.

The membership of the Illinois Defense Counsel consists of 335 attorneys throughout the State of Illinois who devote the majority of their law practice to the defense of personal injury litigation. It is believed this is the first time an attorney's association has inequivocally endorsed any of the so-called "no-fault" insurance plans.

WILLIAM J. VOELKER, Jr.,
President.

MAY 14, 1971.

Re: Illinois plan for automobile reparations system reform.

DEAR ILLINOIS DEFENSE COUNSEL MEMBER:

On May 12, 1971 a special meeting of your Board of Directors convened to consider the following motion:

"That the Board of Directors of IDC take a position endorsing the Governor's proposal in total."

Because of the profound implications in such a motion, not only for our future practice, but also because the Plan deals fundamentally with some of the finest institutions in our society, I feel it is appropriate to advise you of my views after this vote was taken.

Let me assure you that the Board studied this matter long and hard. The debate was heated and anyone hearing the witnessing the depth of sincerity of purpose and profundity of expression would have been impressed, as I was. What was considered and ultimately done was not done to save our practices in any narrow sense, but rather done as a first and controlled step towards the goal of meaningful reform.

In what is undoubtedly an historical action, the Board voted to pass the motion in its entirety. Following its passage, it was agreed that Illinois Defense Counsel should make known its position on the Illinois Plan. To that end, appropriate telegrams were sent to the Illinois Senate and members of the press, is perhaps by this time has come to your attention.

In its consideration, the Board was acutely aware of the injustices resulting from calendar delays in major metropolitan areas which have proven extremely resistent to other attempted solutions. These injustices, as you know, have contributed substantially to public dissatisfaction with our present system, even in areas in which no calendar delay exists. Also, we were impressed by the profligate waste of time, money and talent for all concerned in litigating small property damage cases and personal injury cases involving only temporary injuries.

As you will have noted, the Illinois Plan makes no alteration in the right of a person to recover damages for pain and suffering in cases of death, dismemberment, permanent total or permanent partial disability, or permanent serious disfigurement. The only limitation on damages for pain and suffering is in cases of temporary injuries, limiting damages to 50% of the reasonable medical expenses up to $500 and 100% of those same expenses in excess of $500.

Further, the Plan provides for court supervised mandatory arbitration where the amount in controversy is $3,000 or less. Provision is made for the right to a trial de novo after arbitration.

In addition, inter-company claims of bodily injury and property damage must be processed through inter-company arbitration.

Finally, the technique of the Plan is to provide for certain mandatory first-party coverages in automobile liability policies, with certain excess coverages required as options to the insured, thereby preserving maximum freedom of choice to the insured.

At the risk of duplicating information you have already received, I attach a machine copy of the outline and summary of the Illinois Plan as described by the Director of Insurance.

We believe these changes would be in the best interests of the citizens of Illinois. We hope you will agree their adoption will permit the adversary system to meet the challenges of the day by concentrating on substantial cases.

Our position is obviously not binding on individual members. Nonetheless, we commend it to you as the best judgment of our collective leadership. What we do today does not irrevocably bind us to the Illinois Plan tomorrow if its actual purpose does not meet our expectations. Indeed, one of the reasons for our endorsement of the Illinois Plan is that it supplements rather than supplants the traditional American system of jurisprudence. Additionally, it essentially preserves the virtue of personal responsibility to which you have so long been unequivocally committed.

With the solemnity of our responsibility to society and the single-minded conviction that the adversary system as preserved is worthwhile, we endorse the Illinois Plan with its first-party coverage provisions and system reforms. I hope you will receive this news in the same spirit in which it is conveyed: that society's lasting reforms have been because of attorneys, not despite them.

Very truly yours,

WILLLIAM J. VOELKER, Jr.,
President.

THE ILLINOIS PLAN

Following is a brief outline of the major proposals recommended:

1. MANDATORY MINIMUM MEDICAL, HOSPITAL, FUNERAL, INCOME CONTINUATION, AND LOSS OF SERVICES BENEFITS

Every private passenger auto liability policy issued or delivered in Illinois must provide the following minimum 1st party benefits:

A. Medical, hospital and funeral benefits: $2,000 per person.

B. Income continuation benefits: 85% of lost income subject to a benefit limit of $150 per week for 52 weeks.

C. Loss of services benefits: Reimbursement for expenses incurred to replace services ordinarily performed by an unemployed injured insured subject to a benefit limit of $12 per day, for 365 days.

Applicable Notes

(1) Benefits should extend to pedestrians.
(2) Payments are deductible from Uninsured Motorists' Coverage.
(3) Workmen's Compensation exclusions allowed.
(4) No deductibles (1st day coverage).
(5) The benefits should be primary and paid in addition to any other collateral benefits.

2. EXCESS LOSS COVERAGES

Every private passenger auto liability policy issued or delivered in Illinois must make available to the insured and members of his household—on an optional basis—coverage which will provide the following minimum benefits upon depletion of the mandatory coverages:

A. Additional medical and hospital benefits.

B. 85% of lost income subject to a benefit limit of $150 a week for 260 weeks.

C. Reimbursement for expenses incurred to replace services ordinarily performed by an unemployed injured insured, subject to a benefit limit of $12 per day, for 260 weeks.

D. Dependent survivors benefits of 85% of wages subject to a benefit limit of $150 per week for 260 weeks.

Applicable notes

(1) Right of rejection permitted.
(2) May be purchased in lieu of Uninsured Motorists' Coverage or benefits deductible from Uninsured Motorists' Coverage.
(3) Workmen's Compensation exclusions allowed.
(4) Minimum aggregate limits of 50/100 for all benefits.
(5) Benefits should be primary and paid in addition to any other collateral benefits.

3. LIMITED EXCLUSION PERMITTED

First party mandatory and optional excess coverages may exclude the payment of benefits where such payment would be in violation of public policy (to drivers of stolen vehicles, et cetera).

4. PROMPT PAYMENTS OF BENEFITS

A. Payments to all insureds should be made promptly upon receipt of proof of loss.

B. Where losses can be reasonably presumed to extend beyond a 30 day period, partial payments should be made no less often than every 30 days.

5. OFFSET

Benefits available to the insured from his insurer are deducted from any verdict or award obtained by the insured against a wrongdoer.

6. SUBROGATION AND INTER-COMPANY ARBITRATION BY THE INSURER

A. Companies are subrogated to the extent of any 1st party payments made.

B. As a condition of doing business in Illinois, property and liability companies must be members of intercompany arbitration.

C. Inter-company claims (B.I.,P.D., et cetera) must be processed through binding inter-company arbitration.

7. UNINSURED MOTORISTS

A. All payments made under any 1st party coverage are deductible from the insurers Uninsured Motorist Coverage liabilities.

8. ADVANCE PAYMENTS

A. prompt payments of property damage losses in cases also involving personal injury and partial advance personal injury payments should be encouraged.

B. Evidence of advance payments should not be admissible and payments should be credited against any settlement or verdict.

9. GENERAL DAMAGES

Except in serious cases such as those which involve death, dismemberment, disfigurement, permanent total disability or permanent partial disability, damages for pain and suffering should be limited to 50% of the first $500 of medical expenses and 100% of the excess over $500.

10. ARBITRATION—$3,000

Court supervised mandatory arbitration should be provided in all auto injury or property damage cases where the amount in controversy is $3,000 or less, with rights to a trial de novo. Arbitration of matters not in litigation should be permitted.

11. FRAUD

Monetary penalties, imprisonment and the mandatory temporary suspension of all licenses involved in the acts of the participants (medical and legal licenses, et cetera) should be enacted as penalties for participation in fraudulent claims.

12. MEDICAL DISCOVERY

All claimants and insureds should be required to furnish medical information and submit to physical examinations.

SUMMARY

Implementation of the recommendations proposed are designed to result typically in this siuation for the Illinois citizen:

(1) The injured insured victim of an auto accident will be able to *obtain prompt payment* (every 30 days) for the majority of his medical expenses, lost wages and miscellaneous expenses without having to sue or make a claim against another company, but he will still have the right to use or make a claim against the wrongdoer for those expenses or general damages for which he does not have benefits available under his auto policy.

(2) In the event he must sue to recover, he should be able to receive a *prompt trial* because:

a. Nuisance claims will have been eliminated from the trial calendar; and,

b. Inter-company disputes will have been removed from the trial calendar.

If the amount in controversy is less than $3,000, he will have the right to prompt arbitration of the dispute. But, if the amount exceeds that, he will receive a speedy trial because of the removal of many cases from the courts by this plan.

In effect, his own insurance company pays most of his losses on behalf of the alleged wrongdoer's company and then, without clogging up the courts, the company attempts to collect from the alleged wrongdoer's company the amounts advanced.

Senator HART. Our next witness is a man who served with distinction in the Federal Government and who now is the president of the American Insurance Association, Mr. T. Lawrence Jones. I see that he is accompanied by the association's general counsel, Robert N. Gilmore, and a very observing Washington representative and vice president of the association, Mr. Melvin L. Stark.

STATEMENT OF T. LAWRENCE JONES, PRESIDENT, AMERICAN INSURANCE ASSOCIATION; ACCOMPANIED BY MELVIN L. STARK, VICE PRESIDENT, GOVERNMENT AFFAIRS, AND ROBERT N. GILMORE, JR., GENERAL COUNSEL

Mr. JONES. Thank you very much, Senator Hart, and it is a pleasure to be before you again. We appreciate this opportunity. We are very interested in this subject. We have been very impressed by the interest and work and devotion this committee has given to a complicated subject.

My name is T. Lawrence Jones and I am president of the American Insurance Association, an organization of insurance companies writing all kinds of property and casualty insurance, including approximately 30 percent of the Nation's automobile insurance business. With your permission, I would like to address myself first to S. 945 and conclude with some comments on S. 946 and S. 976.

The American Insurance Association has for several years been a strong proponent for major auto accident reparations reform. We are, therefore, most pleased to have this opportunity to appear before this committee and present our views on S. 945 introduced by Senators Hart and Magnuson, Muskie, Proxmire, and Ribicoff.

There is no need to state the case for comprehensive reform. Profs. Keeton and O'Connell were among the first in recent years to expose the tragic failures of the present state of affairs. They were the first to present a detailed plan for change. American Insurance Association's special committee on automobile accident reparations completed a yearlong study in October of 1968, and at that time made public a report calling for a complete no-fault auto accident reparations system. Last year the New York Insurance Department report "Automobile Insurance . . . For Whose Benefit?" impressively documented the case for reform and presented what we believe is an irrefutable case for total change.

Finally, we have had the DOT studies and its recommendation. Again the case for major reform is convincing and compelling.

In our judgment the great debate has ended. It can no longer be seriously contended that the auto tort liability system must be maintained. As we see it, the area of discussion has narrowed.

Senator HART. Mr. Jones, if I were down there testifying I would say that, too, but if you were up here listening for the last week or two you would not agree that the debate has ended.

Mr. JONES. This has been one of the great disappointments we have had since March 18, 1971, when Secretary Volpe came and appeared before you. We think the debate should be ended. It is obvious that it is not. We sincerely support a State-by-State approach, and we did this, we began on this route because we thought that we could enact no-fault automobile insurance plans sooner State-by-State then we could by coming to Congress and getting the attention of Congress.

It appears now to us that many of the people who are coming and telling you that they also support the State-by-State method do so just to have 50 more debates to oppose. So it is just in our view—and we must admit that it is just in our view—that the debate should be ended, but it obviously is not.

There are two issues before us. One, should we seek change through State or Federal action? Two, how extensive should the change be to meet the pressing needs of the public?

I would like to address myself to these two questions.

STATE VERSUS FEDERAL

Obviously S. 945 and similar bills are based on the premise that Federal action is necessary and desirable. When American Insurance Association's study was completed in October 1968, our special committee in its report stated:

> The committee in its deliberations has assumed that a revision of the present system would be achieved at the State level. This would give an opportunity to test and observe a no-fault system in actual operation. The committee notes, however, that Federal action to achieve uniformity and countrywide application is a possibility.

At that time American Insurance Association had not developed a policy position on the question of whether there should be a State or Federal solution, although all our deliberations were on the assumption that reform could and would be achieved at the State level.

In recent months we have considered specifically the roles of the State and Federal Governments. American Insurance Association believes the States should be afforded an opportunity to enact real no-fault auto accident reparation laws. We have no specific time limitations. In our opinion the sooner the better. It would be extremely beneficial to have the experience of working with a substantial no-fault law at the State level before establishing a national pattern. This is one of the advantages of our Federal system and it would not be wise to discard this opportunity for laboratory experimentation which is available through the States. The knowledge and expertise gained under a State law will be invaluable in formulating a smoothly working system.

Although one could argue that the threat of Federal legislation might spur the States to action, it could have just the opposite result. If major proponents for change were to shift their support to a Federal statute, State legislatures might conclude that the pressure for change was no longer on them to provide at the State level much needed reform. It would be an easy out and would be a way for them to avoid what so many legislators believe is a necessary but uncomfortable task.

Senator, I would like to relate a specific experience if I could. One of the witnesses earlier today made a very fine statement, Mr. Haring

of New Jersey, who mentioned that they had a commission appointed by the Governor to study this matter. I had the opportunity to appear before that commission in executive session. All members were not there. But I do want to say that the chairman of the commission is a very objective and courteous man, but the inclination on the part of some of the commission members was, do we really have to deal with it? Isn't Congress going to take care of this eventually? And we contended that it was a responsibility that they should face up to and that the citizens of New Jersey could get a plan that would be of benefit to them, providing a better product at a lower price, if they would respond to this challenge.

So it can work against us—your legislation can work against State action. Some contend that it can work as a spur for State action, but it seems to work both ways.

Or course, there are drawbacks to the State approach. First, there is the possibility that the States will not act. The State legislative record of the past 3 years is not impressive. It is set forth in the attached exhibit. Only Massachusetts has enacted reform legislation and its law is a modest first step. On the other hand, there is no assurance that auto accident reparations legislation will pass the Congress and be approved by the President. I say this despite the fact that there appears to be much more support for no-fault auto reform in the Congress than we anticipated several months ago. Still, reform will be vigorously opposed at every turn by the same forces which have thwarted auto no-fault bills in the State legislatures. And they will have the additional argument that the Federal Government is invading an area of accident reparations heretofore not dealt with by the Federal Government.

The other possible drawback to a State-by-State approach is the chance that we may end up with a pattern of legislation which will differ markedly from State to State. This would be unforunate. It would be inefficient and expensive to administer no-fault programs if they varied substantially. However, it should not be assumed that we will have a hopelessly diversified pattern of State laws. This did not occur when State financial responsibility laws were enacted. These laws, while differing in some important details, are compatible and in fact they are conspicuous for their high degree of uniformity. Even the three States with compulsory laws, Massachusetts, New York, and North Carolina, are well coordinated with the financial responsibility laws of the other States.

In the final analysis, the Congress can act if the States either fail to act at all or produce an unworkable statutory patchwork. We do not rule out ultimate Federal action depending on how well the States respond to the public need for a satisfactory auto accident reparations system throughout the country. If the States falter, I can readily visualize our strong support for Federal legislation.

In short, we urge the States be given the opportunity to enact sensible reform legislation. If they do not meet the challenge, then if will be time for the Congress to act.

EXTENT OF REFORM

American Insurance Association developed and supports a comprehensive program for automobile accident reparations reform. Our bill

replaces the present auto tort liability system in toto. In that respect it is similar to the reform measure proposed by the New York Insurance Department and endorsed by Governor Rockefeller. Sometimes we have been accused of intransigency because we continue to believe our proposal does achieve maximum reform but it has withstood sniping from the status quo stalwarts who have persistently but unsuccessfully sought to demolish it.

Our espousal of complete reform does not mean that we cannot accept and endorse proposals which fall short of our model. We believe that S. 945 and similar bills in the Congress offer substantial and desirable reform. American Insurance Association can support at the State level legislation which closely follows S. 945. Our support of this kind of State legislation would be subject to certain amendments which we believe are necessary. We will briefly discuss those amendments.

AUTO INSURANCE BENEFITS PRIMARY

Under S. 945 net economic loss benefits are reduced by the amount of any benefit from other sources unless such other insurance or other source of benefits contains explicit provisions making its benefits supplemental to those paid under a qualified no-fault policy. This means that the auto insurance benefits under the bill are secondary to other benefits. We think this is unsound. We believe auto insurance benefits should be primary in order to achieve efficient administration of the insurance system.

If such benefits are primary, they will be paid promptly by the auto insurer upon the determination that there has been an auto accident. This is simple and easy. It will avoid costly and time-consuming administrative work in ascertaining what other benefits may be available to the injured person. Making auto insurance primary will also greatly simplify the process of classifying motorists for rating purposes.

Sir, I would like to point out we have never based our contention for a change in the auto insurance system in any way on the congestion of the courts. That is not the thing that really bothers us. When we get a claim under the fault system or the tort liability system there is a minimum amount of investigation we have to do to see that there is liability on the part of our policyholder, and we are involved with a third-party claimant that we do not know anything about. Unless it is a very small amount of money it takes almost 2 months to process an ordinary claim. And it is the 2 to 3 to 6 months involved in investigating a claim and paying that we get the real complaint about, not when it goes to the lawyer and the court.

We get complaints there, but it is mainly the ordinary ones. If automobile insurance is primary, then all we will have to determine is that there was an automobile accident, then we know we have to pay. If auto insurance is secondary, we can tell you ahead of time, the administrative work we have in the first instance will be increased, we will have to ask, "What other insurance coverages do you have?" And after the accident we will have to ask, "Are they still in effect?" before we even know there is liability. On the other hand, if we were cooperating with the national health program or any other insurance benefit program, it is equally easy to administer from their point of view.

Let's say there is a national health insurance program and all they have to determine is that the man is in the hospital or has gone to the

doctor because he was involved in an automobile accident and they know that that is an exclusion from their coverage or maybe they might have copies. By the same token, we can act promptly if all we have to determine is that the injury really arose from an automobile accident. We really think that this is the soundest system all the way around.

Further, if other sources of benefits are primary, for example, deducted from auto insurance benefits, it has the effect of transfering the costs of automobile accidents to nonmotorists. In our judgment it is wrong to spread the cost of automobile accidents over other forms of insurance. Those who generate costs should bear the costs. The way to assure that this will be achieved is to make auto insurance benefits primary and not disperse the cost of auto accidents through other insurance and benefit systems. I am sure the Senator has heard the economists describe this as internalization of costs.

We, of course, do not favor duplication of benefits. Other systems can readily adapt to an auto reparations system which is primary.

PROPERTY DAMAGE

S. 945 does not include property damage. Thus it retains the tort system in an important area of auto accident claims. This means that almost every auto accident will have to be investigated, an expensive process, to determine liability. Obviously important potential savings will be lost.

In our opinion the auto insurance system should not be saddled with the burden of retaining property damage tort claims.

REJECTION AND NONRENEWAL

S. 945 places severe prohibitions on insurers with respect to rejecting an applicant for insurance and the right not to renew a policy. No insurer would be permitted to reject any applicant for insurance. The only exception is where the domiciliary State insurance supervisory authority finds that its solvency would be impaired by writing additional policies. This exception is not available in the case of policy renewals.

These provisions might be acceptable if incompetent and reckless drivers were removed from the road, but in real life this does not happen. In our judgment these provisions are far too severe and should be eliminated. Under a no-fault auto insurance system companies should be able to underwrite all risks much more knowledgeably than is the case today because they will be able to measure the loss potential of each driver.

The industry recognizes its obligation to provide completely adequate coverage to all licensed motorists who cannot be readily insured in a voluntary market. The rejection and nonrenewal provisions of S. 945 are not the way to assure that each licensed motorist will be afforded adequate insurance coverage.

Senator, I would like to add that certainly the member companies of our association do recognize this as a responsibility. We know that you are directing your attention toward a real problem and we know that the industry has the responsibility of providing what we call and think of as a full market or coverage for those people that need it,

whether we would choose to have them as our policyholders or not. We have a special committee working on this problem. It is made up of very senior executives. We have hired some consultants and specialists, and the man that is heading up this team of consultants is a distinguished citizen of your State, a former insurance commissioner there, David Dykehouse, who practices law in Detroit.

Senator HART. An extremely able man.

Mr. JONES. A very able man and very enjoyable to work with. He has pulled together a vast amount of material which our committee will have to sort through in the next few months. But it is all directed toward this problem of how we as an industry and as companies can provide the full market that the public needs.

POLICY FORMS, RATING CLASSIFICATIONS AND TERRITORIES, STATISTICAL PLANS

S. 945 bestows on the Secretary of Transportation enormous powers with respect to policy forms, classes of risks and rating territories. It also gives the Secretary extensive control over the kinds of statistics companies can compile and requires detailed reports to be made to the Secretary.

Clearly these provisions would be inappropriate if the bill were to be used as a model for State legislation. However, looking at the bill strictly as a Federal no-fault auto reform measure, we believe these provisions should be eliminated. As we view these provisions, insurance companies would be subject to both Federal and State regulation of policy forms, rating classifications and territories and of the premium rates charged to policyholders.

From our standpoint, this confusing overlapping of regulatory authority is unsound. It should also be noted that regulatory provisions of this nature in a Federal no-fault bill will play into the hands of the defenders of the status quo. They will be able to point out that these provisions raise again the specter of Federal regulation of the insurance business. Auto insurance reform is too important to be burdened with any nonessential issues.

S. 946 is the proposed Motor Vehicle Group Insurance Act. This bill is designed to outlaw State legislative or regulatory restrictions on mass marketing. American Insurance Association is unqualifiedly opposed to any kind of restriction on methods of marketing insurance policies.

There have been two major studies—"Collective Merchandising of Automobile Insurance" by Prof. Bernard T. Webb, published in 1969; and "Mass Marketing of Property and Liability Insurance," undertaken by Dean Spencer Kimball of the Wisconsin Law School and Prof. Herbert Denenberg of the University of Pennsylvania Wharton School as part of the DOT research. These studies strongly support removal of all restrictions on mass merchandising.

In fact, we do not believe there is a single student of the property and casualty insurance business who does not favor the encouragement and widespread utilization of various mass marketing procedures. They all deplore obstacles to mass marketing developed at the State level either through legislative enactment or insurance department regulation.

The Kimball-Denenberg study concluded:

The State of the law in any given jurisdiction can only be ascertained by an exhaustive look at the statutes, insurance regulations and case law of the jurisdiction. It is clear, nonetheless, from all the information we have at hand, that there are a multitude of unreasonable barriers to the free development of mass marketing of property and liability insurance which are found in the laws of the several States. Undoubtedly those barriers will gradually be lowered, or even eventually eliminated, as the normal processes of evolution in the marketplace produce changes like those that have taken place in group life and health. But the development is bound to be slow and uneven. There is an urgent need to strike down unreasonable barriers in the path of mass marketing so that it may help provide a more adequate and equitable insurance market.

In agreeing with the view that there is an urgent need to strike down these unreasonable barriers, we would merely add that this restrictive legislation is still being introduced in State legislatures with strong backing. Last year the New York Legislature passed a bill which if enforced would have precluded many mass merchandising plans. It had been vigorously opposed by the New York Insurance Department and by other Government bodies, as well as by employer, union and professional groups and was ultimately vetoed by Governor Rockefeller. However, a somewhat similar restrictive bill became law in Louisiana in 1970. Right now a legislative effort is being made in Connecticut to overcome a court decision which held that a 1969 law did not prohibit a form of mass merchandising.

May I add that in the last few days we have learned that an insurance code that had just been passed in Nevada and has not yet been signed by the Governor there as originally proposed followed the model in Wisconsin and Minnesota that permitted the normal development of mass marketing methods, but during the course of the legislative consideration the agents in Nevada succeeded in getting a chapter amendment to put in a series of restrictive provisions on which we do not yet have a full report.

We cannot tell you exactly how it is, but that just occurred.

Accordingly, we think the kind of legislation contemplated by S. 946 is desirable and necessary. We would prefer to see it encompass all property and casualty lines and not be limited to motor vehicle insurance. But of even greater importance, the law should be so drafted that it will be clear that it applies to all forms of mass marketing. I think we can all agree that the ultimate goal of collective merchandising is what might be called true group insurance such as now is so common in life and hospitalization insurance.

In the words of the Kimball-Denenberg study, page 7, true group—is a plan for the insuring of individual risks, under a single program of insurance, under which the insurance company will consider all such risks to be insurable without regard to individual underwriting characteristics and will set a rate, determined in whole or in part by the characteristics and experiences of the group and uniform for all members of the group or broadly averaged over the group.

However, there are very few pure or true group plans covering automobile or other personal lines of insurance in operation today. Generally employer or union payments are a feature of true group plans. Most authorities believe that true group for personal lines of insurance is not in the immediate offing.

In the meantime, other forms of mass merchandising which retain reasonable individual underwriting standards but which provide such benefits as lower costs and convenient budgeting through pay-

roll deductions should be not denied the consumer, especially the car owner. In fact, the costly nature of the present auto tort liability system suggests that these plans are even more important right now than they would if we were operating under a lower cost first party no-fault program.

It will be argued, I am sure, that legislation such as S. 946 is a form of Federal regulation at the expense of State regulation. We do not believe it constitutes Federal regulation any more than does the McCarran Act. For example, the McCarran Act puts it quite bluntly that acts of boycott, coercion, and intimidation are illegal and to the extent that such acts might exist they are subject to the Federal antitrust laws.

All that S. 946 would do, especially if broadened and clarified, would be to lay down an understandable rule in the area of marketing. If such a Federal law were to be passed, present restrictive laws and regulations would be repealed by the States or would die on the vine as no longer valid. In our judgment, no Federal action would be necessary. By this I mean that we do not visualize any need for enforcement by Federal authorities. In fact we doubt that a provision authorizing the Attorney General to institute injunctive proceedings is necessary. The Congress having spoken, that should be sufficient.

American Insurance Association endorses legislation along the lines of S. 946.

S. 976

The third bill before the committee is S. 976. This is the proposed Motor Vehicle Information and Cost Savings Act. Its purpose is "to promote competition among motor vehicle manufacturers in the design and production of safe motor vehicles having greater resistance to damage."

American Insurance Association supports all constructive efforts to encourage the design and production of safe motor vehicles. Ideally, cars should be as safe as possible in terms of what happens to the occupants after the crash. In recent years the main concentration, and properly so, has been on striving to develop cars which will protect car occupants in the so-called second collision.

Now the public is recognizing the necessity of designing and manufacturing cars which can sustain damage without costly repairs. Car damage, as we know, is an important factor in the high cost of insurance.

Senator, if I may at this point, I would like to respond to the position taken before this committee on these bills by representatives of the automobile manufacturers, that safety features in automobiles have no effect on insurance rates. This simply is not true.

And the evidence to the contrary is irrefutable. The safety features built into American autos over the last 5 years, safety belts, collapsible steering wheels, ballooning windshields and the like, have all been related to passenger safety. The successes of these measures are reflected in the lower cost of insurance covering bodily injury.

The rapid upward spiral of bodily injury liability insurance rates has been halted. In State after State we have seen either decreases in these rates or only slight upward revisions as might be caused by the overall inflationary trend.

I believe we sent a copy to you, Senator Hart, of a study made by our consultants as to what caused automobile insurance rates to go up, and it reported that all of the costs involved in automobile insurance policies are related to service industries, and service industries do not have a productivity increase to offset increases in costs as they come about, or the inflationary cost as it occurs.

I would like to say that these inflationary increases are greatest in the area of personal injuries—bodily injuries—particularly the hospital in recent years and the doctor bills, and in spite of these great inflationary increases and no productivity increase offsetting those increases, we have seen in some cases an actual decrease in bodily injury premiums, and we know it is attributable to those safety standards; and in some cases there have been much smaller increases than you might expect.

The difficulties we have had in the last 3 years in greatly increased automobile insurance rates have all been associated with property damage. Prior to that, it was all associated with the bodily injury.

Senator HART. Thank you for that comment which you have added, I note, to the prepared testimony.

Is it fair to assume from the study that we welcome receiving, that just as there has been a stabilization and perhaps a reduction in the cost of insurance for bodily injury following the imposition of safety standards, a similar stabilization or reduction could be anticipated if we manage to move to the standards of property loss reduction?

Mr. JONES. We are very confident of it. I would like to continue, that unquestionably when automobiles are built to withstand collision damage to the extent that they now provide better protection to passengers, there will be similar effects on property damage insurance rate levels. The simple fact is that insurance rates can be traced to two factors, the number of claims and the cost of those claims.

Elementary mathematics thus make it clear that a reduction in the claims will mean a reduction in insurance rates. Even if we restrict ourselves to the possibility of making cars easier to repair, we must conclude that such a step would have a favorable effect on insurance costs.

The insurance industry, with the help of the Insurance Institute for Highway Safety, is conducting a pilot study seeking to develop data on the cost of repairing cars of different make and model. We are endeavoring to do this by analysis of current cost information in the hands of insurance companies as cars of claimants and policyholders are repaired. In addition, the Insurance Institute for Highway Safety has conducted rather extensive low-speed car crash projects, the results of which have been brought to the attention of this committee. This IIHS testing program has dramatically demonstrated the need for improved car design.

Over the years the insurance industry has provided leadership in driver education, motor vehicle law enforcement, and traffic engineering. We still believe these areas of traffic safety are important, but now our work is emphasizing reduction of loss resulting from car accidents. This means we want to do all we can to make sure car occupants are not seriously injured. It also means that we want to have cars which can withstand many of the commonplace crashes without huge repair costs.

S. 976 directs the Secretary of Transportation to establish by July 1, 1972, a system of testing to determine and compare the susceptibility to damage of motor vehicles under normal operating conditions. If feasible, tests would be developed to determine and compare the risk of personal injury or death to car occupants resulting from traffic accidents which might occur at normal speeds and under normal operating conditions.

As soon as possible after July 1, 1972, the Secretary would promulgate property loss reduction standards which will minimize car damage, such standards, of course, to be compatible with safety standards aimed at protecting passengers.

S. 976 requires manufacturers to test production models of every make and model of passenger car in accordance with the regulations promulgated by the Secretary. The results of this testing are to be furnished to the Secretary and prospective buyers.

The bill also directs the Secretary to make this testing data available to insurance companies "for use in determining premium rates for insurance covering property damages and personal injury related to the factors tested under the provisions of section 126 of this act." The Secretary is also required to report to the President and the Congress on the extent to which the motor vehicle insurance industry is utilizing such information in the determination of insurance premium rates.

We would urge that there is a need for a good deal of flexibility in incorporating new techniques for rating car damage by make and model. We do not believe the insurance companies should be forced into any specific rating methodology or procedure based upon car crashing data and engineering analysis. This kind of information can be very helpful in rate making but it should be considered and not be applied mechanically.

In supporting [illegible] motorists, cars better [illegible] which can be repaired [illegible] need to recognize [illegible] But we would stress that [illegible] as our concern [illegible] of the public [illegible] to damage.

I would also add a comment [illegible] have considered [illegible] commented on [illegible]

[illegible]

Where do we stand [illegible] compensating [illegible]

The rate of progress [illegible] balance sheet [illegible] the list would be the [illegible] support major reform [illegible] chided the insurance [illegible] reparations system. [illegible] industry are advocating [illegible] vocal support of [illegible]

I believe we sent a copy to you, Senator Hart, of a study made by our consultants as to what caused automobile insurance rates to go up, and it reported that all of the costs involved in automobile insurance policies are related to service industries, and service industries do not have a productivity increase to offset increases in costs as they come about, or the inflationary cost as it occurs.

I would like to say that these inflationary increases are greatest in the area of personal injuries—bodily injuries—particularly the hospital in recent years and the doctor bills, and in spite of these great inflationary increases and no productivity increase offsetting those increases, we have seen in some cases an actual decrease in bodily injury premiums, and we know it is attributable to those safety standards; and in some cases there have been much smaller increases than you might expect.

The difficulties we have had in the last 3 years in greatly increased automobile insurance rates have all been associated with property damage. Prior to that, it was all associated with the bodily injury.

Senator HART. Thank you for that comment which you have added, I note, to the prepared testimony.

Is it fair to assume from the study that we welcome receiving, that just as there has been a stabilization and perhaps a reduction in the cost of insurance for bodily injury following the imposition of safety standards, a similar stabilization or reduction could be anticipated if we manage to move to the standards of property loss reduction?

Mr. JONES. We are very confident of it. I would like to continue, that unquestionably when automobiles are built to withstand collision damage to the extent that they now provide better protection to passengers, there will be similar effects on property damage insurance rate levels. The simple fact is that insurance rates can be traced to two factors, the number of claims and the cost of those claims.

Elementary mathematics thus make it clear that a reduction in the claims will mean a reduction in insurance rates. Even if we restrict ourselves to the possibility of making cars easier to repair, we must conclude that such a step would have a favorable effect on insurance costs.

The insurance industry, with the help of the Insurance Institute for Highway Safety, is conducting a pilot study seeking to develop data on the cost of repairing cars of different make and model. We are endeavoring to do this by analysis of current cost information in the hands of insurance companies as cars of claimants and policyholders are repaired. In addition, the Insurance Institute for Highway Safety has conducted rather extensive low-speed car crash projects, the results of which have been brought to the attention of this committee. This IIHS testing program has dramatically demonstrated the need for improved car design.

Over the years the insurance industry has provided leadership in driver education, motor vehicle law enforcement, and traffic engineering. We still believe these areas of traffic safety are important, but now our work is emphasizing reduction of loss resulting from car accidents. This means we want to do all we can to make sure car occupants are not seriously injured. It also means that we want to have cars which can withstand many of the commonplace crashes without huge repair costs.

S. 976 directs the Secretary of Transportation to establish by July 1, 1972, a system of testing to determine and compare the susceptibility to damage of motor vehicles under normal operating conditions. If feasible, tests would be developed to determine and compare the risk of personal injury or death to car occupants resulting from traffic accidents which might occur at normal speeds and under normal operating conditions.

As soon as possible after July 1, 1972, the Secretary would promulgate property loss reduction standards which will minimize car damage, such standards, of course, to be compatible with safety standards aimed at protecting passengers.

S. 976 requires manufacturers to test production models of every make and model of passenger car in accordance with the regulations promulgated by the Secretary. The results of this testing are to be furnished to the Secretary and prospective buyers.

The bill also directs the Secretary to make this testing data available to insurance companies "for use in determining premium rates for insurance covering property damages and personal injury related to the factors tested under the provisions of section 126 of this act." The Secretary is also required to report to the President and the Congress on the extent to which the motor vehicle insurance industry is utilizing such information in the determination of insurance premium rates.

We would urge that there is a need for a good deal of flexibility in incorporating new techniques for rating car damage by make and model. We do not believe the insurance companies should be locked into any specific rating methodology or procedure based upon car-crashing data and engineering analysis. This kind of information can be very helpful in ratemaking but it must be evaluated and should not be applied mechanically.

In supporting sound legislation designed to achieve safer cars for motorists, cars better able to withstand low-speed crashes, and cars which can be repaired more economically, we are well aware of the need to recognize the practical problems confronting manufacturers. But we would stress that the auto manufacturers' concern, as well as our concern as auto insurers, is secondary to the overriding interest of the public in safer cars, as the bill puts it, "having greater resistance to damage."

I would also add a comment, Senator, that in endorsing S. 976 we have considered the other features involved in the bill. We have not commented on them specifically, but we endorse the bill as a whole.

CONCLUSION

Where do we stand in the struggle to achieve a new system for compensating people injured in auto accidents?

The rate of progress for reform is always slow. If we examine the balance sheet, there have admittedly been disappointments. High on the list would be the silence of many leaders of the bar who privately support major reform. Over the years some outstanding lawyers have chided the insurance industry for not espousing a better anto accident reparations system. Now that important segments of the insurance industry are advocating such reform, it would help a lot to have the vocal support of leaders of the bar.

Another disappointment has been the judiciary. We have in mind their apparent unwillingness to see any connection between the horrible delays in our criminal courts and the amount of court and judge time expended in the processing of personal injury auto accident suits. This is an unbelievable example of burying one's head in the sand.

There have, of course, been a few shining exceptions. I would like to stop and observe, if I could, sir, that Mr. Eugene M. Haring, who was here this morning, and one of his partners, Mr. Woodruff English, and Chief Justice Weintraub were three of the people that we had in mind when we drafted this part of the remarks, and it is very encouraging to see them take the role they have.

These lawyers and judges are to be commended for their intellectual integrity and willingness to speak their minds. These are qualities which one would normally associate with the legal profession.

If I may just add another story, Senator Hart, recently where I was appearing on a program speaking on no-fault, Judge Alfred P. Murrah, who is the senior Federal judge in the United States and the director of the Federal Judicial Center, told me a story that was very interesting.

He said that in 1946 Chief Justice Arthur Vanderbilt of New Jersey, accompanied by Judge Murrah, Judge David Peck of New York, and Judge Bodin of New York, asked to come and see our companies, our associations, and Judge Murrah said that our officials, our general counsel, then Mr. Ray Berry, who Mr. Gilmore was associated with, were very courteous to him, very nice, treated them fine when they were in New York, but these four judges came in and they said we would like to discuss with your association whether we could find some way to take the automobile accident cases out of the courts, and he said at that time the answers were all negative from our side, and he said he was glad to see that we stuck with the problem a little bit longer.

On the brighter side, we are heartened by the ever-growing support for no-fault auto insurance. The newspapers and all other news media have been overwhelmingly favorable. In increasing numbers legislators, even those who are lawyers, now admit that some kind of change is near at hand.

We would note here again the agents group that appeared before you, represented by Mr. Charles Rue, this morning, they have made forthright statements since 1968 when they came out with their plan shortly after ours. They gave me the honor of addressing them in 1969, and I want to say that that was the only totally favorable audience that I have ever had the opportunity of appearing before, Senator Hart, and discussing this subject.

They represented a very fine attitude all the way along. We have also been very encouraged in the last few weeks by the endorsement of the National Association of Casualty and Surety Agents, an outstanding group of outstanding agents, and they have endorsed principles along the lines of your legislation and ours, and they specifically endorsed our legislation. This is a very encouraging step.

The outlook for change has been greatly helped by the DOT studies. The interest of this committee and the House Interstate and Foreign Commerce Committee has been a major contribution to the growing support for reform. We would expect that the interest of these two

ongressional committees will continue and will result in careful valuation of the response of the States.

As mentioned earlier in our statement, we believe the States should ave an opportunity to enact effective auto accident reparations legisla- ion. But we repeat, this does not mean that we believe there is no role or the Congress. In fact, it is abundantly clear that the Congress must ct should the States prove incapable of providing the kind of no-fault uto accident reparations laws which meet the criteria of genuine eform and substantial uniformity.

Thank you for your attention, Senator.

Senator HART. Mr. Jones, thank you for the statement you have ust made. Clearly, as the history of this subject is made, the responsi- ble attitude that you and the American Insurance Association have lisplayed will be acknowledged. Let me acknowledge it now.

Mr. JONES. Thank you, sir.

Senator HART. I know that it is not an easy leadership undertaking iven the competing claims that necessarily are involved among the nembers of the association.

I would just like you to comment on a couple of things I guess. I m thinking of Judge Murrah's remark to you and wondering whether ou are suggesting that we in the Congress apply the same sort of time- able to the development of plans—genuine reform plans—at the State evel that his experience with the 1946 to 1971 timespan. That would be 25-year period.

Mr. JONES. I think everything moves faster now, Senator, and I loubt if we would have that kind of infinite patience anymore. I would ike to add this bit of history if I could.

In 1959 Gov. Pat Brown of California appointed a special study of utomobile insurance, and Prof. Stanley A. Weigel, who is now a 'ederal judge, wrote the report known as the Weigel report, and at hat time the member companies of our association—the name of the ssociation then was the Association of Casualty & Surety Cos.— hanged their position to the fact that they would no longer oppose ny no-fault proposal. They did not change to an affirmative.

The reason they didn't change to an affirmative is they didn't see the easonable possibility of early action. As a matter of fact, I remember Ir. Gilmore testifying before the Joint Insurance Committee in Mas- achusetts in the spring of 1967 to just that effect, that we neither op- osed or supported the Keeton-O'Connell program that was before hem.

That was not a very happy position, but in the spring of 1967, the Iassachusetts House of Representatives passed the Keeton-O'Connell ill—one house did—and this was an indication to our companies that t was now feasible to take affirmative action, that there was support or it, that we could expect some action.

So we studied the problem to see what the best solution would be nd we came in in October of 1968 with our program, and it seemed ssential to wait until the study that the Congress had requested be one by the Department of Transportation had come in, and as you now that came in March 18, 1971, here before you in this committee.

I would have to say that we have been somewhat disappointed n the response that has occurred to Secretary Volpe's statement. It eemed to us that he was very clear about the fact that the debate

should be ended, that we should go to no-fault and we should do it right now.

I think I speak for our companies when I say that we have been disappointed in the State response so far.

Senator HART. I didn't mean to suggest seriously that I thought Judge Murrah's 25 years was what you were recommending, but is there any kind of early warning system that we could fix and watch for so that Federal action is not delayed needlessly or endlessly.

Mr. JONES. Senator Hart, I believe that the response of two States in the next few months is going to be terribly important to our member companies, and those are Florida and Pennsylvania. We began this year with really pretty high hopes of getting a number of plans enacted this year. At the top of our list were Hawaii, Alaska, Minnesota, New York, Connecticut, Florida, and later in the year came Oregon and Pennsylvania.

But we have suffered disappointments in those first five out of the original six; we only have Florida. We now have suffered a setback in Oregon and we only have Pennsylvania. I think if we can't accomplish significant and sensible reform in Florida and Pennsylvania during the rest of this year—the Florida legislative session is supposed to end June 6 but will probably go to the end of June—that our companies would be inclined to reappraise their position, and we are making a very sincere effort in both places.

You know, there has been some newspaper advertising in New York State under the name of Citizens Committee Against No-Fault. We have some evidence that at least some trial lawyers have supported that effort. It is probably too late for us to do anything effective in the way of advertising in New York, but it is not too late in Florida. As a matter of fact, we are running some ads in Florida today. I don't know that you want to introduce this in the record, but at least we will make it available to you.

Senator HART. For the file at least.

Mr. JONES. We are running them in support. We are sincerely trying to get some enactments there. In Florida the house insurance committee has reported a good no-fault bill. It is a substantial reform at a substantial savings.

The Senate has reported a bill that is no-fault only in name, not in any substance. They retained all lawsuits very carefully; and that would not be acceptable. But we do have a good House bill.

Unfortunately we got a setback yesterday. It was on the calendar for Monday, but it has to have a special order of the Rules Committee for it to be considered on the calendar on Monday, and the Rules Committee yesterday denied that special order by a vote of 14 to 12. The reports are that there are trial lawyers from all over the State around the capitol, and although the Speaker who named the Rules Committee had said that the House Insurance Committee bill will receive floor consideration on Monday, his Rules Committee didn't back him up.

I don't known whether the Speaker will be able to change that or not. But this was a disappointment because it is a good bill.

Senator HART. We heard about the New York advertising campaign, and in fairness to everybody that has been involved in these hearings, I should ask you to provide for us the same figures that I asked the

American Trial Lawyers to provide and I asked Mr. Kemper to provide.

Would you advise us for the record how much money you will spend or intend to spend or will have spent at the end of your anticipated Florida campaign?

Mr. JONES. Not just what we have spent on this?

Senator HART. I guess in fairness I should ask you to advise us the total expenditures you have made in attempting to persuade through advertising and lobbying, to use a word that is always misunderstood, in the advocacy of no-fault.

Mr. JONES. This is our first effort at advertising, and this ad we are running in 17 newspapers in 13 cities. I don't have the bills in exactly. but it is going to be about $23,000. We are spending about $2,500 on a few billboards down in Florida. Those are my only commitments now, and I couldn't tell you what the expenditures will be at the end of the Florida program.

Senator HART. Do you have any hospitality suites?

Mr. JONES. No, sir.

Senator HART. No expenditure there? And you will provide a precise figure for the record as to the total of the Florida campaign.

Mr. Jones. All right, Senator.

(The information follows:)

The total expenditure was $66,000.

Senator HART. The second question, and the last for me. You suggest that we observe the progress in Florida and Pennsylvania to see whether genuine reform can be achieved at the State level. Do you regard the Illinois plan as meeting that criteria of genuine reform?

Mr. JONES. No. Senator, we would say—you made the observation yourself—the Illinois plan is a definite improvement over the present system, no question about it, and prior to having the benefit of the Department of Transportation report and Secretary Volpe's testimony we might very well have felt that it was a step worth taking.

We did in the end support the Massachusetts bill, although we stayed with our own bill as long as we could. Now, I guess our expectations—we feel we are entitled to greater expectations, and I think we would be disappointed if that is all we got in Illinois.

There are three other States that are considering legislation along that line now. California is in about the same category as are Michigan and Delaware. New York is weaker. The bar association is—the Hughes-Crawford bill—is the one that is receiving the most attention at the assembly in New York, and that retains all lawsuits, it has no cost reductions whatsoever.

If a man elects to purchase the first party no-fault benefits that would be available and which we would be required to offer to him, then he would increase what he pays for automobile insurance.

We are sure that would be a great disappointment to the citizens and a mark against the industry if that sort of legislation was all that came out.

Senator HART. Mr. Sutcliffe?

Mr. SUTCLIFFE. Thank you, Senator.

Mr. Jones you have before you the two charts previously discussed with Mr. Baylor, representing the Governor of Illinois. Since you were present in the audience when we went through that exchange, I

won't ask that we go through it again. I know that your organization has done an extensive amount of costing of various reform proposals and would offer you the opportunity to comment now, if you wish, and would appreciate the best approximation of figures that you can provide the committee for the various plans.

If you wish to add the AIA plan in addition to that represented as S. 945 and the Ogilvie plan, please feel free to do so. I also would like to point out that in S. 945 we have asked you to assume that it has been modified to include property damage coverage on a first-party basis which was one of the points which you suggested in your testimony.

In that connection, the criticism that you apply to the investigation cost resulting from property damage liability, the residual property damage liability in S. 945, does that same kind of criticism in terms of the inability to affect cost savings apply to the Illinois plan?

Mr. JONES. Yes. You would still have to retain more of the investigative process if you retained the subrogation right, intercompany subrogation procedures.

Senator, I think you would be interested in this, if I may. One of our member companies that writes very heavily in the State of Massachusetts has kept records during the first 4 months of this year as to the amount of money that his company has paid out to other insurance companies through subrogation, and the amounts paid to his company by other companies by way of subrogation. He said he is exactly $1 ahead—$1, out of all of this shifting of money back and forth and the people involved in doing it.

Mr. SUTCLIFFE. How much did that cost consumers for all that shifting?

Mr. JONES. He could hardly break that out, but this is one of the major savings we hope to achieve by a complete no-fault system. I can break this figure out for you. When we did our study in 1968, early in 1968, our claim administration expense was 12½ cents of the premium dollar—12½ percent of the premium on BI, bodily injury. You get confused if you try to apply this to the total premium, but just that particular coverage it cost us 12½ cents out of each dollar.

We initially reduced that in the first year, in our cost estimates, our assumptions, to 9 cents because there was a very substantial retraining expense; with new procedures, it takes time to adjust the personnel, you still have the personnel around that you have to shift to some place else, so we couldn't bring it down right away. Then their projections were that in a reasonable transitional period they could bring it from 9 cents down to 5 cents and from there it would depend a whole lot on the exact form that the system took as to how efficient you could become below that.

There was some hope the system would get where we could bring that down to 3 cents of the premium dollar to handle the personal injury claim.

Now, if we retain the investigative process for purposes of adjusting these costs back and forth between the companies, that would be merely deteriorated. I don't even know that they would say we could go to 9 cents in the first year. I am sure they wouldn't say we could go to 5 cents after the transitional period, because we would be retaining an expense of people, files, et cetera.

We administer these intercompany arbitrations—it is one of the biggest arbitration systems in the world and hundreds of thousands of cases a year. But, you know, a representative does have to come in from each company and sit down with his file, and they go through a number of them on a given day, and it is better than court procedures, but it is still people who are involved: There are reports, becoming familiar with the file, discussing the file with each other, and so forth, and if they can't agree, getting a third person to make the agreement for them.

So, it is highly desirable, we believe, for the system not to have that feature retained.

Mr. SUTCLIFFE. Mr. Jones, let me ask you one question. If for political reasons, reflective of public demand, some kind of compensation is requested for intangible loss, pain, and suffering, general damages, would your companies be willing to write that kind of coverage on a first-party basis?

Mr. JONES. Yes.

Mr. SUTCLIFFE. Even if it were a mandatory coverage?

Mr. JONES. Yes. We have considered it. We never attracted much attention to a proposal which we made in our plan when we first announced it, whereby you got automatically, as pain and suffering payment, 50 percent of your medical expenses on a first-party basis. There was no dispute about it; it was automatic. We felt there would be some public pressure. We think this is wrong, but we are going to put it in.

Senator Hart, I would like to add that at the time, I was seeing a doctor fairly regularly, a back doctor, and he argued against this, and we ultimately took it out. He said the medical profession had too many people coming in making extra visits following an automobile accident for purposes of building up the damages, and that if we paid their doctor's bill plus 50 percent more, then it was a bad system, and our committee eventually abandoned this approach.

What we would prefer to do is establish a schedule of benefits, and we think we could do this on the basis of experience very well. We could go to the system recommended by the British Columbia Royal Commission, which was that of an administrative procedure, an administrative body. You would go for the intangible award before some administrative tribunal. That was not enacted. That is just the Royal Commission's recommendation.

Mr. SUTCLIFFE. Without regard to fault?

Mr. JONES. Yes. That was without regard to fault.

We would strongly urge that you not consider a system where you get two lawyers involved who are not experts on pain and suffering but who are experts at bargaining and negotiations and let them argue about what that amount should be before a judge who is not an expert on pain and suffering and using a jury as a tool in the negotiating process.

We can't believe that it should be done in that way; there are many other ways that it could be done, and a number of our companies have felt, from the beginning, that we might have to do this.

Mr. SUTCLIFFE. One final question, although there may be some additional for the record. You have argued against formalizing the rating procedures which your insurance companies would use, the levels

of premium for collision coverage of automobiles that hopefully had increased property loss reduction characteristics.

How would you assure this committee that any cost savings resulting from the promulgation of property loss reduction standards would be passed on to the consumer in the form of reduced premiums?

Mr. JONES. We think the whole rating and rate review process is operating in this way at this time. There is great public pressure against rate increases and for rate reductions. We think that the committee could rely on this pressure.

Senator Hart, we are making very substantial progress in changing our rating organizations to rate service organizations that are furnishing information to the companies, and we have gotten competitive rating laws in 11 States, and if the Governor signs the Nevada code, it will be 12 States. Director Baylor is one of them. We have to acknowledge that Director Baylor and the commissioner of California have expressed criticism against the companies in not moving more promptly and more dramatically in changing their rating classifications and rating procedures, but let me assure you that they are moving. There is a lot of movement.

They are aware of what Director Baylor is saying, and they are aware of what Commissioner Barger is saying. In fact, four of the commissioners came to our annual meeting last year and said it very forcefully. Next week the American Insurance Association is having their annual meeting in New York, and the second day, the program is directed to pricing the insurance product.

We have a professor from the University of Pennsylvania, Professor Williamson, who is an authority on pricing in the American economy. I am not sure that he has been or hasn't been a consultant to the Senate Antitrust and Monopoly Subcommittee. He is going to make a presentation on pricing theory with applications to the property casualty insurance industry on Wednesday, and we are going to have an extensive discussion of it.

I think of the Aetna Life & Casualty All Driver Plan that they have put in successfully in a number of States, including Illinois, Director Baylor's State, and some other things that are developing independently in different companies, and I think you are going to see the automobile insurance system operating with new ways and new methods, particularly if we have this no-fault plan which will make it so much more adjustable to the driver you are insuring and open up markets.

We will no longer be concerned with what kind of appearance the man might make in court if he becomes a defendant or what kind of a witness he might make. All of those things will go by the board. We are just talking about a man and the kind of car he has and the kind of environment in which he drives; that determines his exposure to damages, and we can rate very well on that sort of a basis, within much broader categories.

I think these things are working.

Mr. SUTCLIFFE. Thank you.

Senator HART. Mr. Gilmore, is there anything you care to add?

Mr. GILMORE. No, sir.

Senator HART. Mr. Stark?

Mr. STARK. Mr. Chairman, I would like to take advantage of you for another moment, please, from the vantage point of some years in the claims field, a great part of which was spent in the Chicago area, and add something for the record that I think might be helpful.

It is not logical to use the disposition of a policyholder claim for his $100 deductible in the collision field, as an analogy to determine what his conduct might be in terms of restricting his rights to pursue general damages. The analogy will not hold up very well because the system of intercompany arbitration that presently exists takes care of the $100 deductible for that individual at the same time determination is made against the third party insurer to pay.

So, if a claim of $500 is being asserted by the collision carrier against the wrong doer's company and $400 of it has been paid by the company and a hundred dollars has been paid by the policyholder, the determination in favor of the collision carrier will carry with it a total verdict of $500. In many of these cases where there is collision coverage, the recovery is being made through this intercompany arbitration process at no cost to the insured who gets back his $100.

I grant you there are areas involved where that $100 is not recovered because of the lack of an intercompany arbitration agreement, but it happens that the system which is so extensive now, involving all companies—stock, mutual, reciprocal—nationwide—that it covers a vast amount of this type of loss residual to the policyholder.

Another point I would like to make respecting the Illinois plan and other plans like it, is that any attempt to circumscribe general damages by limiting the recovery to 50 percent, if up to $500 medical, limiting the recovery to 100 percent, if above $500 medical, is bad, because it preserves the same incentives that exist in the present system to beef up the medical, the same kind of hanky-panky that I have seen through many years of experience in the claims business.

If you are up to $350 in medical and it is legitimate, there is going to be a big push to get it up to $501 so there can be a general recovery for pain and suffering rather than just $350. It will incite lawyer activity. It will incite some of the unscrupulous aspects that pervade the present system. It will not eradicate the incentives that are constantly causing extra costs to be paid under this present system that maintains a wasteful and sham front of giving people money in addition to their economic loss, particularly in a small case where they don't deserve it at all.

So, I don't think the claim made for savings related to circumscribing of general damages in this particular plan or others like it—can be given the kind of credibility that the proponents of that plan would desire you to give it, because there are lots of intangibles.

The remainder, the residual of the cancerous system that has caused the present tort liability area in auto accident reparations to be so criticized and so condemned, that same cancerous system is left there and we will have the same kind of abuse, exaggeration, distortion, and overclaiming for the sake of getting that extra buck. We may knock out many of the activities of some of the bar who engage in this, but believe me there will be a residual number who will be working for the $100, $200 and $500 fee in an effort to get the extra sum.

Senator HART. Thank you for adding that to the record, and I know you speak from a background of years of experience in the field.

I think Mr. Sutcliffe wanted to ask Mr. Stark a question.

Mr. SUTCLIFFE. Mr. Stark, in the Massachusetts plan and in the Illinois plan where interinsurer subrogation is provided, there is a provision requiring that the claims cost as well as the wrongdoers damages be compensated to the company whose policyholder has found to be innocent of any wrongdoing.

Does that indicate itself the magnitude of the claim cost that will still be inherent in the Massachusetts and Illinois plans?

Mr. STARK. Yes, there is what we call an allocated or unallocated loss adjustment expense that is going to be shifted along with the actual payment of a claim.

Mr. SUTCLIFFE. If that were an insignificant amount, there would be no reason to provide for reimbursement of that, is there?

Mr. STARK. That is correct. It is not a large amount. Perhaps it is going to be used on some formalized basis. The point is it does add to the loss. In other words, aside from what is paid to an injured person, it will add to that amount, whether it be 5, 10, or 15 percent, an additional sum floating back and forth.

Mr. SUTCLIFFE. Not only will it add, but it must be an indicator that there will be those costs within that procedure?

Mr. STARK. Oh, I think so.

Mr. GILMORE. Senator Hart, I would just like, if I may, to very briefly amplify the remarks that Mr. Jones made in talking about our plan, as originally submitted, making some payments for what I might call noneconomic losses. Actually, this was confined only to cases where there was a disfigurement or an impairment. And under our plan as originally presented, we would pay in those cases an amount not exceeding 50 percent of the medical expenses. We never did have in any of our plans what you might call a general across-the-board pain and suffering allowance such as there is in Illinois plan. Ours was very limited and could be compared to the provision in your bill dealing with catastrophic harm except under our program originally submitted it would have been on a no-fault basis.

Senator HART. We are having trouble with the definition or the section that you mentioned, I don't have the bill here, the catastrophic section. If you could give us any help on that, it would help us.

Mr. GILMORE. Actually we thought it was somewhat better in this draft than it was in the bill introduced at the last session. We have had a lot of trouble with this, and this is one of the reasons why we abandoned what could be called a rather modest payment for disfigurement.

Mr. JONES. Senator, we had trouble with it before you ever tried to draft a section along this line, and you did better than we did.

Senator HART. The draftsman did.

Gentlemen, thank you very much.

Is there anything that is a loose end that you would like to include?

The record will remain open.

Mr. JONES. I can ask Mr. Sutcliffe for a clarification of one of the lines of his chart.

Senator HART. Yes. Because it bears on the table that Mr. Jones has attached as an exhibit, the progress report on the State legislative actions, let me add to the record at this point a memorandum that was prepared by the National Conference of Commissioners on Uniform State Laws, dated April 13, 1971. It was provided to the Congressional Research Service of the Library of Congress. It tabulates in very understandable and interesting style what has happened to the several uniform State laws that the Commissioners on Uniform State Laws have developed over the years.

In some cases there is very broad acceptance across the country within a period of a very few years and in other cases many years with very few takers.

Mr. JONES. One State that we had great hopes for this year was Minnesota. We have a very able advocate up there, State Senator Jack Davies. He, for 3 years, had a bill before the Minnesota Legislature. They are well educated on the subject and well acquainted with the subject.

The DOT material was made available to them. Notwithstanding that, we couldn't get his bill reported this year. Senator Davies has not given up, but our people who follow the legislation in Minnesota, they have become encouraged just as the Minnesota Star did, and I would like to leave for the record an editorial from the Minnesota Star of May 3.

Senator HART. Thank you.

That will be made a part of the record.

(The editorial follows:)

[The Minneapolis Star, May 3, 1971]

A FEDERAL INSURANCE APPROACH

NO-FAULT auto insurance legislation appears dead in this session of the Legislature.

Trial lawyers and lobbyists for some segments of the insurance industry have done their work well. The smokescreens they raised have been thick enough to obscure the promises of two major insurers to reduce premiums 10 to 40 percent under a no-fault system, as well as the Minnesota Poll this month which showed that 55 percent of state auto owners questioned said they were in favor of such a system.

Perhaps it is just as well. We always have had serious doubts about the possibility of pushing meaningful auto insurance reforms through the legislatures of 50 separate states. The federal approach—with Congress passing no-fault legislation for this country as a whole—would, we believe, be a simpler, swifter way to solve a problem that is of increasing concern to consumers.

The Nixon administration came close to this approach last month, but backed off under pressure from some insurance companies. A three year Department of Transportation study made a strong recommendation for a mandatory, national system of no-fault auto insurance. But in presenting the report to a Senate committee, Transportation Secretary Volpe suggested only "national goals" for insurance reform by the states, and did not set any penalty deadline.

The federal approach is not dead, however. No-fault legislation has been introduced in the House and Senate, and hearings are being conducted. The consumer-motorist might have his innings yet.

(The appendix to the statement follows:)

Exhibit to Statement of T. Lawrence Jones, President of American Insurance Association

SUMMARY OF STATE NO-FAULT AUTO INSURANCE LEGISLATION 1969–71

1971

State	Plan	Action
Alaska:		
House 25	AIA plan	Reported in the House.
Arizona:		
House 316	Massachusetts plan	No action.
House 217	Partial no-fault plan	Do.
California:		
House 117	do	Do.
House 1030	Massachusetts plan	Amended and recommitted in House.
House 1505	Partial no-fault plan	No action.
Senate 515	AIA plan	Do.
Colorado:		
House 1221	Partial no-fault plan	Died.
House 1357	do	Do.
House 1358	Keeton-O'Connell plan	Do.
House 1483	Partial no-fault plan	Do.
Connecticut:		
Senate 571	Massachusetts plan	No action.
Senate 899	do	Do.
Senate 702	AIA plan	Do.
Senate 1048	Partial no-fault plan	Do.
Delaware:		
House 4	do	Reported in the House.
House 90	AIA plan	Do.
House 133	Partial no-fault plan	Do.
Florida:		
House 1821	Partial no-fault plan (Rep. MacKay)	Do.
House 168	Keeton-O'Connell plan	Do.
House 65	AIA plan	Do.
House 322	Davies plan (similar to AIA)	Do.
House 695	Partial no-fault plan	Do.
Hawaii:		
House 181	Davies plan (similar to AIA)	Do.
House 1417	Partial no-fault plan	Do.
Senate 1279	AIA plan	Do.
H.C.R. 93	Study bill	Reported in House.
Illinois:		
House 2115	Keeton-O'Connell plan	No action.
Senate 263	Partial no-fault plan	Do.
Senate 976	do	Do.
Indiana:		
House 1416	Keeton-O'Connell plan	Died.
Senate 640	Partial no-fault plan	Do.
Kansas:		
House 1356	Davies plan (similar to AIA)	No action.
H.C.R. 1037	Study proposal	Passed in House, reported in Senate.
Maryland: House 151	Massachusetts plan	Died.
Massachusetts: House 1530	Repeal of partial no-fault law	No action. Several other bills pending affecting no-fault provisions.
Michigan:		
Senate 4	Keeton-O'Connell plan	No action.
S.R. 45	Study proposal	Do.
House 4847	Partial no-fault plan	Do.
House 4734	do	Do.
Minnesota:		
Senate 568	Davies plan (similar to AIA)	Killed in Senate subcommittee.
House 724	do	Do.
House 1737	Partial no-fault plan	Do.
House 2740	Study bill	Do.
Missouri: House 924	Massachusetts plan	Do.
Montana:		
H.J.R. 29	Study proposal	Now law.
House 451	AIA plan	Died.
Nevada:		
Senate 301	do	Do.
New Jersey:		
House 829	Study proposal	Now law.
House 2302	Partial no-fault plan	No action.
New Mexico:		
H.J.M. 13	Study proposal	Now law.
Senate 224	Partial no-fault plan	Died.
House 135	Puerto Rico plan	Do.
New York:		
House 675	Partial no-fault plan	Third reading in House.
Senate 4400	Partial no-fault plan (Sen. Gordon)	Reported in Senate.
Senate 4850	N.Y. Insurance Department bill	No action.
Senate 5792	AIA plan	Do.

State	Plan	Action
North Dakota:		
S.C.R. 4028	Study proposal	Now law.
S.C.R. 4029	do	Do.
Senate 2479	Partial no-fault plan	Died.
Ohio: House 381	do	No action.
Oklahoma: House 1270	AIA plan	Do.
Oregon:		
House 1851	do	Tabled in House.
House 1300	Partial no-fault plan	No action.
S.J.R. 19	Study proposal	Do.
Pennsylvania:		
H.R. 34	do	Do.
House 542	Partial no-fault plan	Do.
House 37	Constitutional amendment	Do.
Rhode Island: House 1470	Massachusetts plan	Do.
Tennessee:		
H.J.R. 119	Study proposal	Do.
S.J.R. 53	do	Do.
Texas: H.C.R. 110	do	Do.
Washington:		
House 230	Partial no-fault plan	Do.
Senate 654	Keeton-O'Connell plan	Do.
House 696	Study proposal	Passed in House.
West Virginia:		
House 1209	AIA plan	Died.
Senate 423	Partial no-fault plan	Do.
S.C.R. 15	Study proposal	Do.
Wisconsin: House 373	Massachusetts plan	No action.
Congress:		
House 7514	Moss proposal	In committee.
Senate 945	Hart proposal	Do.
1970		
Alaska: House 809	AIA plan	Died.
California:		
Senate 797	do	Do.
House 1450	Partial no-fault plan	Do.
H.R. 146	Study proposal	Do.
Hawaii:		
House 1932	AIA plan	Do.
Senate 1812	do	Do.
Senate 1959	State fund	Do.
House 1334	Keeton-O'Connell plan	Do.
Massachusetts:		
House 1928	AIA plan	Do.
House 610	Keeton-O'Connell	Do.
House 611	do	Do.
House 6041	Partial no-fault plan	Do.
Senate 1430	do	Do.
Senate 1580	do	This is the partial no-fault bill which became law. Effective Jan. 1, 1971.
Senate 500	do	Died.
New York:		
House 842	Keeton-O'Connell plan	Do.
House 6013	Partial no-fault plan	Do.
House 6133	N.Y. Insurance Department bill	Do.
Senate 8849	AIA plan	Do.
Pennsylvania:		
H.R. 197	Study proposal	Do.
House 2279	Constitutional amendment	Do.
Rhode Island: Senate 791	Keeton-O'Connell plan	Do.
West Virginia: H.C.R. 8–XX	Study proposal	Do.
Congress: Senate 4339	Hart proposal	Do.
1969		
California:		
Senate 116	Keeton-O'Connell plan	Died.
Senate 1141	Partial no-fault plan	Do.
Colorado: House 1466	Keeton-O'Connell plan	Do.
Connecticut: House 6763	Partial no-fault plan	Do.
Delaware: House 335	do	Do.
Illinois: House 402	Keeton-O'Connell plan	Do.
Massachusetts:		
House 4439	do	Do.
House 1909	Partial no-fault plan	Do.
House 4440	do	Do.
Michigan: Senate 1022	Keeton-O'Connell plan	Do.
New York: Senate 2803	do	Do.
Rhode Island: House 1144	do	Do.
Wisconsin: Senate 204	do	Do.
Puerto Rico: Senate 334	Postponed to Jan. 1, 1970, the effective date of the Automobile Accident Social Protection Act (a partial no-fault plan) which became law in June 1968.	Enacted, effective on Jan. 1, 1970.

Exhibit to Statement of T. Lawrence Jones, President of American Insurance Association

SUMMARY OF STATE NO-FAULT AUTO INSURANCE LEGISLATION 1969–71

1971

State	Plan	Action
Alaska:		
House 25	AIA plan	Reported in the House.
Arizona:		
House 316	Massachusetts plan	No action.
House 217	Partial no-fault plan	Do.
California:		
House 117	do	Do.
House 1030	Massachusetts plan	Amended and recommitted in House.
House 1505	Partial no-fault plan	No action.
Senate 515	AIA plan	Do.
Colorado:		
House 1221	Partial no-fault plan	Died.
House 1357	do	Do.
House 1358	Keeton-O'Connell plan	Do.
House 1483	Partial no-fault plan	Do.
Connecticut:		
Senate 571	Massachusetts plan	No action.
Senate 899	do	Do.
Senate 702	AIA plan	Do.
Senate 1048	Partial no-fault plan	Do.
Delaware:		
House 4	do	Reported in the House.
House 90	AIA plan	Do.
House 133	Partial no-fault plan	Do.
Florida:		
House 1821	Partial no-fault plan (Rep. MacKay)	Do.
House 168	Keeton-O'Connell plan	Do.
House 65	AIA plan	Do.
House 322	Davies plan (similar to AIA)	Do.
House 695	Partial no-fault plan	Do.
Hawaii:		
House 181	Davies plan (similar to AIA)	Do.
House 1417	Partial no-fault plan	Do.
Senate 1279	AIA plan	Do.
H.C.R. 93	Study bill	Reported in House.
Illinois:		
House 2115	Keeton-O'Connell plan	No action.
Senate 263	Partial no-fault plan	Do.
Senate 976	do	Do.
Indiana:		
House 1416	Keeton-O'Connell plan	Died.
Senate 640	Partial no-fault plan	Do.
Kansas:		
House 1356	Davies plan (similar to AIA)	No action.
H.C.R. 1037	Study proposal	Passed in House, reported in Senate.
Maryland: House 151	Massachusetts plan	Died.
Massachusetts: House 1530	Repeal of partial no-fault law	No action. Several other bills pending affecting no-fault provisions.
Michigan:		
Senate 4	Keeton-O'Connell plan	No action.
S.R. 45	Study proposal	Do.
House 4847	Partial no-fault plan	Do.
House 4734	do	Do.
Minnesota:		
Senate 568	Davies plan (similar to AIA)	Killed in Senate subcommittee.
House 724	do	Do.
House 1737	Partial no-fault plan	Do.
House 2740	Study bill	Do.
Missouri: House 924	Massachusetts plan	Do.
Montana:		
H.J.R. 29	Study proposal	Now law.
House 451	AIA plan	Died.
Nevada:		
Senate 301	do	Do.
New Jersey:		
House 829	Study proposal	Now law.
House 2302	Partial no-fault plan	No action.
New Mexico:		
H.J.M. 13	Study proposal	Now law.
Senate 224	Partial no-fault plan	Died.
House 135	Puerto Rico plan	Do.
New York:		
House 675	Partial no-fault plan	Third reading in House.
Senate 4400	Partial no-fault plan (Sen. Gordon)	Reported in Senate.
Senate 4850	N.Y. Insurance Department bill	No action.
Senate 5792	AIA plan	Do.

State	Plan	Action
North Dakota:		
S.C.R. 4028	Study proposal	Now law.
S.C.R. 4029	do	Do.
Senate 2479	Partial no-fault plan	Died.
Ohio: House 381	do	No action.
Oklahoma: House 1270	AIA plan	Do.
Oregon:		
House 1851	do	Tabled in House.
House 1300	Partial no-fault plan	No action.
S.J.R. 19	Study proposal	Do.
Pennsylvania:		
H.R. 34	do	Do.
House 542	Partial no-fault plan	Do.
House 37	Constitutional amendment	Do.
Rhode Island: House 1470	Massachusetts plan	Do.
Tennessee:		
H.J.R. 119	Study proposal	Do.
S.J.R. 53	do	Do.
Texas: H.C.R. 110	do	Do.
Washington:		
House 230	Partial no-fault plan	Do.
Senate 654	Keeton-O'Connell plan	Do.
House 696	Study proposal	Passed in House.
West Virginia:		
House 1209	AIA plan	Died.
Senate 423	Partial no-fault plan	Do.
S.C.R. 15	Study proposal	Do.
Wisconsin: House 373	Massachusetts plan	No action.
Congress:		
House 7514	Moss proposal	In committee.
Senate 945	Hart proposal	Do.
1970		
Alaska: House 809	AIA plan	Died.
California:		
Senate 797	do	Do.
House 1450	Partial no-fault plan	Do.
H.R. 146	Study proposal	Do.
Hawaii:		
House 1932	AIA plan	Do.
Senate 1812	do	Do.
Senate 1959	State fund	Do.
House 1334	Keeton-O'Connell plan	Do.
Massachusetts:		
House 1928	AIA plan	Do.
House 610	Keeton-O'Connell	Do.
House 611	do	Do.
House 6041	Partial no-fault plan	Do.
Senate 1430	do	Do.
Senate 1580	do	This is the partial no-fault bill which became law. Effective Jan. 1, 1971.
Senate 500	do	Died.
New York:		
House 842	Keeton-O'Connell plan	Do.
House 6013	Partial no-fault plan	Do.
House 6133	N.Y. Insurance Department bill	Do.
Senate 8849	AIA plan	Do.
Pennsylvania:		
H.R. 197	Study proposal	Do.
House 2279	Constitutional amendment	Do.
Rhode Island: Senate 791	Keeton-O'Connell plan	Do.
West Virginia: H.C.R. 8–XX	Study proposal	Do.
Congress: Senate 4339	Hart proposal	Do.
1969		
California:		
Senate 116	Keeton-O'Connell plan	Died.
Senate 1141	Partial no-fault plan	Do.
Colorado: House 1466	Keeton-O'Connell plan	Do.
Connecticut: House 6763	Partial no-fault plan	Do.
Delaware: House 335	do	Do.
Illinois: House 402	Keeton-O'Connell plan	Do.
Massachusetts:		
House 4439	do	Do.
House 1909	Partial no-fault plan	Do.
House 4440	do	Do.
Michigan: Senate 1022	Keeton-O'Connell plan	Do.
New York: Senate 2803	do	Do.
Rhode Island: House 1144	do	Do.
Wisconsin: Senate 204	do	Do.
Puerto Rico: Senate 334	Postponed to Jan. 1, 1970, the effective date of the Automobile Accident Social Protection Act (a partial no-fault plan) which became law in June 1968.	Enacted, effective on Jan. 1, 1970.

NATIONAL CONFERENCE OF COMMISSIONERS ON
UNIFORM STATE LAWS,
Chicago, Ill., April 13, 1971.

1. UNIFORM ADOPTION ACT

1. Proposed, 1949. Approved, 1953.
2. First adoption, 1957.
3. The Act was adopted in only 2 states and in 1967 a committee was appointed to review the Act. A revised Uniform Adoption Act was approved in 1969.

2. UNIFORM COMMERCIAL CODE

1. Proposed, 1940, that Code should be undertaken as soon as funds were available. Drafting commenced, 1943. Approved, 1951.
2. First adoption, 1953.
3. The Code has been adopted in every jurisdiction except Louisiana.

3. UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT

1. Proposed, 1936. Approved, 1939.
2. First adoption, 1940.
3. The Act was adopted in 11 states. In 1952 a committee was appointed to review the Act. A revised Uniform Contribution Among Tortfeasors Act was approved in 1955 and has been adopted in 5 states.

4. UNIFORM CRIMINAL EXTRADITION ACT

1. Proposed, 1921. Approved, 1926.
2. First adoption, 1927.
3. The Act was adopted in 16 states. In 1930 a committee was appointed to review the Act. A revised Uniform Criminal Extradiction Act was approved in 1936 and has been adopted in 39 jurisdictions.

5. UNIFORM DIVORCE RECOGNITION ACT

1. Proposed, 1946. Approved, 1948.
2. First adoption, 1949.
3. The Act has been adopted in 10 states.

6. UNIFORM INSURERS LIQUIDATION ACT

1. Proposed 1934. Approved, 1939.
2. First adoption, 1939.
3. The Act has been adopted in 28 states.

7. UNIFORM LIMITED PARTNERSHIP ACT

1. Proposed, 1914. Approved, 1916.
2. First adoption, 1917.
3. The Act has been adopted in 46 jurisdictions.

8. UNIFORM MOTOR VEHICLE CERTIFICATE OF TITLE AND ANTI-THEFT ACT

1. Proposed, 1951. Approved, 1955.
2. First adoption, 1957.
3. In 1958 the provisions of this Act were incorporated into the Uniform Vehicle Code promulgated by the National Committee on Uniform Traffic Laws and Ordinances and we do not have a breakdown of the states that have adopted those portions.

9. UNIFORM PARNERSHIP ACT

1. Proposed, 1912. Approved, 1914.
2. First adoption, 1915.
3. The Act has been adopted in 43 jurisdictions.

10. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

1. Proposed, 1948. Approved, 1950.
2. First adoption, 1951.
3. This Act has been adopted in all jurisdictions.

11. MODEL ANTI-DISCRIMINATION ACT

1. Proposed, 1963. Approved, 1966.
2. First adoption, 1967.
3. This Act is a Model Act and the Commissioners are not obligated to press for its adoption. The criteria for Model Acts is that where, in the judgment of the National Conference, uniformity between the states on a subject is not necessary or desirable, but where it would be helpful to have legislation which would tend toward uniformity where enacted, acts on such subjects are promulgated as Model Acts. While we understand the Anti-Discrimination Act has been used as a model for legislation in a number of states, we have been advised of only 2 states where it has been enacted in its entirety.

12. UNIFORM DECEPTIVE TRADE PRACTICES ACT

1. Proposed, 1961. Approved, 1964.
2. First adoption, 1965.
3. The Act was adopted in 5 states. In 1966 an amendment to 1 section of the Act was approved and the Act as amended has been adopted in 9 states.

13. MODEL DEFENSE OF NEEDY PERSONS ACT

1. Proposed, 1963. Approved, 1966.
2. First adoption, 1967.
3. In 1970 the Act was revised to supplant the county option approach with one that centralizes responsibility in a single state public official and the name of the Act was changed to Model Public Defender Act.

14. UNIFORM MARRIAGE LICENSE APPLICATION ACT

1. Proposed, 1948. Approved, 1950.
2. First adoption, 1951.
3. This Act was adopted in only 1 state and was withdrawn, it appearing that existing legislation in most of the states was adequate.

15. MODEL RULES GOVERNING PROCEDURE IN TRAFFIC CASES

1. Proposed 1956. Approved, 1957.
2. First adoption, 1958.
3. The Rules have been adopted in 10 states.

Senator HART. We will recess while I take a phone call.

(Short recess.)

Senator HART. With apologies for having held them so long, we welcome the spokesmen of the Automotive Service Industry Association, Mr. Harold Halfpenny, their counsel whom we have heard before and are delighted to see again.

STATEMENTS OF HAROLD T. HALFPENNY, LEGAL COUNSEL, AUTOMOTIVE SERVICE INDUSTRY ASSOCIATION, HALFPENNY, HAHN & ROCHE, CHICAGO, ILL.; ACCOMPANIED BY WILLIAM F. RAMP, DIRECTOR OF MARKETING, ALEMITE INSTRUMENT DIVISION, STEWART-WARNER CORP., CHICAGO, ILL.; AND MARVIN RICHER, ENGINEER, DIVISION OF APPLIED POWER INDUSTRIES, BLACKHAWK MANUFACTURING CO., MILWAUKEE, WIS.

Mr. HALFPENNY. Thank you, Senator.

I have had the privilege of appearing before you a number of times and in committees you have chaired, and we appreciate your efforts on behalf of the various segments of the automotive industry.

My name is Harold T. Halfpenny, I am a partner in the law firm of Halfpenny, Hahn, & Roche with offices at 111 West Washington

Street, Chicago, and am here as general counsel for Automotive Service Industry Association. With me are William F. Ramp, Jr. of the Stewart-Warner Corp., Chicago, and Mr. Marvin Richer of Applied Power Industries, Inc., Milwaukee.

Both of these men are experts in the field of periodic motor vehicle inspection, diagnostic systems and so forth.

Due to the lateness of the hour, Senator, I will make a few brief remarks and request that my comments be put in the record so the committee will have the benefit of these two men that are real experts in the field.

Senator HART. Let's order the statements of all three printed in the record in full and proceed as you like.

Mr. HALFPENNY. We appear on behalf of Automotive Service Industry Association, a national trade association with over 5,000 members engaged in various phases of the automotive aftermarket. These members are independent manufacturers, remanufacturers, warehouse distributors, heavy-duty distributors and wholesalers of automotive replacement parts, equipment, tools, chemicals, paint, refinishing materials, supplies, and accessories.

Our concern is with the effect of this bill on the replacement parts industry, and on the driving public which is the ultimate concern for us, for the vehicle manufacturers, and for Congress.

We will divide our discussion among us. Mr. Ramp and Mr. Richer will give our suggestions on diagnostic and periodic motor vehicle inspection. I will make some general observations on other sections of the bill.

First, certain testimony before this committee makes it appropriate for me to give a very brief description of the replacement industry. That is the testimony of Ralph Nader—as quoted in the newspapers—that the auto industry "coldly and with slide rule precision" has produced cars that need repairs so often that it creates a multibillion dollar replacement market "marked by enormous and monopolistic company markups" on parts.

I want to point out that this portrayal of "monopolistic" firms in the replacement industry is untrue and is refuted by the industry statistics. The only statistics on manufacturers of replacement parts are those assembled by Automotive Service Industry Association. While only ASIA members contribute to these statistics, they include the larger parts manufacturers, aside from the vehicle manufacturers, who are not members.

These figures are representative of the industry as a whole. Forty-five percent of ASIA manufacturer members have annual gross sales of less than $1 million; 78 percent less than $5 million; 86 percent less than $10 million, and only 1 percent have more than $25 million.

If they are talking about markup on parts, if the witness intended to refer to wholesales, the figures are similar. According to the 1967 U.S. census, 85½ percent of all wholesalers had an annual volume of less than $500,000; less than 1 percent had over $5 million.

The business of these wholesalers was described by testimony summarized by the Court of Appeals for the Eighth Circuit (Moog Industries, 1956). "Their business is keenly competitive and consists of the sales of thousands of items at small margins of profit."

In short, the replacement industry is not composed of grasping giants, but of small businesses doing their best to supply the needs of the motoring public for the parts necessary to keep their cars running.

Turning from the industry to the bill now under consideration, let me suggest that the concept of "property loss reduction" standards is one which should be approached with great caution, and with a keen appreciation of the fact that it would change the basic philosophy of the Traffic and Motor Vehicle Safety Act.

The act as it now stands authorizes the setting of "motor vehicle safety" standards, which are aimed at preventing the unreasonable risk of accidents and particularly risk to persons of injury or death resulting from such accidents. This has been accepted as legitimate matter for public concern, and for governmental regulations.

S. 976 would enter an entirely new field by authorizing "property loss reduction" standards, aimed at reducing the "economic loss suffered by the public as a result of property damage to motor vehicles involved in accidents."

We submit that this drastic change of direction should not be undertaken without serious consideration of the basic question: Is it an appropriate exercise of national power to interfere with the freedom of choice of the motoring public, and with the business judgment of the automobile industry, solely in order to reduce property damage?

In this connection, it is doubtful whether the insurance companies need any protection. A study undertaken on behalf of the Senate Antitrust and Monopoly Subcommittee in 1968 concluded that the insurance companies are making "exceptional profits" despite their claims to the contrary. As for a possible reduction in premiums paid by the motorist if there were a reduction of property loss—this would be a long and uncertain process.

Turning to specific provisions of the bill, we offer the following comments:

We are concerned with the section (sec. 5, adding sec. 128 to the Motor Vehicle Act) providing that the Secretary shall promulgate motor vehicle safety and property loss reduction standards requiring that all motor vehicles manufactured after January 1, 1975, be "so designed and constructed as to facilitate motor vehicle inspection, and to facilitate the repairs necessary to meet the requirements of such inspections."

This provision is unrelated to either motor vehicle safety or property loss reduction. It is suggested that it does not come within the general purposes of either the Motor Vehicle Safety Act or of S. 976.

We are also concerned with the difficulty of limiting "property loss reduction standards." We would object to any requirement that parts be radically changed by legislative fiat instead of the objective knowledge of dedicated engineers and designers.

Senator, ASIA has always supported periodical motor vehicle inspection, and has worked actively to promote it. Our objections are made from a practical point of view rather than in protest against the basic requirement of inspection.

From that point of view, the number of inspections required would be almost impossible to perform adequately. Further, they would be so burdensome and expensive that the motoring public would react against the entire program. For example, if a man purchased a new

car, was involved in an accident, and thereafter sold the car, he could be subject to three inspections within a very short time.

One of the things that we are very concerned about is section 501(a)(2) which would have drastic consequences. This is the provision that no inspector may own or receive any benefit from a business engaged in the repair or sale of motor vehicles, automotive repair parts or accessories. This would disqualify hundreds of thousands of garages, service stations and car dealer repair shops from performing inspections. This is the group best qualified to so act. In turn the inspection function would be thrown into the hands of only persons who could finance expensive equipment. This would make the cost of inspections very high, and would drain trained mechanics away from the repair of vehicles—where they are badly needed—and put them into the inspection business.

Now the two men that accompany me here will explore these facets of the bill, and we do appreciate this opportunity to express the views of the Automotive Service Industry Association.

First, Mr. W. F. Ramp, Jr., of Stewart-Warner, who, as I stated, has been in this business all of his life will make a statement.

Mr. RAMP. My name is William F. Ramp, Jr., and I am director of marketing in the Automotive and Instrument Division of the Stewart-Warner Corp., Chicago, Ill.

I appear before you with a 26-year background in the automotive equipment industry. I have been an equipment serviceman, equipment salesman, part owner of a small equipment business, and during the last 4 years have been directing the marketing and research and development of automotive equipment in the fields of lubrication equipment, wheel balancing and wheel aligning equipment, tire changers, headlight testers and aimers, and the development of diagnostic lane equipment and single bay diagnostic equipment.

I am asking that consideration be given for private industry to be a part of the worthwhile endeavor of periodic motor vehicle inspection because I feel that the inspection aspects of PMVI can best be handled by private industry.

May I preface the rest of this testimony by saying that, as an individual and as an executive in a corporation which makes equipment for the automotive industry, I commend this committee for its concern with motor vehicle inspection. As a taxpayer, husband, and father, I want to see safe automobiles on the streets and roads of America, and I am sure I speak for my industry in this regard.

I would like to address my comments to a particular portion of bill S. 976 and, as an equipment man, point out some facts of which I am sure you would want to be aware.

In your introduction of this amendment, I would specifically like to discuss title V, section 501S (a. pars. 1 and 2).

With due respect to you, Senator Hart, and in full agreement with this intent, I would like to point out that the above-mentioned paragraphs pose a formidable task for the taxpayers, whether at State or Federal level.

Based upon the millions of automobiles that are sold, both new and used, plus the collision statistics for each year, I am sure that the amount of inspections required would be in the many millions.

I am sure you are aware that the proper steps that have to be taken in diagnosing the ills of an automobile are formidable and require trained manpower and sophisticated and costly equipment. At this point in time, to my knowledge, the least expensive single bay diagnostic unit to accomplish this, completely equipped and installed, runs between $12,000 and $13,000. This type of unit utilizes an all purpose diagnostic lift with a built-in capability dynamometer, checking of alignment, check for balance, removal of wheel for checking of brakes, headlight testing, and the inspection of the general condition of exhaust system and front-end parts of the automobile. It also contains an electronic motor analyzer for engine performance.

The equipment industry has run the gamut over the past few years of trying to design the very best at the lowest cost and the most accurate diagnostic equipment that we can design. We, as an industry, have spent millions in research and development for better equipment; but to be completely candid, we are very frustrated by the lack of standardization for meeting the requirements of the various statutes that exist throughout the country.

Let me cite an example. There are a few States that have procedures for checking the conditions of automobile brakes. One State says the wheels cannot be removed, another State says take the wheels off. In taking the wheel off to check for brake condition, you have a time factor that I believe the public cannot live with. If the wheel stays on, you have another problem. How, and at what speeds, do you determine the fade factor that shows wear of the brakes? There is equipment available today that will detect fade at speeds of 20 miles per hour; 30 and 40, and even 60 miles per hour. The low speed units are mechanical in nature and one high speed unit measures the coefficient of heat generated by the friction on the drum when the brakes are applied. Gentlemen, if you were an equipment manufacturer and willing to build equipment and spend the money for research and development which way would you go in designing brake testing equipment? If the American public is to be benefited by this or any other bill concerning periodic motor vehicle inspection, and meet the timetables as outlined, all the standards for the diagnostic guidelines must come quickly.

One of the most disturbing things, again with due respect to this amendment, is that we are basically saying that the present periodic motor vehicle inspection statutes of many States will be done way with; and also that all independent garage owners, service station operators, and new car dealers are banned from being a part of this nationwide inspection team.

Let me point out that although the automotive repair business has come in for criticism, for every bad one there are many good ones. There exists in America today a large cadre of experienced, honest businessmen and mechanics who are competent and should play a part in this endeavor. We recognize that already there exists a shortage of trained mechanics and our industry is doing everything in their power with the help of the cities and States, vocational schools, grants of Federal money, and on-the-job training. All of this effort is to build a larger group of trained young men. And we are making progress.

I would have no way to accurately calculate how many inspection stations would be necessary under this proposed amendment, but I

known that to properly staff the thousands necessary would deplete our already short supply of technicians.

To think of the cost to the taxpayers to implement this program staggers the imagination. Based on $12,000 in equipment alone for just a single bay unit, not counting land costs and administrative and technician costs, I would estimate somewhere between $1½ to $2 billion. This would not include the cost of the more expensive special equipment required to determine whether a vehicle which has been damaged in a crash was properly repaired. This item would substantially increase the cost estimates given here.

With proper guidelines and whether administered by the Federal Government or delegated to the State, you have at your disposal a large group of competent, honest businessmen willing to invest their money, and you have a group of equipment manufacturers willing—as soon as we have the standards—to keep investing our moneys in designing and producing the equipment necessary to do the job.

All of us are at your disposal. I hope you will please call upon us so that together we can in the most economical way possible for the American taxpayer give to him competent periodic motor vehicle inspection.

Thank you, Senator.

Senator, the next speaker will be Mr. Richer, who, I feel, is probably the most qualified man in the country to discuss diagnostic centers. Although he is a young man, this is a young business, and he has had more experience than I think anybody in the entire industry.

Mr. RICHER. My name is Marvin Hans Richer, residing at S31 W24890 Green Valley Lane, Waukesha, Wis. For the past 12 years, I have been directly involved in the automotive service business. I began as a specialist mechanic, actually doing all the technical work necessary to correct and maintain a vehicle in safe and proper working order. In 1961, I started a business called Richer Automotive in Rochester, Minn., concerned with the maintenance and service of all types of vehicles. This business is in operation today and services 2,000 cars per year. In 1964, I joined the Mobil Corp.'s special projects division diagnostic center program.

I held various positions within the program from diagnostician to service manager. My employment at Mobil was due directly to my practical and working knowledge of automotive and automotive service centers. I had the experience of personal contact in the establishment of five service centers in the United States. I also had an opportunity to learn the economics of a national service business.

In 1969, I joined Applied Power Industries as a product planner. My direct responsibilities are concerned with the technical development and planning of new products and machines which are used to diagnose and repair automotive systems that have failed or been damaged in use. These service systems cover all aspects including collision damage repair, performance testing equipment, wheel, brake, electrical and major frame repair. Our products are also designed for tire service/repair, retreading, et cetera. In this work I am intimately concerned with the economics, cost and quality of the repair of vehicles. During this time, I have gathered a variety of specific and general knowledge and experience which I will be happy to share with you today.

Please feel free to ask any questions you may have and I will endeavor to answer them to the best of my ability.

I would like to share with you some of my observations on the technical and manpower requirements of your proposed bill. I hope that any information I may provide you with will enable you to draft and pass a just and fair bill to all concerned.

Let me begin by directing some comments to title V—diagnostic inspections, registrations, and titling standards.

Section 501, paragraph 1, seems unclear to me as to what is meant by "Safety Regulated Mechanism, Subsystem, or Functional Nonoperationl Part." For purposes of this discussion, let us assume that the reference made includes such things as the frame, or subframe, of an automobile. A damaged frame, if not correctly repaired, can seriously affect the handling qualities of an automobile. Therefore, such damage results in a safety-related mechanism not functioning properly, to the extent that the vehicle is actually unsafe to drive.

The method for detecting a frame problem requires a visual check by the mechanic as well as the use of somewhat sophisticated equipment, such as frame gages, wheel alinement equipment, and inspection devices which incorporate lights, and magnifying lenses. The type of individual who has the training and skill to run these machines and do this inspection would be an ex-body repairman.

If he also were required to estimate the cost of such repairs, he must have estimating experience. This particular segment of the industry is currently experiencing a serious problem in obtaining and retraining qualified repairmen. There is a question whether a sufficient number of trained personnel could or would be available within the next 5 years without a major national training effort. One of our corporate divisions, Bear Manufacturing Corp., runs such a training school in this technology and I am familiar with the details and conditions of teaching this skill.

Section 501, paragraph 2—the inspector referred to in this paragraph would be "trained to perform duty." My question—trained by whom? Training an individual to put marks on a check list is one thing, training a person to interpret what is unsafe or safe in a highly complex mechanical mechanism is quite another. At present, there is a severe lack of adequate facilities in addition to a lack of funds, Federal or otherwise to train such people.

The other major consideration in any technical service program is the manpower requirement. There are almost 100 million owned vehicles in use that do not have any built-in diagnostic compatibility to machines presently available, including the computer. Because of this, it is difficult to believe that anyone but a trained mechanic could do a thorough and accurate diagnosis on this vehicle population.

You must consider when someone suggests the use of mechanics as inspectors, that a good mechanic is earning considerably more than an inspector's position could pay today. Therefore, the type of individual available would not be the better repairman.

This presents a serious problem at the onset because one of the most significant goals that must be achieved if the system is to work, must be to insure its believability to the public in its early stages. If the centers were to be staffed with unqualified people initially, it would seriously damage the image of such a program in the long

range. It is also most certainly a necessary requirement that the technician involved be certified by some regulating agency.

This certification must also include a constant retraining program to insure a constant level of technical competence. The role of the Federal Government in such a certification program could be much the same as the present airplane repairmen, certified by the FAA, but trained by private or State agencies. However, the gross numbers of vehicles to be repaired when compared to aircraft is staggering and puts the automotive training program in an entirely different light.

The other major point of this paragraph deals with the motor vehicle inspector not owning or receiving any benefits from the repair side of the inspection. As written, it is somewhat vague as to the alternate solution to the inspection system you propose. As interpreted, this would involve State or privately owned certified stations through a given State which could devote their entire effort to inspection. Let's assume that the method to be used would be the State-owned inspection stations.

Presently, as outlined in your bill, the States would have the necessary incentives to establish such stations as soon as guidelines have been established according to highway safety program standard No. 1.

Referring to a study PB 195733 diagnostic center, vol. 1, done by Northern Research Engineering Corp., Cambridge, Mass., July 1, 1970, I quote:

> If all motor vehicles are to be inspected only at diagnostic centers, it will be necessary to establish a greater number of new centers. Presently, there are about 286 existing in the U.S. Based on NREC's 1975 projections, the number of centers required to adequately inspect the vehicle population is about 7,000.

Using this same report, they estimate that the average cost of a building for such a center to be at $10 a square foot in the extreme climate region.

I would like to add here I think this is very, very low— far too low.

Everything indicates that by the time that this program could be put into place, this cost would be significantly higher. Assume that the total cost of the building completed with a blacktop parking lot would be $100,000, which does not include the cost of the equipment, furniture, forms, et cetera; the equipment for such a center would at present cost $30,000 to $35,000, plus installation.

When you add the cost of land and installation of such equipment, your total reaches nearly $200,000 per center. This type of center would be one which you might find in a larger metropolitan area. Total cost of installing these 7,000 stations would range upward from $1.5 billion. You must also consider that such a program would incur administrative costs of such magnitude that the $1.5 billion is only a starting point.

The other question that would arise after such a State-owned and operated program would be implemented is what to do with the private inspection stations which are presently licensed by those States. These stations have invested thousands of dollars in equipment to comply with State regulations which would be changed. Such changes will, in effect, obsolete the private inspection station and, in addition, they would lose the income derived from such inspections.

Possibly all of my observations have been accounted for by your technical advisors, but in conclusion, I would like to restate my concerns with your manpower problems and requirements. It has been my direct and practical experience in training and supervising automotive diagnosticians that this type of work and the salaries commensurate will not attract trained mechanics; therefore, a training program on a very large and expensive scale will be necessary to accomplish before any part of it could function.

Thank you, Senator.

Senator HART. Thank you, and I particularly thank you, Mr. Richer, for the practical caution that you gave us.

You tell us, and properly, that if the system, as we visualize it, is to work, it has to be believable from the very early stages. At the very least your message should persuade those of us who are associated with the bill to be sure we don't advertise is as producing something which in fact it won't be able to produce at least for a period of time.

That is one of the criticisms of the political system and it would be a fair criticism of this if we weren't careful.

Having said that, would you agree that what we should be attempting to do is develop a program or assist in the development of a program across the country which, whatever its cost, would be less than the benefits that honestly could be identified as flowing from it?

In other words, when we talk about programs like this, we should be talking under the same discipline that we try to apply to Corps of Engineers projects, the cost-benefit ratios is the phrase they use there, that that should apply to this thing, too; is that what you are telling us?

Mr. RICHER. I would say "Yes." I would say initially when you set up the original parameters for such a program that you should probably set them up to do what minimum you would require, and anything that you would get from such a program over that would be plus for you.

Mr. RAMP. I think it is a very fair question, Senator. This cost ratio, Mr. Richer gave the example of State control, in my example, I was talking of independent businessmen being regulated by Federal or State to a point which is possible as FAA does it where it is pretty scary, if I may use that phrase, from their standpoint to make a mistake. I think the cost ratio is tremendous.

What I think in my statement I was saying is we have a lot of trained men, we have some equipment, the ability to do this job at that level we think is easier and less costly than to take it on a full-blown national scale, as Mr. Richer said, from a manpower standpoint alone is very frightening due to the depletion of mechanics. This is a very frightening thing, because if periodic motor vehicle inspection is not done correctly, then it is of no value to anyone. If loose ball joints are allowed to hang on the front of an automobile after an inspection because someone forgot to look at them or because they were not part of a standard, they can create an accident on a highway as quickly as a blown tire at 60 miles per hour, for example.

Mr. HALFPENNY. Senator, Mr. Richer tells me that the Mobil centers after a great expenditure of money have been generally abandoned, is that correct?

Mr. RICHER. Yes. They started out with five centers constructed over the years from 1963 to 1966, and at present I believe they are only operating three. A couple of those are not on a profitable basis. So the large full-blown diagnostic center as such has not been a practical economic venture for Mobil as well as some other companies that have closed theirs.

One thing, Senator, I would like to add here, after I prepared this and started thinking about it in a little more depth, I find there are a couple of things to consider. In the presently envisioned diagnostic center—this would be either the lane type or the bay type, the lane being where you drive straight through and the bay being where you drive in and back out—at present there is not any way available of making an accurate diagnosis on a short-time basis to effectively determine whether or not a frame has been damaged severely enough to cause a safety problem.

Let us just disregard that for a second and say we just check the other things that could be checked today. Probably the full rate you could get on a drive in-back out type of situation would be somewhere around three to four cars per hour. This would be a full check. As far as the lane type operation, there really is not too much difference in productivity with the exception you do have the capability to lengthen the lane which in turn increases the productivity. This requires more cost and more manpower.

Senator HART. This does not take care of the hundred million cars that one of you reminded us would be on the road.

Mr. RAMP. Yes, sir.

Senator HART. But to the extent that the new car can be required to have the design which enables one to make the diagnostic testing or will apply the instruments and get the readbacks, and I think our first thought should be how do we attempt to insure the cars that will be coming on the roads, putting aside the problem with the ones we have already here, the ones that come on the road are designed consciously to reduce to a minimum both the expense and the unreliability of whatever testing procedures and diagnoses we can get.

I know that is easier said than done. Two days ago we had testimony from the automotive tank center, the Army's transportation center, and they showed several what I would call true diagnostic machines, computerized, put the tape in, and a Pfc. could drive the car he could read the test. He did not have to have this expert training.

So there is this down the road someplace.

Mr. RAMP. Senator, let me make a comment if I may about that, sir. The equipment industry today has the technology, the ability and most importantly the desire to bring about any type of equipment to any sophistication that is necessary to do the job. Computerized readouts are today a reality. This is no dream. The pushbutton age, so to speak, is here as it applies to diagnostic to an extent. But, Senator, where we have the stumbling block, again I come back to the standards and the guidelines, where we really have the problem, if I may get it down to really a basic point, is without knowledge of where we are going and how we are going to get there, there is no one with the exception of maybe a few people that have R. & D. money to excess that are going to try and outguess what is going to be needed, and this is a very serious thing.

Senator HART. You are saying that until the public is advised what standards should be met by the vehicles, you do not know what equipment to design to find out whether it meets the standard?

Mr. RAMP. That is correct.

Senator HART. Once the standards are out your technology will permit you to develop the machines?

Mr. RAMP. Both Mr. Richer and I are building and supplying and installing diagnostic centers, both drive-through and bay type. For instance, let us say the Department of Transportation engineers would say that a road simulator, for instance, was necessary for the front end to discover loose ball joints. To my knowledge at this point in time there is none available, and yet the capability to bring about a so-called road simulator is not beyond any of us to do so almost within a matter of months. But a road simulator is going to be fairly expensive and the cost—the tool and die processing and engineering, et cetera, costs money, and that is a typical example of what I might say we stumble on when we look at the future.

Mr. RICHER. Senator, might I add something along the same lines as you were mentioning about the Army showing you their capability of diagnosing a tank or a vehicle.

Senator HART. They were wheel vehicles.

Mr. RICHER. Anything that moves I would take. I have seen some of the reports that have been published on their program, and I believe it covers any vehicle, doesn't it—tanks, guns, anything that moves?

The military, or let's for the present just define it as general Government, has the ability to say if I want to buy a vehicle, I want this vehicle in this box. The box is 5 feet deep and it has four wheels and it does this and it does that, and everyone that comes out at the end of the production line is the same. We have a distinct problem in the automotive aftermarket; we not only have many boxes, they all contain different components within the box. Some of the basic things exist. I am not saying they are totally different. But we do have this problem that it is a little bit more complex than what the Army might have at this particular point.

I think it is only fair that we get on the right wavelength and understand what we are trying to get across in that aspect.

Senator HART. I think you are getting across very well.

Mr. Sutcliffe.

Mr. SUTCLIFFE. Let me ask you a few questions to see if I understand your problems and perhaps we can reflect upon the legislation together.

You point out that we cannot make significant advances in technology for testing until we know what items the National Highway Traffic Safety Administration thinks will be required to be tested in their vehicle-in-use standards. I guess a corollary to that is you are also asking for standards—and these are performance standards—that there be some parameters set down similar to perhaps SAE standards for the kind of thread spacing for a spark plug in terms of the equipment that is being used for the testing.

In other words, you have to have some kind of a standardization to help put the vehicles in the kind of boxes that the Army is able to put their vehicles in in order to accomplish diagnosis; that is what you need to advance the state of the art and not go in the wrong direction from a cost point at this point in time; is that a fair statement?

Mr. RAMP. It is a fair statement, but do not limit us to what we are doing. We are going ahead with research and development. We are not stopping.

Mr. SUTCLIFFE. But it is difficult for you to do so?

Mr. RAMP. Right. When you look at the PMVI, again come back to my statement of the brake problem, the brake engineers, the brake friction material, those who make the friction material that goes on brakes and the engineers who build the automobiles, someone says the fade factor should be checked at certain miles per hour.

Now, if you would say to us as an industry this will be necessary at 40-miles-per-hour—now, within a 40 mile an hour capability it is possible that we could go various routes again thinking of the cost factor to check those brakes at 40, but it might be a different ballgame entirely if someone said, a group of engineers who know the brake business, say it is necessary to check them at 60.

Mr. SUTCLIFFE. Let me take that point, then, and suggest what answer we might get from the Department of Transportation. If we asked them: You were required to promulgate vehicle-in-use standards by January 1, 1969. Why have you not done it? We might get some kind of answer like this: No. 1, we are not exactly sure what items in the vehicle we need to test. Assuming that we do isolate and can isolate all the safety items of the vehicle, we do not know what the cost-benefit analysis to set that out as a vehicle-in-use study. In other words. they will use as their argument for not setting the standards the fact that they do not know because technology has not progressed and we have not seen in operation what is reasonable to demand of vehicle testing. So, in many respects we are on a treadmill, because you people are waiting for the standards and the standard setters are waiting for the technology.

This bill I think tries to start to break this impasse by setting forth a schedule of promulgation of those standards which are necessary and a judgment that technology will be available on a cost-effective basis to meet whatever standards are found to be necessary for the public health and safety.

But to say that is to also point out that that was also said in the National Highway Traffic and Motor Vehicle Safety Act of 1966. So. in saying it again we are going to try to encourage, I would imagine if this legislation passes, that that message be reinforced to the administrator and the standard-setters.

Do you feel that we now, through technologies that you people yourselves are developing and those which the administrator is bringing to bear upon this problem and the possible commercial fallout from them, that it would be safe to proceed with the standard setters setting forth those standards for vehicle-in-use components of the vehicle that obviously relate to safety and to then, once those standards are set, allow a certain amount of time by which you develop testing capability for those standards but allow the play of the free market to come up with cost-effective technologies to reach that goal reached by the standard setters? Would that be an intelligent way to proceed from this point on?

Mr. HALFPENNY. Before he answers that, I think the serious problem confronting the entire industry is the great suspicion apparently of Government to use or take advantage of the technical knowledge and the know-how of the industry.

Mr. SUTCLIFFE. Where is that suspicion, the National Highway Safety Administration?

Mr. HALFPENNY. I think it is generally that industry leaders are not called in and asked questions. It takes a long time for a person to become a mechanic. I would say a good mechanic has a longer training than we have in the legal profession to really become proficient in it, a minimum of 7 to 9 years. And everyone wants to discount this mechanic as being incompetent.

Good mechanics know more about the problems of the automobile, and we have some outstanding mechanics and engineers that have been working on these problems a lifetime, their judgment on some of these problems should be used.

Then, the equipment people can come along and have some method of testing. The industry's big problem is on periodic motor vehicle inspection of some of these critics, insurance companies included, that speak as though they want to do so much to reduce repair cost and promote safety are the ones who stir up people and fight these periodic motor vehicle inspections in the State legislatures.

We have been attempting to get PMVI in States for years and years, and we find the motor clubs and insurance companies contesting it.

The real serious problem is cars that are dangerous instruments on the streets. You will have mechanics tell you that people come in and talk about a brake lining and they take the wheel off and find there is no brake lining at all, and they say what will it cost, and when told the cost to do the job, they will say put the wheel on and they drive off with this unsafe car, it is really a dangerous instrument.

Mr. RICHER. I would like to add one thing. It might be construed if you go back and read what we were talking about before, about putting cars in boxes that we are advocating a system. That is not true.

Mr. SUTCLIFFE. But if you set performance standards, you can have a variety of different kinds of cars that are still compatible with the diagnostic system.

Mr. RICHER. Basically all cars have a certain basic number of items in the same car.

Mr. SUTCLIFFE. They use the same size thread depth for spark plugs.

Mr. RICHER. No.

Mr. SUTCLIFFE. Most all.

Mr. RICHER. Most all, OK. But they all have specific things which have to be checked. It is not fair to say it is impossible. It is just not fair to say that it can be done economically today because really nobody has said, of all the systems in an automobile what do you want to check? Do you want to check how high the acid is in the battery? Fine, we will check that. But just tell us you want it done.

One of the things I would like to convey to you right now is from an equipment manufacturing standpoint, we are more than willing to furnish you with anything you want to help you in any way to determine what things are wrong.

Mr. SUTCLIFFE. This is the task that Congress of necessity has delegated to the National Highway Safety Administration.

Mr. RICHER. I question whether enough industry has been called on in the right places to give you the guidance necessary. You may be a little tired of hearing the practical approach to this thing, but it all

boils down, gentlemen, when you get out in the field that guy that is claimed in some cases I have heard in the last few days is a crook, he is the man who is going to have to fix the automobile. That is the man that is ultimately going to be responsible to see that this work is done and the car is safe to be on the road. Maybe we should define and raise this gentleman's stature, and the certification program is one way to do that.

Senator HART. That runs into a little static, too.

Mr. RICHER. Certainly. I was told at one time if you tried to do something that is quite a bit different from what has been done in the past 20 years, and you know I am not that many years over 20 to be qualified, but if you want to do something that has been and is a radical change from what has been done in the last 20 years, you have to step on some people's toes to do it.

Senator HART. That statement will get you in more trouble than your statement about one type of car, but I agree with you.

Mr. HALFPENNY. We do offer any of the technical knowledge that is available as far as aftermarket is concerned to be of any help at any time.

Mr. SUTCLIFFE. Let me go to one question related to your example of frame deformation. I imagine there are degrees of frame deformation where a visual inspection of a rather serious crash is going to show frame deformation that is quite obvious. To the extent we have property loss reduction standards, bumper standards, that prevent damage to the exterior of the vehicle in most speed crashes, would we be minimizing to some extent because of the requirement to have beefed-up frames—to perhaps have beefed-up frames to meet that capability, minimizing the inspection problems resulting from minimum frame deformation that still presents safety hazard?

Mr. RICHER. You are asking a design question which I do not feel qualified to answer on. Maybe I can add one thing at you which might help. When I speak of frame repair and the inspection thereof after it is done, I am talking specifically about the automobile that has hit a head-on car, another car, or has run off the road and sheared off a pole where there has been serious damage done to the frame.

It is one thing to correct a frame and the next thing to do it right. You can pull it back into squareness as near as possible with many machines on the market today.

Mr. SUTCLIFFE. This is one of the reasons why the bill requires an inspection after an accident.

Mr. RICHER. That is my point. I don't believe in the present form, no matter how you cut what you have put in here, that you could have the capability to do that. Just as a comment, and I wouldn't want to comment any further than to say I think you will probably end up having two types of inspection for this type of problem.

In other words, you will have one for your PMVI inspections and you will have another for your crash programs, because this is more detailed.

Senator HART. So that the record will be clear, your technology, the area in which you two gentlemen operate, is capable of developing instruments and methods that would permit an after crash inspection to be made that would be reliable?

Mr. RICHER. We have them today, Senator, in all shapes and sizes.

Mr. RAMP. And some that are in the R. & D. stage that are better than the ones we have had before. So, the technology is growing. It is not going backwards or staying static. It is certainly more sophisticated.

Again striving to do better at a lower cost is a constant goal.

Senator HART. We appreciate very much the very specific and practical counsel that you have given us, and I am not discouraged by it either.

Mr. HALFPENNY. Thank you, Senator. I thought this was the type of information that seems to be lacking altogether in this problem. We have, I think, in the automotive industry some of the most capable people and dedicated people that are willing to give of their time and service if they are asked to do so.

Senator HART. I find it hard to conceive of the system—both safety and reparability; crash reduction cost—either system being administered wisely if there is any failure to consult at every stage of the development those who, as you put it, whether it is a mechanic or a tool operator who is designing diagnostic equipment—unless its administrator consults those elements of the automotive economy, the machine won't run, I agree with you.

I said your general testimony doesn't disturb me, but you do leave us this late Friday afternoon on an unhappy note, I think it was Mr. Richer who said a mechanic will sometimes take a wheel off and check the brake and find there isn't anything there and the owner will say put it back on, it costs too much to fix and off he goes—and it is a lethal weapon.

There are a lot of problems in this land that you can't even understand much less get an answer to, but, my God, in a society with 100 million of those potential weapons, it should be long past when a thing like that could be separable.

Mr. HALFPENNY. We sure appreciate your concern, because it is a concern of industry. Naturally, we have a selfish motive that we are in the business, but we want to be helpful.

Senator HART. It is insanity to know that there are a number of those vehicles moving in traffic right now, not to discount the drug traffic as a danger.

But you are much more apt to get hit by a car than pick up a habit.

Mr. RAMP. I am sure the administrator has very capable engineers on his staff and all this, but as Mr. Halfpenny says, if there are any contributions we are capable of making, we want to stand ready to help him in any way we can.

Senator HART. We appreciate that, and when the administrator testifies we will advise him.

Mr. HALFPENNY. Senator, it was too late to request them to be personally present, but I have a statement from the Independent Garage Owners of America, that Mr. Flanagan, who has appeared before, would make and I wonder if I could have that inserted in the record.

Senator HART. Yes, it will be printed.

(The statement follows:)

STATEMENT OF THE INDEPENDENT GARAGE OWNERS OF AMERICA, INC.

My name is James Flanigan of the law firm of Halfpenny, Hahn & Roche, Chicago, Illinois, General Counsel for the Independent Garage Owners of America, Inc.

The Independent Garage Owners of America is a National Trade Association of approximately 4,000 members who are independent garage owners; they are located in 35 states. Our membership covers all phases of automotive service: general repairs, body repairs and specialty repairs. We are a part of the second largest industry in this country and we take pride in the vital role we play in serving the public.

There are now approximately 112,000 independent repair shops across the nation. The Bureau of Census figures for 1963 showed 139,000 of these shops, so that there has been a significant decrease in their number. The 1963 figures showed 137,000 units were unincorporated businesses run by an active proprietor; I do not have the more recent figures, but it is still true that a very large percentage are today so operated and managed. In other words, this is an industry of small businesses, in which the owners are active workers as well as managers.

In this connection, the yearly sales volume averages, as shown by a Hunter Micromarket Survey, are significant. As they're printed, the volumes are:

Dollar volume:	*Percent repair shops*
300,000 and over	1.3
200,000 to 299,999	1.9
150,000 to 199,000	3.3
100,000 to 149,999	8.2
80,000 to 99,999	5.2
60,000 to 79,999	10.0
40,000 to 59,999	16.0
20,000 to 39,999	28.5
Up to 20,000	25.6

As you can see, we are not talking about big business.

We note with special interest that S. 976 provides that vehicle inspection stations cannot be associated with any business engaged in the repair or sale of motor vehicles or motor vehicle parts except in areas where the vehicle population is insufficient to make independent motor vehicle inspectors feasible. Before the adoption of such proposal, Congress should consider information that is now available, comparing private inspection stations versus state inspection station programs.

In June 1968, the Department of Transportation released a report, "An Investigation of Used Car Safety." This report was prepared by Operations Research, Incorporated, Silver Spring, Maryland, under contract No. FH-11-6522. If inspection stations cannot engage in motor vehicle repair, a rejection requires three separate visits by the car owner. First, the vehicle must be taken to the inspection station where a defect is identified and a rejection sticker issued; second, to an automotive repair facility for the correction of the defect: and third, back to the inspection station for re-inspection where the approved sticker is then attached.

Operations Research, Incorporated computed that the motorist had to pay twice as much in time and money for the inspection through a state-owned system than for the state-appointed system, even though the inspection fee for the state-appointed system was less than for the state-owned system.

Operations Research found that the average distance traveled round trip for inspection and re-inspection was 25 miles for the state-operated system compared to 4 miles for the licensed system.

The repair costs per vehicle inspected with a state-owned system, which averaged 85 cents per vehicle and for a state-appointed system, $1.46 per vehicle. The travel time to the motorist based on only $1.25 per hour for his time was $3.68 in the state-owned system and $1.04 in the state-appointed system. Further, in the state-owned system the taxpayer paid $1.05 through taxes whereas in a state-appointed system there was a revenue of 4 cents per vehicle inspected which the state received from inspection fees. Interestingly, the vehicle condemnation losses were identical in the state-owned and state-appointed systems.

If the Congress makes a decision to completely divorce licensed inspection stations from automotive repair facilities, they should do so knowing that it is the motorist who is going to carry the greatest burden and not the automotive repair facility.

We have given consideration to the possibility of recommending that Congress permit automotive repair facilities to engage in inspection but requiring defects identified by the inspection stations to be repaired at another service station. This, of course, would mean that no garage would ever make a profit as a result of identifying a defect during motor vehicle inspection. However, we believe that if such were the case, the more inspections a repair facility conducted, the less repair work it would receive.

Inasmuch as a garage would make more out of repairs than it makes from inspections, the ban on repairing an identified defect would discourage garages from becoming licensed inspection stations.

Much has been stated about profits from repair work generated by the inspection station located in a repair facility. Operations Research provided the Department of Transportation its findings on this aspect. The accompanying table titled, "Summary of Service Station MVI Profits Per Inspection, ByInspection, Repair and General Sales, for Three MVI Systems" indicates the licensed inspection stations made a profit of nine cents per vehicle inspection, and averaged a profit of 19¢ on sales and repair service. This compares to a net profit per inspection of 11¢ in states wtih state-operated inspection stations.

Here then is a difference of 17¢ as far as the automotive service industry is concerned. Compare this to an economic burden to the motorist, which indicates that on the average he pays almost twice as much for inspection that is not associated with a repair facility. It should be noted that the most frequently found violation is the proper focusing of headlights, a very minor adjustment usually. Yet the motorist would be required to make three trips to obtain a completed inspection if Congress determines that a repair facility cannot be licensed for inspections. Irrespective of whether repair facilities are permitted or not permitted to perform inspections, the industry will still perform the repairs. It is the motorist who will bear the burden. We believe this comparison between state operated and privately operated inspection stations speaks most graphically in response to the claims of wholesale rejections to force unneeded repairs on car owners.

We, therefore, suggest that before any legislation is recommended, that consideration be given to the views expressed above.

SUMMARY OF SERVICE STATION MVI PROFITS PER INSPECTION, BY INSPECTION, REPAIR, AND GENERAL SALES FOR 3 MVI SYSTEMS

Activity and account	MVI system cost, dollars		
	State-operated	State-appointed	Spot check
Inspection:			
Receipts		1.54	
Expenses:			
Labor		1.12	
State stickers		.12	
State license		.01	
Depreciation on equipment		.09	
Performance bonds		0	
Overhead		.11	
Total		1.45	
Gross margin on inspection		.09	
Repairs:			
Receipts	0.59	1.51	0.88
Expenditures	.52	1.33	.77
Gross margin on repairs	.07	.18	.11
General sales:			
Receipts	.73	.12	.09
Expenditures	.69	.11	.09
Gross margin on general sales	.04	.01	0
Net profit per inspection	.11	.28	.11

Senator HART. We are adjourned.

(Whereupon at 5:05 p.m., the hearing was adjourned, subject to the call of the Chair.)

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

FRIDAY, MAY 28, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m. in room 5110, New Senate Office Building, Hon. Vance Hartke presiding.

Present: Senators Hartke, Cotton, and Griffin.

Senator HARTKE. Good morning to everyone.

Today the Senate Commerce Committee begins its 11th day of hearings on auto insurance reform proposals directed at the compensation delivery system and the automobile which so profoundly affects that system. In previous hearings we have been told how the lethally designed eggshell exteriors of automobiles cost this country billions of dollars and aggravate the human misery associated with auto accidents.

This morning the committee will receive the testimony of Douglas W. Toms, Acting Administrator of the National Highway Traffic Safety Administration. Mr. Toms is charged with the responsibility of protecting the lives of our Nation's drivers—no easy task in light of the magnitude of the problem, the foot dragging of the automobile industry, and the pussyfooting of certain overseers of policy in the White House.

Because of his responsibilities Mr. Toms is uniquely qualified to present the Administration's position on S. 976, the Motor Vehicle Information and Cost Savings Act. He is also the person to answer questions raised in these hearings concerning the bumper standard of the Nixon administration which, according to some witnesses, does not qualify as either a safety standard or an insurance cost reduction standard.

Mr. Toms, we welcome your testimony this morning. You may proceed as you see fit.

STATEMENT OF DOUGLAS W. TOMS, ACTING ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY JACK L. GOLDBERG, ASSOCIATE ADMINISTRATOR FOR PLANNING AND PROGRAMING; JOHN A. EDWARDS, ASSOCIATE ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT; AND LAWRENCE SCHNEIDER, ACTING CHIEF COUNSEL

Mr. TOMS. Thank you.

Mr. Chairman, Senator Cotton, ladies and gentlemen: I welcome this opportunity to present the Department's views concerning Senate

Bill S. 976—a bill to amend the National Traffic and Motor Vehicle Safety Act of 1966. This act provides the basic legislative authority for our motor vehicle safety regulations. Our concern and responsibility for motor vehicle safety has prompted intense interest in the Department toward the proposed amendment.

As you know, some time ago we officially set a minimum departmental goal of reducing the annual rate of traffic fatalities per 100 million vehicle-miles to 3.6 deaths by 1980. This change would represent a one-third reduction in the 1968 fatality rate.

However, as a result of increasing numbers of licensed drivers and registered vehicles, the vehicle mileage will increase approximately one-third by 1980 and substantially offset the reduction in the death rate. Thus, there would still be 50,000 highway deaths in 1980.

Therefore, the Secretary and I have agreed to set our sights even higher than the minimum goal. We hope to reduce the fatality rate by even more than one-third so that the number of highway deaths in 1980 will be only about half of the current 55,000 annual deaths.

I am happy to report that in 1970 we appear to have begun to reverse the upward trend in the number of annual fatalities on our highways. There were approximately 1,100 fewer traffic deaths in 1970 compared to 1969—about a 2-percent reduction. This represents the lowest fatality rate per miles driven in our history.

I can further report that based on early estimates for the first quarter of 1971 we are running 3 percent lower in fatalities than for the first quarter of last year, despite a poor month in January of this year.

Mr. Chairman, these are hopeful signs, but this is only the beginning. A toll of 50,000 dead on the highways each year is a toll that brings disgrace to civilized society, especially when the technology for solution is either in hand or just over the horizon.

At the beginning of my tenure I established three major safety priorities: Crash survivability, the experimental safety vehicle, and alcohol countermeasures.

We have issued the passive restraint standard and have demonstrated design solutions for protecting people in 60-mile-per-hour crashes.

Our experimental safety vehicle program will provide us by this December with prototype automobiles which will protect occupants at 50 miles per hour.

Our alcohol countermeasures program, funded under the Highway Safety Act, will shortly begin to prove that a broadbased program to control drunk driving will save thousands of lives.

Nothing—but nothing—must be allowed to deter us from our goals.

But, indeed, we recognize another need. The frustration resulting from millions of our people experiencing minor crashes involving substantial property damage and the problems which follow cumulate into a national problem which cannot be ignored.

We, therefore, share with you, Mr. Chairman, and other cosponsors of S. 976, the view that the objectives of providing assistance to the consumer on the damageability and repair of automobiles is a necessary added mission for this Department.

However, in doing so, we must not eclipse our principal safety objective of reducing fatalities, injuries, and accidents. We cannot—and must not—dilute our efforts in this crucial area, particularly since recruiting skilled and experienced staff for our priority safety mission has proven to be very difficult.

Further, as this committee is well aware, there are provisions in the 1966 Act that have not yet been fully met.

Therefore, after extensive consideration of the proposed amendment and its implications, we favor an alternative approach to what we consider to be the most desirable objective of the bill—better consumer information.

We are unable to support S. 976 principally because we do not believe that the establishment of Federal standards for automobiles, purely for economic reasons, is in the public interest.

We feel that the competitive nature of the marketplace is less restrictive and more responsive to the whims and fancy of the purchaser. We are not certain that the Government should be making restrictions in those areas where the consumer most enjoys expressing individuality and personal taste. He should be able to spend his money as he sees fit unhampered by Government control.

However, we do believe in an aggressive governmental policy of regulation in matters of health and safety. We think recent actions in both safety and emission control demonstrate this belief.

In the aspect of economics of consumer products we believe that the consumer should have complete freedom of choice. Consumer choice, however, can be most effectively exercised with maximum possible consumer information. Our intention will be to provide this information in the most objective manner possible.

Aside from our general opposition, we have several specific problems with Government-imposed property loss reduction standards:

1. These standards would involve us heavily in design features, including styling, rather than the performance standards that we now issue to insure safety.

2. Specific applications of present technology are almost nonexistent in this area as compared to the situation that existed in safety in 1966. The 1966 act was preceded by 20 years of activity by the Society for Automotive Engineers, General Services Administration, and other organizations.

The Department has other problems with this bill:

1. We cannot, at this time, advocate or support the establishment of a nationwide independent diagnostic inspection system. We feel that the state of the art necessary to justify such a system is several years away.

2. We believe that several items in the bill are best handled by administrative action instead of specific legislative mandate; for example, amending the highway safety standards No. 1 and No. 2.

3. We estimate that the annual cost of the nationwide independent diagnostic inspection system required by the bill is extremely high. For example, the construction plus operating costs of the diagnostic centers would be in the range of $1 billion per year. Since we do not have adequate information as to the cause-and-effect relationship between vehicle defects and crashes, we should not embark on such a costly venture at this time.

Again, we want to emphasize our reluctance to compromise our principal safety mission of reducing fatalities and injuries in order to lessen the monetary costs of minor accidents. Money will never buy back a single lost life.

We will discuss with you today our proposed alternative concept. We will submit a bill to you in the near future.

A summary of the Department's proposal:

The Department's proposal will have as its objective a program of consumer information on vehicle susceptibility to property damage, crash worthiness, and aggressiveness aimed at—

1. Providing the consumer with the basis for a more informed choice in the marketplace.

2. Influencing the establishment of lower insurance premium rates for owners of vehicles which provide for greater occupant safety and protection against crash damage.

3. Establishing incentives in the marketplace for auto manufacturers to build cars with reduced damage characteristics and increased safety protection.

I must emphasize that consumer information developed scientifically and objectively is obviously a complex program and will require development of a solid research base to determine feasibility, cost, and public policy implications.

Before examining our proposals in detail, let me discuss some of our work already underway which will provide collateral benefits relating to vehicle crash damage protection.

Mr. Chairman, if you would permit, we would like at this time to show a film. I will attempt to narrate some of the key features of the film. I apologize for the location of the screen and the difficulty of some of the members to be able to view the picture.

Senator HARTKE. Let me say that we cannot complain of partisan considerations in view of the fact that only the Republicans are being denied the right to see the film.

I might say, in view of the Vice President's statements lately, maybe it is better that they do not see it.

(Presentation of film with narration.)

Mr. TOMS. Mr. Chairman, that is a 1968 Ford going into the pole at approximately 60 miles per hour. This is an overhead shot showing the movement of the engine and showing the amount of energy that is being transmitted to this vehicle, and you will note that the pole comes all the way to the roofline and the windshield separates.

That is a 1961 Chevrolet with a different type of frame going into the pole at 56 miles per hour. The differences in these two vehicles is in the frame and structure. Note that in this one the pole goes all the way into the passenger compartment, the roof separates from the body of the vehicle, and there is absolutely no crash survivability whatsoever.

This is the same make car that has an energy management structure. We have put plastic hinges in the frame and demonstrated that we can take that same vehicle into the pole at 63 miles per hour and provide complete survivability for the occupants because the body separates from the frame and the frame manages the energy.

This is a slow-motion shot showing that vehicle going into the pole. There is an anthropometric dummy in the vehicle. The bag goes off. There is no intrusion of the pole into the passenger compartment and there is ample space to save any life in that vehicle.

This is an indication that we can manage that energy.

This is a picture of a 5-mile-per-hour bumper into the pole, and it is

very hard to see, but you will note that this is a slow-motion shot showing the bumper that has been sufficiently beefed up to hit the pole with no damage.

We have been running many different kinds of bumpers and structures and energy management devices in an attempt to best reduce the gravity forces that are transmitted into the occupant compartment.

This is an overhead shot of the same scene.

I may add that in our experimental safety vehicle program we have been working on a number of different energy management devices of this type so that we can better understand how these forces work in terms of saving lives.

There is another shot which is very hard to see because there is too much light in the room. Mr. Chairman, this shot shows 10-mile-per-hour crash into the pole, and the type of structure and devices necessary to properly manage that energy in such a collision.

Here is the 10-mile-an-hour shot of a vehicle with stiff-ridged bumper. What we were doing here is getting acceleration readings, attempting to find out exactly what happens to the structure of the vehicles with these kinds of impacts and the amount of deformation.

There is an overhead shot. You can see some of the wires and instrumentations that we have on the vehicle, and you can see the kind of energy that is transmitted to the frame, engine, and structure of the vehicle.

The same shot from underneath indicating exactly what is taking place in that kind of crash.

Next we will show you some cars crashing with closure speeds in excess of 90 miles per hour. These are two identical vehicles, closure speed of 90 miles per hour, going into each other, and you will notice that the energy really begins to be managed when the two wheels hit and the engines meet. You will note that there is a slight difference in these vehicles, in the sheer dynamics of the crash. One climbs up slightly over the other one. You can see how very subtle differences in the shapes of these vehicles makes quite a difference in how they crash.

Next we are going to show you a modified white car and the red car at the same speed, and you will note that the modified car is a good deal more aggressive and suffers much less damage than the unmodified red car. These were some experiments that we conducted in an attempt to learn more about this vehicle characteristic.

This is the shock structure for the experimental vehicle. Its purpose is to aid in determining how we can manage energy at fairly significant speeds, and how much space and distance we need, and how it is transmitted.

You will note that the wheels actually lift from the surface, but we can compress the device in that short distance and absorb that energy.

Senator HARTKE. What is the speed of impact on that?

Mr. TOMS. I do not happen to have the exact speed of that. About 50 miles per hour I am told, Mr. Chairman.

This is some of our lateral testing to determine frame strength and affected structure in the lateral crash. You will notice that the pole is entering the car rather significantly, so much so that survivability for the right front occupant would be a serious consideration.

This is a 20-mile-per-hour lateral crash. Here is an underneath shot

so that you can see how the frame flexes and how that energy is transmitted across to the center of the vehicle. It also shows the exact amount of intrusion of the pole into the structure.

Is this the modified one, Bill?

Now, we have modified the frame by moving up crossmembers underneath the vehicle to indicate that the intrusion is much less here, approximately a half to a third as in the previous vehicle. This provides the space that is necessary for the safety of the occupants.

We will now show you an underneath shot that shows the extra strengthening of the frame and the cross members, and how most of the energy is absorbed by that outer rail. You can see that there is much less deflection in the remainder of the car. What we are doing here is using the entire undercarriage to help absorb that energy.

Now, this is a car-to-car side crash baselined at 40 to 45 miles per hour, and it shows a vehicle going into the side of another vehicle. You will notice that in this lateral crash, the struck car is being deflected and pushed aside by the striking car.

Now we are going to show you a car-to-car side crash that is modified, and if the film were better—we cannot see it—just go right on through.

If the film were better, you would be able to notice that there were really significant reductions in penetration. Clearly, the aggressiveness or the hostility of the nose of the vehicle is very critical to the safety of occupants in these automobiles.

It is important that we do have strong enough side members in vehicles so that we can prevent the intrusion of these cars in lateral crashes.

These were 40 to 45 miles per hour.

Note this one has been modified and that there is literally no intrusion into the passenger compartment of the struck vehicle by the striking vehicle. In fact, the inner wall in this crash was deformed only 3½ inches.

Mr. TOMS. Let me now describe for the committee the various provisions of the Department's proposal, a consumer information program.

The Department will request authority for the following consumer information program:

1. To develop and publish information on major makes and models of automobiles regarding their susceptibility to property damage, crashworthiness, and aggressiveness, if, and to the extent, our research shows it to be feasible and in the public interest. Research and test authority to determine property loss susceptibility will also be sought.

2. To require insurance companies to provide the Department, for use in this program, accident claims and cost data under procedures developed by the Department.

3. To require insurance companies to publish premium rate data by make and model of vehicles under procedures established by the Department.

4. To require annual reports from each car manufacturer on actions taken to improve safety and property loss reduction, and make these reports available to the public.

VEHICLE INFORMATION

Providing vehicle information by make and model for safety performance, damageability, and cost of repair, would be a major new activity for the Federal Government. Product ratings for benefit of health and safety are made by other agencies. Our policy has generally been to set safety standards for all vehicles so that the consumer knows he is buying a vehicle with a certain level of safety.

Our only efforts, so far, to differentiate vehicles in terms of performance, has been the issuance of several consumer information regulations concerning stopping distance, passing ability, and tire reserve load. We have also funded statistical studies on fatalities and serious injuries in motor vehicle crashes by make and model.

Low-speed damage susceptibility comparisons represent a more difficult consideration from a technical standpoint.

The purpose of vehicle information is to tell the consumer what can be expected to happen to his vehicle in actual motor vehicle crashes, and to provide this information to insurance companies. This cannot be achieved by striking autos against barriers or by requiring manufacturers to conduct thousands upon thousands of crash tests.

A research program must determine the feasibility and costs of developing more scientific and objective comparisons. This same program must develop much more sophisticated techniques for accomplishing that objective.

RESEARCH AND TEST PROGRAM

The Department will request authority to perform a research and test program for new vehicles to determine safety performance information by make and model and also for vehicle damageability and cost of repair. This research and test program will be directed at the objective of reducing the cost of repair without jeopardizing the overall safety performance.

Research, analysis, and testing are required to determine the precise relationship among a car's:

(1) fragility, or its susceptibility to damage;

(2) crashworthiness, it protection of passengers from personal injury or fatality; and

(3) aggressiveness, for example, its potential for causing abnormal damage to the struck vehicle.

This relationship must be understood in great detail.

It must be emphasized that crash testing of all makes and models of cars would be prohibitively expensive. Some crash testing will be necessary, but this must be augmented by analysis, simulation, and accident data to obtain the necessary research information.

We believe that these research efforts will provide the Department with sufficient information to permit a strong consumer information package. This type of information can steadily increase the public awareness of the possible variations in vehicle injury protection and damage susceptibility. Thus, the consumer will be provided the opportunity to make a better choice about one of his more expensive purchases.

INSURANCE INDUSTRY CLAIMS DATA

In parallel with the research, analysis, and testing activity to determine the vehicle damage susceptibility, crashworthiness and aggressiveness, we need and will seek authority to acquire insurance industry accident claims data on a regular basis. These data will be a necessary part of our research program. We believe that these types of insurance data can be easily acquired. We should be able to determine from these data the three factors for vehicle comparison previously discussed.

The insurance data will provide the vital link between crash tests (car-to-car and barrier tests), computer simulations and actual motor vehicle crashes. Without this link, the resultant vehicle information could be incorrect or misleading to the consumer. But it should be emphasized that the insurance data must be integrated with research, systems analysis, and testing to provide the complete vehicle information picture.

INSURANCE PREMIUM RATES

We believe that consumer information on vehicles should, in fact, result in a differential in insurance premium rates for cars. This rate differential should benefit purchasers who buy cars with increased safety and damage protection. Thus, one of the major cost benefits associated with lower economic loss—and better crashworthiness—should be reduced insurance premium rates.

Mr. Chairman, it is a real pleasure for me to read this morning the Wall Street Journal and indicate that we expect auto insurance rates to fall, and if I may quote an official of one of the Nation's auto insuring giants, he said, "Frankly, since the middle of last year, we have been turning up unconscionable profits in auto coverage." This company says it is considering filing in stages for rate reductions.

Insurance rates must begin to take into consideration the differentials in costs of repair.

The publication of insurance rates by make and model will tell the consumer whether or not insurance companies are taking vehicle characteristics into consideration in setting premium rates.

MOTOR VEHICLE INSPECTION AND DIAGNOSTICS

I want to use this opportunity to reiterate my position regarding motor vehicle safety inspection. I do not, at this time, support periodic motor vehicle inspection (PMVI) as the only type of inspection system for our States. However, I do strongly support the objective of removing unsafe motor vehicles from the road. There are important differences between these two concepts.

The major problem with periodic motor vehicle inspection is that we do not yet know how to design an inspection system that will assure identification of unsafe vehicles quickly, accurately, and inexpensively. Consequently, we are redrafting our highway safety program standard on motor vehicle inspection. This does not mean, and must not be interpreted, as saying we are doing away with vehicle surveillance. It does mean that we are giving States a certain amount of flexibility in how they accomplish the job of removing unsafe vehicles from the road. We will evaluate the results and we will

strongly oppose the efforts of any State to abandon this area of concern.

We believe also that the consumer needs assistance in determining what repairs his vehicle needs and whether those repairs are performed properly. Without doubt, inspection can assist the consumer in these decisions.

I also believe that automated diagnostics will be the technique of the future. But, we are not, at this time, prepared to support legislation which levies upon the States a system of independent diagnostic inspection systems.

Too much is unknown. What is known is by no means positive. In the United States today, based on available data, there is no statistical difference in fatality rates between States that have periodic motor vehicle inspection and those that do not. This is not an indictment of motor vehicle inspection. It may be an indictment of inspection as practiced today. We do not have adequate information as to the cause and effect relationships between vehicle defects and crashes, although some studies in Europe indicate a far closer link than we have determined thus far.

Additional analysis and research are required before we could recommend a national system of independent diagnostic centers for motor vehicle inspections. Some research has been underway for several years. But considerably more effort is required to determine, for example, safety-critical components, tolerance limits for performance, inspection procedures, and equipment. Much more trade-off analysis is also required to determine the most cost-effective approach for both safety and economic loss protection.

USED VEHICLE RESEARCH PROGRAM

The used vehicle research program which the Department has been conducting for several years is designed to:

(1) determine the type and number of vehicle defects which exist on the road today,

(2) determine the effect of defects on vehicle performance,

(3) determine the relationships between vehicle defects and crashes,

(4) verify that safety critical defects can be detected through vehicle inspection,

(5) establish a complete list of inspection items and acceptance criteria,

(6) develop effective inspection procedures, equipment, and skills, and,

(7) develop an inspection system which can be used by States as a model in a series of demonstration programs.

I believe that through this systematic and logical process, we can achieve our objective while maximizing safety and the economic payoff.

Senator COTTON. Mr. Chairman, would the witness permit me to interrupt him for a moment?

I am impressed by the statement you made a moment ago, that you did not find any difference between the death rate in States that have a thorough inspection system and those that do not have such a system.

Did I understand you correctly?

Mr. TOMS. Yes, you did, sir.

Senator COTTON. Now, first, let me read to you from your own Highway Safety Program Standards, June 1969, on the question of periodic motor vehicle inspection, this is what your Department said:

> Until recently, there was very little evidence to support the reasonable supposition that state inspection systems contribute to highway safety. This deficiency has now been overcome at least in part. Recent research demonstrates significant differences in state motor vehicle accident death rates associated with inspection programs.

In other words, your Department in June of 1969 had discovered that there was a difference and so proclaimed.

Now, you say that there isn't any.

Mr. TOMS. Well, I came to the National Highway Traffic Safety Administration, since that statement has been made. Our people have reviewed much of this research and much of this information, and we have to confess to you that there is just no statistical difference in these States.

Now, when the motor vehicle standard was first written, No. 1, obviously the professionals that were involved were convinced that this would be of great merit. I feel that as they went along and pursued this program, they did find some encouraging signs. However, as you know, Senator, time marches on and we must continually review this information.

We have reviewed it. We have just completed a rather thorough analysis of this, and we regret to say that there just isn't any real statistical difference between the States.

Senator COTTON. Is there any real State inspection?

Mr. TOMS. We think that periodic motor vehicle inspection can be done much better, and we think that diagnostics, as have been discussed before this committee——

Senator COTTON. I won't interrupt the hearing, but I would like to discuss this point further.

Senator HARTKE. Isn't it true that really until you develop some vehicle-in-use standards it is probably going to be impossible to make that determination?

Mr. TOMS. That is a contributing factor, and we are very close now, Mr. Chairman, to be able to come out with those factors on vehicles in use that are definitely safety-related. It is our hope that, based on the Washington, D.C., study, we will be in a position to do that hopefully toward the middle or near the end of this year. We are also gearing upon our vehicles-in-use standards to complement this study that is nearing completion.

I might add that we are quite pleased with the quality of this study. I think it is going to provide us with some very useful information.

Senator HARTKE. Yes, but we have been asking for this for quite a number of years, you know. In fact, I have been working for safety for vehicles on the road since 1966. I don't meet this issue with a great deal of pleasure in view of my own personal tragedy in my own family. But since 1966 you have had the authority to promulgate vehicle-in-use standards, and you were directed to have those completed by 1968, and if I am not mistaken, this is 1971. Time is marching on.

Mr. TOMS. Since I have been aboard, Mr. Chairman, we have been

working as hard as we can according to what we think our priorities ought to be. We admit that the high payoffs have not been realized in this program as in crash survivability and alcohol countermeasures. However, I can assure you we have been hard at work and it is my hope that we will be able to deliver these to you in the future.

Senator HARTKE. Why can't you do what is required by the law?

Mr. TOMS. I can't answer for my predecessors.

Senator HARTKE. Why can't you do it now? You said the priorities you established placed vehicle-in-use standards on the back burner, and maybe the burners are turned off.

Mr. TOMS. No; the burners aren't turned off, but repeatedly before this committee and other committees, we have been implored to set priorities. Consequently, we have set priorities and we have attempted to identify the priorities that we think would have the best payoff. We don't think that motor vehicle inspection is among those with a real high payoff.

Senator HARTKE. How many people are involved in that program now?

Mr. TOMS. John, can you answer how many people you have in Lynn Bradford's program relating to Tony Jacklin's program?

Mr. EDWARDS. Yes sir; in motor vehicle program service——

Senator HARTKE. In what now?

Mr. EDWARDS. The motor vehicle program service; we call it MVP, Mr. Chairman. We have 12 people working the problems of used vehicle standards. In the research activity, we have about four people actively running research projects in the area.

Senator HARTKE. Four people are involved, right.

Mr. EDWARDS. That is correct.

Senator HARTKE. How many are involved in vehicle-in-use, in the development of vehicle-in-use standards?

Mr. EDWARDS. Twelve, sir.

Senator HARTKE. In the total program to develop a vehicle-in-use standards?

Mr. EDWARDS. Yes.

Mr. TOMS. That is one of our operating divisions in our motor vehicle program.

Senator COTTON. May I make one observation, Mr. Chairman?

Senator HARTKE. Go right ahead.

Senator COTTON. I just want to call to your attention—and I do this with a good deal of pride—that in my own small State we have an inspection system. It has been rigidly enforced for some years. It doesn't cost to the State; it doesn't cost the Federal Government. I know that this bill will make it impossible for a garage, filling station, or anyone engaged in business to do the inspecting, but we do license such businesses, and they make a nominal charge for the inspection.

If they are caught off base in their inspection, they lose their right to inspect. It costs them in business calls since it is immediately known throughout the community that they have lost their right to inspect.

Now, the law is enforced so rigidly that if a car is caught on the road without the latest inspection sticker, it is taken right off the road. The people in that car have to find some other way to get home. They have to have the car towed in and inspected. There is no fair or favor exercise.

Did I understand you correctly?

Mr. TOMS. Yes, you did, sir.

Senator COTTON. Now, first, let me read to you from your own Highway Safety Program Standards, June 1969, on the question of periodic motor vehicle inspection, this is what your Department said:

> Until recently, there was very little evidence to support the reasonable supposition that state inspection systems contribute to highway safety. This deficiency has now been overcome at least in part. Recent research demonstrates significant differences in state motor vehicle accident death rates associated with inspection programs.

In other words, your Department in June of 1969 had discovered that there was a difference and so proclaimed.

Now, you say that there isn't any.

Mr. TOMS. Well, I came to the National Highway Traffic Safety Administration, since that statement has been made. Our people have reviewed much of this research and much of this information, and we have to confess to you that there is just no statistical difference in these States.

Now, when the motor vehicle standard was first written, No. 1, obviously the professionals that were involved were convinced that this would be of great merit. I feel that as they went along and pursued this program, they did find some encouraging signs. However, as you know, Senator, time marches on and we must continually review this information.

We have reviewed it. We have just completed a rather thorough analysis of this, and we regret to say that there just isn't any real statistical difference between the States.

Senator COTTON. Is there any real State inspection?

Mr. TOMS. We think that periodic motor vehicle inspection can be done much better, and we think that diagnostics, as have been discussed before this committee——

Senator COTTON. I won't interrupt the hearing, but I would like to discuss this point further.

Senator HARTKE. Isn't it true that really until you develop some vehicle-in-use standards it is probably going to be impossible to make that determination?

Mr. TOMS. That is a contributing factor, and we are very close now, Mr. Chairman, to be able to come out with those factors on vehicles in use that are definitely safety-related. It is our hope that, based on the Washington, D.C., study, we will be in a position to do that hopefully toward the middle or near the end of this year. We are also gearing upon our vehicles-in-use standards to complement this study that is nearing completion.

I might add that we are quite pleased with the quality of this study. I think it is going to provide us with some very useful information.

Senator HARTKE. Yes, but we have been asking for this for quite a number of years, you know. In fact, I have been working for safety for vehicles on the road since 1966. I don't meet this issue with a great deal of pleasure in view of my own personal tragedy in my own family. But since 1966 you have had the authority to promulgate vehicle-in-use standards, and you were directed to have those completed by 1968, and if I am not mistaken, this is 1971. Time is marching on.

Mr. TOMS. Since I have been aboard, Mr. Chairman, we have been

working as hard as we can according to what we think our priorities ought to be. We admit that the high payoffs have not been realized in this program as in crash survivability and alcohol countermeasures. However, I can assure you we have been hard at work and it is my hope that we will be able to deliver these to you in the future.

Senator HARTKE. Why can't you do what is required by the law?

Mr. TOMS. I can't answer for my predecessors.

Senator HARTKE. Why can't you do it now? You said the priorities you established placed vehicle-in-use standards on the back burner, and maybe the burners are turned off.

Mr. TOMS. No; the burners aren't turned off, but repeatedly before this committee and other committees, we have been implored to set priorities. Consequently, we have set priorities and we have attempted to identify the priorities that we think would have the best payoff. We don't think that motor vehicle inspection is among those with a real high payoff.

Senator HARTKE. How many people are involved in that program now?

Mr. TOMS. John, can you answer how many people you have in Lynn Bradford's program relating to Tony Jacklin's program?

Mr. EDWARDS. Yes sir; in motor vehicle program service——

Senator HARTKE. In what now?

Mr. EDWARDS. The motor vehicle program service; we call it MVP, Mr. Chairman. We have 12 people working the problems of used vehicle standards. In the research activity, we have about four people actively running research projects in the area.

Senator HARTKE. Four people are involved, right.

Mr. EDWARDS. That is correct.

Senator HARTKE. How many are involved in vehicle-in-use, in the development of vehicle-in-use standards?

Mr. EDWARDS. Twelve, sir.

Senator HARTKE. In the total program to develop a vehicle-in-use standards?

Mr. EDWARDS. Yes.

Mr. TOMS. That is one of our operating divisions in our motor vehicle program.

Senator COTTON. May I make one observation, Mr. Chairman?

Senator HARTKE. Go right ahead.

Senator COTTON. I just want to call to your attention—and I do this with a good deal of pride—that in my own small State we have an inspection system. It has been rigidly enforced for some years. It doesn't cost to the State; it doesn't cost the Federal Government. I know that this bill will make it impossible for a garage, filling station, or anyone engaged in business to do the inspecting, but we do license such businesses, and they make a nominal charge for the inspection.

If they are caught off base in their inspection, they lose their right to inspect. It costs them in business calls since it is immediately known throughout the community that they have lost their right to inspect.

Now, the law is enforced so rigidly that if a car is caught on the road without the latest inspection sticker, it is taken right off the road. The people in that car have to find some other way to get home. They have to have the car towed in and inspected. There is no fair or favor exercise.

My car just went up to New Hampshire. It had no inspection sticker. Before I had it driven to New Hampshire, I wrote to the highway safety commissioner and got written permission for it to go into the State to my hometown where it is inspected.

Now, it is a comparatively new car. However, when it was taken to the gas station where I have bought gas for 20 years, and it was inspected, my assistant, who is in New Hampshire, was informed that it didn't pass inspection. There was a slight hole in the muffler, which might permit exhaust to go through or cause some damage. The inspection certificate was denied me until the car was taken to the garage and repaired. We had to wait a week before it could be taken care of because the garage was so busy.

Now, you can probably look at the death rate in the State of New Hampshire and say that per capita it doesn't run so much lower than other States, and that will substantiate the statement that you made here today that you can see no difference. But I happen to feel that there is a difference. For example, we have a great many tourists in New Hampshire during at least 9 months of the year. We probably have tourists in nine out of 10 cars on the road, and a substantial percentage of our highway accidents and deaths involve cars from other States, not New Hampshire cars.

Our cars go off the road when they get to the point they don't pass inspection, and we don't have to have an expensive system to do it.

Now, I remember when we had the hearing a couple of years ago, the chairman of this committee, Senator Magnuson, said his State had a system of motor vehicle inspection but that the legislature wouldn't appropriate the money to do the job. Now, that situation may have changed. The chairman was saying it regretfully, and I certainly am not criticizing him. I am just saying that was one example.

Now, we don't have to appropriate money. We could go on the basis that a 50-cent or a dollar fee is not a hardship on a person who wants the use of the highways. So I just want to call your attention to the fact that this bill would set up an expensive system. However, the States perhaps can be forced to do their job right by denying cars registered in a nonperforming State entering interstate commerce. I can't see why you have to wait. I can't see why you have to take the other alternative in this bill to establish an expensive system of federally imposed inspection. I think that if you just hold the States' feet to the fire and make them do this thing right, that more can be done for automobile safety than any other one thing that can be done. I therefore must disagree with you that this is one of the things to defer.

Thank you, Mr. Chairman.

Senator HARTKE. Mr. Toms, go right ahead and finish your statement.

Senator COTTON. I am sorry. I shouldn't have interrupted at this point, but at the time you made that statement I couldn't wait any longer.

Mr. TOMS. Furthermore, our amended highway safety program standard on inspection will require that a motor vehicle be inspected whenever the title of the vehicle is transferred or whenever any vehicle cannot be driven from the scene of a motor vehicle crash.

The Department is in complete agreement with the objectives of S. 976 regarding motor vehicle registration and a uniform titling program as contemplated by the Uniform Motor Vehicle Code. Highway safety standard No. 2 is also being amended, at the present time, to incorporate these provisions. Therefore no additional legislative authority is required to accomplish this objective.

In summary, I must again address the question of priorities. The proposal the Department will submit would be a major new effort and would be additive to our existing safety program. We must insure that we do not cut into the essential efforts we are now making to improve traffic and motor vehicle safety.

This concludes my statement. I thank the chairman and the committee for the opportunity to comment and present the Department's views on S. 976. I would be pleased to answer questions and to clarify any items at this time.

Senator HARTKE. Thank you, Mr. Toms.

I would like to know, Mr. Toms, in view of the fact that this measure has been on the books since the latter part of February of this year and you now propose to submit a new major program yourself, just when we can expect that proposal to be in draft form and submit it to the Congress for introduction, if that is the intention.

Mr. TOMS. Mr. Chairman, I will assure you that the National Highway Traffic Safety Administration will make every human effort to get this to you as quickly as we possibly can.

Senator HARTKE. What is as quickly as possibly can?

Mr. TOMS. I would hope that we can have it in the range of—what? Thirty days, or 40 days?

Senator HARTKE. Well, we will be in executive session on this legislation before that.

Mr. TOMS. If we can do it faster, I will assure you and give you my personal pledge, Senator, that I will do everything that I can to get it in as quickly as possible.

Senator HARTKE. Was this an idea before this bill was introduced, or is this a reaction to the introduction of this bill?

Mr. TOMS. I think it is a bit of both, Senator.

Senator HARTKE. Bit of both?

Mr. TOMS. Yes.

Senator HARTKE. With the emphasis on reaction, right?

Well, I suppose if we pass this bill there will not be much need for yours, right?

Mr. TOMS. We think we have lots of good things in ours, Mr. Chairman.

Senator HARTKE. Well, I understand that.

I might just observe that in a matter in which there is a question of priorities evidently you must have not been of the opinion this bill was going very far, otherwise you would have reacted more quickly.

Mr. TOMS. I think I could say something other in addition. I think that we have a great interest in this field. We have had a lot of professional engineers and a lot of scientists who have had different views. I think that the more that we got into it and the more we

researched it and discussed it, we realized that it was a complex field that would take a great deal of effort. As these views begin to polarize and as these people begin to settle in and defend their beliefs, a considerable difference of opinion develops. As you begin to sort these things out and as people work them out, as within any agency or any group of professionals, you find that reaching a consensus takes some time.

Senator HARTKE. There have been rather lengthy hearings upon S. 976, and of course there are a number of areas in which there have been some questions concerning the actions of the National Highway Traffic Safety Administration. Let's take a couple of these. We'll start out on bumpers.

I wonder if you would describe for the committee the bumper standard which the Department of Transportation has announced.

Mr. TOMS. It requires for the 1973 model year passenger cars 5 miles, front, two and a half, rear, barrier tests with no damage to the safety items. It adds for the 1974 model year a pendulum with a ridge, 5 front, 4 rear, and includes a number of hits across the surface of the bumper, 30° angle strikes, and a bumper height requirement of between 16 and 20 inches.

I would like to emphasize, Mr. Chairman, that in our business one of the most important considerations is the height requirement. Although it is not contained in the committee's bill, this is most essential if you are really going to help the consumer in terms of damage and safety.

Senator HARTKE. Now, the authority to set the height requirement—is it in this bill?

Mr. TOMS. I had thought that it was not.

Senator HARTKE. In the Safety Act?

Mr. TOMS. Oh, we have the authority to set height, yes, and we have this in our rule.

Senator HARTKE. You want a new bill?

Mr. TOMS. We have a rulemaking action underway that requires a ridged pendulum to strike the front and rear surface facet of the vehicle without any damage to the safety items. The pendulum can strike anywhere between 16 and 20 inches. In our professional judgment, this is a good way to determine the height of bumpers.

Senator HARTKE. But as I understood it you criticized the bill in front of you for not requiring a height requirement.

Mr. TOMS. We just felt that this was a very important consideration and encouraged the committee to think in terms of the height of bumpers, because we think that, at least in terms of safety and in terms of truly preventing damage, bumper match is one of the most important considerations.

Senator HARTKE. Why should the committee think about it when we have already given you authority to act upon it in the Safety Act?

Mr. TOMS. And we have acted upon it.

Senator HARTKE. I do not mind thinking about it; if you want me to think about it for a while I will think about it.

Mr. TOMS. I just point out it is not in the bill.

Senator HARTKE. It does not have to be in the bill. You have the authority. Why should we feel that we have done something wrong by not including something in the bill that is not necessary to be in the bill. I have to admit I am perplexed by that reasoning.

Mr. TOMS. I just wanted to emphasize to the committee that we though that this was important.

Senator HARTKE. It is important; we have discussed its importance.

Now, as far as the bumper standards which you have at the present time, do they deal with safety only?

Mr. TOMS. That is correct.

Senator HARTKE. They do not deal at all with property loss reduction standards?

Mr. TOMS. That is correct.

Senator HARTKE. Just how safe are these regulations? In other words, how safe does it have to be? How far does it go? What components of the vehicle must not suffer damage?

Mr. TOMS. The standard covers such components as lights, hood, latch, trunk, muffler, tail pipe, radiator. In other words it covers those components that are in the direct vicinity of the front and rear bumpers of the car that we consider to be necessary for protection for safety.

Senator HARTKE. Is there any requirement that the vehicle be in a drivable condition afterwards?

Mr. TOMS. We think that this rule will assure such a condition. There is a——

Senator HARTKE. Is there any requirement that there be?

Mr. TOMS. We did not think it was necessary that such——

Senator HARTKE. Why not?

Mr. TOMS. Because we feel that the way that the rule is written that this goal would be for all practical purposes assured.

Senator. HARTKE. Why can't you just say it?

Mr. TOMS. We could. We could add to it. We did not think it was necessary.

Senator HARTKE. After all, we are talking about these vehicles being in a drivable condition afterwards; isn't that the idea of making it safe?

Mr. TOMS. We feel that in 99$\frac{9}{10}$ percent of the cases this will be assured by the way the rule is now written.

Senator HARTKE. Well, would the windshield have to be protected?

Mr. TOMS. We did not include the windshield because we are covering the hood.

Senator HARTKE. What about the windshield wipers?

Mr. TOMS. We do not think that the windshield wipers are likely to be damaged if they meet these conditions.

Senator HARTKE. And the side mirrors?

Mr. TOMS. Same with the side mirrors.

Senator HARTKE. What about the frame?

Mr. TOMS. The same with the car frame.

Senator HARTKE. The battery and the battery mounts?

Mr. TOMS. Same with those also.

Senator HARTKE. The hood?

Mr. TOMS. The hood is included.

Senator HARTKE. The trunk?

Mr. TOMS. Trunk is included.

Senator HARTKE. Door hinges?

Mr. TOMS. Door hinges, not likely.

Senator HARTKE. Not likely. Tires?

Mr. TOMS. We do not feel that they would be damaged.

Senator HARTKE. Brakes and wheels, steering mechanism? In other words, if the drive shaft should fall out of the thing it would still qualify.

Mr. TOMS. We do not think it would fall out.

Senator HARTKE. You say you do not think it would? What if it would?

Mr. TOMS. I suppose, Mr. Chairman, that if it proved to be desirable we can list literally every component of the automobile, but we do not think we are going to have any enforcement problem with these items.

Senator HARTKE. One of the presentations by insurance companies showed were the drive shaft completely dropped out.

Mr. TOMS. At 5 miles an hour?

Senator HARTKE. I'll check on that.

Mr. TOMS. I would like to see it.

Senator HARTKE. The speed was 10 miles per hour. The car was a 1971 AMC Ambassador DPLO.

How many cars in the market at the present time in your opinion meet the 1973 standards?

Mr. TOMS. How many cars at present can withstand a 5-mile crash with no safety-related damage?

Senator HARTKE. Right.

Mr. TOMS. Probably very, very few, Mr. Chairman.

Senator HARTKE. Are there any at all?

Mr. TOMS. Well, there are over 500 makes and models. I have to confess to you that I am not sufficiently personally aware of these 500 makes and models so that I can say with certainty that there is not one vehicle that could or would not.

Senator HARTKE. Are you familiar with the test which was submitted by Dr. Hadden?

Mr. TOMS. I am not intimately familiar with it. I have heard about it.

Senator HARTKE. You have just heard about it; you have not read it?

Mr. TOMS. I am sure that our engineers on bumpers have examined it very carefully.

Senator HARTKE. But you have not followed his testimony in these hearings at all?

Mr. TOMS. I read part of it.

Senator HARTKE. Are you familiar with the statement which he made after the film was shown in these hearings in which he said. "These are the six 1971 models which we found which met the standard even at 5 miles per hour, rear into barrier, and estimated the amounts of damage that they sustained," and then he gave the 1971 models, the Plymouth Fury I, Plymouth Satellite, Pontiac Firebird, Buick Skylark, Mercury Montego, Mercedes 220, and gave the estimates of the repair costs which were involved? You are not familiar with that?

Mr. TOMS. I have not followed their activities closely because their interest is in property damage. Ours is in safety.

Senator HARTKE. Theirs is what?

Mr. TOMS. In property damage; our work is in safety.

Senator HARTKE. You are asking for no damage at all, isn't that right?

Mr. TOMS. To the safety related items.

Senator HARTKE. Yes, and no damage.

Mr. TOMS. To its safety related items. We permit sheet metal damage in our rule. We do not have any authority to deal in the property damage field.

Senator HARTKE. I understand that this bill will give you that authority, and you do not want it.

Mr. TOMS. We are not sure that it is necessary——

Senator HARTKE. I did not say that. As I understand it you do not want it.

Mr. TOMS. We are not supporting the bill, that is correct.

Senator HARTKE. As I understand it you do not want it?

Mr. TOMS. I think that is correct.

Senator HARTKE. All right.

Wouldn't it be fair to say, though, that the safest car involved in any 5- or 10-mile-per-hour collision would be one that suffered no damage whatsoever?

Mr. TOMS. Not necessarily. It could be highly hostile and aggressive.

Senator HARTKE. Pardon me?

Mr. TOMS. It could be highly hostile and aggressive. Consequently it could transmit injury to occupants of other vehicles, because, Mr. Chairman, there will be old cars on the road for at least 10 years.

Senator HARTKE. You do have those standards for hostility and aggressiveness at the present time; is that right?

Mr. TOMS. We do not.

Senator HARTKE. You are including that in your ultimate design?

Mr. TOMS. We hope to document it, yes, sir.

Senator HARTKE. Assuming you have that, wouldn't it be better then to say that the fair assessment would be the one which would have no damage whatsover under such circumstances?

Mr. TOMS. I think that you have to make several considerations, such as how you achieve it, how much it costs, and what the ultimate benefit is to the customer.

Senator HARTKE. Let me ask you, were you familiar at all with the Taylor device at the time that you promulgated the standards?

Mr. TOMS. I am not personally familiar with it, but my engineers are.

Senator HARTKE. They were or were not?

Mr. TOMS. They were; they still are.

Senator HARTKE. It was rejected? What comment do you have on the Taylor device?

Mr. TOMS. We never endorse a product.

Senator HARTKE. Pardon me?

Mr. TOMS. We never endorse a product.

Senator HARTKE. What is your comment on the device? Whether you endorsed it or did not endorse it, it was in direct conflict with the promulgation of your standards and intentions.

Mr. TOMS. Mr. Chairman, there are dozens and dozens of devices very similar to Mr. Taylor's on the market.

Senator HARTKE. Is it a good device?

Mr. TOMS. Sure it is a good device.

Senator HARTKE. Does it do more than what you say is necessary to be done at the present time?

Mr. TOMS. We are not so sure that in order to achieve the directives of our rule you have got to have the device on the bumper; there are other ways you can do the job, and we are not about to design the bumper for the manufacturer.

Senator HARTKE. I am not asking you that. You see, the essence of the argument very simply is whether or not it is reasonable and practicable to develop a bumper at this time which can meet a 5-mile-an-hour collision. Is that the problem?

Mr. TOMS. Sure.

Senator HARTKE. Isn't that right?

Mr. TOMS. Yes.

Senator HARTKE. Now, as to the Taylors, they came in and said they had a device and submitted it to you; and you had that in front of you at the time you promulgated the bumper standard?

Mr. TOMS. That is right.

Senator HARTKE. Now, all I am asking you, was that or any similar device—was that available? In other words, did you have anything to indicate that really when these people say they could not comply with higher standards, did you have any information, any type of contrary information to indicate that those people in the automobile industry who were saying they could not meet these standards, that in fact they could if they were willing to adopt what was in the marketplace at the time?

Mr. TOMS. And I said there were more than several dozens of such devices available in the marketplace.

Senator HARTKE. Why would you not then go ahead and promulgate that type of higher standard if that was available?

Mr. TOMS. We have a standard that we think does an adequate job of protecting safety related items. We in our time requirements require five and two and a half in the 1973 year, five and four added in the 1974 model year. We had every intention and still do of evaluating the state of the art. If we feel that it is justifiable to increase the rear to 5 miles an hour, we can do so. In fact, we are evaluating that right now.

Senator HARTKE. Is this a no-damage standard?

Mr. TOMS. Our rule is safety related; we permit sheet metal damage.

Senator HARTKE. Let me ask you again: taking into account the question of the aggresiveness and hostility aspect of it, isn't it really true—I mean, is there any question in your mind whatsoever that the safest standard would be one in which there would be no-damage?

Mr. TOMS. No, it is not clear in my mind. I am not sure that is true. Because you could get a no-damage standard and create a very hostile and aggressive car.

Senator HARTKE. I said, assuming that you take that into consideration.

Mr. TOMS. I am not sure that your point is clear, Mr. Chairman.

Senator HARTKE. Well, I would imagine that most people were rather shocked to begin with, except for the sophisticated people in this room, when they found out that most bumpers were not designed to withstand anything nearly, maybe, 35- to 40-mile-an-hour impact. So when they came down and said that the industry cannot develop one which was at 5 miles per hour within the time limit you gave them, why, it was really shocking to most of the unsophisticated people who drive

automobiles throughout the United States. But now we are coming back to the place where we take an additional step and say that even if you develop a standard, it will not be a safety standard that says no-damage, but it will be a standard at a safety point below no-damage. I would imagine that people will really be in a quandary as to what really we are talking about in regard to automobile safety.

Mr. TOMS. Well: minor sheet metal damage and safety isn't necessarily related.

Senator HARTKE. Well, let me ask you: Has any motor company in petitioning for reconsideration asked you to raise the bumper standard?

Mr. TOMS. I understand that Ford has submitted this.

Senator HARTKE. What do you mean by this?

Mr. TOMS. I have not seen the petition yet, but I read the paper.

Senator HARTKE. You read the paper. Well, let me ask you this: Did Ford Motor Co. file a petition with you on May 19 asking you to raise your bumper standards?

Mr. TOMS. Larry, has it been filed?

Mr. SCHNEIDER. Mr. Chairman, our docket section received an addendum to Ford Motor Co.'s petition for reconsideration dated May 19, 1971. I don't know the date which that was received, but it would have probably been either the 19th or shortly thereafter.

Senator HARTKE. You probably what?

You have had it since May 19?

Mr. SCHNEIDER. We either received it on May 19 or sometime thereafter. There is no stamp date on when it was actually received.

Senator HARTKE. Well, this is quite a departure from what you have had in the past, isn't it, with regard to the automobiles' manufacturers, in regard to their own standards.

Mr. TOMS. Yes; it is.

Senator HARTKE. But you didn't know about it until you read about it in the paper. Good thing we have got the newspapers around here.

Mr. TOMS. Hundreds of these things come into our docket section all the time. I must confess, I do not wait around to read them. They come in repeatedly from time to time, and that is what our attorneys are there for.

Senator HARTKE. No one reads them.

Mr. TOMS. Sure; our attorneys read them.

Senator HARTKE. What does he do with them?

Mr. TOMS. They evaluate them, and they analyze the petitions that have been submitted by the manufacturers and the public and they develop a position and they bring it to me for consideration.

Senator HARTKE. And the attorney thought there was nothing unusual about an automobile manufacturer coming in asking that you revise the standards upward, which is a notable departure from practically anything in the past, and you came here for congressional hearings today, and you still didn't known anything about it. The attorneys didn't advise you. You read about it in the newspaper.

What do you expect me to think about the efficiency of your agency, Mr. Toms?

Mr. TOMS. There has been an enormous amount of talk in the last few months, Mr. Chairman, about five and five bumpers, and we are privy to a good deal of proprietary information from the automobile

industry as to what they are doing on bumpers. I generally know what they are going to do and what they are thinking about long before it appears in the newspapers.

Senator HARTKE. Have you evaluated any of these other devices to which you referred, such as the Taylor device. I understand there may be as many as five or six different models as you have indicated on the market at the present time, which would provide for greater protection, and also provide safety at 5 to 10 miles per hour on bumpers.

Mr. TOMS. We have evaluated a good many, both in our experimental safety vehicle program and other programs.

Senator HARTKE. Do you find them effective?

Mr. TOMS. Yes.

Senator HARTKE. Why, then, would you set such low minimum standards?

Mr. TOMS. We don't think we have set low standards. We think that we were 2 years ahead of the requirement in the bill and that we have had height added and angular heights and both pendulum and barrier, that this is a better rule and does the job effectively.

Senator HARTKE. At 2½ miles per hour?

Mr. TOMS. We felt at that time that the evidence that we had, that it did a reasonable job of protecting the rear light, the tail pipe and the deck lid. We are in the process now of reevaluating this to see whether or not there would be sufficient economic payoff for the consumer to raise it to 5 miles an hour. If we should decide that this is the case, we probably will still do it well in advance of the time set by S. 976.

Senator HARTKE. Now, you have told this committee that your primary concern is for the safety of the people and the motor vehicle, and that is your primary concern, isn't that true?

Mr. TOMS. That is correct.

Senator HARTKE. You want to protect the people who are involved in the accidents themselves. Now, in examining the Department of Transportation bumper standards, many people have stated that it provides no protection whatsoever to the occupant in the vehicle.

Can you just explain to us why no maximum acceleration limits for the passenger were set forth in the Department of Transportation bumper standards.

Mr. TOMS. Because of our rule taking action on occupants and interior protection take care of that problem. We have requirements for padded dashboards, collapsible steering columns, and a host of other activities that accomplish that purpose on the interior of the vehicle.

Senator HARTKE. Well, is it true that under the present system that if an automobile crashes into an object that as far as the passengers are concerned he is first thrown forward, is that right?

Mr. TOMS. That is correct.

Senator HARTKE. And then he comes off with the same force practically when he rebounds, isn't that true.

Mr. TOMS. There is a certain degree of rebound, but it's entirely dependent upon the energy management device used at the instrument panel. And rebound of humans at those low speeds are insignificant. Rebound is a consideration at the 50 g. upward level.

Senator HARTKE. Are you familiar at all with the Ford petition for reconsideration of the standards?

Mr. TOMS. You mean on the bumper.

Senator HARTKE. On acceleration, where they asked very definitely that certain maximum acceleration be established.

Mr. TOMS. They are talking about vehicle, not occupant, as I remember it.

Senator Hartke. Is that in your standard.

Mr. TOMS. What they are concerned about is the rigidity of the bumper, and how the entire vehicle would rebound against the barrier. We are considering that problem very carefully.

Senator HARTKE. But you have not made any change in that?

Mr. TOMS. We may very well. We are analyzing it right now. This is one of the good things about rulemaking action, Mr. Chairman. In doing these things by administrative actions that you can make amendments and make changes as a state of the art changes.

I might add, Mr. Chairman, while there is a pause for a moment. We sure would have liked it if Ford would have taken the same position on the passive restraints that they took on bumpers.

Senator COTTON. I didn't quite hear that. What did you say?

Mr. TOMS. Senator Cotton, I said it sure would have been nice if in the course of our efforts on passive restraints, Ford took the same position as it did on bumpers.

Senator HARTKE. Let me say to you that it would be nice if all motor vehicle manufacturers would take a very cooperative and forward-looking view, and I would hope that they would do so. But I certainly am not going to criticize Ford for taking a step which I think is contrary to its general trend, and if this is a good indication, let's not give them a slap on the wrist for taking one step forward, while the rest of them have taken two steps back.

Mr. TOMS. Let's just push them a little harder and hope they get into some other areas, too.

Sure, we applaud them for that step, and we applaud the committee, but let's get them going in safety as well as property damage.

Senator HARTKE. Let's get them going all the way across the board. I agree with you on that.

Now, let me see if I can put back what concerns me at this moment. When you are talking about a bumper standard, when you are talking about protecting the individual person, the passenger in the vehicle, and when you refer in turn and say we already have taken care of all of the requirements necessary to protect the person inside the passenger compartment, are you leading me into the conclusion that all that is necessary to protect the passenger has already been done?

Mr. TOMS. At those speeds we think we are in pretty good shape.

Senator HARTKE. At 5 miles per hour?

Mr. TOMS. Yes.

Senator HARTKE. At 2½ miles per hour?

Mr. TOMS. Pardon me?

Senator HARTKE. At 2½ miles per hour?

Mr. TOMS. Obviously.

Senator HARTKE. I suppose in a way you may be right, and I hate to admit it, because when you are dealing at 2½ miles per hour, I suppose, there is just not an awful lot of crashes at 2½ miles per hour.

Mr. TOMS. From the rear, you have the seat back and other things there, so that you are just not talking about the movement forward into the instrument panel.

64-345 O - 71 - pt. 4 -- 25

industry as to what they are doing on bumpers. I generally know what they are going to do and what they are thinking about long before it appears in the newspapers.

Senator HARTKE. Have you evaluated any of these other devices to which you referred, such as the Taylor device. I understand there may be as many as five or six different models as you have indicated on the market at the present time, which would provide for greater protection, and also provide safety at 5 to 10 miles per hour on bumpers.

Mr. TOMS. We have evaluated a good many, both in our experimental safety vehicle program and other programs.

Senator HARTKE. Do you find them effective?

Mr. TOMS. Yes.

Senator HARTKE. Why, then, would you set such low minimum standards?

Mr. TOMS. We don't think we have set low standards. We think that we were 2 years ahead of the requirement in the bill and that we have had height added and angular heights and both pendulum and barrier, that this is a better rule and does the job effectively.

Senator HARTKE. At 2½ miles per hour?

Mr. TOMS. We felt at that time that the evidence that we had, that it did a reasonable job of protecting the rear light, the tail pipe and the deck lid. We are in the process now of reevaluating this to see whether or not there would be sufficient economic payoff for the consumer to raise it to 5 miles an hour. If we should decide that this is the case, we probably will still do it well in advance of the time set by S. 976.

Senator HARTKE. Now, you have told this committee that your primary concern is for the safety of the people and the motor vehicle, and that is your primary concern, isn't that true?

Mr. TOMS. That is correct.

Senator HARTKE. You want to protect the people who are involved in the accidents themselves. Now, in examining the Department of Transportation bumper standards, many people have stated that it provides no protection whatsoever to the occupant in the vehicle.

Can you just explain to us why no maximum acceleration limits for the passenger were set forth in the Department of Transportation bumper standards.

Mr. TOMS. Because of our rule taking action on occupants and interior protection take care of that problem. We have requirements for padded dashboards, collapsible steering columns, and a host of other activities that accomplish that purpose on the interior of the vehicle.

Senator HARTKE. Well, is it true that under the present system that if an automobile crashes into an object that as far as the passengers are concerned he is first thrown forward, is that right?

Mr. TOMS. That is correct.

Senator HARTKE. And then he comes off with the same force practically when he rebounds, isn't that true.

Mr. TOMS. There is a certain degree of rebound, but it's entirely dependent upon the energy management device used at the instrument panel. And rebound of humans at those low speeds are insignificant. Rebound is a consideration at the 50 g. upward level.

Senator HARTKE. Are you familiar at all with the Ford petition for reconsideration of the standards?

Mr. TOMS. You mean on the bumper.

Senator HARTKE. On acceleration, where they asked very definitely that certain maximum acceleration be established.

Mr. TOMS. They are talking about vehicle, not occupant, as I remember it.

Senator Hartke. Is that in your standard.

Mr. TOMS. What they are concerned about is the rigidity of the bumper, and how the entire vehicle would rebound against the barrier. We are considering that problem very carefully.

Senator HARTKE. But you have not made any change in that?

Mr. TOMS. We may very well. We are analyzing it right now. This is one of the good things about rulemaking action, Mr. Chairman. In doing these things by administrative actions that you can make amendments and make changes as a state of the art changes.

I might add, Mr. Chairman, while there is a pause for a moment. We sure would have liked it if Ford would have taken the same position on the passive restraints that they took on bumpers.

Senator COTTON. I didn't quite hear that. What did you say?

Mr. TOMS. Senator Cotton, I said it sure would have been nice if in the course of our efforts on passive restraints, Ford took the same position as it did on bumpers.

Senator HARTKE. Let me say to you that it would be nice if all motor vehicle manufacturers would take a very cooperative and forward-looking view, and I would hope that they would do so. But I certainly am not going to criticize Ford for taking a step which I think is contrary to its general trend, and if this is a good indication, let's not give them a slap on the wrist for taking one step forward, while the rest of them have taken two steps back.

Mr. TOMS. Let's just push them a little harder and hope they get into some other areas, too.

Sure, we applaud them for that step, and we applaud the committee, but let's get them going in safety as well as property damage.

Senator HARTKE. Let's get them going all the way across the board. I agree with you on that.

Now, let me see if I can put back what concerns me at this moment. When you are talking about a bumper standard, when you are talking about protecting the individual person, the passenger in the vehicle, and when you refer in turn and say we already have taken care of all of the requirements necessary to protect the person inside the passenger compartment, are you leading me into the conclusion that all that is necessary to protect the passenger has already been done?

Mr. TOMS. At those speeds we think we are in pretty good shape.

Senator HARTKE. At 5 miles per hour?

Mr. TOMS. Yes.

Senator HARTKE. At 2½ miles per hour?

Mr. TOMS. Pardon me?

Senator HARTKE. At 2½ miles per hour?

Mr. TOMS. Obviously.

Senator HARTKE. I suppose in a way you may be right, and I hate to admit it, because when you are dealing at 2½ miles per hour, I suppose, there is just not an awful lot of crashes at 2½ miles per hour.

Mr. TOMS. From the rear, you have the seat back and other things there, so that you are just not talking about the movement forward into the instrument panel.

64-345 O - 71 - pt. 4 -- 25

Senator HARTKE. What I am trying to figure out is how you are going to pull out this one part of the vehicle and just say, "Well, we have taken care of that and the other part of the vehicle." Now, without expressing an engineering judgment, I will say this to you. I am sure of one thing, that if that automobile is more safe as far as the bumper is concerned and protects against injury at 10 miles an hour, that is a much better bumper and is going to offer more protection for that person in the passenger part of that automobile than an automobile safety standard which is only, say, 4½ miles per hour.

Mr. TOMS. That could be true, Mr. Chairman, but do not overlook the fact that there are many cars on the road today that have excellent sheet metal energy absorbing systems that will permit a lot of property damage but also provide excellent safety for the occupants.

Senator HARTKE. Yes, but you see, you are putting "either/or" on this endeavor, and I just do not want to do that. I am not one who believes in the first place that there is any prohibition on the Congress to consider economic factors, and you may find that you can eliminate economic loss and provide for maximum safety at the same time. It certainly is not just either/or, property damage or personal injury.

Mr. TOMS. I think the real issue that is worth discussing momentarily is whether the consumer ought to have that choice.

Senator HARTKE. I think the consumer is entitled to have both, and that is the major difference between the two of us in regard to this bill.

Mr. TOMS. That is not any different. I believe that a consumer ought to have the opportunity to buy a car that suffers very low property damage in crashes, but I am not so sure that we ought to say that everybody in America has to have that kind of a bumper if perhaps they do not want it, particularly when we consider that there are a lot of cars on the road that do a very fine job. This is particularly true of certain foreign models which do a very fine job of planning energy, but do not necessarily have property-damage-type bumpers. I think there might be something very well said to give the consumer that choice.

Furthermore, this is also true in certain forward control vehicles, sport cars, and off-road types of vehicles. There is a broad range of vehicles in this country, Mr. Chairman, that people would very much like to buy. Some of them do not necessarily lend themselves absolutely to 5-mile-an-hour low property damage bumpers, front and rear. I am not so sure that we ought to take that privilege away from the American consumer.

Senator HARTKE. We are going to cover that in a moment. We will take that up then.

But as to a related matter, when you talked about the different cars in the marketplace, have you taken into consideration the fact that there are a number of vehicles which are on the highway and which maybe the design of the vehicles may be one which certain individuals might like, but are in effect sort of moving weapons on the highway as far as pedestrians are concerned?

Mr. TOMS. The pedestrian issue is very serious. It is an issue about which we are considerably concerned. However, it is not as simple as just getting an arbitrary panel of judges together and trying to decide what edge is hostile, or what edge is sharp, or what that hood ornament will do. It really requires a study of the dynamics of

the pedestrian. We do know that the shapes and noses of the front of vehicles have remarkably different effects upon the kinematics of pedestrians in a crash.

Now, Mr. Chairman, I regret to say that we just do not know enough about how to model the fronts of cars for accomplishing better kinematics in pedestrian crashes. We have done quite a bit of dummy crashes, but dummies do not act like human beings in the crash, and we have not found humans yet that we can crash. So there is a lot to be learned, and I do not think it pays to move off and begin to make arbitrary decisions on these designs, because we may do a poorer rather than a better job.

Senator HARTKE. When we first started these hearings—I do not recall whether it was 1965 or 1966—I remember at that time very definitely coming in here and seeing some of these front ends which were like weapons. I remember the spears, the sharp points, on the front end of vehicles which had been driven through individuals, through pedestrians. I remember, for example, quite vividly, the one dealing with the child being pierced right through the middle of the abdomen. At that time it was quite generally agreed upon that in the future at least we should try to avoid those things which would obviously assault and yet we do have at this time vehicles on the highway, as far as designs are concerned, which appear to give that same type of damage to the pedestrian.

Mr. TOMS. The only one that I know of that you are probably concerned about is a hood ornament on the Monte Carlo.

Senator HARTKE. Well, you do not feel here that this 1971 Mercury Montego which has a W-shaped front end could act as a wedge and hold a pedestrian captive underneath there and throw him right under the vehicle?

Mr. TOMS. W-shaped front ends have been a real concern to us.

Senator HARTKE. Have they expressed your concern to the manufacturer?

Mr. TOMS. Sure. I think the issue here is, is the pedestrian thrown to the ground and run over? Is the pedestrian thrown into the air and possibly run over? Or is it better perhaps to hold the pedestrian against the vehicle and try to bring down the G forces? We really do not know.

Senator HARTKE. But you have expressed concern to Mercury about this?

Mr. TOMS. We have not talked to Mercury definitely about that front end.

Senator HARTKE. Why not?

Mr. TOMS. Because there are others also.

Senator HARTKE. You have not expressed concern to any of them?

Mr. TOMS. No, we have not.

Senator HARTKE. I thought you said you expressed your concern to them.

Mr. TOMS. Very definitely about pedestrian crashes.

Senator HARTKE. But not in regard to the style of the front end?

Mr. TOMS. We are not sure that that front end is any worse than a number of others.

Senator HARTKE. But you suspect it might be?

Mr. TOMS. We would like to know.

Senator COTTON. Mr. Chairman, may I be permitted to look at that, or is this entirely a one-man show?

Senator HARTKE. I can never upstage you, Senator Cotton.

Mr. TOMS. Those vehicles with a very low scope-like nose might be worse than that.

Senator HARTKE. Well, does the mere fact that something is worse than this one explain why you would not complain about this if it is bad?

Mr. TOMS. We complain about them all; we are constantly exercising these things with the industry.

Senator HARTKE. You have been writing to them, have you?

Mr. TOMS. I am not so sure about writing, but we sure do a lot of talking.

Senator HARTKE. But you have never written to them, right?

Mr. TOMS. Larry, do you know if you have written about that particular subject?

Senator HARTKE. Now, Mr. Toms, I am going to show this to you. A 1971 Pontiac Firebird; this has a very sharp nose on it. Does that present any concern to you whatsoever?

Mr. TOMS. I have watched that car crash in a number of tests and it would be my judgment that it probably is not among the worst.

Senator HARTKE. It is not among the worst?

Mr. TOMS. No.

Senator HARTKE. Is it among the best?

Mr. TOMS. I would not put it among the best.

Senator HARTKE. Why wouldn't you want it to do the best?

Mr. TOMS. Because we do not know what the best really is. We are really doing a lot of guesswork in this field. And until we do develop dummies that model the kinematics of a human in a crash—don't underestimate the difficulty of that, Mr. Chairman, because most of the pedestrians that are killed are kids, drunks, and old people. This fact imposes very serious problems on how to model these kinds of crashes and how to simulate dummies that will reproduce what happens in those crashes. Then you have got to take literally every kind of vehicle of every different shape and run it through that process. We have not found how to do that yet, nor has the auto industry.

Senator HARTKE. Don't you think kids and old people and even drunks are entitled to live?

Mr. TOMS. They are entitled to everything we can humanly give them, but we should not force something that we do not know how to do.

Senator HARTKE. Well, here is a 1971 Buick Skylark now that has almost all the limits of the thing we discussed—this came out in 1970. Four years later, after we had talked about this in these hearings and discussed some of these sharp projectile fronts there is a beak-shaped upper lip and pointed bumper, right?

Mr. TOMS. Yes.

Senator HARTKE. Then you mean to say that will not be more damaging in your opinion than one which had been flat?

Mr. TOMS. You mean flat or rounded?

Senator HARTKE. Or rounded, yes.

Mr. TOMS. Chances are, in terms of producing injury, that kind of an edge obviously would be more damaging than a flat edge.

Senator HARTKE. That is right. A 1971 Ford Galaxy resembles a small pointed weapon such as the old mace that we used to have in medieval times; is that right?

Mr. TOMS. I am not familiar with maces.

Senator HARTKE. Here is a 1971 Pinto. It has that same upper lip projected forward with the point, right? And the 1971—do you see that?

Mr. TOMS. Yes.

Senator HARTKE. That is a Chevrolet Vega. It is almost like a battering ram.

Mr. TOMS. Personally what bothers me more about the Vega that you just held up is the shape of its underpart—of the part of the sheet metal under the bumper.

Senator HARTKE. Did you complain about that to them?

Mr. TOMS. I have not personally complained about the nose of the Vega to GM.

Senator HARTKE. Well, you do not feel that this is in your realm of responsibility?

Mr. TOMS. Absolutely it is in our realm of responsibility.

Senator HARTKE. How do you get that responsibility translated into action if you do not direct something to these manufacturers along that line?

Mr. TOMS. I think that the most important thing is to really find out what happens in pedestrian crashes. We are working very hard on dummy development, and we are pleased to indicate that the industry recognizes this need now. I think we are getting a better test response from the dummies.

Senator HARTKE. I would hope you would learn more about that.

Mr. TOMS. I assure you, Mr. Chairman, we will.

Senator HARTKE. I would hope you would communicate your opinon to the auto companies in writing. You know, Mr. Toms, one of the problems that we have heard constantly is the fact that people have said they have done things. I am not saying that you don't. I would imagine that you do. You know, somehow or another when you do it in writing, it gets through to the people in authority, and maybe they will——

Mr. TOMS. To be honest, it isn't our desire that is the problem. That is not the issue here. The question is how to do it. We have a great desire. I think our people are among the most serious people in safety in the entire country.

Senator HARTKE. I wouldn't expect you to say anything else, but that is all right.

Mr. TOMS. But, you know, we are also professionals who want to do the job right, and take a great deal of pride in doing it right.

Senator HARTKE. How much do you think you spend in effectuating this desire?

Mr. TOMS. I think our people have it.

Senator HARTKE. I know they have the desire, but how much money is spend and man-hours are spent to effectuate the desire that you say?

Mr. TOMS. You mean to the desire?

Senator HARTKE. No. How much in your department is spent? How much is being spent by your department?

Mr. TOMS. Our engineer's evaluating style?

Senator HARTKE. Style, yes. How much do you think?

Mr. TOMS. We really deal most in structure and in crashing, instrumentation, in trying to find out exactly what takes place, and this is why—we are sorry these films weren't better—we studied the slow motion films.

Senator HARTKE. Isn't the style a part of the aggressive nature of an automobile?

Mr. TOMS. We have said repeatedly that we felt that much too much money was put into style.

Senator HARTKE. It has been estimated that about $2 billion a year is spent in the automobile industry on developing style, and what I am trying to find out really from you is how much is being spent on safety in styling by you as compared to the $2 billion on style by the auto industry.

Mr. TOMS. We would be happy to try to sort that out.

Senator HARTKE. No use in sorting that out. Aren't you really saying that you spend a very small amount of money on it, and although you are concerned about it, your efforts are not there?

Mr. TOMS. There is no question that the industry spends a great deal more on style that it does on safety.

Senator HARTKE. Maybe the automobile industry could take judicial note, and if their representatives are in the room, maybe they can hear me loud and clear. If you are going to spend $2 billion on style, you ought to spend at least an equal amount on safety, and I might say that if you don't do that, probably the Congress will.

Mr. TOMS. Thank you, Mr. Chairman.

Senator HARTKE. What about the bumpers in relation to trailer hitches? What study have you done on that, what results have you found? Do you have any indication that trailer hitches are unsafe, especially these hitches which are put on the bumpers?

Mr. TOMS. We have a program underway on trailer hitches, and I would like to ask John to give you what details he can.

Mr. EDWARDS. I don't have too much at my immediate disposal, Mr. Chairman, but we do have a program underway studying the stability and control capabilities of the automobile/trailer combination. It is being implemented now and should produce results by the end of this year. I would be pleased to provide specific information to the committee.

Senator HARTKE. This is a safety factor is it not, so we are not talking about economics at the moment?

Mr. TOMS. This is a safety factor.

Senator HARTKE. Isn't that right?

Mr. EDWARDS. Yes, sir.

Senator HARTKE. You agree with that?

Mr. EDWARDS. Absolutely.

Senator HARTKE. Why wouldn't it be a part of your safety problem then?

Mr. TOMS. I have a very strong feeling that trailer hitches should not be on bumpers. Trailer hitches ought to be attached to the frame and structure of the vehicle.

Senator HARTKE. Do you intend to promulgate a standard to that effect?

Mr. TOMS. Yes.

Larry, we have issued a NPRM that specifies different classes of trailer hitches.

Senator HARTKE. Specifies them. I want to submit for the record a letter from an Illinois coroner who describes the way in which a Cougar bumper supporting a trailer tore away from the car with the result that the trailer crossed the highway, injured one person, and killed three others.

How far along are you in that field? Let me ask you that.

Mr. TOMS. I think we are fairly well along. I can't cite exactly, but it would be my guess that when the study is finished that John has going, we will take a quick review of the NPRM that we have issued and we will move forward with the final rule.

Senator HARTKE. And this, for all intents and purposes, would remove trailer hitches from bumpers entirely; is that right?

Mr. TOMS. Yes, it would eliminate unsafe trailer hitches. One of the things I thought you would bring up is that the trailer rental companies are quite concerned with our proposal. However, we still think our proposal is in the best interest of safety. In other words, when trailers are rented, the hitch is frequently attached to the bumper. Consequently our rule will vastly affect that market.

Senator HARTKE. You are not going to let the trailer companies just stop you if you really find it is a safety hazard, are you?

Mr. TOMS. No.

Senator HARTKE. Let's come to the question of prices. Ford has testified here in these hearings that their improved bumpers may add as much as a hundred dollars to the cost of an average new car. And the statement in the press conference, they announced a new FFMVSS-215, you estimated a cost of $40 to the manufacturer for the improved bumper.

Mr. TOMS. Average.

Senator HARTKE. And testimony before this committee indicates that the cost maybe could be lowered to as much as $30 per car, on an average.

Now, what in your opinion is the responsibility of your administration in arriving at a solid estimate? In other words, when can we expect some public statements from you as to your findings in this regard?

Mr. TOMS. Ralph Nader has talked to me about this sort of thing, and he has sincere doubts as to whether or not we ought to, in the Government, talk prices and costs, or whether we should provide an environment in which the marketplace or competition controls these prices. I think he has a good point.

I think that we have to evaluate whether we ought to talk about original equipment manufacturer prices or whether we ought to just try to do everything we can to keep these prices at the lowest possible level. I admit that Mr. Nader has added a new dimension here. Again, I think that he has a good point.

Senator HARTKE. Isn't Mr. Nader talking about the question that he would like to get back to wholesale prices rather than retail prices?

Mr. TOMS. In his communications to me, I didn't understand him to mean purely wholesale prices. This may have been a part of it. I didn't get that point.

Senator HARTKE. The testimony before this committee has indicated that sizable sums will be added in the next few years to the prices of new vehicles because of the new safety standards which your administration has enacted so far, or will enact.

Now, have you made any studies at all as to whether or not these estimates that the auto industry has made are inflated, or just exactly what the American people should know about the amount which is added for costs?

Mr. TOMS. We have to recognize, Mr. Chairman, that the consumer always pays for safety features, the auto industry isn't in the business to make these things available for nothing. It is true that the original equipment costs to the manufacturer as it is translated to the consumer in the final retail costs, with the markups to accommodate the profit for the distributor and dealer, at least double, and in some cases even triple.

Senator HARTKE. But how far should you go? In other words, where is your role? How far should you go in making available to the public the information in this regard, and how much—should there be a ceiling put on the amount of costs that is involved? Wouldn't you be able to find what the actual increase amounts to?

Mr. TOMS. Our cost and leadtime analysis people do give us their best professional judgment as to what these things cost. We find we usually give or take 15 percent pretty close to what these actual costs are. I am certainly not opposed to our making this information publicly available.

Senator HARTKE. What is wrong with the people knowing what your estimates are?

Mr. TOMS. I think it could be helpful.

Senator HARTKE. I think it would be, too.

Mr. TOMS. I wouldn't be opposed to it at all.

Senator HARTKE. Could you supply this for the committee as you move along in these various items?

Mr. TOMS. I would be pleased to do so.

Senator HARTKE. All right. I think this will be fine.

In 1970, the insurance industry alleges that they paid about $4,700 million in claims which were associated with damage to vehicles. It is estimated that of this amount approximately $3,200 million went to the repair and replacement of motor vehicles and the other overall economic loss associated with vehicle crashes was more than $16 million.

Do you have any estimates of the benefits in relation to costs for a property loss reduction program such as contained in the bill before us?

Mr. TOMS. Jack, can you give those figures?

Jack Goldberg here has been working on this problem night and day, Mr. Chairman, and is probably my house expert on this subject.

Senator HARTKE. Pull the mike up there, so everyone in the back of the room can hear you, because they have to report on this.

Mr. GOLDBERG. Mr. Chairman, our data shows us that in the most perfect of all worlds a 1974 production run of vehicles with five and four bumper protection will result in the life of that production of a hundred thousand miles.

Senator HARTKE. How much?

Mr. GOLDBERG. A hundred thousand miles of the life of the vehicle of a 1974 model year. There would be a net benefit of approximately $1 billion. Now, I must modify this by saying that a key ingredient is bumper mismatch. Because of this problem, net benefit can be expected to be severely limited in the first several years of the bumper installation. However, the bumper net benefit would get better and better as more cars have them.

Senator HARTKE. Now, that is if you adopt your standards, the minimum safety standards adopted by the administration, right?

Mr. GOLDBERG. No, sir. That is a full property protection standard.

Senator HARTKE. No damage?

Mr. GOLDBERG. No-damage standard.

Senator HARTKE. In other words, a no-damage standard?

Mr. GOLDBERG. Yes, sir.

Senator HARTKE. That is what is required in the bill.

Mr. GOLDBERG. Yes, sir.

Senator HARTKE. Now let's come to this question which we have alluded to before, the question of consumer information. In your statement, you said you were opposed to setting of Federal standards, if those standards relate purely to economic considerations as opposed to health and safety regulations, and I think you argued that the legitimate function of Government is to provide consumer information which will guide consumer choice in the marketplace and therefore encourage the production of automobiles which are less susceptible to damage and easier to repair. And then you say that your Department would provide the necessary consumer information to stimulate better design of vehicles; is that a fair statement?

Mr. TOMS. That is a fair statement.

Senator HARTKE. Pardon me?

Mr. TOMS. That is a fair statement, Mr. Chairman.

Senator HARTKE. Let's take a look, then, at your Department track record on providing relevant consumer information.

In a letter to me in 1969, the Department of Transportation said that they were proceeding ahead to develop a crash survivability index which would measure the way in which different cars protected occupants in a crash, and at that time I was told that by May of 1972, the crash survivability index would be available.

I wonder if you would tell the committee just exactly where we are in regard to this provision and provide a detailed report of the progress you have made in developing such an index since 1969?

Mr. TOMS. This is a broad subject, and I would like to start by having John indicate to you what we have done in attempting to move ahead in this program.

Senator HARTKE. Let me ask you first, will you provide for us a detailed report of the progress you have made in addition to what you say here today.

Mr. TOMS. Absolutely.

Senator HARTKE. Let me ask before you go on, will this report be ready by May 1972?

Mr. EDWARDS. I don't think so.

Mr. TOMS. No.

Senator HARTKE. Pardon me? I didn't hear that.

Mr. TOMS. I don't think it will be. And certainly one of the difficulties is the 500 different makes and models.

Senator HARTKE. All right.

Mr. TOMS. And the combinations.

Senator HARTKE. Let me ask you, if it's not going to be available by May 1972, when is it going to be available?

Mr. TOMS. OK, John.

Mr. EDWARDS. Mr. Chairman, I would like to take a moment to give you a feeling for the planning process that went on.

Senator HARTKE. I don't mind having a feeling, but I would like to have the date first.

Mr. EDWARDS. Yes, sir. But subsequent to June of 1969, and upon the arrival——

Senator HARTKE. Are you going to come to a date eventually?

Mr. EDWARDS. Yes, sir.

Senator HARTKE. All right.

Mr. EDWARDS. Upon the arrival of our new Administrator, we reviewed the entire crash survivability program, and, of course, reiterated the fact that the primary objectives of our safety administration was to save lives, reduce the number and severity of injuries resulting from traffic accidents, and to reduce the number of accidents. Comparative crash testing, which seeks to determine some overall survivability rating for vehicles that have already been designed, manufactured, sold, and now in use, could not, at that time, lead to the accomplishment of our prime objectives in a direct way, or within a clearly definable time frame.

Simply stated, what appeared to be a straightforward task in the first planning iteration, that is, rating vehicles, was upon closer examination, a very complex, extremely expensive activity which, if and when it could be done, offered much less potential payoff in terms of reducing deaths and injury than pursuing the crash survivability research program to develope the techniques, technology, and energy data which, through appropriate rulemaking, will lead to improved vehicle safety design and construction.

Now, with that as a background, then, our crashworthiness program emphasized improved occupant protection through the use of passenger restraints and energy-managing structures. Our safety program was established, as you know, so as to demonstrate that the crashworthiness capability which we were so seriously trying to achieve could, in fact, be demonstrated in a total systems environment.

Now, with that, then, we did not continue to pursue the development of a comparative crash survivability index. However, and this is the "however" I really want to emphasize: We have not abrogated the responsibility of trying to mathematically model the accident. In the ultimate, as you may recall, the comparative crash survivability index was going to be a function of the computer capability developed. That would be the ultimate end of that program. And we have pursued the development of computer models of the vehicle occupant. We have pursued the development of computer models of passenger restraint system, and we are beginning to pursue the development of models of vehicle structures which, because of their complex geometrics, because of the nonlinear quality of the response of the vehicle in a crash environment, make the work very tough for us.

But in terms of giving you an input that will indicate when that program will be feasible, we think that we can meet the requirement in section 124(d) of your bill by next June.

Now there is a date. We can give you a feasibility study by that time. Parts of that work are underway now, so we believe that we can meet the requirements of S. 976 for a feasibility study, but as to whether we are going to be able to publish quantitative ratings of the survivability of vehicles by weight class based on analysis of accident data with limited crash testing within the 30-month timeframe that we promised in our November 16 letter is a different question. I am afraid I would have to say that we are going to be at least 6 months or more late in doing that.

Senator HARTKE. I understand section 203 of the National Traffic and Motor Vehicle Act, the Department of Transportation was required to develop a uniform quality rating system for motor vehicle tires by September 9, 1968.

Has such a standard been developed?

Mr. TOMS. We are hard at work at it.

Senator HARTKE. No; I asked had it been developed?

Mr. TOMS. It has not been developed.

Senator HARTKE. All right.

Will you please describe the information which is contained in the consumer information bulletin which the National Highway Traffic Safety Administration has been putting out for the last several years?

Mr. TOMS. Talks about acceleration, braking, and passing distances; and tire reserve load is also in there.

Senator HARTKE. Pardon me?

Mr. TOMS. Tire reserve load.

Senator HARTKE. How many consumers utilize information which is contained in these bulletins.

Mr. TOMS. I don't think very much.

Senator HARTKE. How do they obtain the information if they want it?

Mr. TOMS. Through the dealer.

Senator HARTKE. Are the dealers under any legal requirement to provide this to the consumers?

Mr. TOMS. No; they are not.

Senator HARTKE. What will they have to do to get it?

Mr. TOMS. Well, you know, obviously, Mr. Chairman, if their car doesn't show up well in bulletin, the dealers don't do very much to distribute this in their showroom. I guess that is the wrong place to try to put it, because if their car does show up in the bulletin, they're going to do everything they can not to hamper their sale.

Senator HARTKE. What then, is your opinion of this program today?

Mr. TOMS. Seems to be the best way to go about this, No. 1 ——

Senator HARTKE. I mean what about the program so far?

Senator COTTON. Why don't you let him answer?

Senator HARTKE. Why don't you let me ask my questions once.

Senator COTTON. I beg your pardon.

Senator HARTKE. I can ask my own questions, Senator Cotton.

Senator COTTON. Well, Mr. Chairman, I think the witness has a right to answer the question.

Senator HARTKE. If you want to ask questions, go right ahead. I will not interrupt you.

Senator COTTON. I am going to ask a few if I live long enough, but go right ahead.

Senator HARTKE. Go right ahead now, Senator Cotton. I will defer to you, sir.

Senator COTTON. That is very kind of you, but I would like to hear the answer to your question.

Senator HARTKE. Well, I will ask the question again.

What is your honest appraisal of the program today?

Mr. TOMS. I think that it's not as effective as we would like it to be, I think that there are some things that we ought to try to do to make it more effective. I feel that we ought to make this information available to consumer magazines, and to the auto buff magazines that people read heavily in their decisions in buying a car. I think that we ought to go on television we ought to try to get public service time to communicate this information.

It's my humble opinion that the release of this information through dealerships is not the best way.

Senator HARTKE. Senator Cotton.

Senator COTTON. Mr. Chairman, it's your privilege to finish your questioning and I am not going to intrude upon you. You are the acting chairman of this full committee here today.

Senator HARTKE. I said I defer to you. I shall defer to you, sir.

Senator COTTON. All right.

Mr. Toms, how does it happen you are here today?

Mr. TOMS. We were asked to come here to testify on S. 976.

Senator COTTON. I was informed that this was the only day that you could appear. You were going on some extended trip or something, and this hearing had to take place today because of your request?

Mr. TOMS. Yes, it's convenient for us, because as you know, the Secretary is now negotiating an experimental safety agreement provision with the country of France, and I will next week be over there to continue the negotiations with the experimental safety vehicle agreement with the Government of France.

I will also be attempting to negotiate an agreement for a 3,000 to 4,000 pound safety vehicle with the Government of Germany.

Senator COTTON. How long will you be gone?

Mr. TOMS. Be gone about a week or more.

Senator COTTON. Well, I want the record to show that this hearing is taking place while Congress is in recess. The Senator from Kentucky, Mr. Cook, and the Senator from Tennessee, Mr. Baker, have been, I understand, fairly faithful in attendance at these hearings. The Senator from Kentucky protested to the chairman and to me that the opportunity to talk with the man who is doing the administering of this job should come when they could be in town.

I have had to cancel speaking engagements, or the distinguished gentleman would have to have been here all by himself. I wouldn't want him to be lonely.

It's utterly impossible for other members to be here.

I think that this being a full committee, I want the record to show that although a protest was made, the decision was that the hearings should go ahead.

Now, I think that other members of this committee, such as the Senator from Michigan, Mr. Griffin, who was here for a few minutes but had to leave because he has speaking engagements during this recess, are interested in hearing your testimony. For example, Senator Griffin represents a State in which most of the automobile manufacturers are located. He therefore has a very real and intense interest in this subject. I am sure he would have wanted the opportunity to question you.

One of the penalties of being the senior Republican member is that it's up to me to see that we are represented. Consequently, since my colleagues could not be here, I had to cancel other things and be here.

I think that we are entitled, the committee is entitled to an opportunity to question you. I therefore want the record to show that I have protested and do protest this whole proceeding at a time when I doubt there is another member of the committee on either side in town. I know there isn't on my side of the aisle.

If it was done to accommodate you, then I must say, I don't think that you were treating the committee fairly.

If it was not done at your volition, then I still say that the members of this committee have not been accorded the privilege that should be theirs.

For the record, also, I would say, that there better be a quorum present when this full committee considers this bill. It's a highly important bill. And, in view of this proceeding today while the Senate is in recess, and practically all the members are out of town, I will insist upon a quorum. We should have an opportunity to hear you.

You are going to be gone a week. Well, I express the hope on the record, that the distinguished acting chairman will have you back here and give the other members of this committee an opportunity, after having read your testimony, to examine you about it.

Now, like the chairman I am interested in when this administration bill is going to get up here. I am constantly being placed in the position, as senior Republican member of this commitee, of having to go to the chairman of the committee to request that we defer action until the administration gets its bill up here.

I was not entirely satisfied with your response as to when this proposed administration bill would be before this committee.

Can you give me more information on that.

Mr. TOMS. I wish that I could, Senator Cotton. All I can do is pledge to you that I will do everything within my power to facilitate it getting here.

Senator COTTON. I will be perfectly frank. Is this the same old story of the Department waiting for the White House to OK their version?

Mr. TOMS. Well, certainly in a bill of this importance, there are a lot of parties who are interested in the position.

Senator COTTON. Well, I noted in the chairman's opening statement—of course, I was not permitted to comment on it at the time—that he made as a flat statement that the White House was "pussyfooting" on this bill.

I ask you, is the White House "pussyfooting" on this bill?

Mr. TOMS. Not to my knowledge.

Senator COTTON. Well, I ask you again, and I am asking it as one who has to represent the administration on matters coming before this committee: Is the delay caused by the attempt of the Department of

Transportation to secure an OK from the White House on whatever made you—and by you, I mean the Department—state that you would submit a bill to this committee.

Mr. TOMS. It's true, Senator, that in a bill like this, it leaves the highway traffic safety——

Senator COTTON. I can't hear you.

Mr. TOMS (continuing). It's true that in a bill like this, that after it leaves the National Highway Traffic Safety Administration, and goes to the Transportation Department at large, I am not heavily involved. There has to be approvals. I am sure there are many agencies in Government that are deemed concerned about administration's position. I do not know the exact nature of the approvals and checkoffs, since I am not intimately involved.

Senator COTTON. Do you have any knowledge that would corroborate the chairman's statement that the White House is "pussyfooting" on this bill?

Mr. TOMS. I have no evidence to suggest that is true. In fact, I would believe, from my involvement, that it's not true.

Senator COTTON. Do you have a bill?

Mr. TOMS. Yes, we have been working on our position on this.

Senator COTTON. Is your bill completed?

Mr. TOMS. It's not completely completed in terms of all the language, but we have developed our position the way we want it to be.

Senator COTTON. Well, may I have just one or two examples of the fundamental differences between your bill and the bill we have before us?

Mr. TOMS. We feel we should not set property damage standards. We should make damage susceptibility information available to the consumer and attempt to induce the marketplace to bring about these changes.

Senator COTTON. Well, I am not quite sure I understand that answer. You don't mean by that answer that what you want is to put it up to the choice of the consumer as to whether he shall buy a safe automobile or a dangerous automobile? You don't mean that, surely?

Mr. TOMS. No, because we have the authority in safety. I only mean it in reference to property damage.

Senator COTTON. Now, did you ever design an automobile?

Mr. TOMS. I never have.

Senator COTTON. Did you ever build an automobile?

Mr. TOMS. No.

Senator COTTON. Has anyone in the Department ever designed or built an automobile?

Mr. TOMS. No, no one.

Senator COTTON. You have made no investigation to find out how many Members of Congress have ever designed or built an automobile?

Mr. TOMS. I never have.

Senator COTTON. If I understand your point, you are saying that you want to prepare and promulgate, after careful hearings and examination, every rule that is possible or practical to be promulgated to insure safety, or all possible safety in the construction of automobiles?

Mr. TOMS. That is correct.

Senator COTTON. Does that extend to the design of automobiles?

Mr. TOMS. Only in terms of its structure and those things that deal with safety.

Senator COTTON. And you consider your task is to find a reasonable posture which insures every practical step that can be taken to make an automobile safe, but you want to keep out of the field of trying to tell the automobile manufacturers how to design, how to plan, and how to construct their automobiles?

Mr. TOMS. That is correct.

Senator COTTON. Is that a fair statement?

Mr. TOMS. That is a fair statement.

Senator COTTON. Do you consider the bill before us goes further than that, placing you in the posture of having the Congress dictate to the automobile manufacturer the construction and to a certain extent the design of automobiles?

Mr. TOMS. That is correct.

Senator COTTON. Also, do you take into consideration the facts that in our efforts to care for the interest of the consumer, that what the consumer has to pay for automobiles also has to be considered to a reasonable extent?

Mr. TOMS. Very much so. We are very concerned about costs.

Senator COTTON. In other words, is your objective to insist on every practical and effective safeguard in automobiles, but not to go into unrelated detail which could compel the consumer to pay a substantial extra sum?

Mr. TOMS. That is correct. We feel that it is proper for us to deal in the fields of health and safety. But we are not so sure that we should deal in purely economic areas.

Senator COTTON. Now, I am going to appeal to the chairman of this committee, as I have said, to give the full committee an opportunity to examine you. You have said you will be gone a week. Can you be more specific about when you will be available?

Mr. TOMS. Mr. Chairman, if it is the committee's pleasure, I will not go to Europe to engage in these negotiations.

Senator COTTON. Not much sense of your hanging around here during this recess, because there are no Senators here.

The Senate will be back in session by next Tuesday. How soon after that could you be back in the country and be available so as not to delay these hearing unnecessarily?

Mr. TOMS. My present itinerary calls for me to return here on the 14th of June, but if it is the committee's pleasure to hold a hearing earlier than that time, I will be here.

Senator COTTON. Incidentally, concerning our earlier exchange on my State's inspection program, it is my recollection that the price of inspection in New Hampshire is set by the inspecting facility but it averages about $3. I am also informed that this automobile inspection program, which is rigidly enforced, has had an appreciable effect on holding down the insurance rates in the State. I suggest that to you because of my hope—and I suppose every Senator is entitled to one—that more can be accomplished by a rigid inspection of automobiles than by any other method, except, of course, the matter of dealing with drivers. It can be done by States and we can see to it that the States do it in a serious manner.

I gather that you do not go along with that.

Mr. TOMS. We believe that the State ought to have the right to conduct the kind of inspection program that it wants, as long as it is effective in removing the unsafe vehicles from the road.

Senator COTTON. Your last words are the crux of what you have just said to me. If States are not doing a job, they should be forced to do that job.

Mr. TOMS. Yes; it must be effective.

Senator COTTON. And if it isn't effective, the cars from that State should face the possibility of being taken out of interstate commerce?

Mr. TOMS. Well, we are hopeful that very soon we can identify precisely the characteristics of the car that lead to collisions and crashes and that we can then develop the vehicle in use standards that will assist the States in being sure that their inspection programs are more effective.

Senator COTTON. Yes, but the States will still have to contend with cars that are already built and already on the road. And, you can't take a poor man who has a 5-year-old car and can't afford a new one, and throw him off the road arbitrarily if he keeps that car in the best possible condition and it is carefully inspected.

Brakes are fully as important as bumpers, aren't they?

Mr. TOMS. Yes. We tend to think that the most cost beneficial items in safety inspection would be tires, brakes, steering linkage, shock absorbers, and, to some degree lights.

Senator COTTON. I will be through now in just a second, Mr. Chairman. Is it necessary to wait until you have made all your studies and determined the characteristics of safety that you are going to require in automobiles to find the ideal automobile or the reasonably safe automobile? Do you have to wait until then before we tighten up on State inspection of existing automobiles on the highways? This bill goes so far as to—if I understand it correctly, and I am handicapped, because I have not been able to attend all the prior hearings, being here today because I am pinch-hitting—point toward a Federal inspection system.

Now, if you don't see to it, and see to it immediately, that the States are forced to do this inspection job seriously and faithfully under penalty of having the cars taken out of interstate commerce, then you are going to continue to have many States doing a very slipshod method of inspection while you develop your rules; is that right?

Mr. TOMS. We are in the process right now of revising our motor vehicle standard.

Senator COTTON. Now, does the bill that you are contemplating sending up to this committee contain anything on the matter of inspection?

Mr. TOMS. It does. It requires an inspection after a crash and when there is a change of ownership.

Senator COTTON. Well, that, in my opinion, is very inadequate.

Mr. TOMS. Well, this is in addition to the present inspection standard, and that gives the State flexibility. They can have at least one per year.

Senator COTTON. But, with respect to the present inspection standards, many States are very lax in their enforcement of them. Don't you find that to be true?

Mr. TOMS. For some States, this is probably a true statement. Some States do a very good job, and some do not do as good a job.

Senator COTTON. Well, why can't we take steps to see that they all do a reasonably good job?

Mr. TOMS. I think that when we can find ways to do this in a really cost beneficial way, so the consumer gets a full measure of value for the money spent, I think that we will be in a position to provide adequate enforcement.

Senator COTTON. I won't argue the point any more. I can't agree with you on that.

I thank you, Mr. Chairman.

Senator HARTKE. Since there has been a request made for reappearance of the witness, this hearing is going to be adjourned for that purpose until the reassignment of the witness, to be arranged by the chairman of the committee, and whatever agreement he can make with the ranking minority member as to our reappearance. There was no request for a continuance. There was this——

Senator COTTON. I beg your pardon. There was a request made to the chairman of the committee.

Senator HARTKE. Well, to my knowledge there was no request made for a continuance or postponement of this hearing. I assure the committee I am not in any way complaining about the fact that I am here today, but I was requested to do these hearings by the chairman of the committee, and it is not my desire at any time to move into these positions, although I frequently do take assignments when no one else is willing to take them.

Senator COTTON. Mr. Chairman, may I say to you, first, that I sincerely compliment you on the thoroughness with which you and your staff have gone into this subject, as indicated by your very searching and able questioning today.

I am not, in any sense, objecting to your conducting these hearings when the chairman requests you to do it. I think you perhaps are better informed or as well informed as any member on this committee. But I did formally protest to the chairman at the request made to me by other members of the committee, that they would have no opportunity to examine Mr. Toms, who, after all, is the man more than any other person responsible for the enforcement of these matters.

I did make that protest, not because I objected to your conducting the hearing, but because I thought the hearing should have been scheduled when all the Senators are not out of town and thereby afford them an opportunity to participate. Then, if they don't come, it is their own responsibility.

But I want to make it very clear, I was not criticizing you, sir.

Senator HARTKE. I didn't assume that you were. The fact remains that we are going to continue these hearings. I want to repeat the statement I made about the overseers at the White House concerning "pussyfooting" that is going on in regard to this program. I think it is "pussyfooting." I think it is deplorable. I think it is an unsatisfactory performance in view of the number of people who are killed on the highways, the fact that auto accidents are a No. 1 killer of our young people in America today and ranks next to some of the diseases such as heart disease, which generally affects old people, as almost an epidemic.

The attitude is not merely in regard to this legislation, but in regard to the problem itself. Unfortunately, the administration has not shown the concern which I think humanity is entitled to receive.

64-345 O - 71 - pt. 4 -- 26

I point as evidence of that the fact that there is authorization for $40 million for this year in the field of automotive safety for this administration, and yet the administration saw fit only to request $31 million plus a few hundred thousand, for this program.

In other words, it did not see its way clear to avail itself of the opportunity to the capacity which Congress felt was necessary, and I might say that I don't think that the Congress has been overly generous in its consideration in this field.

So I do not retract in any way that feeling.

Senator COTTON. Well, those of us who also sit on the Appropriations Committee, as a number of members of this committee do, can take care of the appropriations. We don't necessarily have to take the view of the White House. But, I wouldn't expect anything that this White House would do would satisfy the Senator from Indiana. I simply wanted to find out what specific evidence there was to sustain that statement that the White House was "pussyfooting" on this legislation.

We are getting into politics, but we can't legislate without some politics. Nevertheless, I am not prepared to swallow that statement yet until I find out.

Senator HARTKE. All right. This meeting is adjourned, and the return of the witness will be at the determination of the chairman of the committee.

Mr. TOMS. Thank you, Mr. Chairman.

(Whereupon, at 12:30 p.m., the hearing was adjourned, subject to the call of the Chair.)

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

WEDNESDAY, JUNE 16, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committe met, pursuant to call, at 10:12 a.m., in room 6206, New Senate Office Building, Hon. John O. Pastore presiding.

Present: Senators Pastore, Cannon, Baker, Cook and Stevens.

Senator PASTORE. The hearing will please come to order.

I want to express apologies to the witnesses and the people who have assembled here, and the press as well, for the delay that was caused this morning. As most of you know, these are busy times, and the Senators are committed all over the lot, thus there was a delay. I am just pitching in as a substitute for Mr. Moss. As I understand it, he is very much involved in the President's energy program, and he is chairman of the subcommittee that is dealing with that. That accounts for his absence here today.

Now, today the Senate Commerce Committee resumes these hearings on auto insurance reform proposals directed at the compensation delivery system and the automobile which is an integral part of that system.

This morning we will again hear from Douglas W. Toms, Acting Administrator of the National Highway Traffic Safety Administration.

The minority members of this committee requested that Mr. Toms be given the opportunity to reappear so that those members of the committee who were absent from the city during the recess would have an opportunity to hear and question Mr. Toms.

This hearing date was fixed by the chairman of the committee with the concurrence of the majority members.

Mr. Toms, we want to welcome you again. I don't know if all the majority members are here who are interested but——

Senator COOK. I would hope, Mr. Chairman, that all the minority is interested.

Senator PASTORE (continuing). We have one of the most distinguished members or colleagues, a very dear friend of mine, the Senator from Kentucky, Mr. Cook. If they are not here, he can take care of whatever they have to say.

All right. You may proceed, Mr. Toms.

STATEMENT OF DOUGLAS W. TOMS, ACTING ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION; ACCOMPANIED BY JACK GOLDBERG, ASSOCIATE ADMINISTRATOR FOR PLANNING AND PROGRAMING; ROBERT CARTER, ASSOCIATE ADMINISTRATOR, MOTOR VEHICLE PROGRAMS; JOHN EDWARDS, ASSOCIATE ADMINISTRATOR, RESEARCH AND DEVELOPMENT; AND LAWRENCE SCHNEIDER, ACTING CHIEF COUNSEL

Mr. TOMS. Mr. Chairman, Senator Pastore, Senator Cook, I welcome the opportunity to appear again before this committee to present the administration's views concerning S. 976 and a bill which the administration feels will more effectively and more efficiently serve the needs of the consumer in this area.

My prepared statement on May 28 discussed fully both our problems with S. 976 and the administration's alternative proposal which was then under preparation. I will, therefore, confine this statement to the highlights of the matters under review here today.

The bills that you are considering deal primarily with economic problems. They concern the automobile owner's pocketbook, not his life or limbs. No one who works daily with automobiles can fail to appreciate the strains imposed upon the pocketbooks and nerves of Americans by the more than $6 billion worth of property damage incurred by automobiles annually.

However, there must be priorities. Our priority is safety. In 1970, the upward trend in fatalities was reversed, and the fatality rate was the lowest in automobile history.

If these encouraging signs were causing us to become complacent about the future, the January 1971 increase in fatalities of 8 percent was enough to shock us out of our euphoria. Although there was a total reduction of 16 percent for February and March as compared with the same period last year, fatalities increased 8 percent in April 1971 over April 1970. At present, this year's fatalities are about even with those for the same time last year. We anxiously await each month's statistics as we ride the thin edge of success or setback.

In short, unless we diligently pursue our priorities in safety, the fatality count could shoot skyward again.

I stated previously, and I will repeat, money will not buy back a single lost life or limb. So nothing must be allowed to deter us from achieving our safety goals. Nothing must be allowed to dilute our safety efforts.

Our major objection to S. 976 is that it would require the establishment of automobile standards for purely economic reasons. We believe that the vigorous regulation of industry in matters of health and safety is a proper and a necessary role of Government. Recent Government actions in automobile safety, emission control, and other matters of health and safety have amply demonstrated the wisdom and benefits of such regulation. However, we do not believe regulation of purely economic matters would be appropriate or desirable.

The Committee on Interstate and Foreign Commerce of the House of Representatives, in reporting to the floor the National Traffic and Motor Vehicle Safety Act of 1966, stated:

> * * * The other major difference between the bill as introduced and as reported is the elimination from the latter of all references to property damage as an

element to be considered in establishing Federal safety standards. The committee believes that the emphasis of this legislation should be on the protection of persons rather than the protection of property, and to eliminate any possible conflicts restricts the bill to considerations which relate to the safety and protection of persons.

The Senate committee, this committee, also considered and eliminated property damage reduction as an objective of the Safety Act.

Senator PASTORE. Could I interrupt you, Mr. Toms? Of course, I am not an expert on this particular subject. Some of the other members of the committee have been hearing the testimony. I regret this very much. But why can't we have both? I mean why do you object to the economic involvements here? We did pass the Auto Safety and Highway Safety Acts. Those had to do with the protection of life and limb.

Now, will you admit this? I mean from a practical point of view—and I meet this very day—I have people write to me and tell me that their insurance has been canceled and they can't buy insurance, which has led a lot of people to this program of no-fault insurance.

Now, I think it is a dangerous thing if a person who wants to buy insurance can't go out and buy that insurance, because he needs that protection. He may say, "Well, it's economics." But I mean you could actually go broke and you could put your family in dire circumstances unless you could give them this protection in case of an accident.

Now, the point I am making is this: Unless we do something about reducing the cost of the damage that takes place in an automobile, we will never be in the position of telling an insurance company, "Look, you have got to cut down your rates for the simple reason that you are not paying out as much as you used to."

So it does have an effect. And it is what an insurance company has to pay out in the ultimate which compels that insurance company to say to a person who wants to buy the insurance "We can't sell it to you because you are too much of a risk."

Now, I can't assimilate that. If you are telling me that it is more important to protect life and limb, I go with you a hundred percent. But if you are telling me that it is no concern of this Congress that we should take care of the economics involved. I don't follow you. I am lost.

If you could tell me in simple English why you feel that way, I would appreciate it.

Mr. TOMS. Basically, we feel that the reduction in insurance rates—in other words—the profits that the insurance industry has realized already this spring indicate that there has been a reversal and that these costs are coming down.

We feel, too, that the reduction in deaths is a good sign.

We think that the amendment we have made to our bumper standard will go a long way to correcting many of the problems of property damage.

We have a philosophical problem about becoming involved in the designing of automobiles or getting into the regulation of the automobile industry for purely economic reasons.

We think that many of the concerns of the American public are going to be corrected as we move forward with our program. We think that it is not necessary for us to take this extra step in pure economic regulation. We think that these economic benefits will come anyway.

And as we get later into my statement, Mr. Chairman, I would be happy to amplify some of the amendments that we have made and how we feel they will do the job.

Senator PASTORE. All right. Then you proceed, Mr. Toms.

Mr. TOMS. We believe that the actions of the Congress in 1966 were correct. We believe that the reasons underlying this action still apply.

There is no doubt, however, that the consumer deserves a better break in the marketplace. The President's message earlier this year on consumer affairs indicated his commitment to this course. Assistance to the consumer can be rendered most effectively through adequate consumer information. The administration's bill will enable us to study and, if feasible, implement a program to provide this consumer information in what we believe to be the most efficient and economic manner possisble.

Let me now describe the various provisions of the administration's proposal.

CONSUMER INFORMATION PROGRAM

The administration's bill would give the Secretary of Transportation the authority to do the following:

1. To develop and disseminate as widely as possible information on the damage susceptibility and crashworthiness of all major makes and models of automobiles if the development of such information is feasible and beneficial to the public interest.

2. To request, and, if necessary, require, automobile insurance companies to furnish the Department with accident claim data relating to personal injury and property damage and the cost of remedying the damage. The data would be used in determining the feasibility of the program and to develop such consumer information.

3. To require automobile insurance companies to furnish the Department with a description of the extent to which their insurance rates or premiums for automobiles are affected by the damage susceptibility and crash worthiness of individual makes and models of automobiles.

4. To require automobile manufacturers to furnish the Department with information relating to their efforts to improve the crashworthiness and reduce the damage susceptibility of their automobiles. The Secretary would have authority to make this information available to the public with appropriate safeguards.

5. To conduct a research and testing program, including the crash testing of automobiles, to aid in determining the feasibility of developing the consumer information and in developing such information.

Senator PASTORE. Are there any enforcement rights in your suggestion?

Mr. TOMS. No.

Senator PASTORE. This is just a matter of information, so after you go through all this expense and you get the information, then you could either take it or leave it?

Mr. TOMS. It has been our experience, Mr. Chairman, that when this kind of information is made available to the public and the industry, and as we pursue this kind of material from the industry, that the marketplace does an excellent job. Note the activities in passive restraints and in bumpers in the auto industry.

Senator PASTORE. If the marketplace did an excellent job, we wouldn't have to have all this legislation to protect the consumer, would we? But we have found out over the years unless we put some teeth in the law and protect the consumer—I mean the FTC is doing that every day. They are asking for more authority. As a matter of fact, I want to complement this administration. They are really doing something down at the FTC.

But I am telling you this protection doesn't occur without compulsion.

Mr. TOMS. I think, Mr. Chairman, that as we analyze the behavior of the States under our State and community safety programs, we find a lot of pride involved. The States hate to be at the bottom of the list in performance. They hate to be declared to be the poorest in the public eye. They strive very hard to do their best.

I find in the automobile industry the same is true. When one takes a step to provide more safety or better protection, the others follow very quickly.

I think the problem in the past has been that there has been no action in this area whatsoever. There has been literally no governmental involvement. And I think that now that the NHTSA is in the safety field and moving forward, we will see substantial progress.

If, in the future, we come back to this committee and we are able to show these things are not working, then we would be the very first to step forward with the necessary remedies to get the job done.

But I am a little cautious to ask for more than we need when we are fairly confident that what we are presenting here will do the job.

Senator COOK. Well, Mr. Toms, let me ask you in that regard, under your consumer information program, item 1, to develop and disseminate as widely as possible information on damage susceptibility, is it now the policy of the DOT that they are going to ask for full implementation and a full budget for their automobile damage studies and their checks?

As you well know, it developed at hearings prior to your testimony that the insurance companies actually give a larger budget to their association to test automobiles and to go out on the open market and buy automobiles than the Department of Transportation puts into its program.

Mr. TOMS. Well, of course, they haven't the kind of authority that the Government has.

Senator COOK. I know, but the point I am trying to make is frankly they are doing a better job. They are doing a better job of testing automobiles. They showed us films at the hearings of collisions at 5 miles an hour, 10 miles an hour, 15 miles an hour. And yet the gentleman who testified, who is in charge of the laboratory, whose name I have forgotten——

Senator PASTORE. Dr. Haddon.

Senator COOK. Dr. Haddon—is a former employee of the Department of Transportation. He said that one of the unfortunate parts of the program in the Department is that actually they have a smaller budget to test automobiles than he has from the combined insurance companies throughout the country.

Mr. TOMS. Senator Cook, his point was to exploit the problems in property damage, and we have not had that authority. We think that this program——

Senator PASTORE. Would you excuse me for just a moment? Can everybody hear what the witness is saying?

Senator COOK. To go back to your item 1, Mr. Toms, to develop and disseminate as widely as possible information on the damage susceptibility and crashworthiness of all major makes and models. This means you are going to have to do it just like they are doing it. Now, I think we are talking about a parallel situation. And I am wondering whether the Department is going to be enthusiastic enough to fully fund this program and get it in major operation.

Mr. TOMS. We think that we will be able to, Senator Cook.

Senator COOK. All right.

Senator STEVENS. May I inquire? Is it necessary for the insurance companies, the industry and you to be spending the amount of money they plan to spend to test these automobiles, and in effect, spend the taxpayers' money.

Isn't there some way to set standards for testing so that they can be certified and the consumer won't have to pay three times to test the same automobile?

Mr. TOMS. We will be getting this information, Senator Stevens. from the automobile industry. We will also have our own crash testing program going on. We hope to go back into accident records of insurance companies and of States. We expect to be able to make these comparisons and then present an index or present a comparison of these makes and models to the public.

Now, one of the problems will be trying to get this information all put together in a new model year to give the public information about the new model coming out. That is going to be very difficult. We think that we can present something to the consumer.

We think that we can provide a great deal of relevant information about crashworthiness and damage susceptibility of cars that are at least 1 year old.

Senator STEVENS. It seems to me that the insurance companies, the industry, and the Government ought to be interested in getting such information to the public before the first one is sold.

Mr. TOMS. I think that——

Senator STEVENS. It is the first new group that is going to spend the money to buy the automobiles. Then they are going to read 6 or 8 months later your consumer information which reveals it is not a very good model. Somehow I think you ought to get together.

Mr. TOMS. I think that there will be a good bit of information that will be available on them, because the manufacturers are testing them approximately 8 months or a year before they go on the market. But they often make last-minute changes. And no matter what kind of a program you have, you are not going to know until some of these cars are out in the real world what their damage susceptibility is going to be.

So we will just have to do our best to try to disseminate this information so that people can make these comparisons.

Senator STEVENS. Thank you. Thank you, Mr. Chairman.

Senator COOK. I might add to that, Mr. Chairman and Mr. Toms. Apparently I owe you an apology. The Department of Transportation has submitted a proposal for construction of its own testing facilities. but it is waiting for the approval of the Commerce Committee and then it will go to the Public Works Committee.

So I think this was pursuant to the request of the House Public Works Committee; was it not?

Mr. TOMS. That is correct.

Senator COOK. So apparently the fault, at least part of the fault, has to lie up here and not down at the Department of Transportation.

Mr. TOMS. We haven't had our own testing facilities. We need these facilities very much.

Mr. Chairman, shall I continue?

Senator PASTORE. Yes. You may proceed.

Mr. TOMS. The first major consumer information program for automobiles was established under the Automobile Information Disclosure Act of 1958. This act required that purchase cost information be displayed with new automobiles offered for sale. This was the first time the consumer got a reasonable break in making an informed choice in the selection of his automobile. While there have been problems with this cost information, certainly no one would recommend its elimination.

This leads me to a discussion of the present consumer information regulations of the National Highway Traffic Safety Administration. In these regulations, we are attempting to put together a mosaic of information which, when taken together, represents a fairly sophisticated profile of vehicle safety performance details. Some say that this program has not been as effective as it might be. The reason is that we have now only three tiles in the mosaic. The items of consumer information that we report on are: (1) Stopping distance, (2) Tire reserve load, and (3) Passing acceleration.

We have determined that publishing a regulation for consumer information, with an objective test procedure, is just as difficult and time consuming as issuing a safety standard. Therefore, we have concentrated our energies on developing safety standards to insure that all purchasers of new passenger cars receive a motor vehicle with a basic level of safety.

The program we are proposing here today is conceptually different from our current consumer information program. Our proposed program more closely resembles the Information Disclosure Act in that it requires information relating to the total vehicle.

The most frequent question that we, as safety professionals, are asked, is: "What car should I buy?" There is no specific answer to this question. The answer is dependent on individual needs, values, and tastes.

Although we cannot give a specific answer to this frequently asked question, we can provide the consumer with information to assist him in his choice. If our program is determined to be feasible, it will provide information on damage susceptibility and crashworthiness of all major makes and models of automobiles. We think that this information will go a long way toward providing the consumer with the basic information that he needs to make an informed choice in the marketplace.

We are also wedded to the concept of maximum consumer information from other standpoints. We have recently established an Office of Consumer and Public Affairs which will devote itself exclusively to the development of better means of informing the public on the vehicle and equipment which they use. We have a wealth of research

and engineering information within the organization. Much of this can be translated into consumer information to provide very valuable guides to the consumer on safe operation and maintenance of his vehicle.

The National Highway Traffic Safety Administration also has issued public advisories which are designed to inform automobile owners on specific safety problems. We have initiated the concept of the consumer protection bulletin under which information gathered in our defects investigation program is released to the public just as soon as we have learned that there is a likelihood of a serious hazard to motor vehicle safety.

The National Highway Traffic Safety Administration has taken some steps to provide consumer information in all areas. The program is and should be much broader than crashworthiness and damage susceptibility information by make and model of vehicle, although this will certainly be the heart of our consumer information program. We recognize that much effort is still required to determine the best type of information to provide the consumer and the best manner in which to provide it. We must develop the most effective way to promulgate the information so that it reaches the maximum number of consumers and is in a form that the consumers can comprehend.

We believe that the adminstration's proposed legislation would provide a substantial improvement in the consumer information presently available to the public under the Automobile Information Disclosure Act and our present consumer information program. This legislation could provide the consumer with information, by make and model, relating to the safety and damage susceptibility of new and recent model year automobiles. Naturally, we will first explore the feasibility of this program to assure that we will be able to provide the most accurate information and information that would be truly useful and beneficial to the public.

The consumer now knows that when he purchases a new automobile, he is receiving a motor vehicle that complies with all applicable Federal safety standards. However, he has no way of determining the extent to which the different makes and models of automobiles exceed the required levels of safety performance. Further, he cannot determine the damage susceptibility of the different makes and models. Without the ability to evaluate the automobiles, he cannot go comparison shopping for the make and model of automobile that possesses the level of safety and damage resistance that suits his taste and needs. The administration's bill would give us the authority and resources to conduct a vigorous consumer information program to eliminate this information gap.

Mr. Chairman, I would like now to give you a status report on our reevaluation of Federal Motor Vehicle Safety Standard No. 215, Exterior Protection, which is the bumper standard. A press release on April 14, 1971, announcing the issuance of the exterior protection standard stated, "The Traffic Safety Administration noted that further work is in process to refine or add to the requirements for 1974 model cars."

The purpose of issuing the standard at that time with that caveat was to insure that the initial requirement for 1973 model-year vehicles could be met. The effective date for 1973 models then was less than 18

months away. Materials and tools had to be ordered. We had run out of time and could not wait for completion of our evaluation of the 1974 models.

I also indicated to this committee on May 28 that this standard was under a continuing reevaluation.

We are today publishing a notice of proposed rulemaking specifying higher performance requirements for the 1974 model year. We are requiring 5 mile-per-hour protection for both front and rear bumpers as established by impact into a barrier with the engine operating at idle speeds. The requirement for successive strikes by a pendulum is also being retained, although we are modifying the face of the pendulum somewhat. This will, we believe, control the bumper mismatch problem.

The previous standard required protection of lighting, hoodlatching, fuel, cooling, and exhaust systems. The NPRM issued today will expand coverage to all safety-related vehicle systems such as suspension, steering, and braking. It is intended that the vehicle bumper system be required to protect the vehicle from all damage that affects safe operation.

We believe that these requirements are stringent enough to make it impractical for manufacturers to design bumper systems that do not offer full protection to all parts of the vehicle except, of course, the face of the bumper itself.

SUMMARY

We oppose S. 976 and feel that the administration's proposal will be both more efficient and more effective.

Mr. Chairman, I would be pleased to answer any questions and to clarify any of these items at this time.

Senator PASTORE. Mr. Cook.

Senator COOK. Let me pass for just a minute, Mr. Chairman.

Senator PASTORE. Mr. Stevens.

Senator STEVENS. Do I understand this last statement to mean that you are going to have a regulation for 5 and 5, front and back, for 1974 and you are going to continue with the face-to-face bumpers—although I'm not sure of its technical name.

Mr. TOMS. The 5 and 2½——

Senator STEVENS. The height concept—in 1975?

Mr. TOMS. No, the height requirement will also be in effect in 1974.

Senator STEVENS. They will both be in 1974?

Mr. TOMS. Yes. The present rule is that it will require bumpers to pass a barrier crash, 5 front, 2½ rear, for 1973. As you know, 1973 models are in the development process now. For 1974 it will require the bumpers to pass 5 and 5 barrier tests and 5 and 5 pendulum tests. The pendulum is the device that we employ to assure bumper height match.

We feel the bumper mismatch problem is the real heart of the damage issue. As I hold up these pictures, Mr. Chairman and members of the committee, you can see very quickly that very few of our cars have bumper height match.

Senator COOK. As a matter of fact, it became obvious during those test movies, Mr. Toms, and I think the staff will agree, that on practically every car we watched during that demonstration, the bumper was behind some particular ornamental point on the hood, so that the hood itself struck the barrier before the bumper did.

Mr. TOMS. You see, there are cars with enormous mismatch. With the chairman's permission, I would like to submit these pictures for the record because they illustrate the need for the pendulum test and to protect against mismatch.

(The pictures referred to follow:)

FIGURE 1A.—Variation in height of leading edge of face bar—left, 68 Pontiac GTO (29 inch); right, Alfa Romeo (16½ inch)

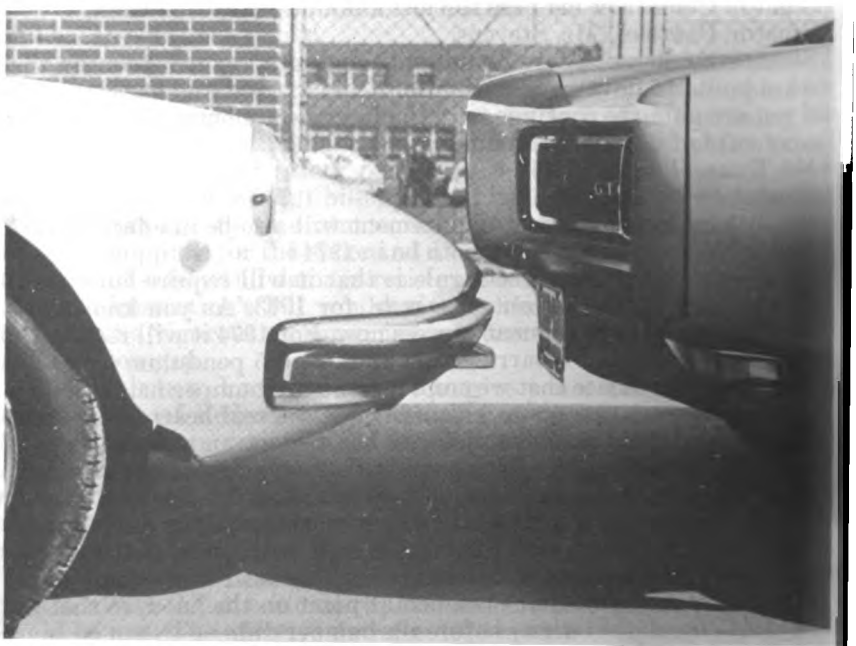


FIGURE 1B.—70 Alfa Romeo front versus 68 Pontiac G[illegible] mismatch

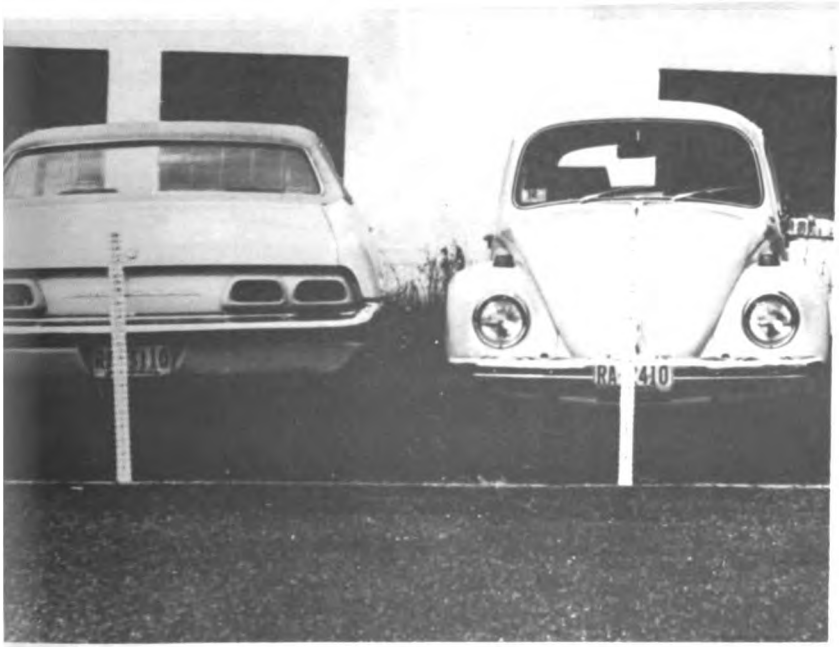


FIGURE 2A.—Variation in height of leading edge of face bar—left, 70 Mercury Montego (22 inch) right, 70 Volkswagen (16 inch)

FIGURE 2B.—70 Volkswagen front versus 70 Mercury Montego rear—centerline mismatch

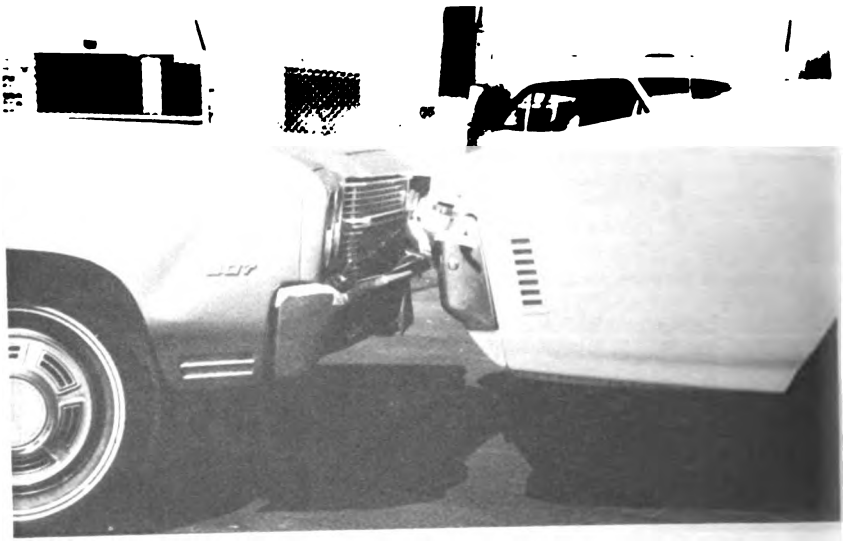


FIGURE 3.—70 Chevrolet front versus 70 Chevelle rear—centerline mismatch

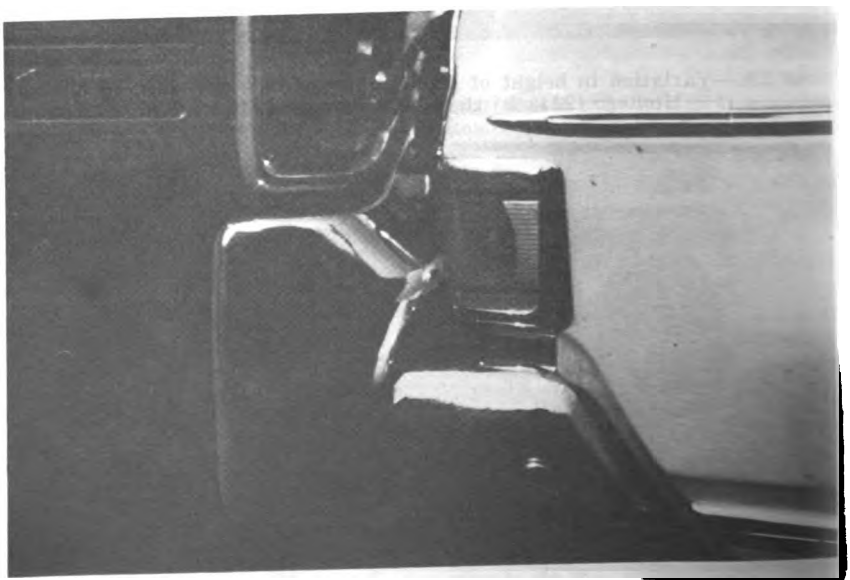


FIGURE 4.—69 Fairlane front versus 69 Plymouth rear—co

FIGURE 5A.—Variation in height of leading edge of face bar—left, 70 Chevrolet rear (26½ inch) ; right, 70 Ford front (18½ inch)

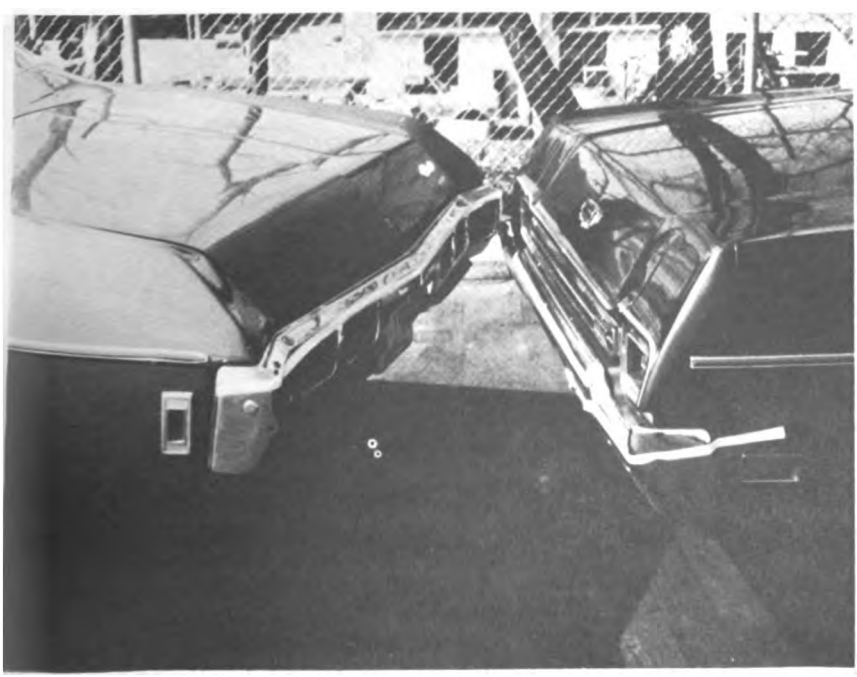


FIGURE 5B.—70 Ford versus 70 Chevrolet rear—corner mismatch

FIGURE 5C.—70 Chevrolet rear versus 70 Ford front—centerline mismatch

FIGURE 6.—70 Camero front versus 70 Ambassador rear—centerline mismatch

64-345 O - 71 - pt. 4 -- 27

FIGURE 7A.—Variation in height of leading edge of face bar—left, 70 Chevelle front (21 inch); right, 70 Chevelle rear (26 inch)

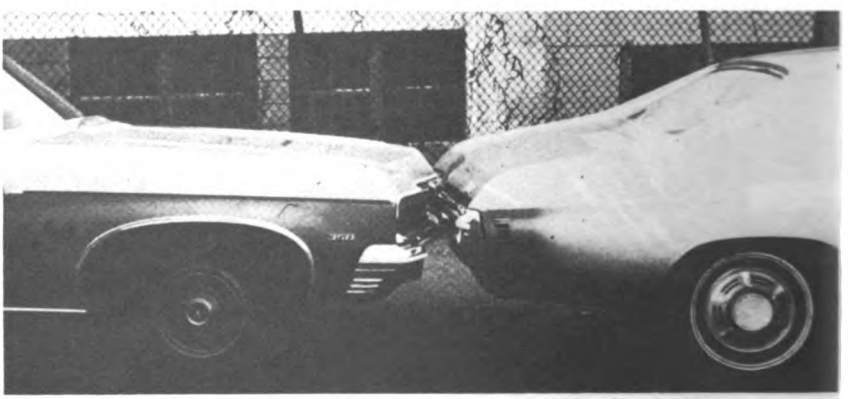


FIGURE 7B.—70 Chevelle rear versus 70 Chevrolet front—centerline mismatch

FIGURE 8.—70 Mustang front versus 70 Mustang rear—centerline mismatch

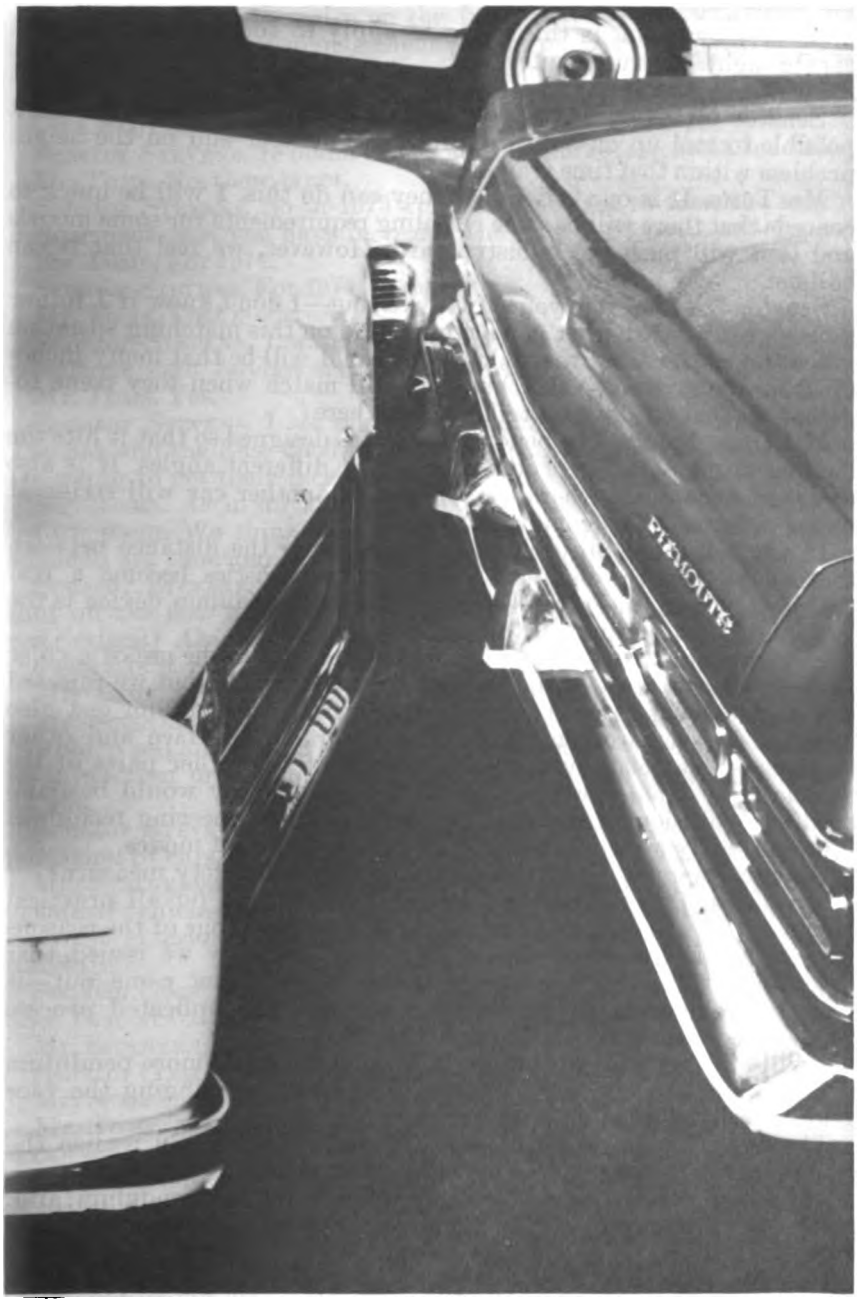


FIGURE 9.—70 Ford front versus 70 Plymouth rear—corner mismatch.

Senator STEVENS. Is this going to apply to foreign-manufactured cars brought into this country too?

Mr. TOMS. Absolutely.

Senator STEVENS. Have you consulted with the industry? Is it possible to tool up on both the protective bumper and on the height problem within that time frame?

Mr. TOMS. It is our belief that they can do this. I will be quick to concede that there will be some retooling requirements for some models and that will push the industry hard. However, we feel that it can be done.

Senator PASTORE. Are you actually saying—I don't know if I follow you correctly—that what you have in mind on this matching situation is that no matter what the make of the car it will be that many inches up from the ground so that bumpers will match when they come together? Is that what we are talking about here?

Mr. TOMS. Partly. The pendulum itself is designed so that it hits the bumper at many different locations and at different angles. It is also designed to indicate where the bumper of another car will strike at under different crash conditions.

If you take the approach of just measuring the distance between the ground and the bumper, loading characteristics become a real problem. Our engineers have decided that the pendulum device is the best engineering approach to assure bumper match.

Now, we did, Mr. Chairman, give some thought to the use of a ruler in measuring distance of the bumper from the ground, but we rejected this as not being as good as a pendulum test. A pendulum test also accomplishes some other things. The nature of the face and other surfaces of the pendulum prevent sheet metal and other parts of the vehicle body from overhanging the bumper so they would be damaged in a collision. It is difficult to develop an engineering technique that will fairly measure these things under all impact modes.

Senator PASTORE. Now, you are doing this as a safety measure?

Mr. TOMS. This is a safety measure, but we think for all practical purposes this will do the damage job also. And this is one of the reasons why we worked so hard on the pendulum and why we issued that caveat about further refinements when the rule first came out—is because we knew that the pendulum test was a complicated process and we needed more time to develop it.

I will even state a further caveat. I think as we do more pendulum testing we are probably going to be interested in changing the face again in the future and improving it.

The more you work with the pendulum, the more you realize the things that can be accomplished through its use.

At first, I personally didn't fully understand the pendulum and, not being an engineer, had a little trouble comprehending all of its uses.

However, now that I have seen more of this pendulum, I realize that it is going to be a very useful device.

Senator STEVENS. What is the requirement for 1973 models now?

Mr. TOMS. That the bumpers be able to pass the barrier test.

Senator STEVENS. The 5 and 2½?

Mr. TOMS. That is correct.

Senator STEVENS. And that requires retooling for 1973?

Mr. TOMS. It will require on the front that the manufacturer use some kind of energy management device or else they will have to adopt a kind of a frame and chassis that can absorb that impact. It will vary greatly from car to car, but it is still a fairly sizable blow, takes a lot of energy to be dissipated.

Senator STEVENS. It doesn't have any height requirement for 1973?

Mr. TOMS. No, there is not.

Senator STEVENS. So in 1973 you have the face to face, the height requirement, and you have increased the rear to 5?

Mr. TOMS. For 1974.

Senator STEVENS. For 1974—5 and 5?

Mr. TOMS. That is correct.

Senator STEVENS. I want to applaud you. Have you had any conversations with foreign car manufacturers?

Mr. TOMS. Yes.

Senator STEVENS. I see our State and the west coast flooded with Toyotas and the East flooded with Volkswagens. I don't see how they are going to get their face up to my wife's Oldsmobile.

Mr. TOMS. As in any program like this, there are real challenges before them. We think that they can do it. The real issues in this business are time and money. Know-how is obviously there.

Senator STEVENS. Don't misunderstand me. I would just as soon shut off the flow of all those things into this country. But are there restrictions? Are you proposing to keep them out if they don't meet the test? Is it just a consumer information concept?

Mr. TOMS. I will have my lawyer tell you how we will do that.

Mr. SCHNEIDER. If they don't comply with this standard, they won't be able to sell any cars in this country, Senator Stevens. We would get an injunction prohibiting them from doing it. We have authority to do this.

Senator STEVENS. You have the existing authority to prohibit importation of cars that are not safe?

Mr. SCHNEIDER. We have the authority to enjoin the importation or sale of vehicles that don't comply with an applicable safety standard. And the exterior protection standard would be an applicable safety standard.

Senator COOK. You also have the authority to stop any such automobiles that are already in the country from going on the highway?

Mr. SCHNEIDER. Yes, sir.

Senator COOK. In other words, prior to sale?

Mr. SCHNEIDER. Yes, sir.

Mr. TOMS. As a matter of fact, quite often we will impound a vehicle because it does not meet the safety standards, and we will hold it until it is brought up to the standard or it is sent back to the country of origin.

Senator COOK. May I give you a real loophole in this? I posed this at our previous hearing. Nothing in any of the legislation that is proposed, including S. 976, says anything to preclude the owner of the automobile from taking his bumper off, as we see done. We see many automobiles on the roads that are reworked, rear springs are put in, so that the automobile is another 2½ feet above the ground. This obviously represents the most tremendous mismatch in the world.

Senator STEVENS. Is this going to apply to foreign-manufactured cars brought into this country too?

Mr. TOMS. Absolutely.

Senator STEVENS. Have you consulted with the industry? Is it possible to tool up on both the protective bumper and on the height problem within that time frame?

Mr. TOMS. It is our belief that they can do this. I will be quick to concede that there will be some retooling requirements for some models and that will push the industry hard. However, we feel that it can be done.

Senator PASTORE. Are you actually saying—I don't know if I follow you correctly—that what you have in mind on this matching situation is that no matter what the make of the car it will be that many inches up from the ground so that bumpers will match when they come together? Is that what we are talking about here?

Mr. TOMS. Partly. The pendulum itself is designed so that it hits the bumper at many different locations and at different angles. It is also designed to indicate where the bumper of another car will strike at under different crash conditions.

If you take the approach of just measuring the distance between the ground and the bumper, loading characteristics become a real problem. Our engineers have decided that the pendulum device is the best engineering approach to assure bumper match.

Now, we did, Mr. Chairman, give some thought to the use of a ruler in measuring distance of the bumper from the ground, but we rejected this as not being as good as a pendulum test. A pendulum test also accomplishes some other things. The nature of the face and other surfaces of the pendulum prevent sheet metal and other parts of the vehicle body from overhanging the bumper so they would be damaged in a collision. It is difficult to develop an engineering technique that will fairly measure these things under all impact modes.

Senator PASTORE. Now, you are doing this as a safety measure?

Mr. TOMS. This is a safety measure, but we think for all practical purposes this will do the damage job also. And this is one of the reasons why we worked so hard on the pendulum and why we issued that caveat about further refinements when the rule first came out—is because we knew that the pendulum test was a complicated process and we needed more time to develop it.

I will even state a further caveat. I think as we do more pendulum testing we are probably going to be interested in changing the face again in the future and improving it.

The more you work with the pendulum, the more you realize the things that can be accomplished through its use.

At first, I personally didn't fully understand the pendulum and, not being an engineer, had a little trouble comprehending all of its uses.

However, now that I have seen more of this pendulum, I realize that it is going to be a very useful device.

Senator STEVENS. What is the requirement for 1973 models now?

Mr. TOMS. That the bumpers be able to pass the barrier test.

Senator STEVENS. The 5 and 2½?

Mr. TOMS. That is correct.

Senator STEVENS. And that requires retooling for 1973?

Mr. TOMS. It will require on the front that the manufacturer use some kind of energy management device or else they will have to adopt a kind of a frame and chassis that can absorb that impact. It will vary greatly from car to car, but it is still a fairly sizable blow, takes a lot of energy to be dissipated.

Senator STEVENS. It doesn't have any height requirement for 1973?

Mr. TOMS. No, there is not.

Senator STEVENS. So in 1973 you have the face to face, the height requirement, and you have increased the rear to 5?

Mr. TOMS. For 1974.

Senator STEVENS. For 1974—5 and 5?

Mr. TOMS. That is correct.

Senator STEVENS. I want to applaud you. Have you had any conversations with foreign car manufacturers?

Mr. TOMS. Yes.

Senator STEVENS. I see our State and the west coast flooded with Toyotas and the East flooded with Volkswagens. I don't see how they are going to get their face up to my wife's Oldsmobile.

Mr. TOMS. As in any program like this, there are real challenges before them. We think that they can do it. The real issues in this business are time and money. Know-how is obviously there.

Senator STEVENS. Don't misunderstand me. I would just as soon shut off the flow of all those things into this country. But are there restrictions? Are you proposing to keep them out if they don't meet the test? Is it just a consumer information concept?

Mr. TOMS. I will have my lawyer tell you how we will do that.

Mr. SCHNEIDER. If they don't comply with this standard, they won't be able to sell any cars in this country, Senator Stevens. We would get an injunction prohibiting them from doing it. We have authority to do this.

Senator STEVENS. You have the existing authority to prohibit importation of cars that are not safe?

Mr. SCHNEIDER. We have the authority to enjoin the importation or sale of vehicles that don't comply with an applicable safety standard. And the exterior protection standard would be an applicable safety standard.

Senator COOK. You also have the authority to stop any such automobiles that are already in the country from going on the highway?

Mr. SCHNEIDER. Yes, sir.

Senator COOK. In other words, prior to sale?

Mr. SCHNEIDER. Yes, sir.

Mr. TOMS. As a matter of fact, quite often we will impound a vehicle because it does not meet the safety standards, and we will hold it until it is brought up to the standard or it is sent back to the country of origin.

Senator COOK. May I give you a real loophole in this? I posed this at our previous hearing. Nothing in any of the legislation that is proposed, including S. 976, says anything to preclude the owner of the automobile from taking his bumper off, as we see done. We see many automobiles on the roads that are reworked, rear springs are put in, so that the automobile is another 2½ feet above the ground. This obviously represents the most tremendous mismatch in the world.

So, consequently, what we are doing is we are imposing tremendous restrictions on the manufacturer of automobiles to meet this standard, but nowhere in any of these do I read anything that imposes on the owner of that automobile the obligation to maintain the configuration of that automobile to comply with safety standards that are imposed upon the manufacturer.

Mr. TOMS. This is a State regulatory problem. We do have a vehicle inspection standard under our State and community program. There is no question that as we move forward in safety and in air pollution that we are going to have to get tougher.

Senator COOK. Do you think you need that authority?

Mr. TOMS. We have that authority now. We have the authority——

Senator COOK. I am not sure you do.

Mr. SCHNEIDER. Yes, we have it under the Highway Safety Act.

Mr. TOMS. However, we don't have the authority to prevent the individual from making the change.

Senator COOK. Yes, but you have the authority to impose a regulation and ask the States to impose it. Is it mandatory that the States impose it?

Mr. TOMS. We could withhold their money if they did not.

Senator PASTORE. Any further questions?

Senator STEVENS. I would like to ask one thing. You have the authority, do you not, to have Federal regulations that apply to Federal-aid highways, as far as utilization of those highways is concerned?

Mr. TOMS. Yes.

Senator STEVENS. You don't believe you have the authority to issue a regulation that says some of these people can't put 10-inch wheels in the front and 25-inch wheels in the back and thereby destroy the face-to-face concept very easily? You can't prohibit those cars from traveling on Federal systems?

Mr. TOMS. We can make determinations as to what the requirements for the vehicle inspection program are and set these forward to the States and bring pressure on the States to adopt them by withholding their money for not having a program that meets our standards.

We do not have the authority to enforce these laws directly against the consumer or the motor vehicle operator. The real pressure on the operator is that in a State which has these inspection programs he has to go in and get a sticker and renew his registration. If he goes in and gets his sticker and renews his registration and goes back out and takes his bumper off or puts the small wheels on, it becomes a police enforcement problem.

It is true that this is an issue. We have monitored once-a-year State inspection programs. We find that some vehicle owners bring their vehicle into condition to meet these requirements. Then they go back and they rake the vehicle by raising the rear end or by making other changes in the appearance of the vehicle so that they do not meet these standards. Sometimes they get away with it for a long time.

We feel that really safe cars on the roadway is truly an enforcement issue.

Vehicle inspection itself, alone, isn't enough to do the job. It is only a part of the program.

I would guess, Senator Stevens, that this is the kind of thing that is going to require a long-range kind of program. There are always

going to be people that have fierce beliefs about their individuality and their tastes in automobiles and will be attempting to do these kinds of things.

Senator PASTORE. May I ask a question at this point, Mr. Stevens?

I direct this to you, Mr. Toms, and to your attorney too. These standards that you will fix will have the effect of law, will they not?

Mr. TOMS. That is correct.

Mr. SCHNEIDER. Yes.

Senator PASTORE. The standard is directed towards the manufacturer, is it not?

Mr. SCHNEIDER. Yes.

Senator PASTORE. Your argument is that if an individual, once he gets his sticker, makes some alteration in his car, your standard does not run toward him? It is a police matter?

Mr. TOMS. Well, we do not in the Federal Government have that enforcement capability. In other words, we do not have the authority to be out on the street and find out that he has been making changes.

Senator PASTORE. I realize that, but the question I am leading to is this: In the event that a person does this deliberately just because he feels that is the way he would like to have his automobile and he has changed his car so it no longer complies with the standards that you have fixed and he is involved in an automobile accident, would that be considered contributory negligence?

Think about it and send us a note on it.

Senator STEVENS. Mr. Chairman, if I may, I was going just a little bit further than that. Why can't we establish a standard of conduct in this legislation that says that a person who modifies the face-to-face standard does have the civil responsibility for any damage that ensues?

(The following information was subsequently received for the record:)

U.S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION,
Washington, D.C., July 1, 1971.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to the Senate Commerce Committee's request, made during its June 16 hearing on S. 976, for the National Highway Traffic Safety Administration's view on the question of whether the alteration of a motor vehicle so that it ceased to comply with all applicable Federal Motor Vehicle Safety Standards would constitute contributory negligence in the event of an accident. As the Committee recognized, this question must be considered under two different fact situations: first, with the absence of a statute prohibiting the alteration of Federally required safety features, and second, with the existence of such a statute.

In the absence of a statutory prohibition against the alteration of safety features, evidence of alteration performed prior to an accident would be admissible in connection with that accident, if at all, only for the purpose of reducing the amount of the plaintiff's recovery. Case law on the related question of the failure to use seat belts indicates that the States would be reluctant to admit such evidence. Many States would refuse admission of the evidence under any circumstances. In those States that would admit the evidence, there would be a requirement for an extremely strong showing that the presence of complying safety equipment would have reduced the damage or injury.

If such a statutory prohibition were adopted, most of the objections of State courts to the admission of the evidence would be eliminated. However, only in a few States does it appear probable that such evidence would establish negli-

gence *per se*. In most States, the evidence would be admitted for the purpose of simply reducing the damages sought by the plaintiff.

Please let me know if I can be of further assistance.

Sincerely,

LAWRENCE R. SCHNEIDER,
Acting Chief Counsel.

Mr. TOMS. I think, Senator, it would be possible for us to explore standards within our vehicle inspection program hoping that States would adopt them, like, for example, the helment law in motorcycling. We have adopted this as a strong part of our State and community programs, and most States have adopted motorcycle helmets. It has been very tough to get people to wear these helmets.

We could probably pursue it along those lines in our State and community program and make it a violation of State law if they were to make these alterations.

Senator STEVENS. I am not communicating. Suppose my daughter takes my car out and she negligently backs into someone at the rate of 5 miles an hour, and that person has altered the back of their car so that face-to-face no longer meets, and she jams into his bumper. It doesn't hurt him at all and smashes the rear end of my car.

Now, she was negligent, but under the standards, if he had abided by the standards, there would be no damage.

I think we could establish a standard of conduct so that he would be responsible if he had altered his car and so that there would not be protection for the person who was negligent. But in a very minor way so that the damage that ensued would not have ensued if he had not modified his car. That is what I am talking about.

Senator PASTORE. That is res ipsa loquitur, isn't it? You may be going too far. Because the damage may be disconnected with the violation of the standard.

Senator STEVENS. That is a matter of proof.

Senator PASTORE. Maybe the daughter began to back up at 50 miles an hour.

Mr. SCHNEIDER. Mr. Chairman, there has been some discussion in the Department and with representatives of the various States as to the possibility of having State legislators adopt a law which would make it an offense, not necessarily a criminal offense, but an offense, to alter a vehicle so that it no longer complies with an applicable safety standard—for example, take the head restraint out or, if it had a bumper, as Senator Cook referred to, take the bumper off.

There is no doubt in my mind as a lawyer that the Congress could make it a Federal violation if it wanted to. But to try to enforce such a law at the Federal level would be extremely burdensome, I would think.

Senator PASTORE. Well, I hope we don't sit here as a supreme court.

Senator COOK. The answer to your question, Mr. Chairman, is going to be that I doubt seriously that you could impose a degree of negligence on him because he violated a national safety standard that is not, as a matter of fact, a violation of the law as such.

Senator PASTORE. But if it contributed—that is the point. This is the reason why I raise the question of contributory negligence. If his negligence contributed to the damage that was caused, you see, he

would be without relief. But if it didn't contribute, I mean then, of course, it would be another case, and that is for the court to decide.

Senator STEVENS. But it is not negligence unless we establish a standard of conduct.

Senator COOK. That is right. It is not a matter of contributory negligence, unless you establish it as an item of negligence.

Mr. SCHNEIDER. I don't think it is per se contributory negligence. I think——

Senator PASTORE. I didn't say it is per se. All I am saying——

Mr. SCHNEIDER. No.

Senator PASTORE. All I am saying is this: If a person deliberately on his own changed a car in violation of the standard—and that is the reason why I asked you if the standard had the effect of law. Where you have deliberately violated the law in changing something, and that change in violation contributes to an accident, you are responsible. That is basic law, isn't it?

Mr. SCHNEIDER. I would support your position.

Senator PASTORE. I studied a little bit of law, too.

Senator STEVENS. Mr. Chairman, I am sure you are a good lawyer. But I just want to say this. I agree with Senator Cook in that I don't see anything here that imposes this standard on the individual.

Senator PASTORE. No, I am not saying that.

Senator STEVENS. It imposes it on the manufacturer. In what instances are you going to carry this over and say the individual can't modify that standard?

Mr. TOMS. We will have to do it through our State and community program.

Senator STEVENS. Why don't you do it through this bill?

Senator PASTORE. It might be a good idea to say that anyone who deliberately changes the standard becomes responsible under the law for having done it.

Senator COOK. I have a notion, Mr. Chairman, the best way to do it, if you are going to do it in this act, is to have a section in here which gives the States a required period of time to impose these same safety regulations on the driver that you have imposed on the manufacturer, and tell the State that if they do not pass such legislation within a required period of time, then DOT funds in these programs will be cut off.

And I think this is the only way. If you are going to do this and you are going to do it from a degree of enforceability, you have to give the States the authority; and the only way you can do that, it seems to me, without having it a Federal offense—and I agree that I have no idea how in the world you are going to enforce this—is to say to the respective States that the safety standards as imposed on manufacturers shall be imposed on the consumer, and he shall not alter or change his automobile once it fulfills those requirements.

And if the States do not create such legislation within a reasonable period of time, which you ought to set out in the legislation, then the DOT funds will be withheld.

Senator PASTORE. You have that latitude under presently existing law directed toward the individual?

Mr. SCHNEIDER. I don't think we have authority to do that. However we have authority, Mr. Chairman, to develop model legislation

under our State and community programs and say to the States, "You have to adopt it." The only sanction we can apply if they don't adopt it is to withhold their highway safety money and recommend to the Secretary that he withhold up to 10 percent of their Federal aid money.

Senator PASTORE. Then Mr. Stevens has a very good point.

Mr. TOMS. Yes.

Senator PASTORE. The only remedy here is to withhold money, isn't it?

Mr. SCHNEIDER. Yes.

Senator STEVENS. Mr. Chairman, there is another thing I would like to mention. I think if there is a "carrot and stick" approach, it ought to be in the law, not in the regulations. I think everyone ought to realize it is coming. It might be well for us to consider putting it in this bill.

Senator COOK. I think that is the only way you are going to advise the public.

Senator STEVENS. May I pursue another matter, Mr. Chairman?

Senator PASTORE. Yes, you may. Would you mind if I asked a few questions first, and then I would ask Mr. Cook to take over the hearing, if he will.

Senator STEVENS. Not at all.

Senator PASTORE. These have been prepared.

And I would hope too that whoever takes the chair will allow the counsel here to ask a few questions that he has prepared.

Are you saying then that the higher performance standards that you are setting will eliminate much of the damage to the vehicle?

Mr. TOMS. Yes.

Senator PASTORE. Will the new standard spell out in detail how the passenger as well as the vehicle will be protected in low-speed crashes?

Mr. TOMS. Not in standard 215. We will do this in standard 208 and other standards where we deal with interior occupant protection.

Senator PASTORE. As you promised in the previous hearing, will you begin providing this committee on a regular basis information as to the cost of the safety improvements mandated by the 1966 auto safety law?

Mr. TOMS. Yes. As a matter of fact, we are in good position to get started immediately.

Senator PASTORE. When can we expect the first submission?

Mr. TOMS. I would hope very, very shortly.

Senator PASTORE. All right. Is it true that the administration proposes to supply consumer information about the damageability characteristics of vehicles in order to stimulate better design of cars?

Mr. TOMS. Yes.

Senator PASTORE. Is it true that efforts of your agency to date to move Detroit to more effective action in the safety area by publishing consumer information have proved an utter failure?

Mr. TOMS. I hate to use "utter."

Senator PASTORE. All right. I will take the word "utter" out. Have proved to be a failure? A failure is a failure no matter how big it is.

Mr. TOMS. We have been very dissatisfied with our progress in this area, and we——

Senator PASTORE. Can you give us an explanation for it?

Mr. TOMS. Well, No. 1, we have been pursuing this program through dealer showroom, and it just hasn't worked. Dealers that have information from us that shows that their car does not perform well often work very hard to prevent the consumer from getting this information.

We only issue information about three aspects of vehicle performance. This is really not enough. We have to broaden our information program.

It is my personal hope that we can go on television, that we can provide information to automobile consumer magazines, that we can work more directly with the media. In these ways, we can try to get this message widely disseminated so that the consumer will see it rather than expecting him to get it in the dealer's showroom.

Senator PASTORE. Well, don't you think that dealers already know pretty much the information? It is the idea that there is no penalty; isn't that it? Is there a penalty?

Mr. TOMS. Not only is there no penalty, but you really, I guess, can't expect them to say bad things about the car they are trying to sell.

Senator PASTORE. Well, that isn't that point. That is right, too. On the other hand, if they have to bring it up, I suppose he would have to do it at his own cost, wouldn't he? And if the next dealer selling the same kind of automobile didn't do it, he is in a better position to give the consumer a bargain, and the consumer many times doesn't even know the difference between the two.

Mr. TOMS. I think the best way is through your consumer magazines and by trying to get it on public service time on radio and television.

Senator PASTORE. Thank you very much.

Will you take over, Senator Cook? I will have to go.

Mr. TOMS. Thank you, Mr. Chairman.

Senator COOK. Mr. Chairman, I have concluded. The only thing I wanted to do was put something in the record if I might. A request has been made by the Secretary, which is included in their 1972 budget, for the sum of $9,600,000 for the test facilities which were required of the Department pursuant to 91-265, which said any appropriation in excess of $100,000 had to be approved by the respective committees.

If there is no objection, I would like to put the letter of Mr. Volpe requesting the funds and the prospectus for the proposed construction of the facility into the record.

(The information follows:)

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., June 8, 1971.

HON. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: The purpose of this letter is to request that the Congress authorize appropriations in the amount of $9,600,000 for the design, construction and equipping of a Compliance Test Facility. A prospectus for the proposed facility is enclosed as required by Public Law 91-265, dated May 22, 1970, Amendment to National Traffic and Motor Vehicle Safety Act of 1966. Title III Research and Test Facilities, Section 301.

The National Highway Traffic Safety Administration requires the Compliance Test Facility to provide the capability for testing motor vehicles, tires and other motor vehicle equipment in order to demonstrate manufacturers' compliance with the Federal Motor Vehicle Safety Standards and to investigate for possible safety related defects. The need for such a facility was set forth in our October

1968 report to the Congress on facility requirements and was discussed in some detail during the hearings on the proposed Fiscal Years 1970 and 1971 Authorization Bill. Budgetary considerations, however, precluded a prior request for appropriations. The Department's Fiscal Year 1972 Budget request does include a project for the Compliance Test Facility.

Sincerely,

JOHN A. VOLPE.

Enclosure.

PROSPECTUS FOR PROPOSED CONSTRUCTION UNDER THE NATIONAL TRAFFIC AND MOTOR VEHICLE SAFETY ACT OF 1966

Project titles.—Compliance test facility.

Project location.—Ohio Highway Transportation Research Center, East Liberty, Ohio.

Project objective.—To provide the National Highway Traffic Safety Administration (NHTSA) with a capability to perform a variety of tests on motor vehicles, tires and other motor vehicle equipment in order to: verify manufacturer's compliance with the Federal Motor Vehicle Safety Standards; evaluate the technical sufficiency of corrective actions specified by the manufacturers in their safety-related recall campaigns; investigate consumer reports or other indications of serious safety defects; and evaluate test procedures and requirements specified for proposed Federal Motor Vehicle Safety Standards.

Estimated maximum project cost.—Design, $400,000; construction, $4,500,000; equipment, $4,700,000 for a total estimated maximum cost of $9,600,000.

The Department of Transportation will be the primary user of the Compliance Test Facility, therefore, no other agency public or private will contribute to the cost.

Project description.—The project will provide for the design, construction and equipping by FY 1974, of a new government facility consisting of the following functional elements:

Testing Laboratory of approximately 58,000 S.F. including areas for inspecting, preparing and instrumenting vehicles; routine and specialized testing of vehicles and equipment including evironmental, photometric, static and dynamic load and materials testing; and tire testing.

Straight test roadway approximately 3,200 feet long, crash barrier and skid pad.

Administrative and technical support area of approximately 26.000 S.F. including calibration laboratory and a data storage and retrieval area.

Support Serviec Area including a 12,000 S.F. warehouse and a 1,000 S.F. service station.

Project justification.— The Compliance Test Facility must be provided to support compliance and other testing related to motor vehicle safety. This testing will assist in determining whether vehicles and equipment sold in the U.S. do in fact conform with the Standards and thereby contain the necessary safety protection. Defects analysis which includes the testing of vehicles and equipment will be conducted to develop evidence of possible safety related defects and to evaluate the actions taken by manufacturers to correct such defects. Testing associated with the development of test procedures and requirements for proposed Standards will also be conducted in this facility. The effectiveness of the motor vehicle safety programs as a regulatory function, depends in major measure on this corrobrative and investigative testing of motor vehicles and equipment.

In the absence of Government facilities, the required testing is being conducted under contract by private testing laboratories. However, continued complete dependence on private laboratories is not satisfactory. There are an inadequate number of laboratories qualified to do the required testing, all of which have other clients. Even for the current partial program which is within the capacity of these laboratories, delays and problems are experienced in scheduling tests and in carrying out a timely program. These private laboratories are not geared to conducting the full range of compliance tests required by NHTSA; therefore several laboratories must be contracted to accomplish the work. In many cases makeshift arrangements must be used and test items must be transported between laboratories in order for the items to be tested to more than one Standard.

Inherent in competitive contract program are the long lead times associated with selecting qualified laboratories to conduct particular tests and negotiating contracts, as well as the lack of control and flexibility for quick reaction to unpredictable testing, required to investigate a safety defect or special non-compliance problem. The private laboratories also do business with segments of the automotive industry, with the resultant potential conflicts of interest. Private laboratories will continue to be used to augment the capability of the government facility when workloads exceed the test capacity of the Compliance Test Facility and when testing is required in areas where no test capability has been provided due to cost-ineffectiveness.

The magnitude of the compliance test program is almost unbounded considering the number of Federal Vehicle Safety Standards together with the universe of vehicles and replacement parts that must be brought under surveillance for compliance with these standards. Currently there are thirty Federal Motor Vehicle Safety Standards in effect, and approximately 115 rulemaking actions in process which will result in new standards and amendments to extend the scope or upgrade existing standards. The standards reflect performance or demonstration requirements described in the form of various types of test which must be conducted to determine whether the standard has been met. The types of tests include: visual inspection, physical measurement, environmental, laboratory destructive, laboratory non-destructive, performance under simulated and actual conditions, and crash. The effectiveness of this program can be illustrated in the test results gathered since the program was initiated. These results indicate the failure rate for vehicle testing is 16.2 percent and equipment testing is 7.8 percent.

Defects analysis involves the systematic engineering analysis of various sources of information including laboratory testing of suspect components and systems. As a result of activities in this area, NHTSA has been responsible for thirty safety defect recall campaigns which would otherwise not have been initiated. Testing plays a major role in defect analysis and has produced significant data involving such items as:

GM–Kelsey Hayes three piece wheels which failed on ¾ ton pick-up trucks modified as campers.

Firestone wheel rims which experienced catastrophic failure on vehicles.

Ford (1969) front suspension, lower control arm which cracked on police vehicles.

Ford (Mustang) front suspension lower strut which experienced failures.

Approximately 671 manufacturers' safety-related defect recall campaigns, involving more than 15 million vehicles, have been conducted from the start of the program to December 1970. This illustrates the potential testing effort related to evaluating the technical adequacy of manufacturers' corrective actions.

The development and evaluation of test procedures and requirements for proposed Standards must be accomplished by means of extensive laboratory test evaluations. For each Standard requiring a demonstration or performance test, a test procedure must be developed which will give reliable vehicle test data from the standpoint of reproducibility, will be meaningful relative to the proposed Standard, and will be applicable on an industry wide basis. The Compliance Test Facility will provide the test capability necessary to conduct this activity.

The facility concept proposed for the Compliance Test Facility is based on detailed engineering studies. These studies include a systematic analysis of the test requirements for current and proposed Federal Motor Vehicle Safety Standards and the characteristics and magnitude of vehicles and equipment manufactured each year. From this analysis an estimated average annual test workload has been derived. The data indicates that the average workload will consist of 1300 full vehicle tests involving approximately 170 new vehicles, 1150 vehicle component tests and 5,000 tire tests. This does not include the test requirements for safety-related defects analysis, since these requirements cannot be accurately predicted. The space, equipment, and manpower requirements, and cost estimates reflected in this prospectus have been translated from the estimated annual test workload data.

The engineering studies have also established the Architect-Engineer design criteria which will be used as the basis for final design. Therefore final design can be initiated as soon as project funds are made available.

ESTIMATED TOTAL ANNUAL COSTS AND PERSONNEL REQUIREMENTS

Costs	Fiscal year—				
	1972	1973	1974	1975	1976
Design	$400				
Construction	4,500				
Equipment	4,700				
Operating and maintenance	125	$1,200	$3,100	$4,200	$4,200
Total	9,725	1,200	3,100	4,200	4,200

Personnel	Fiscal year—				
	1972	1973	1974	1975	1976
Professional and technical	5	68	160	197	197
Clerical and support		12	40	57	57
Total	5	80	200	254	254

Senator STEVENS. Where are we going after 1974?

Mr. TOMS. I think that after 1974 we will be monitoring very carefully the effectiveness of the pendulum test and our barrier requirements for the purpose of determining what further changes are necessary. I am convinced that there will be continually improvements in the quality of the standard.

Senator STEVENS. Obviously the cost of this tooling up or retooling is going to be passed on to the consumer. There has to be retooling for the 1973 models which is entirely different than retooling for 1974, as I understand it. I am not knowledgeable enough on the subject. Are we going to reach a point where these things are going to get caught up so that we do not have retooling costs every year?

Mr. TOMS. I think that your biggest change for 1974 will come on rear bumpers, and I think that after that change is made, what changes from that point forward there are will be largely dependent upon what we learn in our experimental safety vehicle program.

I might add that we do have energy managing 10-mile-an-hour bumpers on our ESV cars, and what we learn there and what our practical experience has been in advising the consumers of the damage that has been suffered and the safety systems that have been damaged will lead us to whatever changes appear to be necessary in future regulations.

Senator STEVENS. You can consult Mr. Schneider on this. But I would like to ask you a series of questions.

Don't your existing regulations and the law require the dealer to disclose to a prospective purchaser any defects or safety information or any information that you have provided? Don't they require him to disclose them in the showroom?

Mr. TOMS. I don't think so.

Mr. SCHNEIDER. Senator Stevens, the present law requires the manufacturer to, through his dealers, make the consumer information available to purchasers of vehicles and prospective purchasers.

Insofar as defects are concerned, it is the manufacturer's obligation to notify the consumer by certified mail of the existence of the defect.

Senator STEVENS. That is another matter. I went too far in mentioning defects. Let's go back. You have a statutory requirement that the manufacturer through his dealer must disclose certain consumer information? Right?

Mr. TOMS. Correct.

Mr. SCHNEIDER. Yes, sir.

Senator STEVENS. Do you have any information that the manufacturers have not sent such consumer information to the dealers?

Mr. TOMS. No. We have monitored this, and we have actually taken some surveys, and we find the real problem is in the dealer's showroom.

Senator STEVENS. What is in the existing law or regulation that puts the burden on the dealer as opposed to the manufacturer? The dealer is the one that is in contact with the consumer. And you are saying to us that this dealer is using devices so that he does not have to carry out the intent of Congress and the administration in disclosing consumer information to a prospective purchaser? Is that correct?

Mr. TOMS. That is correct. We have seriously considered what kind of authority would be required to force the dealers to do a job in this area.

The dealers have come in and have protested strongly against this and encouraged us to seek other ways. And I can see their point. You know, this does hurt them in the marketplace. If a car that they are handling, for which they have a franchise, is not doing well, it really kind of rubs salt in the wound to make them tell the consumer about it when he comes in to buy the car.

Senator COOK. Particularly after they already have it from the manufacturer and they have a big note at the bank on the cars that they have sitting out on the lot.

The unfortunate part about this—and I think I might add just slightly to it, Senator Stevens—is that I think at the present time the only requirement which is totally negative in nature is that the dealer is required to give such information if it is requested of him.

Well, unfortunately, I really don't think that the purchaser pays that much attention, frankly, to the respective models and to the respective safety features of automobiles that he would go into a dealership and say, "Now, I am requesting of you to tell me if there are any basic defects or any problems with this automobile."

This in itself is an entirely negative approach. And I agree with you I think it puts a tremendous burden on the dealer who really is an independent contractor, who has, frankly, more automobiles out on the lot, of a particular model than he might be able to sell, but the financial consequences of that have already been satisfied to the manufacturer.

Mr. TOMS. I still feel the best way to do this job is to go before the public in the magazines, the newspapers, radio, and television. We find there is a great deal of interest particularly in consumer magazines, as to this kind of information issued by the Government.

The full degree of effectiveness will have to wait until it is in operation. But there is no question that we will probably do a far better job going onto television and radio than we have so far in dealers' showrooms.

Senator STEVENS. I had a very interesting exchange here one day that produced a bit of notoriety for the gentleman. It seems to me that what you are saying is that there is another level of responsibility that we have not insisted upon, which is in the showroom. I wonder why you don't impose the responsibility at the place where the consumer has the direct contact.

Mr. TOMS. We would be very pleased, Senator, to explore this and work on it and see how this could be effectively done.

Senator STEVENS. I don't want to offend my friend here, although I wasn't here at the time, I recall the tremendous battle over labeling a certain brand of product that people smoke that comes from his State. And we required a warning on the packages. And it doesn't seem to make much difference to anybody.

I am not sure that even requiring the manufacturer to put a warning on the window or put consumer information on the window would be sufficient.

I think the question really is whether there is deception in dealing with consumers, whether a person who has the information knowingly and willfully withholds it and therefore leads the consumer to a purchasing decision with insufficient facts, without the full facts—or on the basis of untrue facts.

This leads me to question why there isn't a criminal penalty in this bill? Although you have a civil penalty, no criminal penalty is included. You have authority for civil injunction, yet you have no criminal penalty in the bill. Why?

Mr. SCHNEIDER. Senator Stevens, if I may respond to that, our bill as well as S. 976 are proposed amendments to the Traffic Safety Act of 1966. At that time, there was extensive discussion as to whether or not there should be criminal sanctions against manufacturers.

I recall, having studied the legislative history often on this in connection with my work, that Senator Pastore made a very eloquent speech on the floor of the Senate during the debates before passage of the Traffic Safety Act where he opted for civil penalties and other types of civil sanction.

Senator Pastore said that when you are dealing with the vehicle manufacturers, you are not dealing with people who really act with willfulness and intent to deceive. You are not dealing with the common type of criminal. And, therefore, you should not have criminal sanctions available.

Let me speak from our experience with civil penalty authority and our injunction authority. I personally don't think we would need criminal penalty authority to achieve what we would want to achieve insofar as getting manufacturer cooperation and compliance. I really don't personally believe it.

Senator STEVENS. I wasn't addressing myself to manufacturers. I was addressing myself to the guy in the showroom. You have adopted the philosophy that the marketplace is going to determine consumer acceptance of a new model. And that if we provide the consumer with all the information concerning the outcome of the testing and damage susceptibility and crashworthiness and so forth that he will make an informed judgment. Isn't that right regarding your policy?

Mr. TOMS. Yes.

Senator STEVENS. But we haven't done a thing to insure that he gets it, have we?

Mr. TOMS. Well, we have——

Senator STEVENS. The manufacturer is not going to give it to him. It has got to come from the dealer.

Mr. TOMS. Well, of course, we feel that the best way to disseminate this, Senator Stevens, is through your magazines, through television,

public service time, on radio, and try to make it broadly available to the people who normally distribute it and print it, and not rely on the dealer whatsoever.

Senator STEVENS. I see. Have you done that so far?

Mr. TOMS. We have done this on safety messages, and we feel with good results. We have begun to explore consumer information along this line. Our new Consumer Office is now gearing up. We hope that we will be successful in our consumer information program.

Senator STEVENS. On page 3 of your bill, subsection (d), the Secretary is authorized to conduct a contract for such research and testing as he deems necessary to carry out the purpose of this section, including but not limited to the acquisition and crash testing of passenger cars.

We received testimony from a gentleman from Cornell University, who suggested the United States have a modular system for testing. Is that possible under your subsection (d)? Are you looking into the concept of modular testing as opposed to testing each individual model of cars?

Mr. TOMS. We would look for both ways to see which is best and which is most efficient. There are certain parts of the automobile where the subsystem can be very effectively tested. However, there are other types of testing; for example, in handling, where you have to test the whole vehicle.

I think in some areas you can actually mathematically model with real efficiency, and there are other areas in which you cannot. It varies from car to car. This is part of the complexity of this kind of a program.

Senator STEVENS. Suddenly, it has been decided to test these cars after they have been going down the assembly lines. You don't have anything to test until the assembly line is put into motion and something comes off the end. Then you take a few cars, and the industry takes a few cars, and the insurance companies take a few cars, and they start testing them.

I am concerned about the people who are working along the assembly line. What happens to them during the period of testing? And what happens if you decide that the damage susceptibility or the crashworthiness is not good?

Isn't there going to be a disruption of the labor market in the automobile industry if some system isn't established to try to figure these things out in advance? As Miller was saying, as I understand it, it is possible to work these things out in advance through modular system of testing.

Mr. TOMS. There is no question the manufacturer has to completely test his prototypes to be sure they meet the standards. Then you must rely on warranties and guarantees to be sure that the quality of the assembly line is sufficient to make those cars continue to meet these standards.

Senator STEVENS. I see.

Senator COOK. After I get through asking you this question, I am going to ask you one more, and that is I would like you to put into the record within the framework of your testimony today your opposition to S. 976 in regard to what you have discussed this morning. Don't you think you need authority here that the manufacturer has to make

available to your testing facilities in relation to these standards, new designs before they become a manufacturing item on a large-scale basis?

Mr. TOMS. Senator Cook, this would be very, very helpful to us. I think——

Senator COOK. Would you want such authority?

Mr. TOMS. The question that is running through my mind is whether the Government—whether we are ever going to have the capability of testing every make and model. This would mean that we would receive in excess of 500 cars sometime between April and July of the year in which each model would be introduced.

That is a big job. And to do a full-scale testing on all of those—I think I would prefer to put the burden on the manufacturer.

Senator COOK. Well, if you are only talking about 500 automobiles. really, Mr. Toms, I don't see this as being a gigantic job. You know. the Internal Revenue Department gets a few million tax returns starting on the 15th day of April, and they audit a whale of a lot more than 500 within 2 months, I will tell you.

Mr. TOMS. That is true; but when we talk about 500 makes and models, we will probably have to destroy five or six of each make or each model, and we would have to have several others for the various kinds of handling and other testing that goes on. And the physical capability of the United States to crash that many cars in such a short period of time is presently not available.

Senator COOK. Well, I understand that it is not available, but I think that there are many ways that this could be approached.

First, it could be approached in relation to the request that you made for your testing center of almost $10 million.

Then I think it could be approached on the basis of close cooperation under the law, between the manufacturer and the Department of Transportation, to do it onsite at his own facilities, that he meet certain testing standards, that he meet the type of testing standards——

Mr. TOMS. That would be wonderful.

Senator COOK (continuing). That you are going to have in your own facilities. And it merely takes a team from the Department of Transportation to work in cooperation with the manufacturer at his own onsite facilities.

Mr. TOMS. We have been monitoring their work to certify their product is to our standards. We have found this to be successful. At no time have we gone into manufacturers' facilities and asked for this information and felt that we were deceived. They have been very good about that.

Senator STEVENS. Could I ask one other question following up on that? Section (e) is quite interesting on page 3. It authorizes you to sell the crash-tested passenger cars as long as you inform the purchaser they have been crash tested. Are you contemplating selling those for stock car races or to go on the highway?

Senator COOK. If they are 5-mile-an-hour test vehicles, ultimately they are not going to do a great deal of damage, and I don't see why they should have to maintain and keep these.

That is like the law in my State that says if you sell a taxicab you have to give notice it was utilized as a taxicab. All you are saying is this was used by the Government as a testing vehicle, and obviously by

looking at it you could tell that very little damage was done to it in a 5 and 5 or 10 and 10 or whatever the case may be.

Senator STEVENS. Senator Cannon has come in.

Senator COOK. Senator Cannon.

Senator CANNON. I have no questions.

Senator COOK. Counsel has some questions.

Mr. SUTCLIFFE. Mr. Toms, there is one question that I think on the basis of the statement that you have presented on May 28 and your statement today should be asked for the record at this point.

You have argued that the authority granted in S. 976 to set property loss reduction standards could interfere with the safety mission of the National Highway Traffic Safety Administration. Is that correct?

Mr. TOMS. Yes, it is correct. I don't know whether "interfere" is the word. It is the matter of resources and capability and getting them to intermix.

Mr. SUTCLIFFE. So that the interference, if we can use that word, is based upon the possibility of restriction of resources?

Mr. TOMS. Yes, plus there are some philosophical concerns as to whether the Government ought to be in this business.

Mr. SUTCLIFFE. Now, to avoid this, you propose as an alternative the promulgation of consumer information to alert the public to the characteristics of vehicles so that the public in making their choices of vehicles would choose those which are the safest and which have the lowest aspect of property damage susceptibility?

Mr. TOMS. And we further feel that as this information is compelled to be set forth, the manufacturers are going to want to be sure that their cars are in the best possible framework or light before the public.

Mr. SUTCLIFFE. Now, given that presentation, you then come back in your testimony today and tell us—

> We have determined that publishing a regulation for consumer information, with an objective test procedure, is just as difficult and time-consuming as issuing a safety standard.

How are we in any way, shape, or form saving resources and not interfering with the safety mission any more than if we gave you authority to set property loss reduction standards?

Mr. TOMS. The difficulty particularly in lateral crashes and quarter-panel crashes and this sort of thing of measuring exactly what that is is in much sense of the word a structure issue, and it gets into so many details that it is every bit as tough. In fact, it might even be tougher to try to promulgate property damage requirements rather than safety requirements.

Mr. SUTCLIFFE. Well, but——

Mr. TOMS. We often have to repair our cars considerably before they are resold, and generally the bidders know that they are DOT cars, and they are often not as bad as police vehicles that are being sold that have 80,000 or 90,000 and 100,000 miles on them.

Mr. SCHNEIDER. Or we will scrap them.

Senator STEVENS. Supposing I am a dealer and I hear you are going to sell 500 cars. I make a bid and I get 500 cars. Where is it provided that I must tell the prospective purchaser that they were crash-tested?

According to your idea, all you have to do is tell the people that buy them from you that they have been crash-tested. How about the consumer that we are supposed to think about?

Mr. TOMS. You are concerned about the dealer that purchases them at auction that way and attempts to resell them?

Senator STEVENS. You are not going to sell them to individuals. You are not going to set up a showroom, are you?

Mr. TOMS. No. It is a good point.

Mr. SCHNEIDER. Excuse me, Mr. Toms. We would label the cars or require that the cars be labeled in such a way that all subsequent purchasers would be aware that the car was crash-tested. I might add that if we run a car into a wall at 30 or 40 miles an hour we are not going to resell it. We would sell it for scrap.

Senator STEVENS. Thank you very much.

Senator COOK. Now, if I could have the collective judgment of the panel of your opposition to S. 976 in relation to your testimony this morning?

Mr. TOMS. Do you wish us to give it verbally or in writing.

Senator COOK. If you wish to do it section by section and put it in the record, that is all right with me.

Mr. TOMS. Yes. That would be best.[1]

Senator COOK. All right.

Mr. TOMS. And we feel that if we can use insurance company information that actually indicates what the practical experience of a make or model has been in crashes and its involvement and what the claims have been, and we can then compare this against our crash testing information, that we can make excellent information available to the public.

We feel that this approach probably will work as well as anything. It would much less tap our resources than if we were to attempt to do both the structure crash work and the property damage work.

Mr. SUTCLIFFE. I missed the explanation. Because you first argue that setting of the safety standards and setting of objective test criteria for property loss reduction require the same resources from your agency.

Mr. TOMS. The same—it is the same level of difficulty of effort.

Mr. SUTCLIFFE. Which translates into the same resources.

Mr. TOMS. It has to use the same kinds of structure engineers.

Mr. SUTCLIFFE. So that we have a significant cost to the Government in promulgating effective consumer information.

Mr. TOMS. This is why, Mr. Sutcliffe, we felt that the best approach is to inform the consumer as to what is the best car for him to buy. And most people, which is one of the problems that we face, ask, "What car should I buy?" And, of course, we have to come back and ask, "What do you need?" Well, when you try to dictate what people ought to buy or what is good for them, this gets to be very complex. We can do that in safety, but in terms of personal taste it is difficult.

Then you multiply that by attempting to make judgments in terms of property damage. We know how tough it is to make these judgments in terms of safety. It gets to be a very difficult problem.

We prefer very much in this first go-around to try our best to employ information that is presently available in accident records and insurance files and let the consumer know rather than attempt to solve the problem from a structure viewpoint and deal with property damage rules.

---

[1] See page 1896.

Mr. SUTCLIFFE. How many makes and models of vehicles are presently, roughly, in existence?

Mr. TOMS. Over 500. Maybe 550 plus.

Mr. SUTCLIFFE. How are you going to get the comparison of information through radio and TV to the consumer about those 500 makes and models?

Mr. TOMS. We can't really communicate information on all 550. We are going to have to deal with those that are most popular. Of course, we will provide listings that people could refer to if they wanted to.

I think that the automobile enthusiast magazines might do this. They list in their issues all the vital statistics of every car by type of engine, wheelbase, weight, drive ratio, and this sort of thing. We think that they will pick this information up and make it available to the consumer.

The person who really wants to compare cars can go to a newsstand today and he can buy magazines that completely breakdown model, make, by cost, wholesale cost. He can even buy the costs at auction.

We think these kind of magazines will become available when the Government makes this information available.

Now, it is true that a lot of consumers wouldn't go to the trouble to try to find out that kind of information, but it will be available. We in the Government would be publishing these lists so that any magazine or any news service would have it available to present to the public.

Senator STEVENS. I think he has got quite a point, especially in light of a situation that recently occurred in my State. I will not mention the manufacturer. But brand A had a defective model, consequently, with all of the models, the sales fell off absolutely within that manufacturer's line of cars because of the notoriety over the one.

I think that the information that you have pertaining to a particular model will flow around all of the models of the same manufacturer for that year. They have a real risk in the marketplace if you have got any effective information about even one model of a line.

Mr. TOMS. It is our experience that when we declare a defect on an automobile there is a direct effect on sales. We find that the auto industry is enormously sensitive to this sort of thing and very responsive because they do fear that they will be hit in the pocketbook.

Senator COOK. I think the presumption is that when you have a particular bad model, it reflects on all the models that are manufactured by that manufacturer.

Mr. TOMS. It hurts the manufacturer enormously. So this can be an effective tool in doing the job, we feel. And we feel that it will enable us in the Government to do the best job, particularly in continuing with our ESV program, structure, handling.

Mr. SUTCLIFFE. Senator Cook, I think we could submit questions for the record for the remainder.

Senator COOK. Fine. Without objection, questions will be submitted to the Department for answers and made part of the record.

Thank you, gentlemen.

(The following information was subsequently received for the record:)

Sec. 2. Purpose

Amends the 1966 Act to establish procedures for setting minimum property loss reduction standards (including test procedures), and to promote competition among manufacturers in the production of vehicles that are less susceptible to damage and which lessen the risk of injury and death to occupants.

Provides for augmentation and implementation of certain Highway Safety Standards.

Calls for reduction in the extent of property damage and economic losses that result from motor vehicle accidents.

We agree with the overall purpose of S. 976 as stated in this section with only one exception—we do not agree with the provision which requires the setting of minimum property loss reduction standards. A discussion of our objections to this provision is included with our comments on Section 5 of the bill under Section 125 of Title I of the Act.

Sec. 3. Definitions

Definitions added include:

"Property loss reduction"
"Property loss reduction standards"
"Make"
"Model"
"Passenger motor vehicle"

We have no objections to these definitions. We must emphasize for clarification that our understanding of the term "passenger motor vehicles" as defined in S. 976 would include the following classes of vehicles which have been established for safety standards purposes: passenger cars, multipurpose passenger vehicles and buses. We would appreciate confirmation of our understanding such that enactment of this definition would not override or necessitate change of our classification of vehicles for safety standards purposes.

Sec. 4. Property loss reduction standards

All sections of the Act following section 102 (except 103(h)—time of issuance and 103(g)—dual standards) will add property loss reduction standards authority in addition to the present authority for motor vehicle safety standards.

We object to the requirement of property loss reduction standards authority. A detailed discussion of our objections is included in our comments on Section 5 of the bill under Section 125 of Title I of the Act.

Sec. 5. Public Disclosure of Comparative Safety and Susceptibility to Damage of Particular Motor Vehicles and Additional Standards

125(a)

Secretary shall issue regulations by July 1, 1972, on tests and test procedures to allow for comparisons of vehicle damage susceptibility at collision speeds including 5, 10, and 15 mph.

125(b)

Secretary shall promulgate property loss reduction standards as soon as possible after July 1, 1972.

125(c)

Secretary shall promulgate, as soon as practicable after July 1, 1972, a standard requiring all motor vehicles manufactured after January 1, 1975 to be equipped with 5 mph energy absorbing front and rear bumpers that would enable the vehicles to withstand 5 mph impact with minimum damageability.

125(d)

(1) Secretary shall make a study of the feasibility of developing tests and test procedures for comparison of risk of personal injury or death to motor vehicle occupants and report to President and Congress by July 1, 1972.

(2) If tests are feasible, the Secretary will issue regulations on the test and testing procedures as soon as practicable.

125(a)

We are opposed to the issuance of regulations specifying vehicle damage susceptibility tests and test procedures. The requirement that vehicles be tested in accordance with these procedures would impose undue burdens upon the manufacturers. The manufacturers would be required to conduct a large number of prohibitively expensive tests each year in order to comply with this section.

There are currently approximately 500 different makes and models of vehicles that would be subject to the requirements for conducting annual damage susceptibility tests. In order to obtain statistically valid test results which would represent real accidents occuring on our public roads, the manufacturer would have to crash test models of each make and model between 25 and 50 times. This large number of tests would be required to generate information concerning damage susceptibility in various combinations of speeds, accident modes and objects impacted.

Then, each test would have to be repeated several times to ensure the elimination of statistical variances caused by slight differences in production assembly or testing procedures. The net effect of having to allow for all these variables is that manufacturers would be required to conduct, at an enormous expense, between 12,500 and 25,000 tests annually to cover all makes and models of vehicles. This expense would ultimately be borne by the consumer.

In lieu of requiring the manufacturers to test their vehicles in accordance with damage susceptibility test procedures promulgated by the Secretary, we recommend that the Secretary be authorized to conduct a broad consumer information program on vehicle damageability. This program would include acquisition and analysis of insurance industry accident claims and other data, research, including computer simulation of vehicle crashes, crash testing and analysis of engineering data supplied by manufacturers on actions they have taken to update the damage protection aspects of their vehicles. From all of the information, we would develop an extensive consumer information program about damage susceptibility. To ensure widespread familiarity with the consumer information, we would disseminate the information through television, consumer and auto magazines and various other media.

125(b)

We are opposed to the promulgation of property loss reduction standards. We believe that it would be inappropriate for the Federal government to become involved in direct regulation of this aspect of motor vehicles. The competition of the market place would be less restrictive and more responsive than governmental regulation would be to the wants of consumers in this area.

We believe in the value of vigorous governmental regulations in matters of health and safety. These urgent problems require swift and coordinated solutions which the Federal government is generally best suited to develop and implement. The value of governmental regulation of this type has been amply demonstrated in the Federal vehicle safety and emission control programs.

The damage susceptibility of motor vehicles is a problem which requires more consumer information, not more governmental regulation. We believe that the consumer should have complete freedom of choice in matters other than health and safety. However, effective consumer choice can be exercised only with adequate consumer information. We propose, therefore, to develop the necessary information in the most objective manner possible and disseminate it widely.

Aside from these objections we are opposed to government imposed property loss reduction standards for the following reasons:

1. These standards would involve us heavily in design standards, including styling, rather than the performance standards that we now issue to ensure safety.

2. Specific applications of present technology are almost nonexistent in this area, as compared to the situation that existed in safety in 1966. The 1966 Act was preceded by 20 years of activity by the Society of Automotive Engineers, General Services Administration and others.

125(c)

We object to the provision requiring 5 mph (front and rear) energy absorbing bumpers by January 1, 1975 because our Federal Motor Vehicle Safety Standard No. 215 has already provided the necessary bumper requirements. Also the effective date of our standard is earlier (September 1, 1973 for 5 mph—front and rear).

Furthermore, our standard covers the requirement for standardizing bumper heights which is a very critical safety consideration. It is true that our standard does not cover the requirement for sheet metal damage protection, but all operating systems must be protected from damage. We feel that from a practical standpoint, it is impossible to design a car to meet our safety requirements without also protecting the car from significant property damage. We believe that the

consumer will receive this additional benefit without requiring a specific government imposed property loss reduction standard.

In addition, we strongly oppose setting of specific standards by legislation. Incorporating specific motor vehicle performance requirements in the Act would be incompatible with our need to be responsive to the constantly changing technology in the area of motor vehicle safety. If specific requirement were enacted by Congress, they could not be amended or revoked except by furthere legislative action. As a consequence, the institution of a more effective safety program would be delayed.

125(d)

We support a study of the feasibility of developing tests and test procedures and other information that will inform the public as to the risk of personal injury or death to motor vehicle occupants for all major makes and models of passenger cars. However, we cannot complete this effort and report to the President and Congress until July 1, 1973.

We do object, however, to the requirement for issuing regulations covering these tests and test procedures. The reasons for our objection are the same as those for our objection to Section 125(a) above.

Sec. 5. Public disclosure of comparative safety and susceptibility to damage of particular motor vehicles and additional standards

126(a)

Manufacturers must test production models of every make and model of passenger cars according to regulations set by the Secretary under Section 125 and furnish the results to the Secretary.

126(b)

No manufacturer shall sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the U.S.:

(1) any passenger motor vehicle manufactured on or after January 1, 1973, unless production models of the make and model of such vehicle have been tested for damage susceptibility according to the regulation promulgated by the Secretary under section 125(a).

(2) any passenger motor vehicle manufactured on or after 120 days following the Secretary's promulgation of rules under section 125(b) unless production models of the make and model of such vehicles have been tested in accordance with such rules.

We object to all the provisions contained in section 126. A detailed discussion of our objections is contained in our comments to section 125 above.

Sec. 5. Public disclosure of comparative safety and susceptibility to damage of particular motor vehicles and additional standards

127(a)

Testing information supplied by the manufacturers shall be made public, including to prospective purchasers (Consumer Information), for easy comparisons of damage and injury susceptibility, in addition to a comparative analysis of the cost of repairing the vehicles.

127(b)(1)

Information including identification of parts, components, systems and subsystems damaged or displaced during test will be made available to insurance companies for use in determining premium rates for property damage and personal injury.

127(b)(2)

The Secretary will report to the President and the Congress on February 1, 1973, on the extent of the insurance companies' use of this information in setting premium rates and will recommend any additional legislation, if necessary. The Secretary is authorized to conduct studies and surveys necessary to carry out the purposes of this Act.

127(b)(3)

By February 1, 1974, the Secretary shall establish procedures requiring dealers to provide insurance cost data to prospective purchasers for comparison.

127(a)

We object to the requirements for the manufacturers' testing of every make and model of car for the reasons specified in our comments to Section 125. Therefore, this requirement is not necessary.

We would favor such a consumer information program based on the government's testing and research program providing our research shows that this program is feasible and will generate information useful to the public.

127(b)(1)

We have no objection to providing the results of the government's testing and research program to insurance companies or their designated agents and State insurance regulatory agencies for use in determining insurance premium rates for property damage and personal injury.

127(b)(2)

We have no objection to the concept of reporting to Congress on the use that insurance companies are making of consumer information in setting rates. The timing of the report however, must be dependent upon the date that consumer information can be made available for the use of insurance companies.

127(b)(3)

We object to this section because we do not believe that consumer information should be provided through automobile dealers. This would not be the most efficient system since dealers will naturally have a tendency to downplay information which might reflect unfavorably on their model line. We recommend maximum use of the media including television, auto magazines, consumer publications and other similar means of disseminating this information to the public more effectively.

Sec. 5. *Public disclosure of comparative safety and susceptibility to damage of particular motor vehicles and additional standards*

128

The Secretary will issue Federal Motor Vehicle Safety and property loss reduction standards requiring that all motor vehicles manufactured after January 1, 1975, be designed and constructed in order to facilitate motor vehicle inspection and repairs needed to meet inspection requirements.

We object to the requirement of property loss reduction standards for the reasons stated in our comments to Section 125 above.

We also object to the requirement for motor vehicle safety standards to facilitate motor vehicle inspection. A detailed discussion of our objections is contained in the comments to Title V of the bill in Section 501.

Sec. 6. *Judicial review*

Extends judicial review to standards to facilitate motor vehicle inspection and necessary repairs (sec. 128) and to regulations issued under sec. 125.

We object to issuance of regulations in Sections 125 and 128 for reasons stated above. Therefore, this section is not necessary.

Sec. 7. *Safety research*

Adds the authority for the Secretary to collect data in order to determine the relationship between passenger motor vehicle performance and design characteristics and

a. property damage resulting from motor vehicle collisions, and

b. the occurrence of personal injury or death resulting from such accidents.

We have no objection to this section.

Sec. 8. *Cooperation with other agencies*

Adds authority for Secretary to cooperate in the planning and development of tests and testing procedures established under Sec. 125 and methods for inspecting and testing to determine compliance.

We object to Section 125. Therefore, this section is not necessary.

Sec. 9. *Prohibitions and exceptions*

(1) Amends section 108(b)(1)(3) and (5) to include section 126(b) (Testing of production makes and models)

(2) Amends paragraph (2) by adding property damage standards and tests (Penalties will not be enforced if person establishes he did not have

reason to know in the exercise of due care that the vehicle did not conform to safety or property damage standards or had not been tested accordingly).

(3) Amends paragraph (3) to prohibit importation of non-tested vehicles

We object to Sections 125 and 126. Therefore, this section is not necessary.

Sec. 10. Penalties

Violators of provisions concerning:

Compliance with motor vehicle and property loss reduction standards (sec. 108);

Keeping records and reporting data (sec. 112)

Certification (sec. 114)

Passenger motor vehicle testing (sec. 126);

Inspection (sec. 112);

All subject to penalties of up to $5,000 for each violation.

We object to the provisions of this section. We feel that the present penalty provisions of our Act are sufficient and, furthermore, we do not favor the requirements for property loss reduction standards (as stated in our objections to Section 125) or manufacturers testing all makes and models of cars (as stated in our objections to Section 126.) We also believe that the $5,000 penalty is too extreme. We feel that the penalties provided in the current law are adequate at the present time coupled with the other remedies available to us such as injunctions prohibiting sales. When we feel that penalties in the current law are no longer adequate enforcement tools we will not hesitate to recommend either increase penalties and/or other remedial authority.

Sec. 11. Injunctive relief

U.S. District courts can restrain sale or importation of non-tested vehicles.

Since we objected to manufacturers' testing all makes and models of cars under Section 126, this section is not necessary.

Sec. 12. Repurchase or replacement

Non-compliance includes failure to meet property damage standards or to meet testing requirements.

We object to setting property damage standards (under section 125) and requiring testing by manufacturers (under section 126). Therefore, this section is not necessary.

Sec. 13. Inspection of manufacturing facilities

Secretary is authorized to inspect establishments where motor vehicles are being tested.

Since we objected to testing by manufacturers under Section 126, this section is not necessary.

Sec. 14. Certification of conformity

Motor vehicles must be certified as tested for property damage and injury comparison.

Because of our objections to Sections 125 and 126, this section is not necessary.

TITLE V. DIAGNOSTIC INSPECTIONS, REGISTRATIONS, AND TITLING STANDARDS

501(a)

By January 1, 1973, the Secretary shall amend Highway Safety Program Standard No. 1 (PMVI) to include the following provisions:

(1) The standard will require inspection when a title is transferred and whenever safety related parts, systems, etc. are damaged.

(2) Inspectors, certified by the State according to provisions established by the Secretary, will certify safe operating conditions. Certificate must be delivered by seller to purchaser of a motor vehicle at the time of sale. The certified inspector cannot be involved in other automotive services (sales, repairs) unless the vehicle population is insufficient to warrant independent inspectors and the State assures against effects of conflict of interest.

(3) The standard will be expressed as a performance standard applicable to new and used motor vehicles.

501(b)

By January 1, 1973, the Secretary will amend Highway Safety Program Standard No. 2 (registration) so that registration and titling programs are similar to those contemplated by the Uniform Motor Vehicle Code and Model Traffic Ordinance.

501(a)

We cannot, at this time, advocate or support the establishment of a nationwide independent diagnostic inspection system. We feel that the state-of-the-art necessary to justify such a system is several years away. Further, we estimate that the annual cost of the nationwide independent diagnostic system required by the bill is extremely high.

For example, the construction plus operating costs of the diagnostic centers would be in the range of $1 billion per year. Since we do not have adequate information as to the cause and effect relationship between vehicle defects and crashes, we should not embark on such a costly venture at this time.

We also believe that modifications to our Highway Safety Program Standards can best be handled by administrative action under existing authority. Hence, this provision is not necessary.

Furthermore, we are currently amending our Highway Safety Program Standard No. 1 on inspection to require that a motor vehicle be inspected whenever the title of the vehicle is transferred or whenever any vehicle cannot be driven from the scene of an accident.

We must further emphasize that we do not, at this time, support periodic motor vehicle inspection (PMVI) as the *only* type of inspection system for our States. However, we do strongly support the objective of removing unsafe motor vehicles from the road.

The major problem with PMVI is that we do not yet know how to design an inspection system that will assure identification of unsafe vehicles quickly, accurately and inexpensively.

This does not mean, and must not be interpreted as saying, we are doing away with used vehicle surveillance. It does mean that we are giving States a certain amount of flexibility in how they accomplish the job of removing unsafe vehicles from the road. We will evaluate results and we will strongly oppose the efforts of any State to abandon this area of concern.

We also believe that automated diagnostics will be the technique of the future. But, we are not, at this time, prepared to support legislation which levies upon the States a system of independent diagnostic inspection systems. Too much is unknown. What is taken as known is by no means positive. In the United States today, based on available data, there is no statistical difference in fatality rates between States that have periodic motor vehicle inspection and those that do not. This is not necessarily an indictment of the concept of motor vehicle inspection. It may be an indictment of inspection as practiced today. It is for this reason that we are modifying our PMVI Safety Standard to permit more flexibility in the States so that we can make our present used vehicle surveillance programs more effective.

We do not have adequate information as to the cause and effect relationships between vehicle defects and crashes. Therefore, additional research and analysis are required before we could recommend a national system of independent diagnostic centers for motor vehicle inspections. Some research has been underway for several years. But considerably more effort is required to determine, for example, safety-critical components, tolerance limits for performance, inspection procedures and equipment. Much more trade-off analysis is also required to determine the most cost-effective approach to vehicle surveillance, including the development of automated vehicle diagnostics.

For all of the above reasons, we cannot support the provisions of this section.

501(b)

We agree with the provisions of this section. However, we believe that modifications to our Highway Safety Program Standards can best be handled by administrative action under existing authority. Furthermore, we are amending Highway Safety Program Standard No. 2 on registration to incorporate a registration and uniform titling program as contemplated by the Uniform Motor Vehicle Code. Therefore, this provision is not necessary.

TITLE V. DIAGNOSTIC INSPECTION, REGISTRATION AND TITLING STANDARDS

502 Reports on Implementation

502(a)

By January 1, 1972, the Secretary shall report to the President and Congress the progress of the States in implementing Highway Safety Program Standards 1 and 2 of June 27, 1967 and will recommend legislation to facilitate State compliance by January 1, 1973.

502(b)

Each state certified by the Secretary as being in compliance with these provisions shall, after January 1, 1973, receive between 10 to 50 percent of the annual costs of the programs based on the degree of compliance.

502(c)

By January 1, 1974, the Secretary will report to the President and Congress the progress of the States in implementing the amended programs standards and will recommend legislation to facilitate State compliance by January 1, 1975.

502(d)

By July 1, 1973, the Secretary shall:

(1) certify each State PMVI and registration program that meets the standards

(2) not approve a State highway safety program that hasn't established a program to implement standards

(3) reduce the Federal Aid Highway funds apportioned on or after January 1, 1975, to any State not implementing an approved highway safety program. The funds will be reduced by 10% for each year of non-compliance (not to exceed 50%).

502

Since we are opposed to a national independent diagnostic inspection system as required in Section 501(a) (see our previous comments to that section), we do not feel that Section 502 is necessary. Therefore, we would favor deletion of Section 502 in its entirety.

TITLE V. DIAGNOSTIC INSPECTIONS, REGISTRATIONS, AND TITLING STANDARDS

503

Authorizes appropriations to the Department in such sums as may be necessary to carry out the provisions of this Act.

We have no objections to this section.

AMERICAN MUTUAL INSURANCE ALLIANCE,
Washington, D.C., July 22, 1971.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: By way of this letter, we would like to take the opportunity to comment on the Administration's proposed Automobile Owners Information Act of 1971 and on Mr. Douglas Toms' recent testimony.

It is ironic that the Administration objects to S. 976 on grounds that it "would require the establishment of automobile standards for purely economic reasons," maintaining that it is unreasonable to require auto manufacturers to test their products except for health and safety purposes. But, Mr. Toms evidently has no such qualms about requiring auto insurers to collect and make available massive amounts of auto damageability information "for purely economic reasons"—even though they bear no responsibility for auto design.

The detailed claims information which would be requested of insurers under Section 503 is not currently available in the form indicated in the bill. Moreover, it would be extremely costly for most insurance companies to redo their claims procedures and computer systems to gather and process such information.

For example, we believe that such information requirements would have serious impact on one of the most important efficiency costcutting programs which many companies have instituted in the past several years. Being fully conscious of the need to return in benefits to the public as great a share of the premium dollar as possible, these companies have instituted telephone claim adjusting units for the purpose of settling certain type claims as rapidly as possible. This practice has had two important consequences. First, both policyholder and third-party claimants have found much of the red tape taken out of the claim settlement practice. They have had their claims settled promptly, fairly, and without having to put up with the uncertainty which has characterized some automobile insurance claim settlement practices. Second, these new procedures have reduced the claims settlement expenses to the companies and

thus, have allowed a greater proportion of the premium dollar to be returned to consumers by way of benefits.

If, on the other hand, the insurance industry is required to produce the type of information called for in Section 503 on all claims, extensive investigation of each accident claim will have to be preformed and this, we believe, will be impossible for these telephone claims units to perform.

Imposing such requirements on auto insurers not only would put the responsibility on the wrong industry, but would increase auto insurance costs at a time when insurers are under strong pressures to reduce overhead costs and to return a greater portion of the premium dollar in the form of benefits to the accident victim.

We question whether it is in the public interest to require insurers to produce and report such detailed information on all claims, particularly in view of the fact that meaningful consumer information on new models would not be available until some months after they appeared in dealers' showrooms and on the highways.

We also question the desirability of Section 504. We believe that it puts the "cart before the horse." This Section would require our companies to provide the Department of Transportation with a description of the extent to which our rates are affected by the damageability and crashworthiness of individual makes and models of automobiles. Yet, there is nothing in the Administration's proposal which would give our companies the type of information required for them to structure a rating system on the basis of damage susceptibility and crashworthiness.

S. 976, on the other hand, would require auto manufacturers to make available to our companies, prior to the time new car models are offered for sale, the type of crash data upon which a sound rating system can be structured. We specifically endorse S. 976 because it does provide the necessary information base on which sound actuarial judgments can be made for rate-making purposes. We strenuously oppose legislation which would impose heavy responsibilities on our companies without requiring auto manufacturers to provide the timely information needed to fulfill such responsibilities.

In our judgment, the approach urged by Mr. Toms is a circuitous, slow and ineffective solution to the problems created by today's excessively fragile car designs. Moreover, it would place the responsibility and cost burden on the wrong shoulders—i.e., on the car buyer and the auto insurance policyholder, instead of the auto manufacturers who are responsible for the design and damageability of the automobile. The Administration's proposal relies almost solely on informed buyer choices in the market place to bring improvements in crashworthiness and damage susceptibility. But Mr. Toms, himself, stated that the data which would be published would not reach the consumer until many months following the introduction and sale of new car models. Most of the new cars in any given year would already be sold by the time such information reached the potential car buyer. It is therefore unrealistic to expect consumers to bring pressures on the manufacturers to build better cars if they are not given the necessary information in time to make informed buying decisions.

In fact, such delayed information regarding damage susceptibility can only hurt the purchasers of certain car models who were unaware at the time of the purchase of the potential drop in resale value of their automobile.

More effective methods are available. What is needed is a mandatory standard which will require that all cars reach a reasonable level of crash performance. By establishing standards already within the authority of the Federal government—if it so desired—[illegible] American consumers an estimated $1-billion a year by preventing the excessive damage now occurring in low speed crashes.

In answer to questions Mr. Toms [illegible] the economic factor will take care of [illegible] Although there have been [illegible] brought about in part by Federal safety standards, the total auto insurance bill paid by the typical vehicle owner has continued to rise because of the escalation of vehicle damage and auto repair costs. With the vehicle damage coverages accounting for two-thirds or more of the typical auto insurance bill, it is obvious that changes in car design are the key to any overall reduction in the economic costs of auto crashes.

Mr. Toms also referred several times to the matter of priorities, stressing that "nothing must be allowed to dilute our safety records." We agree that safety has

502(b)

Each state certified by the Secretary as being in compliance with these provisions shall, after January 1, 1973, receive between 10 to 50 percent of the annual costs of the programs based on the degree of compliance.

502(c)

By January 1, 1974, the Secretary will report to the President and Congress the progress of the States in implementing the amended programs standards and will recommend legislation to facilitate State compliance by January 1, 1975.

502(d)

By July 1, 1973, the Secretary shall:

(1) certify each State PMVI and registration program that meets the standards

(2) not approve a State highway safety program that hasn't established a program to implement standards

(3) reduce the Federal Aid Highway funds apportioned on or after January 1, 1975, to any State not implementing an approved highway safety program. The funds will be reduced by 10% for each year of non-compliance (not to exceed 50%).

502

Since we are opposed to a national independent diagnostic inspection system as required in Section 501(a) (see our previous comments to that section), we do not feel that Section 502 is necessary. Therefore, we would favor deletion of Section 502 in its entirety.

TITLE V. DIAGNOSTIC INSPECTIONS, REGISTRATIONS, AND TITLING STANDARDS

503

Authorizes appropriations to the Department in such sums as may be necessary to carry out the provisions of this Act.

We have no objections to this section.

AMERICAN MUTUAL INSURANCE ALLIANCE,
Washington, D.C., July 22, 1971.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: By way of this letter, we would like to take the opportunity to comment on the Administration's proposed Automobile Owners Information Act of 1971 and on Mr. Douglas Toms' recent testimony.

It is ironic that the Administration objects to S. 976 on grounds that it "would require the establishment of automobile standards for purely economic reasons," maintaining that it is unreasonable to require auto manufacturers to test their products except for health and safety purposes. But, Mr. Toms evidently has no such qualms about requiring auto insurers to collect and make available massive amounts of auto damageability information "for purely economic reasons"—even though they bear no responsibility for auto design.

The detailed claims information which would be requested of insurers under Section 503 is not currently available in the form indicated in the bill. Moreover, it would be extremely costly for most insurance companies to redo their claims procedures and computer systems to gather and process such information.

For example, we believe that such information requirements would have serious impact on one of the most important efficiency costcutting programs which many companies have instituted in the past several years. Being fully conscious of the need to return in benefits to the public as great a share of the premium dollar as possible, these companies have instituted telephone claim adjusting units for the purpose of settling certain type claims as rapidly as possible. This practice has had two important consequences. First, both policyholder and third-party claimants have found much of the red tape taken out of the claim settlement practice. They have had their claims settled promptly, fairly, and without having to put up with the uncertainty which has characterized some automobile insurance claim settlement practices. Second, these new procedures have reduced the claims settlement expenses to the companies and

thus, have allowed a greater proportion of the premium dollar to be returned to consumers by way of benefits.

If, on the other hand, the insurance industry is required to produce the type of information called for in Section 503 on all claims, extensive investigation of each accident claim will have to be preformed and this, we believe, will be impossible for these telephone claims units to perform.

Imposing such requirements on auto insurers not only would put the responsibility on the wrong industry, but would increase auto insurance costs at a time when insurers are under strong pressures to reduce overhead costs and to return a greater portion of the premium dollar in the form of benefits to the accident victim.

We question whether it is in the public interest to require insurers to produce and report such detailed information on all claims, particularly in view of the fact that meaningful consumer information on new models would not be available until some months after they appeared in dealers' showrooms and on the highways.

We also question the desirability of Section 504. We believe that it puts the "cart before the horse." This Section would require our companies to provide the Department of Transportation with a description of the extent to which our rates are affected by the damageability and crashworthiness of individual makes and models of automobiles. Yet, there is nothing in the Administration's proposal which would give our companies the type of information required for them to structure a rating system on the basis of damage susceptibility and crashworthiness.

S. 976, on the other hand, would require auto manufacturers to make available to our companies, prior to the time new car models are offered for sale, the type of crash data upon which a sound rating system can be structured. We specifically endorse S. 976 because it does provide the necessary information base on which sound actuarial judgments can be made for rate-making purposes. We strenuously oppose legislation which would impose heavy responsibilities on our companies without requiring auto manufacturers to provide the timely information needed to fulfill such responsibilities.

In our judgment, the approach urged by Mr. Toms is a circuitous, slow and ineffective solution to the problems created by today's excessively fragile car designs. Moreover, it would place the responsibility and cost burden on the wrong shoulders—i.e., on the car buyer and the auto insurance policyholder, instead of the auto manufacturers who are responsible for the design and damageability of the automobile. The Administration's proposal relies almost solely on informed buyer choices in the market place to bring improvements in crashworthiness and damage susceptibility. But Mr. Toms, himself, stated that the data which would be published would not reach the consumer until many months following the introduction and sale of new car models. Most of the new cars in any given year would already be sold by the time such information reached the potential car buyer. It is therefore unrealistic to expect consumers to bring pressures on the manufacturers to build better cars if they are not given the necessary information in time to make informed buying decisions.

In fact, such delayed information regarding damage susceptibility can only hurt the purchasers of certain car models who were unaware at the time of the purchase of the potential drop in resale value of their automobile.

More effective methods are available. What is needed is a mandatory standard which will require that all cars reach a reasonable level of crash performance. By establishing standards already well within the available technology, the Federal government—if it so desired—could save American consumers an estimated $1-billion a year by preventing the excessive damage now occurring in low-speed crashes.

In answer to questions, Mr. Toms testified that "by concentrating on safety, the economic factor will take care of itself." Unfortunately, this is not the case. Although there have been indeed some encouraging reductions in bodily injury brought about in part by Federal safety standards, the total auto insurance bill paid by the typical vehicle owner has continued to rise because of the escalation of vehicle damage and auto repair costs. With the vehicle damage coverages accounting for two-thirds or more of the typical auto insurance bill, it is obvious that changes in car design are the key to any overall reduction in the economic costs of auto crashes.

Mr. Toms also referred several times to the matter of priorities, stressing that "nothing must be allowed to dilute our safety records." We agree that safety has

priority over property damage. However, it has not been demonstrated that these two goals are inconsistent or mutually exclusive. Nowhere in his testimony did Mr. Toms state that there is any evidence that cars cannot be built to satisfy both safety and damageability requirements.

It is unclear whether Mr. Toms objects to having the DOT assume greater responsibility for regulating auto damageability on philosophical grounds, or whether he believes his staff and budget are inadequate to handle the job. If it is simply a matter of inadequate funds, then the Alliance strongly urges that Congress provide DOT with adequate resources to take on the additional responsibilities contemplated in S. 976, in view of the enormous benefits which would accrue to consumers.

All in all, we believe that the Administration's proposal is not a good substitute for S. 976. The testimony before the Committee has amply demonstrated both the need for strong Federal action along the lines of S. 976 and the abilities of both government and private industry to meet the demands imposed by S. 976. We respectfully urge you and your Committee to recommend to Congress the enactment of S. 976 with the suggested amendments which we proposed in our original testimony.

We would appreciate it if this letter could be incorporated in the hearing record.

Sincerely,

ANDRE MAISONPIERRE,
Vice President.

(Whereupon, at 11:28 p.m., the committee adjourned, subject to the call of the chairman.)

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

U.S. SENATE, COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C., May 8, 1971.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee, Washington, D.C.

DEAR MAGGIE: In view of your Committee's hearings on legislation dealing with automobile insurance, I am sending along for your Committee's consideration the complaint of one of my constituents:

"Last month I was driving to work and, basically, a woman came out of her driveway and hit the side of my car, causing more than $900 damage.

"After filing a report with the state and my insurance company, Travelers, I was ultimately informed that the woman's company, Employers, now refused to honor my claim. My company will pay only about $250.

"I have two alternatives as I see them: The first is to expend time and money to put the wheels of our judiciary system into motion and hope within a few years to get a judgment in my favor; the second is to take my company's rather arbitrary figure of about $350 (less my $100 deductible), swallow my pride and face higher insurance rates and a black mark against my insurance record.

"This seems to be a gross infraction of my rights as an American citizen. I am an oppressed minority—I stand alone to face two multimillion dollar insurance companies, each with an impressive legal staff and if I wish to keep my pride, I must spend my money to hire a legal counsel who could, at best, win something which may finish in my favor in a few years.

"As an American citizen, I can only appeal to my government when I am faced with a situation where I am at the mercy of two gigantic corporate conglomerates."

Sincerely yours,

George D. Aiken

(The following was referred to on p. [illegible] of Mr. [illegible] statement.)

J. Gunn
March 1, 1971

LAWRENCE RADIATION LABORATORY'S EMERGENCY ENERGY ABSORBING DEVICE

In 1960 a device was invented for safely stopping a moving mass that might break loose during operation.

The device was an assembly of sheet steel membranes and pointed steel pins. If the pins were struck by a part that had broken loose, they would in turn pucture the membranes. See Photos XBB712-733 and -734 and Drawings 9M7644A and 9N1623B. The kinetic energy of the moving mass was dissipated by the deformation of the membranes.

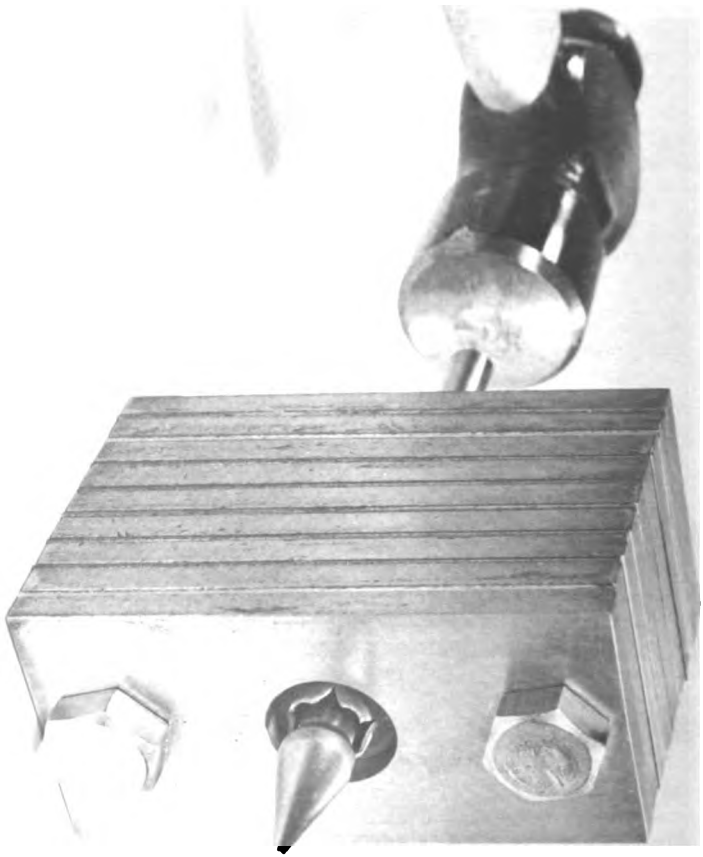
The original requirements dictated safely stopping 8000 pounds moving at 7.5 ft/sec (or 5.1 mph), in 4.25 in. with a deceleration of 2.5 g. Eight pins were used.

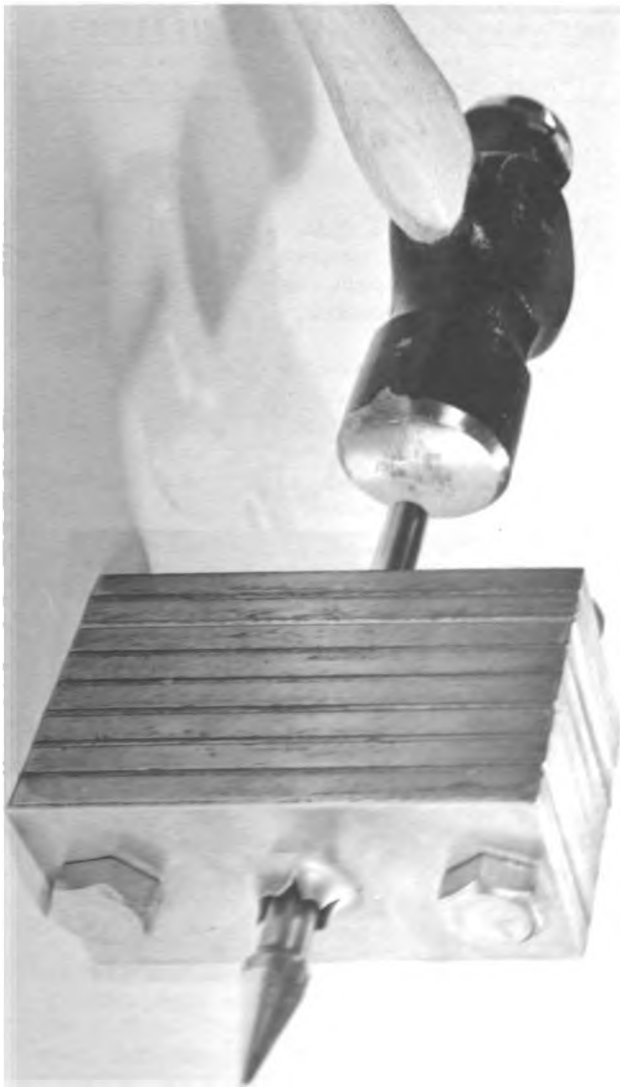
This device worked exceptionally well, and once the "crash pad" was actuated the deformed membranes could be easily and quickly replaced.

It appears that the incorporation of this device would be a dependable low-cost way of solving the problem of low speed crash of automobiles. They could be installed between the auto's bumper and frame and would absorb the collision energy.

Calculations and test data show that a 4000-pound auto can be stopped safely with a deceleration of 2.5 g using a crash pad with 4 pins and a membrane stack about 5 in. long. Shorter stopping distances (with correspondingly higher forces) can readily be obtained by simple changes in the number of pins and in the material of membranes.

This device is covered by U. S. Patent No. 3181653, issued May 4, 1965. The inventor, Jack Roskelley, has assigned the patent rights to the U. S. Government through the AEC. It presumably would be available on a royalty-free basis.





LAWRENCE RADIATION LABORATORY · UNIVERSITY OF CALIFORNIA

ENGINEERING NOTE | BERKELEY | FILE NO 7308-02 M23 | PAGE 1 OF 13

SUBJECT: BEVATRON EXTERNAL PROTON BEAM INT. BM. DEFLECTION – INTERNAL MAG. EMERGENCY STOP

BY: JACK BOKELEY

DATE: 7-NOV-1960

UCID #3506

PROBLEM:

THE MAGNETS AND EQUIPMENT REQUIRED FOR DEFLECTING THE PROTON BEAM ARE OF CONSIDERABLE MASS AND MUST BE PLUNGED AND RETRACTED QUICKLY AND PRECISELY TO INTERCEPT AND DEFLECT THE ORBITING BEAM.

FAILURE IN A CONNECTING MEMBER DUE TO FATIGUE OR OTHER STRESSES COULD CAUSE THE MOVING PARTS TO BREAK AWAY FROM THE PLUNGER EQUIPMENT.

A BREAK AT TOP VELOCITY DURING PLUNGE OR RETRACTION COULD CAUSE SERIOUS DAMAGE TO THE ENTIRE BEVATRON MACHINE BY CRASHING INTO THE SIDES OF THE TANGENT TANK AND POSSIBLEY RUPTURING THE TANK CAUSING AN IMPLOSION OF AIR INTO THE VACUUM SYSTEM.

REQUIREMENTS:

A DEVICE IS REQUIRED FOR THE ABSORPTION OF ENERGY IN STOPPING THE LOOSE EQUIPMENT. THE ENERGY MUST BE ABSORBED AT A RATE NOT TO EXCEED FIVE "G'S" TO PREVENT UNDUE DAMAGE TO MAGNET PARTS AND APPENDAGES. THE DEVICE MUST BE COMPATIBLE TO VACUUM SERVICE WITH NO MAINTENANCE. INSTALLATION AND REPLACEMENT COSTS MUST BE LOW.

DESIGN:

A STACK OF METAL MEMBRANES INDIVIDUALLY SEPARATED BY METAL SPACERS HAVING HOLES SO SPACED AND ALIGNED AS TO PERMIT CLEAR PASSAGE OF A PIN. THE PIN IS DESIGNED TO PASS THROUGH THE MEMBRANES CONSECUTIVELY THUS CHANGING THE KINETIC ENERGY TO MECHANICAL AND WORK OR ENERGY AT A SOMEWHAT UNIFORM RATE. THE PIN HAS A CONE POINT WHICH ENLARGES THE MEMBRANE HOLE

LAWRENCE RADIATION LABORATORY · UNIVERSITY OF CALIFORNIA

ENGINEERING NOTE | BERKELEY | FILE NO 7308-02/1023 | PAGE 2 OF 13

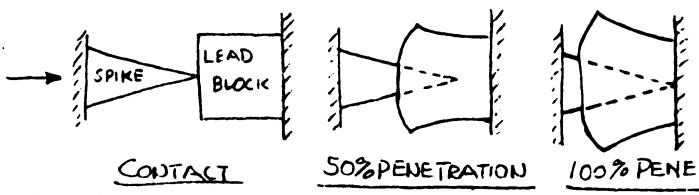
SUBJECT: BEVATRON EXTERNAL PROTON BEAM INT. BM. DEFLECTION-INTERNAL MAG. EMERGENCY STOP

NAME: ROSKELLEY

DATE: 7-NOV. 1960

STUDY:

ORIGINAL ATTENTION WAS GIVEN TO THE USE OF A BLOCK OF LEAD TO BE PENETRATED BY A STEEL SPIKE.



% PENETRATION	% CONE SURFACE	% DECELERATION
0	0	0
10	1	.27
20	4	.99
30	9	2.23
40	16	3.91
50	25	6.10
60	36	8.80
70	49	13.00
80	64	17.00
90	81	21.00
100	100	26.00

THIS STUDY SHOWS THAT AT 50 % OF TOTAL PENETRATION, ONLY 13.50 % OF THE TOTAL FORCE HAS BEEN ABORBED. DECELERATION IS NOT UNIFORM AND INCREASES RAPIDLY TOWARD THE END POINT. THIS CONDITION WOULD NOT BE ACCEPTABLE.

STUDY:

HONEYCOMB MATERIALS AND DESIGN WERE EXAMINED AS A POSSIBLE SOLUTION TO THE ABSORPTION OF THE IMPACT OF THE MAGNETS.

LAWRENCE RADIATION LABORATORY · UNIVERSITY OF CALIFORNIA

ENGINEERING NOTE

BERKELEY | FILE NO 7308-02M23 | PAGE 3 OF 13

SUBJECT: BEVATRON EXTERNAL PROTON BEAM INT. BM. DEFLECTION - INTERNAL MAG. EMERGENCY STOP

NAME: ROSKELLEY

DATE: 7-NOV. 1960

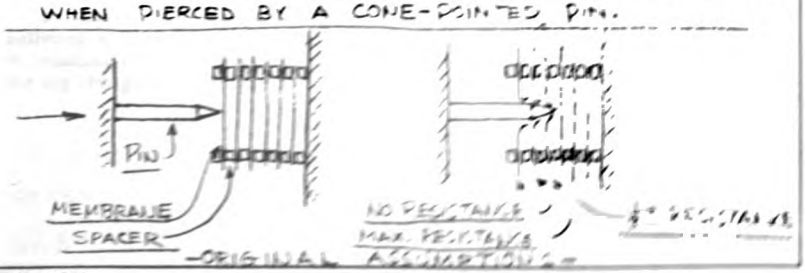
AFTER EXAMINATION OF ~~DATA ON~~ HONEYCOMB DESIGN, CERTAIN UNDESIRABLE FEATURES WERE NOTED — HONEYCOMBED MATERIALS ARE GENERALLY DESIGNED TO WITHSTAND COMPRESSIVE AND IMPACT LOADINGS. THE DESIGN DOES NOT PERMIT UNIFORM ABSORPTION OF IMPACT. THE RESISTANCE TO IMPACT AND COMPRESSIVE FORCES AT CONTACT AND UP TO POINT OF COLLAPSE OF THE CELLULAR STRUCTURE OF THE HONEYCOMB IS VERY HIGH. AT THE POINT OF COLLAPSE, THE RESISTANCE FALLS OFF SHARPLY THEN RISES SHARPLY AS THE MATERIAL COMPRESSES INTO A DENSER MASS. THIS TYPE OF IMPACT ABSORPTION WOULD PROVE UNSATISFACTORY BECAUSE OF THE DAMAGING EFFECTS THROUGH THE HIGH-LOW-HIGH RESISTANCE FEATURES.

STUDY

CONSIDERATION WAS GIVEN TO THE POSSIBILITY OF CASTING A SPECIAL HONEYCOMBED DESIGN THAT WOULD GIVE LOW INITIAL IMPACT RESISTANCE YET MAINTAIN A UNIFORM RESISTANCE TO COMPRESSION THROUGHOUT. MATERIAL DISPLACEMENT WOULD, HOWEVER, CAUSE AN ULTIMATE INCREASE IN MASS AND RESISTANCE TOWARD THE END POINT SO THIS STUDY WAS DISCONTINUED.

STUDY

LAMINATED MEMBRANES AND SPACERS WERE CONSIDERED NEXT. INFORMATION AT HAND INDICATED THIS ARRANGEMENT WOULD PRODUCE A RELATIVELY UNIFORM RATE OF ENERGY ABSORPTION AND DECELERATION WHEN PIERCED BY A CONE-POINTED PIN.



BERNARD BERNSTEIN
14th Floor, 1350 Sherbrooke St. W., Montreal 109, P.Q. *Office 842-6471* *Res. 484-4870*

April 15, 1971.

Ford Motor Co. Listens
American Road
Dearborn, Michigan 48121

Dear Sir:

Your claim that "Ford Listens" in recent television commercials is an insult to any thinking person.

Having bought a 1965 and 1968 Ford Meteor, you might be interested in knowing why I won't be buying your '71 model. Mechanically, they were both fine cars; as trouble free as one can expect. Unfortunately, you also have a way of building vulnerability into your cars. After replacing numerous parking light and tail light lenses on both cars which were all broken while parked, you couldn't begin to convince me that any car design which allows this to happen is not deliberate on the part of the manufacturer. Did you know that to replace the tail light lens on my '68 requires the partial removal of the rear bumper, and the total cost is about $15.00? Did you know that your Company does not make bumper guards to protect me? Were your intracately-made parking light and tail light housings or assemblies designed for practical reasons, or because they are so costly to repair or replace? Is this how Ford has to make money? Are you keeping statistics on the number of grilles that have to be replaced on your '71 Fords and Meteors because a careless driver backed into them? Don't you feel a moral obligation to provide us with a functional bumper that can withstand this type of impact, rather than the chrome-plated ornament you now provide? I think not.

I know this letter will have no impact, but perhaps some day soon enough people like me can get people like you to deliver the product they're capable of. I also know that most car manufacturers share the same guilt, but I drive a Ford, and they don't claim to listen.

Bernard Bernstein

cc Ford Motor Co. Listens
Canadian Road
Oakville, Ontario

cc Mr. Ralph Nader
Washington, D.C.

BREINER, RAMIK & BROWN
ATTORNEYS AT LAW
727-23RD STREET, SOUTH
ARLINGTON, VIRGINIA 22202

ALFRED W. BREINER
VINCENT L. RAMIK
CHARLES E. BROWN

PATENTS, TRADEMARKS & COPYRIGHTS
CABLE ADDRESS: BREINER
TELEPHONE (703) 684-6000

June 29, 1971

Customer Service Department
Ford Motor Company
8051 Gatehouse Road
Falls Church, Virginia 22046

Dear Sirs:

We have a 1970 LTD stationwagon. Last week my son, in parking the wagon, broke out the white glass of the tail light. The red on the top and bottom was substantially untouched.

It would be assumed that it would be a simple matter to buy a new lens, remove a couple of screws, and replace the broken lens. Not on a Ford!

My son was told at Dick Herriman Ford that he (my son) could not replace the lens because of the way it was installed. He was given an estimate of $13 and some cents for the replacement. My son called me and I told him to leave the car and have it fixed, which he did.

When my son picked up the car he was submitted a statement for $23.60. When he complained, he was told the chrome around the light was bent and it was necessary to replace another part. In order to pick up the car, he paid the $23.60.

I do not know if Dick Herriman Ford is playing the old shell game or not, but I do know that something is drastically wrong when it costs $23.60 to replace a broken tail light lens. Either the car is intentionally or stupidly incorrectly engineered.

My first Ford was a 1963 Ford. I have driven Ford products ever since. We presently have, in addition to the stationwagon, a 1971 Bronco and a 1970 Cougar. From my experience with servicing and repairs on the wagon and Bronco, I doubt if I will own another Ford product. I have always believed and practiced "Buy American." Ford's "ingenuity" and "Better Ideas" in insulting its customers with poor engineering and service can be thanked for my change in philosophy.

Very truly yours,

BREINER, RAMIK & BROWN

A. W. Breiner

A. W. Breiner

AWB/ss

cc: Mr. Ralph Nader - Center for Study of Responsive Law
Dick Herriman Ford, Inc.

27517 208 27517

DIAL

ERRIMAN FORD, Inc.
S CORNER, VA. 22101

UNDER WRITER	DATE CHARGED	LICENSE NO.	DATE OF EXPIRATION	OWNER	MILEAGE AND TENTH	PHONE NUMBER	CROSS REFERENCED TO
	7-05-73	770-107	CASH		17757		

T.A. BREINER
1649 - SPRING DR
HELEAN VA

OPERATION & AMOUNT
LUBRICATION
CHANGE OIL
CHANGE OIL FILTER
CHANGE TRANS OIL
CHANGE DIFF. OIL

NUMBER	MODEL OR MAKE

NO.	PROD. DATE	TERMS
		CASH ☐ CHARGE ☐ INTERNAL ☐

NUMBER	DESCRIPTION	PRICE		OPERATION NO.	TIME	TIME PROMISED 1:15	TIME PROMISED 5.	SERV. INSTALL PARTS	DATE INSTALLED	ACCRUED MILEAGE	
2-13450B	Lens	5	46			1 MECH. NO.					
2-13489B	Bezel	10	05			2 REPLACE R TAIL LIGHT					
157	Bulb		60			3					
						4 LENS.					650
				#19		5 MECH. NO.					
						6					
						7					
						8					
						9 MECH. NO.					
						10					
						11					
						12					

CUSTOMER COPY

PRICE

THANK YOU

JUN 28 1971

DICK HERRIMAN FORD, INC.
8201 LEESBURG PIKE
TYSONS CORNER, VIRGINIA 22101
Phone 893-4930

PLEASE RETAIN THIS COPY AS YOUR SERVICE RECORD. ANY CLAIMS OR ADJUSTMENTS MUST BE ACCOMPANIED BY THIS INVOICE AND MUST BE MADE WITHIN 1000 MILES OR 90 DAYS FROM DATE WORK WAS PERFORMED.

THANK YOU

DESCRIPTION	SALE
LABOR REPAIR SHOP	650
PARTS REPAIR SHOP	1605
PARTS BODY SHOP	
GAS, OIL, GREASE	
SUBLET REPAIRS	
BODY SHOP MATERIALS	
SHOP SUPPLIES	39
PAINT & BODY LABOR	
TAX	66
CHARGE SALES	
CASH SALES	
CUSTOMER TOTAL	2360

NATHAN I. GOLDIN
ATTORNEY AT LAW
21790 COOLIDGE HIGHWAY
OAK PARK, MICHIGAN 48237

PHONE 548-4800

May 21, 1971

Honorable Senator Phillip Hart
Senate Building
Washington, D.C.

and

Mr. Ralph Nadar
Washington, D.C.

Gentlemen:

Herewith please find enclosed a copy of a letter that was addressed to the Cadillac Motor Car Division of the General Motors Corporation with respect to bumpers that they are putting on their cars and which is self explanatory. I am also enclosing the reply that was received from the Cadillac Motor Car Division, which is self explanatory, and which is completely unsatisfactory.

In view of the congressional hearings regarding automobiles and particularly the value of bumpers, we trust that the letter that was sent to Cadillac and the reply will be of assistance to you in your hearings.

Yours truly,

Nathan I. Goldin

NIG:pjq

May 14, 1971

Cadillac Motor Car Division
General Motors Corporation
2860 Clark Street
Detroit, Michigan 48210

Attention: Mr. Caputo
Customer Relations

Gentlemen:

In January 1971 I purchased from Klett Cadillac and got delivery of a 4 door Cadillac for my wife, which at this date has only about 350 miles.

The writer drives a 1970 Cadillac which was parked in our office lot at my place of business on May 10, 1971.

My wife in her Cadillac came to my office on that date and asked me to drive her 1971 Cadillac for the purpose of going to lunch. I got into her car which was parked on the opposite side from where my car was parked in my parking lot and backed out for the purpose of driving out of our parking lot, and accidentally backed into the 1970 Cadillac which I drive. The rate of speed in backing out was no more than one or two miles per hour, but even at that speed because of the contact between the cars caused a dent in the bumper in the 1971 Cadillac.

Upon examination of the dent in the bumper, I found that the 1971 Cadillac bumper was made of apparently very soft material and paper thin.

Obviously, bumpers are made for exactly that purpose to safeguard the car and the bumper should be of such material and of such weight to withstand that kind of a minute bump.

I have complained about the 1971 Cadillac car for various other reasons and Mr. A. J. Mitchell of the Cadillac Motor Division apparently looked at my complaints with the 1971 Cadillac was at Klett Cadillac Sales for service, and I have not heard from him since that time.

I believe that in view of my explanation that it is your duty to replace the bumper of the 1971 Cadillac car.

Yours truly,

Nathan I. Goldin

NIG:pjq

CADILLAC MOTOR CAR DIVISION

GENERAL MOTORS CORPORATION

DETROIT, MICHIGAN 48232

May 20, 1971

Mr. Nathan I. Goldin
Attorney at Law
21790 Coolidge Highway
Oak Park, Michigan 48237

Dear Mr. Goldin:

This will acknowledge your letter of May 14 regarding your 1971 Cadillac.

We are always pleased to be of assistance to Cadillac owners whenever possible, Mr. Goldin; however, there are no provisions in the warranty whereby damage caused by other than an original defect in material or workmanship is covered.

We know of no automobile manufacturer whose warranties provide for impact damage such as you describe. Under the circumstances, we regret that we would be unable to comply with your request.

We do, however, appreciate having had an opportunity to review this matter for you.

Very truly yours,

A. P. Caputo

A. P. Caputo
Owner Relations Manager

-db

STONECREST FURNITURE HOUSE,
June 8, 1971.

DEAR SIRS: With your add in the Life you invited your own trouble. You said you will answer, I do not think you will.

Let me introduce myself. Werner Wandschneider 69 years old. I worked for the Solex Carburator Comp in Berlin Germany from 1923 until 1945, mostly as field engineer on the car manufacturer plants. I worked with Opl Iugescheiche. in BMW Munich, Dipl Ing Uhlenhaut now Director Mercedes, Dpl Ing Porsche on racing cars and VW, with Adam Opel A6, General Motors Buick Div. Russelsheim and in your Ford Plant Koln.

To that time I didn't think of it that General Motors and you Ford bought or erected Plants in Germany and England to a time as here was something like a depression.

There was a Senate Committee hearing in Washington some weeks ago. Mr. Nader was a witness and I agree with him in many ways, let me explain why.

First, here are built cars, to large, to high in price and gas consumption to be sold overseas, this hurt our export-import balance.

These cars are built mostly for a short period of time and the models changed to often. This is good for tool and dye makers, but not for export.

The dealers oversees maybe not able to stock all parts for this fast changing modells and can't serve their customers the right way.

The building of oversized cars here lead to the import of small European cars and now added Japanese cars.

To this imports some car manufacturers added more import with bringing in their overseas built small cars like Opel, Simca etc. Pontiac dealers in our section took on Datsun. I think you bring in some of your products out Köln Germany too? Does this help our export-import deficit?

Now look at the front view of our cars, does it look like an engineering job or more like an architects job?

I think it is high time that the Government set rules how cars have to be built. Limited in size and power with *straight* rubber guarded bumpers in front and back, all in a equal high from the ground, maybe springs added to the bumpers like shock absorbers to take a certain beating before costly parts get damaged. The building time for models should be set to 2–3 years before any change is made.

Look at the achievement of invisible headlights, I see nothing in it as danger.

I know windshield wipers glare sometimes, but is it necessary to put them in what I call mudholes. Is it not possible to make them dark instead, what would be less costly.

I have a 1957 Studebaker Station wagon 184'' long. I prefer to go with it to New York instead as going with our 1963 Chevy Biscayne Wagon 205'' long.

Now, I want to buy a medium sized station wagon let's start it doing so. Your Falcon is dropped, the Dodge Dart is dropped, the Rambler Rebell growed to a Matador, the Rambler American is dropped. What's left is the American Motors (Rambler) Sportabout which has another achievement if you prefer to call it that, a deflated spare tire.

All other Ford, G.M. or Chrysler stations are 205 to 230'' long.

Where I have my eyes on now is a Toyota 6 cyl Crown Wagon 185'' long with *bucket reclining seats* what no one else offers here except in oversized stations in the $5000.-range. The Toyota's, Datsun's, Volvo's all offer bucket reclining seats, why you don't?

Instead of using your brain power on the Pinto key, build me a station wagon 180 to 190'' long, 150 HP 6 cyl engine, bucket reclining seats, *straight* rubber protected bumpers, visible windshield wipers and lights.

If that happens I would say Ford had a better idea. It will not happen and I will not get an answer.

Regards,

WERNER WANDSCHNEIDER.

Senator VANCE HARTKE,
Washington, D.C.

DEAR SENATOR HARTKE: TV news flashes by fast and one cannot back up to check, but I believe you entered the Nader/Stevens debate about auto bumpers.

From memory, you were wringing your hands and you asked "Where did we [the Congress] fail in our legislation?"

Congress did not 'fail'—the colossal auto-makers are simply ignoring.

It is I who over a decade ago prodded Antitrust into jailing the electrical executives who had put their heads together on pricing.

It worked—and soon after an Antitrust lawyer called on me, stating he wanted to meet the chap with the bright idea!

Just prod Justice into jailing auto executives for ignoring the new safety regulations—you'll then see action.

It's the colossal corporate BILGE. Weekends over TV, 'Esso' (Standard of New Jersey: Rockefellers) lathers the public on its early ecological pursuits.

It wasn't Jesus Christ after all but ESSO!

Sincerely yours,

LEON J. SALTER.

MAY 10, 1971.

Senator T. STEVENS,
Washington, D.C.

DEAR SENATOR STEVENS: You did not sound very logical in your argument with Ralph Nader as we saw and heard on tonite's TV news. Your comments to Nadar leave serious doubts in my mind about your sincerity in representing the people. I only hope these pictures are seen by your constituents.

Nader isn't always right but you looked bad in this exchange. Nader couldn't be more correct and you argued (rather sillily) in a way that indicated your heart was not in it. What the hell do you mean by all this progress that you argue about. The automotive industry is negative on all progressive movements. They should be forced into bumpers that can be bumped, bearings that bear a load (for longer than 30,000 miles) etc.

Please help the consumer—just a little.

Sincerely,

A. E. LAURENCE.

MAY 11, 1971.

Re the Stevens clash.

[From Voice of the People, Chicago Tribune]

Recently Ralph Nader clashed with members of the Senate Commerce Committee when he accused the automobile industry of "massive thievery" and the committee with "groveling."

I wholeheartedly agree with Mr. Nader's arguments before this committee. Sen. Ted Stevens (R. Alaska) informed Mr. Nader he is too negative and looks for the worse in people, not what's good.

I am not familiar with Sen. Stevens' age, but I know for a fact, as well as other mature citizens of my age who still reminisce of how they used to manufacture automobiles.

Fifty years or so ago, the steel body of a car was constructed of a heavy gauge of steel and not of the tissue type of steel today. Not only that but the workmanship of the rest of the automobile was of a sturdy manufacture. In those eariler days, the ordinary motorist was able to perform his own repairs but today, the mechanism of a car is so complicated that a person has to use wrenches and screw drivers that turn around corners.

At this committee hearing Sen. Robert P. Griffin (R. Mich.) interjected this committee does not grovel and he informed Mr. Nader he does not need to use such statement to get attention. Nevertheless, Sen. Griffin made this statement, he hails from the motor state of Michigan.

Respectfully yours,

[illegible]

MAY 11, 1971

DEAR MR. NADER:

Read how you steamed up the [illegible]
Well, all I have to say is
Those Senators [illegible]
They didn't care if [illegible]
Those auto manufa[illegible]
They're interested [illegible]
But you, who are [illegible]
And doing what it [illegible]

Are being maligned and falsely accused
and what is more, verbally abused!
Shame on them all!
Don't they know that
The public is fed up? So
Keep on shouting loud and clear
Until those bigwigs begin to hear!

NEW CAR OWNERS ARE ANGRY!

U.S. DEPARTMENT OF TRANSPORTATION,
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION,
Washington, D.C., April 23, 1971.

Mr. RALPH NADER,
1719 19th Street N.W.,
Washington, D.C.

DEAR MR. NADER: Mr. Toms and I thoroughly discussed your letter of April 20 relative to bumper costs discused in last week's press conference. He asked that I respond.

Mr. Toms and several of the NHTSA staff have examined the 1973 and 1974 bumper devices presently developed by Detroit's big four. In the demonstrations there were detailed discussions as to cost, added retail cost, etc. Many configurations examined were openly labeled as to cost, and the range was considerable. As you point out in your letter, cost variations relate to the model, to the manufacturer, to offsetting design savings and to a host of other factors.

In the press conference Mr. Toms was strongly urged to discuss these costs and he did so, stating he would be "guessing." As stated at the conference, consumer costs have been estimated to us in amounts ranging from $5 upward. Mr. Toms' guess as to the average was $40.

Since these figures did come from the manufacturers and do represent their own claims of production-plus-markup costs, there it little more substantiation we can provide. We agree with your contention that it would be inappropriate for the NHTSA to estimate consumer cost on its own. It is appropriate that we substantiate manufacturer cost to the extent possible, and we will be doing so.

Sincerely,

GILBERT L. WATSON,
Chief, Consumer Affairs, NHTSA.

APRIL 20, 1971.

Mr. DOUGLAS TOMS,
Acting Director, National Highway Traffic Safety Administration, Department of Transportation, Washington, D.C.

DEAR MR. TOMS: Once again, your office has publicly estimated the added cost to the consumer of a proposed federal regulation (exterior protection). I am interested in knowing why you think it is appropriate for the Bureau to estimate the cost (added price) to the consumer when the presumption should be that figure is determined by market competitive factors which alleged competition should establish independently and, presumably, differently—i.e., some companies could absorb any added cost, have it displaced by other cost reductions, etc. To have the Bureau make this estimate is a presumption against the consumer. Have you asked for an evaluated cost information on bumpers from the companies? It would be more appropriate for the Bureau to estimate production cost to the manufacturers and leave the markups to the different companies. What is your opinion?

This is to request that you provide factual substantiation for the figures given by the Safety Administration at last week's press conference as to the estimated added cost to the consumer of the new bumper standards.

Thank you.

Sincerely,

RALPH NADER.

APRIL 4, 1971.

STATEMENT BY RALPH NADER ON DOT EXTERIOR PROTECTION (BUMPER) STANDARD

There are five major deficiencies in the standard issued today by the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) on exterior protection (bumpers). Most important, the "protection" provided by this standard is for automobile exteriors, not for the vehicle occupants or the pedestrians who continue to be killed and maimed in record numbers.

1. Each year, more than 10,000 pedestrians are killed and tens of thousands injured by hostile vehicle exteriors. Many of these injuries are seriously aggravated by these sharp, slashing points and edges. The NHTSA first proposed a standard for pedestrian protection in 1967, but it has yet to be issued. Absent any government requirement to date, the auto manufacturers have refused to design the vehicle exterior to minimize injury to pedestrians. Obviously, they know how to do it and it would reduce costs as well. But, a recent General Motors Chevrolet Monte Carlo advertisement callously boasted: "We added a raised hood ornament."

What more is needed to convince the Department of the need to eliminate protruding and sharply-contoured bumpers and other harmful ornamental designs? No research and development are needed. Cost savings could be realized with the deletion of expensively sculptured bumpers, fenders and grills. Yet the Department of Transportation perennially fails to act.

The ridiculous distinction now made between injury protection and property damage reduction should be eliminated with amendatory legislation requested by the DOT immediately. The solutions to these problems are not only compatible but interdependent, and should take priority in manufacturing expenditures over the stylistic demons now produced by the auto companies.

2. In unconscionable capitulation to the auto manufacturers' pressure, the NHTSA has designated the level of protection for rear bumpers at half that required for front bumpers. The proposed standard contained identical five m.p.h. speeds for both. As the Insurance Institute for Highway Safety has pointed out, General Motors' argument for this change was based on its MIC data of front and rear bumper damage experience, which General Motors misrepresented by omission. The MIC data covers only collision damage insurance, or insurance for the striking vehicle, and most of these claims naturally concern vehicle front ends.

As General Motors boasted in 1969 congressional testimony their vehicles at that time could already withstand a 2.8 miles per hour pendulum test both front and rear. Thus, the Bureau's standard for 1973 models contains virtually no improvement in the rear bumper crash protection over 1970 and perhaps earlier General Motors vehicles.

3. The list of vehicle equipment and operating systems whose functions shall not be impaired as specified in the standard does not include the following crucial items: brakes, steering, tires, and turning radius.

4. Comments to the Department of Transportation suggested that the standard require minimum trailer hitch retention capability in the rear bumpers. A recent letter from a county coroner in Illinois documented actual serious crashes and injuries incurred when the rear bumper separated from the Mustangs, Cougars and Camaros pulling a trailer. This proposal was ignored, even though thousands of trailers pulled by passenger cars via weak rear bumpers are on the highways.

5. This minimal standard provides the manufacturers with the best of both worlds. They have already used it as a threat to dramatically raise vehicle prices, heaping the blame on the government, and at the same time it does not require significant upgrading of current designs. Thus, the new-car buyer will not only pay more initially, but will continue to pay outrageous repair costs, which for 1971 models ranged up to $445 (Chevrolet Impala) for a five mph rear-end crash (documented by the Insurance Institute for Highway Safety).

64-345 O - 71 - pt. 4 -- 30

For '71 Monte Carlo remains much the way it was.

Because most people liked it the way it was.

A lot of research told us that. (Along with a lot of sales, thank you.) So, no big change. Rather, some small, but nice, improvements.

We replaced last year's grille with one having an even more classic grid pattern.

We widened the distance between the Power-Beam headlights, so the car assumes a slightly lower stance. We added a raised hood ornament.

Inside, we took last year's control knobs and wrapped them in soft black vinyl. They look better. They feel better.

But like we said, most people liked our Monte Carlo the way it was. So it still has steel guard beams built into the doors and a steel bulkhead in the trunk. Still has power disc front brakes. And what people like best of all it still has a Chevrolet price.

Actually, Monte Carlo hasn't changed one bit from what you wanted it to be. A personal luxury car priced hundreds of dollars less than other personal luxury cars.

A whole new field of one

1971. You've changed. We've changed. **Monte Carlo**

FEBRUARY 8, 1971.

Mr. HENRY FORD II,
Chairman of the Board,
Ford Motor Co., Dearborn, Mich.

DEAR MR. FORD: For years the egregious blunders, callousness and greed of your giant co-conspirator against the consumer-citizen—General Motors—have served to deflect attention from your modest corporation's performance. This giant buffer of a General Motors has permitted you many excesses and few public responsibilities. You have spent much time at European auto races, but no time at a single auto safety or pollution conference in Detroit or elsewhere. You watched the resignation of many of your more perceptive executives for want of a challenge, such as Donald Frey and Arjay Miller, while you elevated that socially insensitive corporate Mustang—Lee Iacocca—to the Presidency. You traveled to Washington many times to privately lobby Presidents and their cabinet but declined ever to testify publicly before Congress on your company's involvement in highway casualties and pollution. You spoke of the need for law and order while your lawless company violated federal and local laws around the clock.

Isn't it time you began paying close attention to your cars? Perhaps the following list of items will hep convince you that Ford Motor Company, in addition to sharing common deficiencies with the rest of the auto industry, goes well below common denominators in important areas.

1. In the recent compilation of consumer information braking performance of 1971 passenger cars supplied by the auto manufacturers to the National Highway Traffic Safety Administration under the 1966 safety law, Ford vehicles dominated the *lowest* ranking automobile brake stopping capability. In the bottom eight out of seventy-four rankings, eleven of the thirteen model vehicles were Ford-manufactured. Your company's dealers are reluctant to supply customers with this notorious record which the law requires them to make easily available at the showrooms and to supply with every new vehicle. This is the second year in a row that such Ford braking performance dominated the lowest rankings. How many years does it take for Ford to get a better idea?

2. Your $12 billion a year company cannot apparently build bumpers as protective as they were on your grandfather's automobiles. Picture the brave horizons described by your representative in an official company comment on the federal government's weak bumper standard proposal to go into effect August 1972. Objecting to the weak federal proposal for bumper protection front and rear from damage to vital car system, Ford Motor Company demanded a one year extension—to 1973—and a dilution of rear bumper protection down to the two mph level. The company stated it could do no better. This is a shameful exercise in deceit and prevarication. A five mph bumper is clearly not one of the latter twentieth century's major technological challenges. It would, however, save motorists one billion dollars a year in prevented damage to vehicles.

3. It would be helpful in leading your company to read its official statements before disgorging your colloquialism. On August 22, 1969, the *New York Times* reported that Ford engineers declared the air bag will be introduced on a *1971* Mercury model car. On December 3, 1970, Ford Motor Company filed a petition for reconsideration of DOT Standard 208 involving passive restraint systems to be installed on the *1974* models. The statement asserted: "We believe in the potential of the air bag system of passive restraint and, as a result, have committed substantial effort to the development of the system." But on December 10, 1970—a week later—the *New York Times* and the *Detroit News* reported you as asserting "We think those air bags are a lot of baloney" in reference to the government's proposals. Who speaks for Ford Motor Company, Mr. Ford?

4. Over 4 million Ford owners are driving certain Ford, Mercury and Thunderbird models 1965 to 1969 with defective lower control arms. In August of 1970 your company agreed to recall, for replacement of the lower control arms, approximately 85,000 Ford manufactured vehicles sold for police use over the past five years. You refused to recall the remaining 4 million cars with identical prone-to-collapse lower control arms on the grounds that these cars are not driven as hard as police cars. This decision will eventually involve your company in vast litigation by injured and class action plaintiffs and increasing pressure from government to recall. So, why not recall now?

For '71 Monte Carlo remains much the way it was.

Because most people liked it the way it was.

A lot of research told us that. (Along with a lot of sales, thank you.) So, no big change. Rather, some small, but nice, improvements.

We replaced last year's grille with one having an even more classic grid pattern.

We widened the distance between the Power-Beam headlights, so the car assumes a slightly lower stance. We added a raised hood ornament.

Inside, we took last year's control knobs and wrapped them in soft black vinyl. They look better. They feel better.

But like we said, most people liked our Monte Carlo the way it was. So it still has steel guard beams built into the doors and a steel bulkhead in the trunk. Still has power disc front brakes. And what people like best of all it still has a Chevrolet price.

Actually, Monte Carlo hasn't changed one bit from what you wanted it to be. A personal luxury car priced hundreds of dollars less than other personal luxury cars.

A whole new field of one

1971. You've changed. We've changed. **Monte Carlo**

FEBRUARY 8, 1971.

Mr. HENRY FORD II,
Chairman of the Board,
Ford Motor Co., Dearborn, Mich.

DEAR MR. FORD: For years the egregious blunders, callousness and greed of your giant co-conspirator against the consumer-citizen—General Motors—have served to deflect attention from your modest corporation's performance. This giant buffer of a General Motors has permitted you many excesses and few public responsibilities. You have spent much time at European auto races, but no time at a single auto safety or pollution conference in Detroit or elsewhere. You watched the resignation of many of your more perceptive executives for want of a challenge, such as Donald Frey and Arjay Miller, while you elevated that socially insensitive corporate Mustang—Lee Iacocca—to the Presidency. You traveled to Washington many times to privately lobby Presidents and their cabinet but declined ever to testify publicly before Congress on your company's involvement in highway casualties and pollution. You spoke of the need for law and order while your lawless company violated federal and local laws around the clock.

Isn't it time you began paying close attention to your cars? Perhaps the following list of items will hep convince you that Ford Motor Company, in addition to sharing common deficiencies with the rest of the auto industry, goes well below common denominators in important areas.

1. In the recent compilation of consumer information braking performance of 1971 passenger cars supplied by the auto manufacturers to the National Highway Traffic Safety Administration under the 1966 safety law, Ford vehicles dominated the *lowest* ranking automobile brake stopping capability. In the bottom eight out of seventy-four rankings, eleven of the thirteen model vehicles were Ford-manufactured. Your company's dealers are reluctant to supply customers with this notorious record which the law requires them to make easily available at the showrooms and to supply with every new vehicle. This is the second year in a row that such Ford braking performance dominated the lowest rankings. How many years does it take for Ford to get a better idea?

2. Your $12 billion a year company cannot apparently build bumpers as protective as they were on your grandfather's automobiles. Picture the brave horizons described by your representative in an official company comment on the federal government's weak bumper standard proposal to go into effect August 1972. Objecting to the weak federal proposal for bumper protection front and rear from damage to vital car system, Ford Motor Company demanded a one year extension—to 1973—and a dilution of rear bumper protection down to the two mph level. The company stated it could do no better. This is a shameful exercise in deceit and prevarication. A five mph bumper is clearly not one of the latter twentieth century's major technological challenges. It would, however, save motorists one billion dollars a year in prevented damage to vehicles.

3. It would be helpful in leading your company to read its official statements before disgorging your colloquialism. On August 22, 1969, the *New York Times* reported that Ford engineers declared the air bag will be introduced on a *1971* Mercury model car. On December 3, 1970, Ford Motor Company filed a petition for reconsideration of DOT Standard 208 involving passive restraint systems to be installed on the *1974* models. The statement asserted: "We believe in the potential of the air bag system of passive restraint and, as a result, have committed substantial effort to the development of the system." But on December 10, 1970—a week later—the *New York Times* and the *Detroit News* reported you as asserting "We think those air bags are a lot of baloney" in reference to the government's proposals. Who speaks for Ford Motor Company, Mr. Ford?

4. Over 4 million Ford owners are driving certain Ford, Mercury and Thunderbird models 1965 to 1969 with defective lower control arms. In August of 1970 your company agreed to recall, for replacement of the lower control arms, approximately 85,000 Ford manufactured vehicles sold for police use over the past five years. You refused to recall the remaining 4 million cars with identical prone-to-collapse lower control arms on the grounds that these cars are not driven as hard as police cars. This decision will eventually involve your company in vast litigation by injured and class action plaintiffs and increasing pressure from government to recall. So, why not recall now?

For '71 Monte Carlo remains much the way it was.

Because most people liked it the way it was.

A lot of research told us that. (Along with a lot of sales, thank you.) So, no big change. Rather, some small, but nice, improvements.

We replaced last year's grille with one having an even more classic grid pattern.

We widened the distance between the Power-Beam headlights, so the car assumes a slightly lower stance. We added a raised hood ornament.

Inside, we took last year's control knobs and wrapped them in soft black vinyl. They look better. They feel better.

But like we said, most people liked our Monte Carlo the way it was. So it still has steel guard beams built into the doors and a steel bulkhead to the trunk. Still has power disc front brakes. And what people like best of a[illegible] it still has a Chevrolet price.

Actually, Monte Carlo hasn't changed one bit from what you wanted it to be. A personal luxury car priced hundreds of dollars less than other personal luxury cars.

A whole new field of one

1971. You've changed. We've changed. **Monte Carlo**

FEBRUARY 8, 1971.

Mr. HENRY FORD II,
Chairman of the Board,
Ford Motor Co., Dearborn, Mich.

DEAR MR. FORD: For years the egregious blunders, callousness and greed of your giant co-conspirator against the consumer-citizen—General Motors—have served to deflect attention from your modest corporation's performance. This giant buffer of a General Motors has permitted you many excesses and few public responsibilities. You have spent much time at European auto races, but no time at a single auto safety or pollution conference in Detroit or elsewhere. You watched the resignation of many of your more perceptive executives for want of a challenge, such as Donald Frey and Arjay Miller, while you elevated that socially insensitive corporate Mustang—Lee Iacocca—to the Presidency. You traveled to Washington many times to privately lobby Presidents and their cabinet but declined ever to testify publicly before Congress on your company's involvement in highway casualties and pollution. You spoke of the need for law and order while your lawless company violated federal and local laws around the clock.

Isn't it time you began paying close attention to your cars? Perhaps the following list of items will hep convince you that Ford Motor Company, in addition to sharing common deficiencies with the rest of the auto industry, goes well below common denominators in important areas.

1. In the recent compilation of consumer information braking performance of 1971 passenger cars supplied by the auto manufacturers to the National Highway Traffic Safety Administration under the 1966 safety law, Ford vehicles dominated the *lowest* ranking automobile brake stopping capability. In the bottom eight out of seventy-four rankings, eleven of the thirteen model vehicles were Ford-manufactured. Your company's dealers are reluctant to supply customers with this notorious record which the law requires them to make easily available at the showrooms and to supply with every new vehicle. This is the second year in a row that such Ford braking performance dominated the lowest rankings. How many years does it take for Ford to get a better idea?

2. Your $12 billion a year company cannot apparently build bumpers as protective as they were on your grandfather's automobiles. Picture the brave horizons described by your representative in an official company comment on the federal government's weak bumper standard proposal to go into effect August 1972. Objecting to the weak federal proposal for bumper protection front and rear from damage to vital car system, Ford Motor Company demanded a one year extension—to 1973—and a dilution of rear bumper protection down to the two mph level. The company stated it could do no better. This is a shameful exercise in deceit and prevarication. A five mph bumper is clearly not one of the latter twentieth century's major technological challenges. It would, however, save motorists one billion dollars a year in prevented damage to vehicles.

3. It would be helpful in leading your company to read its official statements before disgorging your colloquialism. On August 22, 1969, the *New York Times* reported that Ford engineers declared the air bag will be introduced on a *1971* Mercury model car. On December 3, 1970, Ford Motor Company filed a petition for reconsideration of DOT Standard 208 involving passive restraint systems to be installed on the *1974* models. The statement asserted: "We believe in the potential of the air bag system of passive restraint and, as a result, have committed substantial effort to the development of the system." But on December 10, 1970—a week later—the *New York Times* and the *Detroit News* reported you as asserting "We think those air bags are a lot of baloney" in reference to the government's proposals. Who speaks for Ford Motor Company, Mr. Ford?

4. Over 4 million Ford owners are driving certain Ford, Mercury and Thunderbird models 1965 to 1969 with defective lower control arms. In August of 1970 your company agreed to recall, for replacement of the lower control arms, approximately 85,000 Ford manufactured vehicles sold for police use over the past five years. You refused to recall the remaining 4 million cars with identical prone-to-collapse lower control arms on the grounds that these cars are not driven as hard as police cars. This decision will eventually involve your company in vast litigation by injured and class action plaintiffs and increasing pressure from government to recall. So, why not recall now?

5. The following description of a serious crash comes from Vernon Von Qualen, coroner, Livingston County, Illinois, who completed a detailed inquest:

"On July 13, 1970 one man was killed and 3 persons were seriously injured on U.S. Route 66 here in our County. A 1970 Mercury Cougar automobile pulling a U-Haul trailer was traveling northbound on the highway, which has two lanes in each direction separated by a median strip. The bumper tore loose from the Cougar, causing the U-Haul trailer to careen across the median strip and onto the southbound lanes of traffic, striking a southbound automobile and causing death to one and injury to 3 others, all innocent victims of circumstance.

"Investigation showed the trailer hitch had remained securely fastened to the bumper and that the *actual bumper* tore loose from the car. Closer inspection revealed the metal brackets holding the bumper to the car to be of an extremely light weight quality."

Mr. Von Qualen also investigated a crash involving a 1966 Mustang whose rear bumper tore loose thereby releasing a U-Haul trailer and almost causing another serious crash.

It would seem that such careful investigations as conducted by Mr. Von Qualen be a sufficient prod for your company to rectify all such design deficiencies and to recall any such vehicles for correction before more crashes occur.

The above items are a few of many such situations particularly affecting your company which should be given the top level attention and action that only you can provide. It is time Mr. Ford for you to devote such concern and meaningful scrutiny to such problems. It is well known in your organization that vertical lines of communication up to your office about safety and pollution problems have neither been candid nor reliable. Somehow you must establish in your office the staff capability to reach deep into your company and obtain the necessary facts that will invoke your personal responsibility to bring about improvement.

Sincerely yours,

RALPH NADER.

The new Eldorado. . . the world's most elegant personal cars.

In the Eldorado Coupe and Convertible, Cadillac presents two completely new and completely distinctive automobiles. A new, longer wheelbase provides superb riding qualities and new, more impressive beauty.

Individual touches, such as the jewel-like stand-up crest and the exclusive coach windows on the Coupe, typify the Eldorado's many styling innovations.

The Convertible, now the only luxury convertible built in America, comes equipped with an ingenious new inward-folding Hideaway Top. It provides a more graceful top-down appearance and allows greater room for rear-seat passengers.

Both Eldorados share the same 8.2 litre V-8 (the world's largest production passenger car engine) in combination with the precise handling of front-wheel drive, variable-ratio power steering, power front disc brakes and Automatic Level Control.

Surely, these are the two most excitingly luxurious automobiles in the world of personal motoring . . . the Fleetwood Eldorados by Cadillac.

GM

New Look of Leadership

Insurers and State Regulations Put Detroit on the Carpet

(By John Kolb and Michael Sheldrick)

And the auto makers are listening. They agree in principle to demands for a system that would rate cars' crashability and repairability

In their demand for a safer, more rugged automobile, the consumer movement and the federal government are getting a formidable ally: the insurance industry. And the auto manufacturers seem to be listening with new respect.

At its semiannual meeting last month in Chicago, the National Assn. of Insurance Commissioners (NAIC), made up of state insurance regulators, invited a confrontation between the Big Three auto makers on the one hand and representatives of the insurance industry on the other hand. Stanley DuRose, NAIC vice president and insurance commissioner of Wisconsin, also invited people from the auto unions and the U.S. Dept. of Transportation.

The first surprise was when all three auto companies showed up. The second was when they unanimously accepted a suggestion made forcefully by insurance representatives: that an index of relative repairability be worked out for each auto design, as a basis for setting insurance rates and for comparison shopping.

LAYING IT ON THE LINE

It was clear from the outset that the state superintendents of insurance and the insurers themselves intend, one way or another, to force Detroit to make cars that will withstand crashes better and be less expensive to repair after an accident.

DuRose opened the meeting by insisting on development of indexes for crashability (ability of a vehicle to withstand physical damage) and repairability (the ease of restoring a vehicle to operation). "The public today is transported in eggshells," he said. An insurance industry representative offered another figure of speech. "Peanut brittle on wheels," he called present-day automobiles.

Other proposals for penalizing fragile design included a system of surcharges on auto insurance premiums for aspects of design that add to repair costs and of discounts for what the insurance industry would consider improved design.

SWALLOWING THE IDEA

The auto men almost sheepishly accept the principle of a rating system for crashability and repairability, and Don Seagrave of American Mutual Insurance Alliance chortled, "We've got them on the run, and we're going to force them to build better cars." In the face of the chorus of criticism, the harried auto industry representatives adopted a conciliatory tone.

"The idea of a rating system is appealing and will be welcomed by us," said John Bates, director of the service section of General Motors. Magnus Von Braun, director of Chrysler's service section, declared, "We endorse the action by the insurance industry." He added, however, that he hoped insurance industry action wouldn't conflict with the auto companies' dealings with the Dept. of Transportation. Finally, Richard Lindgren, Ford Motor's director of marketing operations, made it unanimous by saying, "We recognize the need for an index."

NEW BASIS OF PREMIUMS

In his opening, DuRose declared that autos today are designed for "ease of assembly rather than repairability." And it is very difficult, he said, to tailor insurance rates to various types of autos, even though one might be easier to repair than another. "Values are determined only on the basis of price," he noted.

"What we really hope to do," DuRose explained, "is to develop a rating index whereby an automobile purchaser could possibly determine what he will have to pay for automobile insurance in view of the delicacy and/or ruggedness of his vehicle, and how difficult it is to repair."

Richard Savage, representing a group of insurance rating boards, said he was not in favor of NAIC's coordinating the effort to create an index, as DuRose had suggested, but he endorsed the concept of an index. He also suggested another way insurance companies could force the auto makers to dispense with poor designs: simply get approval for higher rates on such cars.

Savage cited the wraparound windshield as an example. The great number of insurance companies seeking higher rates—and getting them—on cars so equipped led to abandonment of the wraparounds by the auto companies, he said. He also pointed to the higher rates that insurance companies have obtained for so-called high-performance cars.

MEASURING DAMAGE

Arthur Mertz, vice president and general counsel of the National Assn. of Independent Insurers, said his group had been working with Cornell Aeronautical Laboratories in attempting to predict the damage susceptibility of autos. Two situations were chosen: 5- and 10-mph impacts into a rigid pole. Mertz said predictions were highly accurate at 5 mph but erred on the low side at 10 mph. The Cornell lab hopes to refine some of the work, he said, and publish it early next year.

A spokesman for Allstate said: "What we're trying to develop here is a tool that will permit us to exert discipline on auto manufacturers and force them to design better cars."

WHAT NEXT?

No definite plan of action emerged from the meeting, but insurance people seemed please. "We've got the auto companies listening now," one said. "We've never been able to do that before." Another insurance company spokesman added: "This is all because of Ralph Nader. We could have done all of this 20 years ago ourselves."

PRODUCTION MACHINERY, TOO

The insurance industry is also reexamining its methods of evaluating the hazard potential in manufacturing equipment and processes. It is under pressure from still-increasing product litigation and the inability of the nation's workmen's compensation system to pay the costs of injuries caused by design and manufacture defects in production machinery.

Whereas the compensation system formerly covered workers' claims for injury, workers increasingly are suing manufacturers of the equipment allegedly responsible, and these manufacturers are the insurance companies' policyholders. At least some segments of the insurance industry seem to be reconsidering their relationship to the annual increases in accidental deaths and disabling injuries in industrial work.

Among the kinds of action being taken by insurance companies in relation to autos, industrial machinery, and even some consumer products are such safety-oriented aerospace disciplines as systems safety engineering and human factors analysis. These are being applied as a possible means of evaluating hazard potentials in designs of products that carriers are being asked to insure against product liability claims. Included so far are power tools, home appliances, and outdoor power equipment.

Energy-Absorbing Systems Vie for Role Behind Auto Bumpers

(By Nicholas P. Chironis)

The race is on for the lucrative business of providing absorbers for bumpers. Winning design will have to be ingenious, inexpensive.

The auto industry is coming under intestifying pressure to provide cars with bumpers that minimize injury and property damage in collisions. A big push has been launched by the insurance industry, which wants to reduce an annual $3.8-billion property loss from low-speed collisions (page 35). Allstate and two other companies have offered a 20% reduction in collision premiums on cars that can withstand 5-mph impacts, front and rear, without damage.

The National Highway Safety Bureau is working on bumper standards. Legislation is pending in Congress and nine state legislatures that would require cars to be able to stand up under a 5-mph impact (the Florida bill calls for a 10-mph capability).

Auto manufacturers can read the signs of the times. Ford Motor Co. is looking closely at two energy-absorbing designs (drawings), one by Tayco Development Inc., a subsidiary of Taylor Devices Inc., North Tonawanda, N.Y., and the other by Menasco Mfg. Co., Burbank, Calif. General Motors Corp. has started a test program and is reported analyzing a system by Houdaille Inc.

So the battle of the bumpers is on. Before it is settled, many more designers of energy-absorbing systems will be throwing their sketches into the ring.

BEHIND THE BUMPER

Improvements in bumpers themselves will involve the bumper face, making it wider, thicker, and with about twice the present yield strength. Shapes will be confined to certain structural configurations, without unnecessary curves and cutouts, and bumpers will be set at standard heights to avoid mismatching that allows override and underride.

All this is relatively simple to carry out. The crucial factor will be the choice of energy-absorbing syste mto put behind the bumper.

A plain coil spring system, even combined with a hydraulic shock absorber as in conventional wheel suspensions, has little chance of doing the job. Computations show that the spring would have to compress almost a foot for a 20-mph collision—and this distance is in addition to the solid length of the coil itself. Moreover, with coil springs the resisting force climbs steadily with deflection. inducing high propelling forces on a passenger during a collision.

LIQUID-SPRING SYSTEMS

Both the Tayco and the Menasco systems, therefore, have gone to liquid-spring designs, but with certain key innovations.

Conventional liquid springs are simple closed cylinders with moving pistons; the resisting force is created by passage of liquid around or through the piston head.

The Taylor liquid spring (PE–Jan. 1'68,p45), built by Tayco's parent company, uses a tapered metering pin entering a variable-diameter orifice, along with a pressure-responsive valve, to amplify motion so a more constant resisting force with the motion—approaching the so-called square-energy curve—can be obtained. This square-energy response is highly desirable for auto bumper applications, to prevent a high buildup of shock force.

The Taylor springs also employ a partially compressible liquid (a silicone oil that can be compressed to about 85% of its original volume). Such liquid springs are already in use on railroad and automotive wheel-suspension systems, where they replace both the coil springs and the shock absorbers.

FLUID-AMPLIFYING FEATURE

The Tayco system being evaluated by Ford (and reportedly also by Chrysler Corp. and American Motors) goes one step further. It combines the Taylor liquid-spring principles with a newly developed fluid-amplifier concept that flattens the curve of resisting force to the same characteristics as those obtained with collapsible auto frames.

The fluid-amplifying concept applies the same principle as that demonstrated in blowing across the top of a tube immersed in water: the higher the air velocity. the greater the amount of liquid entrained. It amplifies the flow around the liquid spring's piston, matching the flow rate more closely to the piston velocity and thus flattening out the force-stroke curve (graph).

The pressure-responsive valves are dropped from the system when the amplifier cutouts are put in. "We found that at high impact speeds the pressures were 20 times those of conventional shock-suspension conditions," says Paul H. Taylor, president of Taylor Devices. "This theoretically called for valves larger than the liquid spring itself."

FOR HIGHER-SPEED IMPACTS

Tests by Taylor Devices show remarkable impact capability for Tayco's system.

"Although the specifications enacted by some states and announced as a goal by the federal government only require damage-free impact operation to 5 mph in 1973 and 10 mph by 1975," says Taylor, "Tayco Development has built a shock-absorbing device with only a 9-in. stroke yet that will cushion and prevent damage to 5300–lb. car striking a solid barrier at 26.7 mph. This system will thus protect two cars similarly equipped and smashing into one another head-on at a closing speed of 50 mph or more"

Tayco's system has four parallel cushioning units mounted behind the bumper. Realizing that the 9-in.-stroke device may present problems in parking and ga-

raging. Taylor points out that another company product, the Linear Accelerator Shok, remains retracted until needed, then shoots out 9 in. in milliseconds to cushion an impact, under control of an impact sensor such as that in the expanding air-bag systems being considered.

COMPETITOR

The Menasco system (PE–Apr.27'70,p164) is also based on liquid springs, but a highly compressible silicone rubber plays a key role. At the extremely high pressures encountered, the rubber behaves like a liquid. But, unlike a liquid, it's a solid material with no problem of leakage, with need only for simple seals, and with no effect from normal temperatures It requires no maintenance.

Most of the impact energy in a crash is absorbed by the rubber's resistance to flow. As the piston is driven by impact, the rubber is reduced in volume and is forced through orifices. Under pressure reaching 40,000 psi, the rubber stores energy that causes the material to reenter the isolator cavity when the pressure is removed, returning the piston to its original position.

INSIDE-OUT TORI

In the Tor-Shok system, ARA Products Inc., West Covina, Calif., found an ingenious way to get an almost constant resisting force from a coil spring. This candidate for use in auto bumpers is already serving in energy-absorbing guardrails at key highway locations(PE–Apr.27'70,p164).

In the Tor-Shok, a helically wound coil spring is forced to act as a series of tori as it rolls inside out under the action of telescoping tubes. The coil, made of stainless steel wire in the annealed "dead soft" condition, is installed with what amounts to a press fit between the cylinders.

The press fit prevents the torus from sliding during actuation of the device as one cylinder is forced within the other. Instead, as the torus rolls, all points on the inner diameter move to the outer diameter, causing a vigorous stretching action. Simultaneously, the outer points move to inner position, causing a shrinking action This plasticizes the metal, dissipating the kinetic energy of the impact force in the form of heat.

Ford Motor Co. has bought an interest in ARA Products.

OTHER SYSTEMS

The Houdaille system is described as having spring-steel columns that bow under impact and then resume normal position after a collision. In such a system, the energy is merely stored and then released, not dissipated. Another all-metal spring system—but one in which energy is dissipated—is the reverse-coil spring developed by Jet Propulsion Laboratory (page 86).

A safety car designed for very high speeds by Fairchild Hiller Corp.'s Republic Aviation (PE—June '68, p. 43) has a bumper system that is hydraulically extended farther and farther forward as the car picks up speed. The idea is to provide ample deflection capabilities without unduly lengthening the car while it is stationary or moving slowly.

Other shock-absorbing concepts on which Detroit designs will be based include frangible aluminum struts and collapsible car frames, both as means of augmenting the energy-absorbing bumper system.

The Great Odometer Raid

In which the forces of consumer protection triumphed over the deceivers, thereby demonstrating that law enforcement is possible, even on used-car lots

Last summer, 12 investigators from the Massachusetts Attorney General's Division of Consumer Protection made consumer protection history. They staged an odometer raid.

The plan of attack was simple. Working in pairs, the investigators fanned out through the Commonwealth, selected 24 new-car showrooms at random, sauntered in, flashed their badges, and said they were conducting a "routine check" of cars on display in the dealers' used-car lots. For the next several hours they inspected hundreds of used cars and pored over dealers' records for possible evidence that odometers might have been rolled back from original trade-in mileages to lower, more salesworthy figures. Mainly on the basis of educated guesswork after com-

paring the odometer readings with the appearance of the cars, the investigators listed about 250 vehicles open to suspicion of odometer tampering.

The next step was to try locating the former owners of the suspect cars. About 70 per cent of the owners could not be traced at all because the dealers had purchased the cars from wholesalers, or because former owners couldn't be located. A few former owners, when located, refused to cooperate. But 70 persons did reply to the inquiry, and 20 of them said the reading on their odometers when they traded in their cars was much higher than the readings found by the inspectors. On average, between 20,000 and 30,000 miles had been subtracted. One man said his odometer reading had been pared from 90,000 to 45,000 miles.

PENANCE OF A SORT

Assistant Attorney General Robert L. Meade at length decided he had strong cases against six of the biggest new-car dealerships in his state. Massachusetts is one of four states with "little FTC laws" patterned on the antideceptive practices provisions of the Federal Trade Commission Act (the others are Washington, Vermont, and Hawaii). Acting under his state's laws, Mr. Meade succeeded, after several months of polite arm-twisting, in convincing three of the dealers to sign an assurance of discontinuance. That meant, simply, that they filed in Superior Court an agreement saying the would not offer "for sale any vehicle upon which the odometer has been adjusted in any manner . . . so that it does not disclose the . . . true mileage. . . ." As in consent orders filed with the FTC, assurances of discontinuance in Massachusetts are carefully worded so that the signer does not admit to having used certain specific deceptive sales practices in the past, but, nevertheless, agree *not* to use the same deceptive practices in the future.

Those who signed were Charles Chevrolet, Inc., and The Harr Motor Co., both of Worcester, and State Plymouth, Inc., of Springfield. At this writing, the state was still negotiating with two of the other dealers. Mr. Meade took sterner action against the sixth dealer on his list, North Ford, Inc., of West Medford. Saying it had flatly refused to cooperate, he filed suit for permanent injunction against North Ford.

All things considered, the Great Odometer Raid might have been a very bitter pill, indeed, for any auto dealer to swallow had it not been for a high-level decision to sugar-coat the pill with secrecy. As fare as CU has been able to learn, little news of the raid ever reached the people of Massachusetts. The Attorney General's office could have given the names of the dealers to the newspapers, but it decided not to—this time. The only excuse offered by a state official was that it would have been "unfair to ruin these guys when everyone else is doing it, too." Of course, the names of the dealers thus far cited went into public court records (where CU eventually looked them up). But by not alerting the press, the state deprived itself and the public of a most effective enforcement tool in consumer protection cases—the glare of publicity.

Nevertheless, the Massachusetts Division of Consumer Protection deserves some credit for the first organized attempt to stamp out the ancient, odious and widespread practice of odometer tampering. And, Mr. Meade assures us, it won't be the last assault on what is, regrettably, a standard operating procedure of many used-car dealers, who know perfectly well that a high-mileage car is nothing but a drag on the market.

PICKERS AND SPINNERS

Technically speaking, odometer tampering is all too easy to do. The favorite technique in the trade is called "picking" because most operators use a homemade assortment of specially shaped ice picks. With a certain degree of skill and a modest capital investment, an odometer picker earns anywhere from $3.50 to $25 a car. The procedure takes only a few minutes. The picker simply reaches into the odometer drum—after first removing the instrument panel lens or boring through a partition behind the speedometer—and manipulates the digits mechanically, usually only the ten-thousandth place. If the picker is skilled, his handiwork is rarely detectable by a used-car shopper.

With less skill but much more patience, an odometer tamperer can spin the speedometer cable with a high-speed electric motor to the desired low reading. But since it can take hours to spin off just a few thousand miles, spinning is most commonly used by the amateur.

The simplest way to falsify an odometer is by disconnecting the speedometer cable. Dealers will sometimes do that on a new car to be used as a demonstrator or to be driven cross-country to the point of sale. In California last year a fairly strict state law against odometer rollbacks was weakened by an amendment expressly permitting dealers to reset new-car odometers at zero, provided they give the buyer a statement of the true mileage. But law or no law, you can't always be certain that the mileage on the odometer of a "factory-fresh" car recounts its true history.

Wisconsin *requires* that the odometers on all used cars be reset at zero. Arizona tried that, too, then changed its mind (CONSUMER REPORTS, June 1968). And in Florida dealers are permitted, but not required, to roll odometers back to zero. The idea is fine, of course—for the dealer. He can then disavow any knowledge of a car's true mileage and still be on the side of the angels. But the car buyer is deprived of the only base he has on which to add mentally the 20,000-or-so miles the dealer has subtracted mechanically. In states where antitampering legislation is pending, the back-to-zero idea is apt to be pushed hard by the dealer lobby.

Besides California, only Delaware, Kentucky, Massachusetts and New Jersey have laws making it illegal to tamper with an odometer. Several other states, including Hawaii, Maryland and Georgia, have similar laws under consideration. Unfortunately, state laws specifically aimed at odometer rollbacks are generally regarded as difficult to enforce and are therefore rarely invoked. "In order to convict under these statutes," says Paul J. Krebs, director of New Jersey's Office of Consumer Protection, "you practically have to catch these guys in the act."

Bearing him out, Massachusetts chose not to use its criminal statute against odometer tampering to prosecute suspects in the Great Odometer Raid. Although enforcement under the state's little FTC law provided possible, the act provides for no fines to penalize violators and no redress for victimized consumers unless they can sue privately and win an award for damages. The legislature is considering an amendment with stiffer penalties, but meanwhile the most the Attorney General can do is get an injunction ordering the unrepentant violator to stop his fraudulent practices. That has more muscle than an assurance of discontinuance, since anyone in violation of a court injunction is also in contempt of court.

WHO GYPS WHOM?

Massachusetts' Assistant Attorney General, Mr. Meade, while pleased at the results of his raid, asks, "Why hasn't the Federal Trade Commission itself declared odometer tampering an unfair trade practice?" He argues that the problem is, after all, interstate in scope, since so many used cars are sold to wholesalers, particularly in the South, and then auctioned off to dealers from all over the country. Therefore, the solution must be national in scope. The FTC, on the other hand, told CU the agency views odometer tampering in used cars as primarily a local rather than an interstate problem.

"We have no evidence to support the idea that it is being done by the wholesaler," said an FTC attorney. "If we did, we'd certainly investigate, but in my opinion, it's done at the retail level, the level at which the automobile is sold to an unsophisticated buyer. The wholesaler would have nothing to gain by resetting an odometer. He's certainly not going to fool the dealer, who doesn't buy on the basis of the odometer reading, anyway."

Still, he was willing to make at least a hypothetical concession: "I could visualize a dealer requesting the wholesaler to turn back an odometer for him, especially if it's illegal in his state, and I'm sure the wholesaler would do it. But, as I said before, we have no information on this."

Perhaps FTC doesn't, but evidence of a sort is apparently plentiful right across the Potomac River from Washington. The office of Virginia's Senator Harry F. Byrd, Jr. told CU: "The Automobile Trade Association of Virginia tells us that 90 per cent of all odometer rollbacks are done by wholesalers. They say it's a routine part of the 'reconditioning' process. Naturally, the dealer doesn't pay any attention to the odometer reading; he only buys a car on the basis of what he thinks he can sell it for. And when he buys from a wholesaler, he knows he is getting a product he can palm off with little or no risk because the former owner will be very difficult to trace."

The dealer can blame the wholesaler, and the wholesaler can blame the dealer, but it's obvious that neither could tamper with odometers on any large scale basis without the direct knowledge or the implied consent of the other. Few swindlers, after all, fall for their own swindle.

Senator Byrd has therefore taken up the cause of a Federal law against odometer tampering. The Byrd bill (S. 1185) would make odometer tampering subject to a stiff fine. It would also require used-car dealers to give their customers a statement signed by the last *private* owner of the vehicle certifying the mileage that was on the car when he sold it. Meanwhile, on the other side of the Hill, New Jersey Congressman Henry Helstoski has resubmitted his bill of last year (H.R. 4163), also prohibiting odometer tampering in interstate commerce. The chances for passage of either measure during the current session of Congress may be hard to assess, but it's not very encouraging to note that, even in the proconsumer atmosphere of the previous Congress, a bill sponsored by Senator William Proxmire to require auto manufacturers to install tamperproof odometers in all new cars died in the Senate Commerce Committee.

The need for effective legislation is obvious. Norman Polovoy, chief of the Maryland Consumer Protection Division, puts if this way: "I know of no rational or reasonable justification for an automobile dealer setting the odometer back other than to try to convince the purchaser that the automobile has substantially less mileage on it than is in fact true."

According to one report, in 1967 alone Americans bought nearly 20 million used cars and paid an estimated $20 billion for them. The trade journal *Automotive News* reports that prices start falling off sharply after a car has traveled 30,000 miles and beyond that distance, a two-year-old car loses about $10 of value for every 1000 miles on the odometer. Assuming that only half the used cars sold in 1967 were two years old or older, and that only half of them had 20,000 miles picked or spun off their odometers, it doesn't seem unreasonable to estimate that consumers are being misled on used-car lots to the tune of $1 billion a year.

But the cost must be assessed in terms of safety as well. Even with the best of care, a car with 75,000 miles on the odometer is not the car it was at 25,000 miles. The prudent owner knows this and is less likely to take his steering or wheel bearings or exhaust system for granted. But the owner of a "low-mileage" used car may be lulled by the odometer. Until the critical moment, he may have been completely unaware that his car was dangerously in need of repair—a menace to himself and to others.

The National Highway Safety Bureau agrees, and in 1967 it proposed a safety standard requiring tamperproof odometers on all passenger vehicles, including buses, trucks and motorcycles. The idea was assigned to an administrative pigeonhole, however.

"Other proposed safety standards had a higher priority," a bureau spokesman told CU, "but this is not to say we won't have such a standard later on."

WHAT'S TAMPERPROOF?

But at the same time, the bureau questions whether it is possible to design a really tamperproof odometer, and except for General Motors, the auto industry has yet to market anything resembling one. GM's 1969 models have odometers that cannot be spun backward. But there is no way for the used-car buyer to detect whether the mileage reading has been spun forward beyond 99,999.9 to zero and then to some youthfully low second-time-around setting. Also, in GM cars made after January 1, the odometer will exhibit a telltale color separation between the numbers if it has been picked. But a GM spokesman admits, the buyer would have to be "a knowledgeable individual" to recognize the evidence. Despite those refinements, the new GM odometer cannot therefore be described as truly tamperproof. And whatever its positive virtues, the GM odometer will be of little use to the buyer of a used *Ford*, *Plymouth*, *Ambassador*, *Volkswagen*, etc., or, for that matter, to the buyer of a pre-1969 GM model.

CU's automotive engineers give a qualified Yes to the question of whether a tamperproof odometer is feasible. While anything Yankee know-how can put together, Yankee know-how can probably take apart, our engineers say a much less accessible odometer unit, one sealed in plastic perhaps, is certainly possible. But for the unit to be completely tamperproof, the speedometer cable would have to be sealed in two places—where it connects with the speedometer head and at either the transmission or the front wheel connection, depending on the car. (Some car rental companies seal odometers, for obvious reasons, and a spokesman for one of the biggest says sealing is highly effective.)

What about repairs? Would it be possible to fix a broken but tamperproof odometer or install a new one without breaking the seal? Probably not, but mechanics could be required to reseal the unit and verify the original mileage. Enforcement might be difficult—but no more impossible than any other weights-and-measures regulation. If it is important to protect the consumer from the butcher who cheats a few cents on the hamburger, it's at least as important to protect him from the odometer "artist" who chisels a few hundred dollars on a used car.

TITLE LAWS

Title registration laws could help, too, and 31 states already have them. Not only are they an effective weapon against auto theft, they also assure the car owner a clear title to his automobile by requiring that the chain of ownership be established to the satisfaction of motor vehicle authorities. (And possibly the mileage to the satisfaction of the consumer; see box above.) Such a title law is pending in Massachusetts, but the Massachusetts Consumers Council further proposes that the identity of the former owner become a part of the certificate of title the state gives the new owner. But even if the measure sailed through the Massachusetts legislature, it would be truly effective only if most other states passed similar laws.

It will be difficult but not impossible to make the used-car mile more nearly approximate the statute mile. For example, auto makers could develop better odometers; the National Highway Safety Bureau could require them; the FTC could compare notes with Senator Byrd; states could pass uniform title laws; and above all, Congress could pass meaningful antitampering legislation.

Meanwhile, there is something to be learned from Assistant Attorney General Meade's historic venture: Even weak laws *can* be enforced. His Great Odometer Raid certainly hasn't stamped out odometer tampering, but it has made the practice a good deal riskier in Massachusetts.

WASHINGTON, D.C. *December 10, 1970,*

MR. DOUGLAS TOM,
Director, National Highway Safety Bureau,
Department of Transportation,
Washington, D.C.

DEAR MR. TOMS: I am writing in reference to our conversation the other day about consumer information regulations. Contrary to your understanding, it appears that the NHSB has taken steps to discontinue rulemaking on a number of these regulations.

Of the nine consumer information regulations initiated in the *Federal Register* on October 5, 1968, in the form of Advance Notices of Proposed Rulemaking, three have been issued as regulations applicable to passenger cars, and two are in the process of being extended to other types of vehicles. These regulations are:

Braking performance.
Tire reserve load.
Acceleration and passing ability.

Two other regulations appear, based on the information in the Bureau's New "Program Plan for Motor Vehicle Safety Standards" to be on their way to final issuance. These are:

Performance of passenger cars and MVPs when towing trailers.
Field of view for drivers (first published as an NPRM two years ago on December 11, 1968).

However, it is our understanding that since publication of the "Program Plan", a decision has been made to discontinue the Field of View regulation and issue it as a motor vehicle safety standard, primarily because it might be too complicated for some consumers to understand. This argument should be rejected on the basis that the issuances of the Bureau should not be made to conform to the least capable interested party—either consumer or manufacturer.

The "Program Plan" lists three consumer information regulations as "Terminated". These include two of the original nine plus one new proposal. Those listed as terminated are:

Lateral intrusion protection of passenger compartments in a crash (first published as an NPRM on December 11, 1968).

Flammability of materials in vehicle interiors (first published as an NPRM on December 11, 1968).

Roof intrusion.

The two remaining proposals from the original nine have a apparently dropped out of sight. They are not mentioned in the program plan as being active or terminated. These are:

Illumination and glare Produced by headlamps.

Steering ratio (first published as an NPRM on December 11, 1968).

The Bureau's activity to date in the development, publication and termination of consumer information regulations raises several issues. First, a statement of policy is needed on the Bureau's future intentions including:

(1) An explanation of the reasons why proposed consumer information regulations have been terminated.

(2) Why there was no press release or explanation to the public?

(3) What new information regulations are expected to become effective on January 1, 1971 and January 1, 1972?

(4) Whether regulations relating to vehicle injury causation are now contemplated?

(5) The Bureau's view of the value of this program.

My concern over the administration of this part of the NHSB's program. which was added to the legislation by Representative John Moss, is not unfounded. It is fair to say that it has not received priority in funding, staff allocation or organizational level even though it potentially can play a key role in upgrading the safety of motor vehicles without the administrative expense or limitations of minimum vehicle safety standards. But, not until the true safety value of a vehicle is revealed and made widely known can it be expected that the public will buy a vehicle primarily on the basis of its safety qualifications. Your rgulations will not serve this purpose until they are actively publicized in all forms of media, especially television. The publication of several thousand booklets about one or two aspects of vehicle safety performance has virtually no impact on the purchasing public.

With regulations covering critical aspects of vehicle safety performance and imaginative publicity this program could produce safety upgrading by the motor vehicle manufacturers through selective consumer feedback. As a matter of information I would appreciate an explanation of the Bureau's compliance activities to enforce these regulations. For example, have any violations been found to date? What percentage of the marketplace has the Bureau tested for conformance?

Perhaps one remedy might be the designation as a specific office and staff in the NHSB to be responsible for development, enforcement and publicity of consumer information regulations as an integrated program rather than continued maintenance in its present status of merely another function of the already overburdened engineering staff.

Finally, I urge at the same time that the regulations be revised (as has been under consideration since your arrival at the Bureau) to require manufacturers to supply data on the actual safety performance of their new vehicles. The present regulations which permit manufacturers to supply minimum or maximum data masks and important differences between makes and models of vehicles. Unless revised regulations are proposed in the next few months, it will again be too late to make changes before the next model year tests are already structured in the old model.

I look forward to your clarifications and comments on these matters.

Sincerely,

RALPH NADER.

JULY 9, 1971.

MR. DOUGLAS TOMS,

Acting Director, National Highway Traffic Safety Administration, Department of Transportation, Washington, D.C.

DEAR MR. TOMS: We have corresponded on the subject of vehicle safety consumer information regulations previously (see letters dated December 10, 1970 and February 23, 1971, and responses dated January 15, 1971 and March 10, 1971).

On March 10, 1971, Mr. Gilbert Watson stated the following in response to my letter of February 23 to you:

"The Consumer Information Series and its relevance to the various standards will become a Consumer Affairs project. I certainly understand the concept you suggest [issuance of a consumer information regulation accompanying each motor vehicle safety standard]. In large degree, I support it. But there still appears to me to be reporting areas—covered by Safety Standards—which almost defy the assignment of performance indices and ranking. I would resist any area of reporting and ranking which could result in undermining the Safety Standard because of consumer apathy or misunderstanding.

"The concept will require time to develop in terms of 20 or 30 standards and correlated reporting areas."

Could you please tell us what activities have been inaugurated in the four months since March 10 and their current status? We would also like to know which "reporting areas" defy "assignment of performance indices" and would undermine safety standards.

In contrast to Mr. Watson's letter, your testimony of June 16, 1971 before the Senate Commerce Committee suggests a different view. In that testimony you state:

"We have determined that publishing a regulation for consumer information, with an objective test procedure, is just as difficult and time consuming as issuing a safety standard. Therefore, we have concentrated our energies on developing safety standards to ensure that all purchases of new passenger cars receive a motor vehicle with a basic level of safety."

For over two years, no consumer information regulations have been issued by the NHTSA. During the same period you have been allotted a substantial increase in the size of your staff.

In view of the fact that you have not used the broad consumer information provisions in the present law, it is ironical that you should propose to the Congress in this same testimony a request for additional authority to act in this area:

"The Administration's bill would give the Secretary of Transportation the authority to do the following:

"1. To develop and disseminate as widely as possible information on the damage susceptibility and crashworthiness of all major makes and models of automobiles if the development of such information is feasible, and beneficial to the public interest.

"2. To request, and, if necessary, require automobile insurance companies to furnish the Department with accident claim data relating to personal injury and property damage and the cost of remedying the damage. The data would be used in determining the feasibility of the program and to develop such consumer information.

"3. To require automobile insurance companies to furnish the Department with a description of the extent their insurance rates or premiums for automobiles are affected by the damage susceptibility and crashworthiness of individual makes and models of automobiles.

"4. To require automobile manufacturers to furnish the Department with information relating to their efforts to improve the crashworthiness and reduce the damage susceptibility of their automobiles. The Secretary would have authority to make this information available to the public with appropriate safeguards.

"5. To conduct a research and testing program, including the crash testing of automobiles, to aid in determining the feasibility of developing the consumer information and in developing such information."

Since your proposed bill would not require you to report on even the feasibility of issuing vehicle crashworthiness consumer information regulations until July 1, 1973,[1] two years from now, it appears doubtful that this so-called new authority will result in the issuance of regulations for at least three or four years and of course they will not be effective for another year or more after issuance—1976 or so.

Under these circumstances, could you please tell me exactly when you intend to issue consumer information regulations under Section 112(d) of the National Traffic and Motor Vehicle Safety Act of 1966. Important and long-pending

[1] Such feasibility has already been endorsed and described by NHTSA in 1969 testimony before the Senate Commerce Committee.

candidates include vehicle interior flammability, side impact protection, roof intrusion, and field of view. None of these important items are outside the range of current standards or rulemaking. Could you also explain why these types of regulations cannot be issued with little additional effort whenever the equivalent standard is proposed and issued. Not only is there no evidence to support your comment that information standards are as time consuming to prepare as safety standards, but wholly ignored is the ease of issuing the former when the latter have been issued or when the latter have been proposed.

The reasons for your legislative requests numbered one, four and five are not clear. An explanation from your legal counsel as to whether or not you already have legal authority under Public Iaw 89–563 to conduct the programs they describe to the extent they concern automobile safety would be desirable to clarify some important ambiguities in your statements.

With regard to item 5, it would be important to have a clear explanation of why you discontinued the vehicle-to-vehicle and other crash testing programs, discussed in testimony before the Senate Commerce Committee in April 1969 and which Mr. Frank Turner subsequently and explicitly promised Senator Hartke would be resumed in December 1969. Again why do you now request legislation to resume a program you discontinued 18 months ago? If this new program you are proposing is different from the prior one, surely the Congress and the American public have a right to know that fact, and the nature of the differences.

On page 7 of your testimony you state:

"We have recently established an Office of Consumer and Public Affairs which will devote itself exclusively to the better means of informing the public on the vehicle and equipment which they use. We have a wealth of research and engineering information within the organization. Much of this can be translated into consumer information to provide very valuable guides to the consumer on safe operation and maintenance of his vehicle."

These statements are vague. Could you please provide an explanation of the "better means" you have in mind and the "research-engineering information" to which you refer? Do the former include use of television, for example. I noted last month the coverage given to the press release from the Federal Trade Commission on the effective date of the child seating standard. It was barely visible on the least significant page of the few newspapers which printed it.

If your suggested bill were enacted in the form in which it is proposed, what resources do you estimate are needed for fiscal years 1972, 1973, 1974 and 1975 in order to carry it out with maximum impact? It is hardly possible to comprehend its size and priority in the NHTSA without such information, which is noticeably absent from the bill.

I look forward to a factual response to this inquiry. Whatever additional comments you may wish to volunteer about this deplorable weakening of resolve would be useful to have for indications of future trends.

Sincerely,

RALPH NADER.

FEBRUARY 23, 1971.

Mr. DOUGLAS TOMS,
Acting Director, National Highway Traffic Safety Administrations, Department of Transportation, Washington, D.C.

DEAR MR. TOMS: I am writing to confirm the substance of our meeting with you on February 8th. Our discussions were so wide-ranging that a written record of our agreements and unanswered questions is preferred.

DEFECTS

A. TESTING

We do not believe the National Highway Traffic Safety Administration (NHTSA) can make objective evaluations in defect investigations without conducting or contracting for its own vehicle tests with non-industry experts. This applies particularly to Corvair instability, Corvair carbon monoxide, and the Ford lower control arm.

1. Corvair instability

The only NHTSA testing of Corvair stability was conducted at the University of Michigan as part of its contract to test a machine to be used in development of Department of Transportation vehicle handling standards. However, the contract monitors in NHTSA have emphasized that this series was not designed to

test the Corvair but rather to develop handling standards. According to the University of Michigan and others, because of a claimed shortage of contract funds, accelerometers were not employed on the two most severe tests of stability—rapid lane changing and drastic steer brake maneuver—conducted during this contract. As a result of this omission, the Department now lacks the information to quantitatively distinguish the relative degrees of instability of the tested vehicles. Thus, although the tests show that the Corvair (and only the Corvair) would have turned over but for the outriggers in all the J-turn tests at both 48 and 35 mph, meaningful measurement of this was made impossible.

Moreover, except for this contract, the Bureau has confined its examination of test data to that provided by General Motors. An independent analysis of vehicle instability can hardly be made without any independent testing. In view of disclosures of GM's Proving Ground reports showing Corvair instability and the critically important nature of this investigation, I urge that you immediately initiate independent, dynamic, fully-instrumented stability tests of the 1960–63 Corvair to assure objectivity rather than accommodation toward the wealth of General Motors misinformation. As we mentioned to you, a 1961 Corvair has been donated by the owner in Detroit and would be available for you to test.

2. Corvair carbon monoxide

While the tests being conducted by the Automobile Association of Southern California of carbon monoxide level in individually-owned cars is a necessary type of test, we see two defects in this particular test program. First, it is being conducted by a group which consistently has opposed vehicle safety improvements and is thus historically biased against the very program it is now employed to analyze. This policy position stems naturally from the Automobile Association's close relationship with the motor vehicle industry. Second, of all sections of the United States, southern California is an area where the degradation of manifold joints and other parts is least likely to occur. Now that the tests are in progress, this bias should at a minimum be factored into any conclusions drawn from the data.

In view of the fact that winter is more than half over, many months of DOT investigation have elapsed already, and owners of these vehicles have been exposed to this danger without effective warning from the Department, I hope you will, with the Secretary, set a firm deadline by which the American public can expect your final report on this defect.

3. Ford lower control arm

The NHTSA investigation of this problem has consisted of many wasted man-hours looking at vehicles on the road without taking them apart (with a few exceptions) to test the lower control arms. The nature of this problem is such that a visual inspection has value only if the arm is about to break and the crack is visible. This condition will rarely be found in vehicles at the moment in time when it is viewed, even though the arm may in fact have a dangerous defect. Surely the cost of a thorough test program is not outside the limits of your budget. Yet no explanation is given of why one is not made. If the Safety Administration is so confident about the objectivity and efficacy of Ford Motor Company tests, does it follow that the Administration sees no need for an independent NHTSA compliance testing facility? I would appreciate your personal explanation of the Safety Administration's policy on this matter.

B. STATUS OF PENDING INVESTIGATIONS

We raised with you the length of time since the initiation of several defect investigations and requested a status report. These include:

1. Polyvester/glass fiber belted bias tires

Since our conversation about the delay in release of the results of NHTSA's investigation of these tires, I received just today your letter and the copies of the contractor reports on the road tests. We would like to study this work before commenting further.

Since no NHTSA press release was issued with the contractor reports, are we to assume that the reports have been fully accepted by the NHTSA and that they represent the Department's views of the safety of these tires?

2. Ford ignition switch

This problem was first brought to NHSB attention by a former Ford employee, Mr. John Roach, in March 1970. After he contacted us last November, my staff discussed it further with your engine[illegible] and urged them to a[illegible] the informa-

candidates include vehicle interior flammability, side impact protection, roof intrusion, and field of view. None of these important items are outside the range of current standards or rulemaking. Could you also explain why these types of regulations cannot be issued with little additional effort whenever the equivalent standard is proposed and issued. Not only is there no evidence to support your comment that information standards are as time consuming to prepare as safety standards, but wholly ignored is the ease of issuing the former when the latter have been issued or when the latter have been proposed.

The reasons for your legislative requests numbered one, four and five are not clear. An explanation from your legal counsel as to whether or not you already have legal authority under Public Iaw 89–563 to conduct the programs they describe to the extent they concern automobile safety would be desirable to clarify some important ambiguities in your statements.

With regard to item 5, it would be important to have a clear explanation of why you discontinued the vehicle-to-vehicle and other crash testing programs, discussed in testimony before the Senate Commerce Committee in April 1969 and which Mr. Frank Turner subsequently and explicitly promised Senator Hartke would be resumed in December 1969. Again why do you now request legislation to resume a program you discontinued 18 months ago? If this new program you are proposing is different from the prior one, surely the Congress and the American public have a right to know that fact, and the nature of the differences.

On page 7 of your testimony you state:

"We have recently established an Office of Consumer and Public Affairs which will devote itself exclusively to the better means of informing the public on the vehicle and equipment which they use. We have a wealth of research and engineering information within the organization. Much of this can be translated into consumer information to provide very valuable guides to the consumer on safe operation and maintenance of his vehicle."

These statements are vague. Could you please provide an explanation of the "better means" you have in mind and the "research-engineering information" to which you refer? Do the former include use of television, for example. I noted last month the coverage given to the press release from the Federal Trade Commission on the effective date of the child seating standard. It was barely visible on the least significant page of the few newspapers which printed it.

If your suggested bill were enacted in the form in which it is proposed, what resources do you estimate are needed for fiscal years 1972, 1973, 1974 and 1975 in order to carry it out with maximum impact? It is hardly possible to comprehend its size and priority in the NHTSA without such information, which is noticeably absent from the bill.

I look forward to a factual response to this inquiry. Whatever additional comments you may wish to volunteer about this deplorable weakening of resolve would be useful to have for indications of future trends.

Sincerely,

RALPH NADER.

FEBRUARY 23, 1971.

Mr. DOUGLAS TOMS,
Acting Director, National Highway Traffic Safety Administrations, Department of Transportation, Washington, D.C.

DEAR MR. TOMS: I am writing to confirm the substance of our meeting with you on February 8th. Our discussions were so wide-ranging that a written record of our agreements and unanswered questions is preferred.

DEFECTS

A. TESTING

We do not believe the National Highway Traffic Safety Administration (NHTSA) can make objective evaluations in defect investigations without conducting or contracting for its own vehicle tests with non-industry experts. This applies particularly to Corvair instability, Corvair carbon monoxide, and the Ford lower control arm.

1. Corvair instability

The only NHTSA testing of Corvair stability was conducted at the University of Michigan as part of its contract to test a machine to be used in development of Department of Transportation vehicle handling standards. However, the contract monitors in NHTSA have emphasized that this series was not designed to

test the Corvair but rather to develop handling standards. According to the University of Michigan and others, because of a claimed shortage of contract funds, accelerometers were not employed on the two most severe tests of stability—rapid lane changing and drastic steer brake maneuver—conducted during this contract. As a result of this omission, the Department now lacks the information to quantitatively distinguish the relative degrees of instability of the tested vehicles. Thus, although the tests show that the Corvair (and only the Corvair) would have turned over but for the outriggers in all the J-turn tests at both 48 and 35 mph, meaningful measurement of this was made impossible.

Moreover, except for this contract, the Bureau has confined its examination of test data to that provided by General Motors. An independent analysis of vehicle instability can hardly be made without any independent testing. In view of disclosures of GM's Proving Ground reports showing Corvair instability and the critically important nature of this investigation, I urge that you immediately initiate independent, dynamic, fully-instrumented stability tests of the 1960–63 Corvair to assure objectivity rather than accommodation toward the wealth of General Motors misinformation. As we mentioned to you, a 1961 Corvair has been donated by the owner in Detroit and would be available for you to test.

2. Corvair carbon monoxide

While the tests being conducted by the Automobile Association of Southern California of carbon monoxide level in individually-owned cars is a necessary type of test, we see two defects in this particular test program. First, it is being conducted by a group which consistently has opposed vehicle safety improvements and is thus historically biased against the very program it is now employed to analyze. This policy position stems naturally from the Automobile Association's close relationship with the motor vehicle industry. Second, of all sections of the United States, southern California is an area where the degradation of manifold joints and other parts is least likely to occur. Now that the tests are in progress, this bias should at a minimum be factored into any conclusions drawn from the data.

In view of the fact that winter is more than half over, many months of DOT investigation have elapsed already, and owners of these vehicles have been exposed to this danger without effective warning from the Department, I hope you will, with the Secretary, set a firm deadline by which the American public can expect your final report on this defect.

3. Ford lower control arm

The NHTSA investigation of this problem has consisted of many wasted manhours looking at vehicles on the road without taking them apart (with a few exceptions) to test the lower control arms. The nature of this problem is such that a visual inspection has value only if the arm is about to break and the crack is visible. This condition will rarely be found in vehicles at the moment in time when it is viewed, even though the arm may in fact have a dangerous defect. Surely the cost of a thorough test program is not outside the limits of your budget. Yet no explanation is given of why one is not made. If the Safety Administration is so confident about the objectivity and efficacy of Ford Motor Company tests, does it follow that the Administration sees no need for an independent NHTSA compliance testing facility? I would appreciate your personal explanation of the Safety Administration's policy on this matter.

B. STATUS OF PENDING INVESTIGATIONS

We raised with you the length of time since the initiation of several defect investigations and requested a status report. These include:

1. Polyvester/glass fiber belted bias tires

Since our conversation about the delay in release of the results of NHTSA's investigation of these tires, I received just today your letter and the copies of the contractor reports on the road tests. We would like to study this work before commenting further.

Since no NHTSA press release was issued with the contractor reports, are we to assume that the reports have been fully accepted by the NHTSA and that they represent the Department's views of the safety of these tires?

2. Ford ignition switch

This problem was first brought to NHSB attention by a former Ford employee, Mr. John Roach, in March 1970. After he contacted us last November, my staff discussed it further with your engineers and urged them to act on the informa-

tion provided by Mr. Roach. It appears that although this problem affects all 1968 and 1969 Ford cars, it has low priority in NHTSA. In fact, ignition failure is a severe problem. It causes the vehicle ignition to cut off at any time during vehicle use, without warning. When this occurs, the vehicle cannot be started again. It has been almost a year since this was brought to your attention and I think that, even acknowledging your staffing shortages, that is ample time to make a finding on the issue.

3. Wheel investigation

We have heard rumblings, and have seen in letters from the Safety Administration, statements that you have been conducting for a year or more an investigation of wheel defects. Has nothing been found of interest to the public? Is there any date for completion? At least several owners with serious wheel problems brought to the NHTSA's attention have been soothed with the response that there is "an investigation in progress." This is hardly useful information for those owners or others with similar wheels who are driving in ignorant danger.

4. Defect reporting regulations

The defect reporting regulations issued last week contain a significant defect. They require prospective reporting, including an accounting of the number of recalled vehicles which have been inspected by or for the manufacturer, and information about any accidents and injuries related to the defect, beginning only after issuance of the regulations. This means that from late 1967 until sometime after the date of issuance, the NHTSA will not have this information for analysis of the effectiveness of Section 113 of the National Traffic and Motor Vehicle Safety Act. Would there be any objection to requesting the manufacturers to supply this information retroactively? Senator Walter Mondale was successful in making a similar request in 1967 for the first year of the program. Surely NHTSA could accomplish as much for the three years since.

C. DISCOVERY OF DEFECTS

The ability and likelihood of Department of Transportation discovery of vehicle safety defects is directly proportional to the scope and depth of its information. The present practices and capability of the Defects Office for such discovery can only be rated negligible, a deficiency not likely to be corrected by a future Compliance Test Facility's ability to test a limited number of vehicles for defects.

However, under its statutory authority, the NHTSA can require the motor vehicle manufacturers to provide current information about accidents, deaths, injuries, warranty claims, product liability suits, repair and maintenance experience, and insurance claims by make and model for independent analysis by the government. This type of information is purchased (for example, from leasing companies like Peterson, Howell and Heather in Baltimore or taxi cab companies) or sent to the manufacturers and collated and analyzed for the manufacturer's purposes. It obviously is not trade secret information. If the Department is interested in effective monitoring for safety defects and in assuring that "NHSB expertise is current, that its judgment of vehicle performance is not limited to laboratory or theory," as Secretary Volpe wrote Senator Magnuson on January 2, 1971, it should be knowledgeable of actual vehicle experience in substantial numbers. It is incredible that such information is not routinely required by NHTSA regulation. Please consider this a request for its development.

In the absence of accurate accident reporting information from the states, consumer complaint letters are one of the few independent sources of defect information now available to the Safety Administration. It is for this reason that my staff spends the many hours they do in sorting the 250 auto complaint letters I get each week and forwards the pertinent ones to NHTSA. When your office fails to copy and code the initial backlog batch of 1500 of these letters for six months or more, however, there must be a presumption that little value is assigned to the computerized analysis of complaint letters. If this is true, it is unclear what your purposes were in establishing this analysis program. I hope you will assure that the total backlog of letters can be processed within the next few weeks.

Enclosed is a copy of the FTC press release concerning complaints on autos received by the FTC which I mentioned during our meeting. It appears that this information might be a valuable addition to your consumer complaint computer listing.

Motor Vehicle Safety Standards

A. MULTIPLICITY OF ISSUANCES

We are looking forward to a more detailed statement of your plans for issuance of system-oriented safety standards with longterm regulatory effect. The present emphasis apparently is one of speed at the sacrifice of depth, with the result that the standards are little more than a confirmation of manufacturer-scheduled modifications. The only burden on the manufacturer is that he must use values in manufacturing which assure that all the vehicles from the production line do not fall below the standard. The use of multi-stage requirements, confirming the state of the art in the near term and demanding its marked improvement several years later, avoids the ever-present lead-time defense and relieves your engineers and administrators from constantly updating outmoded standards. Incidentally, when do you intend to leap the 30 mph test barricade surpassed by industry manufacturing capabilities six decades ago?

B. COMMENTS ON SPECIFIC STANDARDS

1. Passive restraints

The recent statements by the motor vehicle manufacturers that they will comply with the passive restraint standard (presumably to be applicable to 1974 models) with bolsters and padding is a tragic commentary on their intentions toward vehicle safety and your ability to improve it. The manufacturers could have made such improvements in their vehicles 20 or 40 years ago, to the redemption of thousands of lives and millions of cripping injuries whose cost has been paid by the victims, not the promoters. The NHTSA's great promise of the air bag saving some 6,000 lives in the first year of use becomes an illusion with the issuance of a standard which permits minimal manufacturer expenditure rather than great strides toward a new generation of safe vehicles. When will the Department mandate performance which demands more than extra padding? For 1976 models, just like Ed Cole, President of General Motors, predicted?

In view of the recent efforts of the manufacturers to degrade the public image of the air bag (see "baloney" statement by Henry Ford, jokes at special GM performance for the press on January 26, 1971, misleading statements by Mercedes engineering staff on their human cadaver research, as well as recent television advertisement), please outline your thoughts above wide public distribution via television and other media of information from the Department of Transportation and industry tests, which in fact have shown the inspiring value of these devices.

2. Uniform tire quality grading

In 1968, the year the statute required the issuance of standards for uniform tire quality grading, the Department of Transportation stated that the job was complicated but could be accomplished in about five years. Now, three years later, you have repeated these same assurances. This is to request that your staff prepare an official briefing on the exact status of this program, with details about the research work still required, who will perform it, its cost, and its relevance to the issuance of the standard, for the benefit of consumer representatives, the press and interested parties on Capitol Hill. Attendance by manufacturer representatives would not be objectionable.

3. Child seating systems and restraints

The substantive compromises and delays in the effectiveness of this standard are history. The issue now is public information about the difference between systems manufactured after the effective date of the standard, April 1, 1971, and those manufactured before but sold after the effective date. A public advisory, in the manner of your past issuances, to advise the public of this critical difference, will be useless. It will appear on a filler on page 83 of the few papers that carry it and will not appear on the air. Isn't this a perfect item for public service announcement? Isn't it appealing enough to warrant paid television spots? Can this Administration seriously justify $500,000 for a Commerce Department export sales advertising contract and not provide information about child safety to the public? If you help create a market interest maybe even General Motors and Ford will stock their dealers with the seating systems and recommend them adequately.

CONSUMER INFORMATION

Your letter of January 15, 1971, responding to my questions of December 10, 1971, about your plans on the consumer information program is incomprehensible and unresponsive. A recall and correction would be appreciated.

I look forward to hearing your response to our suggestion that a consumer information regulation accompany the issuance of each motor vehicle safety standard. The standards prescribe the minimum and the consumer information regulations disclose the performance range. Because there is no institutionalized responsibility in NHTSA for consumer information regulations, it gets no priority. The burden should be on the engineering staff to justify why a consumer information regulation is not needed with each standard, rather than on the public.

YOUTHS

In my view, this program as presently designed is a waste of time, expensive (NHTSA estimate for fiscal year 1971: $75,000), and uses precious staff positions (NHTSA estimate for fiscal year 1971: three permanent and three temporary). If your goal is to inform and motivate young people to work for reduction of the high youth and injury rate, an effective program must be developed. As I promised, you will receive a suggested prospectus for your consideration.

PUBLIC READING ROOM AND INEXPENSIVE COPYING

A public reading room is a minimum administrative requirement for every government agency. If the local law schools can afford a nickel self-operated Xerox machine, surely one can be installed for public use in NHTSA.

REPORT ON AGRICULTURAL TRACTOR SAFETY ON PUBLIC ROADS AND FARMS

I most strongly disagree with the recommendation in this report against legislation authorizing mandatory safety standards for tractors and in favor of a five-year delay to allow voluntary industry action not forthcoming in the last 25 years. I will submit shortly a separate critique of the deficiencies in the report's recommendations.

WAIVER OF ANTI-TRUST LAWS

The discussions which have been pursued in the National Motor Vehicle Safety Advisory Council suggesting waiver of the anti-trust laws to allow so-called "industry cooperation" and favoring informal meetings with NHTSA staff prior to initiation of formal rulemaking were discussed in the Congress and in the Department before you were appointed. Both suggestions were firmly rejected. If there is any temptation on your part to acquiesce to these repeated intrusions on the legal and ethical administration of the vehicle safety program, I suggest you first read the letters sent in the spring of 1966 from Mr. Ramsey Clark and Mr. Donald Turner of the Justice Department to Senator Warren Magnuson. It was on the basis of the assurances in these letters that the following language was included in the National Traffic and Motor Vehicle Safety Act of 1966:

Nothing contained herein shall be deemed to exempt from the antitrust laws of the United States any conduct that would otherwise be unlawful under such laws, or to prohibit under the antitrust laws of the United States any conduct that would be lawful under such laws.

Further, as a matter of clarification for all concerned, particularly your staff, I would appreciate your views on our suggestion for an Administrator's order defining the legal and ethical boundaries for exposure of NHTSA staff to informal commentary by interested parties during rulemaking.

HIRING OF TOP STAFF

Since the Safety Administration was formed in 1966, there has been an absence of fully qualified top staff in key positions. Today, five of your key officials and numerous others are in "acting" capacities. After 14 months in office, this is not a creditable record. It is demoralizing to the staff and destructive to productivity. If I can be of any assistance to you in making changes in this arrangement, please let me know.

EFFICACY OF HEAD RESTRAINTS

As the enclosed article from the *New York Times* shows, Mr. Lee Iacocca is stating publicly that head restraints (required by federal standard) may be virtually useless and that "government officials now agree that the head restraints may be of little safety value". Will you publicly clarify your position on this matter?

DIAGNOSTIC ANALYSIS OF VEHICLE MALFUNCTION

The recent developments by Volkswagen with built-in vehicle diagnostic equipment for analysis by dealers appears to be a promising device. Your comments on its possible application by federal safety standard to all vehicles would be appreciated.

Sincerely,

RALPH NADER.

MARCH 10, 1971.

Mr. RALPH NADER,
Washington, D.C.

DEAR MR. NADER: Since the major portion of your February 23rd letter covers inquiries assigned to my office for coordination and reply, Mr. Toms has asked me to give you a point-by-point report on our progress to date.

DEFECTS

A. TESTING

NHTSA has long recognized and agrees there is urgent need for a defects-investigating capacity which is independent of the manufacturer as to facilities and personnel.

While your letter enumerates the Ford Lower Control Arm and Corvair's problems as examples, we see fundamental differences in the investigative expertise required for Compliance investigation as opposed to Defects investigation. The differences point to an urgent need for real separation of the two functions. We welcome your observation and agree with it. We are in the process of tackling the problem now. Unfortunately, if our previous experience is any indicator, it will be a while before we can implement.

1. Corvair instability

Our immediate reaction to your offer of a 1961 Corvair for testing use is "Where is it? . . . We want it." You are correct in stating the Michigan tests did not provide an index of relative stability. They were not designed to do so; neither facility nor test procedures having evolved to a stage of reliability capable of giving us conclusive answers—whether positive or negative.

Our staff estimates we are still some nine months away from completion of this exercise. That is too long a time, but I do not want to mislead you on how long it will take.

As a special project we *can* conduct a series of cornering and lateral acceleration tests, setting up arbitrary test criteria, and coming up with a relative performance for the test vehicles. This we will do.

2. Corvair carbon monoxide

As noted previously, firm deadlines for completion of the California test program have been set. We note your criticism of the contractor and the test region. We do not believe there is reason to prejudge the test conclusions but agree that *if* there is weight to your criticism it must bear on those conclusions.

As to effective warning from the DOT, we acknowledge that the media coverage of our Consumer Protection Bulletins fall short of perfection. We are exploring means to make use of TV public service spots—perhaps paid spots—where public safety is an urgent, immediate objective. My office will work toward this and other coverage methods which show promise of reaching a larger public.

3. Ford lower control arm

The difficulty of dismantling Lower Control Arms is such that it nearly exceeds our resources. Admittedly, such testing might conceivably disclose and prove a frequency level our investigations have failed to prove. But if it did not—and investigation points to this negative—NHTSA would have made a heavy expenditure of public funds to confirm its own findings.

We have *not* closed this investigation. We have received a continual flow of information and have acted upon it to verify the particulars of every alleged failure. Within the next thirty days we expect to make a public report on this material.

As to the need for an independent compliance test facility, we certainly *do* need this, urgently. We have included this need once again in our legislative and budgetary requests. We welcome your support in the effort to acquire it.

B. STATUS OF IMPENDING INVESTIGATIONS

1. Polyester tires

As noted, you have both our letter and the contractor's report on this matter. You question the reasons for withholding a press release at the time of our report to you. First, in view of the report's conclusions and the broader questions you have raised, a press release may be both premature and misleading. Second, there is little justification for announcing the investigation closed. We are not ready to reassure the manufacturer nor to realarm the user.

2. Ford ignition switch

This matter needs investigation. My office hold this assignment. A complete report will be submitted as promptly as possible.

3. Wheel investigation

The same need exists as above. I will submit a detailed report when our inquiry is complete.

4. Defect report regulations

This matter is no longer in question, excepting your suggestion that NHTSA apply the current regulations retroactively.

We fully intend to make such a request. Manufacturers can respond with a refusal—a response we do not expect from them. More probably they will object on the ground that they do not have the information in the detail and form required. We doubt that NHTSA has any alternative to acceptance of whatever information is furnished for the 1967–71 period. But we intend to make the request and to use the information supplied.

C. DISCOVERY OF DEFECTS

Your questions raise two matters closely related: our failure to utilize many ripe sources of information which could significantly define the areas needing investigation, and our on-going capacity to utilize this information if we called for it.

Our project to computerize the flow of consumer correspondence supplied by your office demonstrates the problem. Manpower to transcribe information from consumer letters to data sheets—an expert will handle some fifty letters per day—can be figured for your 3,000 letter backlog as 60 man-days or a four-week task for three experts, fulltime. We are processing our own flow of consumer correspondence and the current flow from Lowell Dodge's office. We do not have three experts left over. In this case we expect to complete an RFP for submission to an outside contractor to get this job done.

We hope to remedy the problem; looking to our growing computer facility, to outside expertise and to budgetary relief to bring the cure. For the present, we have none of these available to process the information we might ask for.

MOTOR VEHICLE SAFETY STANDARDS

A. MULTIPLICITY OF ISSUANCES

1. Passive restraints

Your comments on this item define some areas in which we differ. We regard bolsters and padding as Passive devices. If their use brings compliance with the Standard and the established test criteria, we cannot look on the improvement as tragic, even though it *is* tragic that the same improvements could have been effected many years ago.

It is up to the manufacturer to decide the point at which he will not be able to meet the test criteria with "extra padding" or achieve a certification under this Standard. It is up to us to enforce the Standard's progressively demanding requirements.

2. Uniform tire quality grading

Research and hard data for this Standard have progressed to the point of preparing an NPRM covering four out of six grading criteria eventually intended for consumer grading. The six are Highspeed Performance, Static Strength, Endurance, Force Variation, Traction and Treadwear. The last two named are characteristics which tend to relate inversely in any single tire. The exact nature of this inverse relationship is still in the research phase and will not be covered in the "first generation" UQGS Standard. It will be phased into the Standard when research is completed.

Target date for the NPRM is May 1, 1971. Following issuance of the NPRM a public briefing will be held.

3. Child seating systems and restraints

We are informed that some ten manufacturers definitely plan to meet the effective April 1 dating of this Standard with products certified under the Standard. We hope this means an adequate shelf-supply of Child Seating devices for the public in the very near future.

As to public advisories explaining the inadequacies of pre-Standard products, we couldn't be in more complete agreement. The situation calls for Public Service TV time, and, if possible, for paid spots in prime time. Hopefully, we will lay the groundwork at the same time for regular use of TV coverage to get our Consumer Bulletins and Public Advisories maximum visibility.

CONSUMER INFORMATION

Since I "perpetrated" the January 15th letter in an attempt to expedite a response, you have my apology if it seemed unresponsive, etc. It seemed to represent a "pattern of fire" to me and I responded with a discussion rather than a detailed list of answers. If there are specifics which have not been exhaustively discussed since, I will answer those questions in the next few days.

The Consumer Information Series and its relevance to the various Standards will become a Consumer Affairs project. I certainly understand the concept you suggest. In large degree, I support it. But there still appear to me to be reporting areas—covered by Safety Standards—which almost defy the assignment of performance indices and ranking. I would resist any area of reporting and ranging which could result in undermining the Safety Standard because of consumer apathy or misunderstanding.

The concept will require time to develop in terms of 20 or 30 Standards and correlated reporting areas. Discussion with you or your staff on this project could be of benefit to me. I would welcome it.

YOUTHS

This project has undergone revision within the last week, being removed from the status of a Task Force under Mr. Roche and placed under the line administration of Dan Fulmer's office. Mr. Roche will continue to be a principal in the Youths effort, but primarily in its administrative demands as opposed to direct interface with the Youths Committee and their future activities in highway safety. Mr. Fulmer is aware that you have offered to submit a prospectus for our consideration. It would be most welcome.

PUBLIC READING ROOM AND INEXPENSIVE COPYING

We are still in hope of supplying these facilities. We agree without question they are needed. The problem is double: a definition of any policy which may limit or prevent us from setting this up, a decision to make a special policy for our special need. We are following this.

REPORT ON AGRICULTURAL TRACTOR SAFETY

We will await your critique and give it careful study.

WAIVER OF ANTI-TRUST LAWS

We are in agreement in regard to any general waiver of anti-trust provisions. Where special and specific situations arise in which the cause of highway safety and the motorist's benefit may depend on a waiver we would favor examination on a case-by-case basis to determine if waiver might be justified.

In regard to a suggested Administrator's order to define the conditions in which NHTSA may comment informally on actions during rule making, there exists already a detailed Executive Order, which I am enclosing with this letter. This Order # DOT 2100.2 is specific and spells out the limitations during rule making.

HIRING OF TOP STAFF

You describe a situation which the Acting Administrator recognizes and deplores. We continue to hope that prompt improvement can be effected. Your offer is appreciated.

EFFICACY OF HEAD RESTRAINTS

Your request for clarification of the Acting Administrator's position seems unnecessary. We don't know what "government officials" Mr. Iacocca is supposed to have quoted, nor whether the *Times'* article accurately quoted Mr. Iacocca.

DIAGNOSTIC ANALYSIS OF VEHICLE MALFUNCTION

We are closely watching the Volkswagen development and agree that it could represent a significant forward step if successful and accepted. It is too soon to predict any rulemaking action related to diagnostics in this area, but the Administration will continue to follow the Volkswagen project with a great deal of interest.

Sincerely yours,

GILBERT L. WATSON,
Consumer Affairs Officer.

U.S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
Washington, D.C., January 15, 1971.

MR. RALPH NADER,
Washington, D.C.

DEAR MR. NADER: Thank you for your letter of December 10, 1970. It raises a number of specific questions but in its entirety seems to ask for a discussion of policy.

If I may paraphrase what comes through to me as your concern in this instance it is, "What policy guides our determination in choosing the Motor Vehicle Standards-approach (to safer auto performance) as opposed to the Consumer Service and Information-approach?"—and this could easily be put in reverse order.

Rather than go to the specifics of your letter, which are really answered by the policy determination anyway, I think your concern is timely and I welcome the chance to discuss the broader question.

First, your letter comes at a time when both "approaches" are under intensive study. The question of proliferation of Vehicle Safety Standards poses real concerns for us as for the auto industry. Continual revision and reassessment must not be just a catch-phrase and we are deeply involved in this process. We aim, wherever possible, at consolidation of standards and towards a performance oriented family of standards in which total vehicle and component performance guarantees a higher and higher level of motor vehicle safety.

The other "approach", that of direct consumer information and service, is one we are working to develop more fully. We have given a great deal of study to the possibility of a National Highway Traffic Safety Administration Consumer Affairs Office and to placing within its responsibility many of the functions your letter suggests. The idea is very much alive, still. No matter what entity evolves from this effort, what is important is that a greatly improved and comprehensive approach to direct consumer services will be the result.

As to policy determination—a balanced drive for safe vehicle performance, in which both "approaches" are used to maximum effectiveness—I believe you have made the point in prior correspondence that we must never let Consumer Bulletins, for instance, become a relief valve for industry's responsibility to comply with the motor vehicle standards. In the same way, of course, we must not attempt in a proliferation of standards to handle those consumer needs which are better handled in direct and timely consumer information.

The specific questions of your letter really go to this question of which "approach" is chosen. For us the matter must be a case-by-case, or regulation-by-regulation determination.

Very briefly, for instance, the Field of View matter evolved into a determination of (1) what could be accomplished in vehicle safety payoff; (2) what reliable, measurable feedback from consumer buying could be accomplished as a result of a consumer approach; and (3) which approach could be counted upon to bring design and structural improvement to a significant portion of the vehicle population, in the shortest time. It is a bad over-simplification to name "complication" as the basis of our determination, and this was not the case.

It was our judgment that the regulation was very difficult to present in criteria measurements which were understandable. But more important, resulting feedback could not bring the same clear mandate for more adequate field of view which we could legislate through the standards process. Whenever the correlation between greater safety and consumer preference is not abundantly clear to the consumer, I believe we must be sensitive to the possibility that market feedback from the buying public *can be* a measurable negative instead of the positive impulse we are trying to create.

Put another way, whenever reliable feedback depends on our successful conduct of a considerable public education program we must also consider the surer "approach" of a motor vehicle standard to upgrade the level of safety as rapidly as possible.

We have no intention of letting the Consumer Information Series decrease in its scope or in its expanding function toward a general performance ranking of automobiles coming onto the market. For the present it appears that additions of other performance "areas" and the ranking of each in turn, is more feasible than a total vehicle performance index—and better serves the various tastes and needs of the total public.

Finally, with regard to the issue of actual versus minimum or maximum data, our current plan is to continue the regulations on the present basis. Some types of regulations are amenable to the furnishing of information within specified tolerances, and where it is feasible we intend to use such methods to make the information as realistic as possible. In others, such as braking and acceleration performance, the requirement for "actual" information would present great difficulties, particularly with respect to defining in general terms which of a manufacturer's vehicles must be tested, how they are to be equipped, how many vehicles of a given type should be tested, and precisely which results should be reported (best, worst, average, etc.). The cost of such test programs, which would be passed on to consumers, is another consideration taken into account.

Your suggestions are to the point and of significant value to us. While we are in the throes of reassessment and upgarding part of our effort toward more direct consumer services, I especially appreciate and share your concern for policy determinations which can bring the best results from both "approaches" to maximum vehicle safety performance.

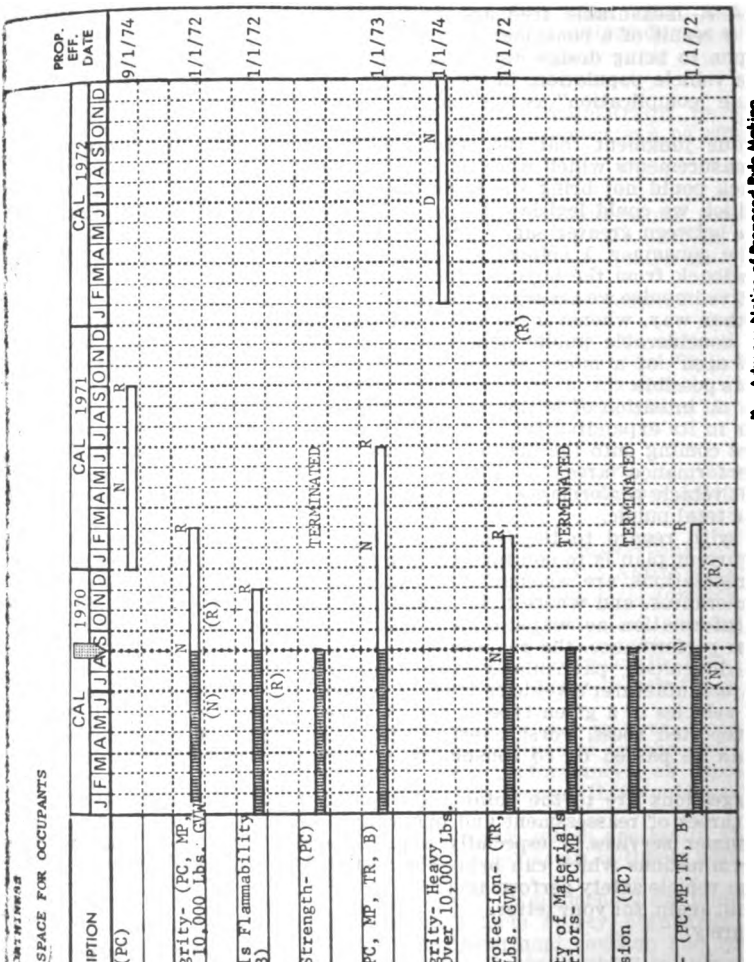
Thank you, again, for your letter.

Sincerely,

DOUGLAS W. TOMS,

Acting Administrator, National Highway Traffic Safety Administration.

MOTOR VEHICLE PROGRAMS
RULEMAKING ACTIONS 9/1/70



Section A-Id

LYNN M. F. HARRISS, FASLA,
Washington, D.C., March 12, 1971.

HON. PHILIP A. HART,
The U.S. Senate, Washington, D.C.

DEAR SENATOR HART: The news account of the testimony of Dr. William Haddon before your Senate Commerce Committee was most interesting to me. For some time I have viewed with concern—and recently with alarm—the trend toward emasculating bumpers to the present sad state of little more than ornamentation. The almost incredible thing is that while bumpers have become less and less, modern traffic has been needing them more and more.

I sincerely hope that you and your committee will see fit to report favorably on the bill to require manufacturers to equip *all* cars with heavy and serviceable bumpers, and even to require a uniform height above the pavement so that on impact they will meet and protect rather than overlapping and hooking into one another.

Some years ago, there were proposals for building bumpers all the way around the car, not just on the front and rear. This may be too much to hope for now, but the bill now before you certainly seems a much-needed step.

Very sincerely yours,

LYNN M. F. HARRISS.

NATIONAL ASSOCIATION OF INSURANCE AGENTS, INC.,
Washington, D.C., March 19,1971.

HON. WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
New Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the members of the National Association of Insurance Agents, representing some 33,500 independent agencies with approximately 150,000 individually licensed insurance producers located throughout the nation, I am writing to you to express our deep interest in and concern for the public interest, as well as our own, in connection with automobile accident reparations.

We believe some remedial action is warranted to correct the now recognizable imperfections, that, under the unique conditions of the past several years, have developed in our present system. We remain firmly convinced, however, that basically the fault concept best serves the public, although it now does appear to have some shortcomings.

Our deep concern for improvements in the present automobile accident reparations system has taken the form of a careful study by the Casualty Committee of this national association. This committee's recommendations were unanimous-adopted in January by our National Board of State Directors. This action is most significant in that it provides an accurate public reading of the feelings and attitudes presently existent among agent leaders and memberships in each of our 50 state associations.

The recently modified position of the National Association of Insurance Agents, which we now find closely parallels the position taken by some other major insurance organizations, is as follows:

1. That the National Association of Insurance Agents supports a system which provides for immediate first-party payments for economic loss due to bodily injuries caused by or resulting from automobile accidents.

2. That the National Association of Insurance Agents reaffirms its position that the tort liability principle should be retained.

3. That the National Association of Insurance Agents maintains the firm conviction that every effort should be made to correct the deficiencies of the present system, on a state-by-state basis, before the basic principles of the system are subjected to a major modification.

4. That the National Association of Insurance Agents recognizes the public need to develop some objective standards for measuring general damages.

From these four basic points you will recognize that the many thousands of independent insurance agents comprising our association's membership, while they do recognize some imperfections in the present fault concept under which our society has operated for decades, firmly believe that such conditions do not call for a complete scrapping of the whole fault concept. Individual wrongdoers should continue to be held basically responsible for their negligence, even

though some form of basic first-party reparations now may be in the public interest.

It is recognized that these four basic recommendations are broad in scope, but they are purposely so in order to leave the ultimate and proper decisions of specific actions to individual states where variations and conditions dictate varying solutions. We agree wholeheartedly with the statement of Secretary of Transportation, John A. Volpe, in his testimony before your committee on March 18, 1971, when he said, "We need not and do not insist that a single reform system be imposed upon all the states. The experience of the states should have much to tell us about the most desirable final configuration of the motor vehicle operation system."

We also concur with Secretary Volpe's statement that "as various first-party no-fault plans are implemented in various states, answers will be forth coming to the question of whether some variants of the program we suggest work better than the present system or not. In this manner, states may be able to spare themselves most of the uncertainty, and greatly reduce the financial risk, that would be involved in any single step, 'all the way', perhaps irreversible change of the system."

This expression of our feeling is submitted to you, Senator Magnuson, with the earnest hope that it will assist in reaching a final decision so momentous to the public, the individual states, and the several industries involved.

Respectfully,

HOWARD H. LEIGHTON,
President.

WASHINGTON STATE COUNCIL OF CHURCHES,
Seattle, Wash., April 22, 1971.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: We understand that there will be hearings from May 3 to May 7 and from May 10 to May 14 on Senate Bills 945, 946 and 976 and a concurrent resolution regarding the present auto insurance system and proposals for effective changes.

It is difficult for us in the Northwest to afford the trip to Washington, D.C., but we wanted you to know our particular position.

We most heartily encourage you to examine such possible legislation and then push for it. We find that poor people in our State are unable to pay for insurance and that many people are risking imprisonment by driving without valid insurance or licenses because of the great cost to them.

Because of these conditions there are many people, therefore, who have automobile accidents with these uninsured motorists who have no way of being compensated for any loss that might be theirs. We are equally interested in the diagnostic inspection for the safe repair of vehicles involved in auto accidents. Once again your committee has exhibited a great interest in the protection of the consumer and for this we give you our thanks.

If there is anything we can do from here to be of further assistance, do not hesitate to have your staff let us know.

Sincerely,

EVERETT J. JENSEN,
General Secretary.

SOUTHERN SERVICE COMPANY,
Arabi, La., April 26, 1971.

Senator PHIL HART,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: It was with great interest that I read an article in the New Orleans States Item, a few days ago, regarding the findings of your antitrust subcomittee based on studies of car inspection and repair figures. The comments of what your investigations had turned up in regard to the condition of new cars on delivery to the consumer is very interesting, and I thought you might be interested in what is happening here in New Orleans in regard to this very same situation.

For many months the management ot Southern Service Company, which is an automotive import terminal, has recognized the fact that the automotive manufacturers, both domestic and import, have relied far too heavily on their dealer organization to act as the final inspector for quality control of their products before being delivered to the consumer; and because of this have created the customer dissatisfaction that has become evident across the nation today.

Southern Service Company has developed and is presently installing for one of their import accounts, (Mid-Southern Toyota Distributors) which covers a fourteen state area in the Mid-West, a complete new concept which could be adopted by any manufacturer, either domestic or foreign; and which would virtually eliminate the consumerism attitude of today.

Under this concept, Southern Service Company has set up for the Toyota account two complete production type diagnostic lanes by which every Toyota product being brought into the Mid-West through the Southern Service port facility will undergo a complete quality control inspection encompassing over seventy-five various mechanical and visual inspections, enabling the dealer to deliver a totally quality controlled vehicle to the consumer. These diagnostic lanes are complete to the extent of checking both Hydrocarbon and Carbon Monoxide content from each vehicle to ascertain the meeting of all present ecology requirements and making a full load dynamometer check for total engine performance. We are offering this service to other import manufacturers and are presently negotiating to set up services of this type in other areas and felt that our contribution to this cause might be of interest to you.

I would like to extend to you and your committee an invitation to visit our facility here in New Orleans which is located in the suburb of Arabi directly on the Mississippi River, in the old Ford Motor Company Assembly Plant. We have at this location a complete auto import terminal facility and we feel that it would be very interesting for you to stop by and look us over at your convenience, to see first hand what can be done to benefit the consumer and ecology.

Sincerely,

SHERMAN T. SMITH,
Plant Production.

STATE OF NEW YORK,
STATE CONSUMER PROTECTION BOARD,
New York, N.Y., April 27, 1971.

Senator PHILIP HART,
U.S. Senate,
Washington, D.C.

I strongly support the No-Fault Auto Insurance Bill which you and Senator Magnuson jointly sponsor and on which you are presently holding hearings. Too many of us know through painful experience that the present system is unfair. It costs too much, compensates too few, encourages dishonesty and rewards its subscribers with unwarranted policy cancellations. The No-Fault Auto Insurance system, on the other hand, would compensate all auto accident victims, except deliberate lawbreakers, while costing us less and paying us sooner. A recent Gallup Poll showed that a majority of American consumers who understand the concept of No-Fault Auto Insurance support it. I think it is up to those of us who do understand to make our voices heard. I urge you to spare no effort in passing this badly needed legislation.

BETTY FURNESS.

STATE OF NEW YORK,
STATE CONSUMER PROTECTION BOARD,
New York, N.Y., April 27, 1971.

Senator WARREN MAGNUSON,
U.S. Senate,
Washington, D.C.

As hearings begin on your proposed No-Fault Automobile Insurance Bill, I want to add my voice to the many others who will be speaking out in favor of it. Our present system denies compensation to one-quarter of all persons injured in automobile accidents. Our present system allows insurance companies and agents, lawyers and claims investigators to take up to 56 cents on every personal injury liability insurance premium dollar. The fault system encourages dishonesty and overreaching by both claimants and insurers. The system abounds with unwarranted policy cancellations. I strongly favor the No-Fault Insurance concept. I support a system which will lower insurance premiums while compensating all

auto accident victims, except deliberate lawbreakers. I am confident all the testimony given at your hearings will clearly demonstrate that the time for No-Fault Auto Insurance is long overdue.

BETTY FURNESS.

McDONALD, McDONALD & McDONALD,
Dalton, Ga., May 5, 1971.

Hon. DAVID GAMBRELL,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR GAMBRELL: I am enclosing herewith a page from "American Bar News, Vol. XVI, No. IV, April, 1971" containing a publication under the heading "Senate Begins Auto Insurance Hearing" and is circled on said enclosure.

I have been present at meetings of several of our local bar associations in this area of the State and find that the concensus of opinion of members thereof is strongly against "No-Fault" system discussed in the enclosed article.

I am sure that you are more familiar with this proposed legislation than I am and that you are in a much better position to express an intelligent opinion concerning same than I am. However, I did want you to know my views and apparently the prevailing view among lawyers of this section on the subject matter. I very definitely feel that this proposal would amount to a step in the wrong direction.

If Senator Baker is being correctly quoted in said publication, although I agree in principle with what he says, I cannot fully agree that "the fact that so many persons are willing to abandon the system . . . . . is, 'a sad sad commentary on the failure of the judicial system in America.'" Concerning this, I, rather, feel that the fact that so many may be willing to abandon the present system is not due primarily to the fallacy of the system, but is, rather, due to a lack of information concerning the present system being passed on to the public and a resulting failure of the public to understand the operations of the present system. Some means of educating the public with reference to governmental functions generally, of course, is much needed. This situation, of course, certainly applies to the functions of the judicial system. Probably the responsibility should fall upon the bench and bar of the nation. However, help from any source would certainly be beneficial.

Any suggestions that you may have that might be helpful concerning this matter will, of course, be greatly appreciated. Meanwhile, we extend our continued best wishes for your much success in all your undertakings.

Yours truly,

ERNEST McDONALD.

Enclosure.

SENATE BEGINS AUTO INSURANCE HEARINGS

Only one voice was raised in clear defense of the present tort liability system at the opening of Senate Commerce Committee hearings on S. 945, the Uniform Motor Vehicle Insurance Act of 1971.

Sen. Howard H. Baker, Jr. (R-Tenn.), said the present system "is not all that bad but its execution has been very poor." The fact that so many persons are willing to abandon the system he said, is "a sad, sad commentary on the failure of the judicial system in America." The Senator also said it is important that neither side become so inflexible and dogmatic that it loses sight of the obvious problems with both the fault and no-fault systems.

S. 945, co-sponsored by Sens. Philip A. Hart (D-Mich.) and Warren Magnuson (D-Wash.), the Commerce Committee chairman, would create a comprehensive first-party, no-fault system of compensating auto accident victims under federal standards administered by the Department of Transportation. It would provide for all medical and incidental expenses plus lost income up to a maximum of $30,000. Further recovery under the present tort system would be limited to victims suffering "catastrophic harm" through permanent disability or disfigurement and the survivors of fatally injured wage-earners.

The first witness on the bill was Secretary of Transportation John A. Volpe, testifying on behalf of the Nixon administration. He also called for a shift to a comprehensive no-fault system but said it should be adopted on a state-by-state basis, allowing for a broad basis of experience. He submitted a concurrent

resolution to that effect, but with the admonition "that Congress cannot, and will not, long ignore the need for evolving new and updated approaches to insurance and accident compensation."

The resolution also calls on Council of State Governments, using appropriate instrumentalities, to develop model no-fault legislation for submission to the states. A step in this direction already is underway by the National Conference of Commissioners on Uniform State Laws which recently named a Special Committee on a Uniform Automobile Accident Claims Act.

MIQUON, PA., *May 11, 1971.*

Hon. PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: This refers to the hearings presently being carried out by the Senate Commerce Committee, concerning automobile safety.

It is obvious that the merits of the issues being considered by the Commerce Committee are in danger of being obscured by emotion. Reduced to its simplest terms, the basic issue is this—is the automobile industry subject to Congressional control or not? The question of automobile safety is merely the vehicle (no pun intended) for bringing the basic issue to light.

Bear in mind that General Motors (not the entire automobile industry, but just one company comprising that industry) employs more people than the population of most states; has assets which exceed the assets of most states; has a budget roughly equal to that of West Germany; has profits equal to the sales of its largest foreign competitor; in short, enjoys a position of power roughly equal to that of most sovereign countries. Their sovereignty is the issue at hand.

Bear in mind also that automobile accidents account for more fatalities per year than war—even declared war; that air pollution emanating from automobile exhausts is a major (some say "the" major) factor in pollution; that the amounts being spent on highways can only be described as enormous; and that, at least for most people, purchase of an automobile represents the largest investment they make outside of the purchase of their home. Taken together, this means that the automobile industry, directly or indirectly, has a tremendous impact on the lives of individual citizens.

I think the automobile industry is saying to Congress that, to the extent that the welfare of the individual citizen is in any way related to the automobile industry, this is a matter which is out of bounds for Congress to regulate. Consider the statement of John J. Nevin,* that—

"If an automobile buyer elects to accept a damageability risk in exchange for an appearance gain or some other benefit that is important to him, that would seem to us to be his decision to make and not a matter of public policy."

First of all, I think the statement is an outrageous one, because it assumes that it is impossible to manufacture an automobile that is both attractive, from a design point of view, and safe. Personally, I refuse to believe that the automobile industry is incapable of doing this, even though Mr. Nevin seems to be convinced of it.

Beyond that, however, Mr. Nevin makes it clear that Congress should play no role in defining the product characteristics of a motor car, even though, as alluded to earlier in this letter, that product has a major impact on all of us.

Unfortunately, I think there is considerable ground for questioning the good faith of the motor car industry. Mr. Roche's constant comments to the effect that the technology does not exist at the present time to permit compliance with the pollution levels established by law has a very hollow ring to it; the statement has been directly contradicted by a number of other scientists who appear to be familiar with the problem, and at least one foreign manufacturer is willing to invest $2,000,000 in a design developed by an American scientist (who has stated as a matter of record that the American companies have indicated no interest whatever in the approach). In addition, others are investing substantial amounts of money in the development of nonpolluting engines, and I would doubt that they would be willing to make such large investments without significant promise of a return. Foreign car companies say simply that they will comply. Do they know something that the American automobile industry does not?

---

*A Ford vice president who testified before the Commerce Committee.

auto accident victims, except deliberate lawbreakers. I am confident all the testimony given at your hearings will clearly demonstrate that the time for No-Fault Auto Insurance is long overdue.

BETTY FURNESS.

McDONALD, McDONALD & McDONALD,
Dalton, Ga., May 5, 1971.

Hon. DAVID GAMBRELL,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR GAMBRELL: I am enclosing herewith a page from "American Bar News, Vol. XVI, No. IV, April, 1971" containing a publication under the heading "Senate Begins Auto Insurance Hearing" and is circled on said enclosure.

I have been present at meetings of several of our local bar associations in this area of the State and find that the concensus of opinion of members thereof is strongly against "No-Fault" system discussed in the enclosed article.

I am sure that you are more familiar with this proposed legislation than I am and that you are in a much better position to express an intelligent opinion concerning same than I am. However, I did want you to know my views and apparently the prevailing view among lawyers of this section on the subject matter. I very definitely feel that this proposal would amount to a step in the wrong direction.

If Senator Baker is being correctly quoted in said publication, although I agree in principle with what he says, I cannot fully agree that "the fact that so many persons are willing to abandon the system . . . . . is, 'a sad sad commentary on the failure of the judicial system in America.'" Concerning this, I, rather, feel that the fact that so many may be willing to abandon the present system is not due primarily to the fallacy of the system, but is, rather, due to a lack of information concerning the present system being passed on to the public and a resulting failure of the public to understand the operations of the present system. Some means of educating the public with reference to governmental functions generally, of course, is much needed. This situation, of course, certainly applies to the functions of the judicial system. Probably the responsibility should fall upon the bench and bar of the nation. However, help from any source would certainly be beneficial.

Any suggestions that you may have that might be helpful concerning this matter will, of course, be greatly appreciated. Meanwhile, we extend our continued best wishes for your much success in all your undertakings.

Yours truly,

ERNEST McDONALD.

Enclosure.

SENATE BEGINS AUTO INSURANCE HEARINGS

Only one voice was raised in clear defense of the present tort liability system at the opening of Senate Commerce Committee hearings on S. 945, the Uniform Motor Vehicle Insurance Act of 1971.

Sen. Howard H. Baker, Jr. (R-Tenn.), said the present system "is not all that bad but its execution has been very poor." The fact that so many persons are willing to abandon the system he said, is "a sad, sad commentary on the failure of the judicial system in America." The Senator also said it is important that neither side become so inflexible and dogmatic that it loses sight of the obvious problems with both the fault and no-fault systems.

S. 945, co-sponsored by Sens. Philip A. Hart (D-Mich.) and Warren Magnuson (D-Wash.), the Commerce Committee chairman, would create a comprehensive first-party, no-fault system of compensating auto accident victims under federal standards administered by the Department of Transportation. It would provide for all medical and incidental expenses plus lost income up to a maximum of $30,000. Further recovery under the present tort system would be limited to victims suffering "catastrophic harm" through permanent disability or disfigurement and the survivors of fatally injured wage-earners.

The first witness on the bill was Secretary of Transportation John A. Volpe, testifying on behalf of the Nixon administration. He also called for a shift to a comprehensive no-fault system but said it should be adopted on a state-by-state basis, allowing for a broad basis of experience. He submitted a concurrent

resolution to that effect, but with the admonition "that Congress cannot, and will not, long ignore the need for evolving new and updated approaches to insurance and accident compensation."

The resolution also calls on Council of State Governments, using appropriate instrumentalities, to develop model no-fault legislation for submission to the states. A step in this direction already is underway by the National Conference of Commissioners on Uniform State Laws which recently named a Special Committee on a Uniform Automobile Accident Claims Act.

MIQUON, PA., *May 11, 1971.*

Hon. PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: This refers to the hearings presently being carried out by the Senate Commerce Committee, concerning automobile safety.

It is obvious that the merits of the issues being considered by the Commerce Committee are in danger of being obscured by emotion. Reduced to its simplest terms, the basic issue is this—is the automobile industry subject to Congressional control or not? The question of automobile safety is merely the vehicle (no pun intended) for bringing the basic issue to light.

Bear in mind that General Motors (not the entire automobile industry, but just one company comprising that industry) employs more people than the population of most states; has assets which exceed the assets of most states; has a budget roughly equal to that of West Germany; has profits equal to the sales of its largest foreign competitor; in short, enjoys a position of power roughly equal to that of most sovereign countries. Their sovereignty is the issue at hand.

Bear in mind also that automobile accidents account for more fatalities per year than war—even declared war; that air pollution emanating from automobile exhausts is a major (some say "the" major) factor in pollution; that the amounts being spent on highways can only be described as enormous; and that, at least for most people, purchase of an automobile represents the largest investment they make outside of the purchase of their home. Taken together, this means that the automobile industry, directly or indirectly, has a tremendous impact on the lives of individual citizens.

I think the automobile industry is saying to Congress that, to the extent that the welfare of the individual citizen is in any way related to the automobile industry, this is a matter which is out of bounds for Congress to regulate. Consider the statement of John J. Nevin,* that—

"If an automobile buyer elects to accept a damageability risk in exchange for an appearance gain or some other benefit that is important to him, that would seem to us to be his decision to make and not a matter of public policy."

First of all, I think the statement is an outrageous one, because it assumes that it is impossible to manufacture an automobile that is both attractive, from a design point of view, and safe. Personally, I refuse to believe that the automobile industry is incapable of doing this, even though Mr. Nevin seems to be convinced of it.

Beyond that, however, Mr. Nevin makes it clear that Congress should play no role in defining the product characteristics of a motor car, even though, as alluded to earlier in this letter, that product has a major impact on all of us.

Unfortunately, I think there is considerable ground for questioning the good faith of the motor car industry. Mr. Roche's constant comments to the effect that the technology does not exist at the present time to permit compliance with the pollution levels established by law has a very hollow ring to it; the statement has been directly contradicted by a number of other scientists who appear to be familiar with the problem, and at least one foreign manufacturer is willing to invest $2,000,000 in a design developed by an American scientist (who has stated as a matter of record that the American companies have indicated no interest whatever in the approach). In addition, others are investing substantial amounts of money in the development of nonpolluting engines, and I would doubt that they would be willing to make such large investments without significant promise of a return. Foreign car companies say simply that they will comply. Do they know something that the American automobile industry does not?

---

*A Ford vice president who testified before the Commerce Committee.

GM's outrageous behavior, in its investigation, and their denial of any investigation, of Mr. Nader unfortunately seems to be more typical than atypical of their overall attitude.

Perhaps the best thing to do is simply to split the motor car companies up into a number of companies; after all, the great progress in the industry was made between World War I and World War II, not in recent years. That, however, is a longer term question.

The immediate question which is being debated is whether or not it is proper for Congress to regulate the design of an automobile, with a view to automobile safety. No other product of such personal impact or of potentially lethal consequences is unregulated by Congress. Even chemicals which are used in the process of manufacturing containers have to be cleared by the FDA. I cannot, personally, see that the automobile industry has done anything on its own with respect to designing a car that is safer. A Model A Ford had a bumper that would very effectively absorb the impact of a crash at considerably more than 5 miles an hour—and some of today's cars have no bumper at all across the center of the car. Indeed, if you look at the cars going up and down the street today, you will see that many of them have a grille that is designed more like a battering ram or a meat cleaver. Additional examples could be listed for several pages.

The argument that competition alone will produce cars less vulnerable to damage is clearly without merit. You will recall that Mr. McNamara, when he was President of Ford Motor Company, emphasized safety in his sales campaign, and was ridiculed at the time for selling safety instead of automobiles. Unfortunately, the sales of Ford Motor Company make it abundantly clear that safety did not sell a car.

A massive injection of Congressional control is required at the present time, not only for the welfare of the consumer, but also to restore—or perhaps establish for the first time—a needed balance of power as between Congress and the motor car industry. In establishing standards for auto safety, while it is clear that standards should not be set which are obviously not attainable, it is also clear that the much-vaunted talents of the motor car industry should be adequate to produce a very substantially safer car than is currently the case.

Yours very truly,

KARL H. SPAETH.

BARRICK, JACKSON, SWITZER & LONG,
Rockford, Ill., May 11, 1971.

Re "No-fault insurance"

SENATE COMMERCE COMMITTEE,
U.S. Senate,
Washington, D.C.

GENTLEMEN: I am deeply distressed at the snowballing effect that has transpired concerning no-fault insurance, and particularly the proposal of Senator Hart.

In the more than 18 years that I have practiced law I have represented both injured parties and defending insurance companies, as well as uninsured defendants. I am thoroughly and completely convinced that no-fault insurance is a mistake. Amongst its shortcomings are as follows:

1. The costs will increase rather than decrease. We have heard a lot of talk about large verdicts and increase in costs, etc., but whenever anyone who is injured, hears of no-fault, there will be probably several hundred thousand more claims paid than are now paid. I have heard an estimate of slightly in excess of a million more claims each year. In addition, I am sure this will not bring about the hoped-for decrease in law suits and court congestion.

2. An innocent injured person will not be able to secure from the guilty driver the intense pain and suffering and other losses beyond merely the cold, hard medical bills and wages unless they exceed an arbitrary set figure. This is a penalty which should not be imposed upon the innocent victim and also creates a temptation to persons to inflate claimed medical bills and claimed lost wages. It even promotes more than we already have to malingering of an injured person. Why should he return to work if he can stay home and thus get over the minimum amount of lost wages necessary to permit him to collect even more money.

3. The system completely destroys a basic concept in America, that of a wrong-doer having to pay for his wrongs. Why, oh please why, should we

eliminate our basic legal concept that an individual who causes an injury to another one must be called to account for his negligence or fault?

4. Why should a reckless or negligent driver be permitted to escape the consequences of his recklessness or negligence which results in injury to other persons?

I sincerely hope that this proposal is soundly laid to rest immediately. I implore you to consider the devastating and far-reaching and even unknown consequents of the adoption of such a proposal.

Thank you for your cooperation.

Very truly yours,

WILLIAM C. JACKSON.

[Telegram]

COLUMBIA, S.C., *May 11, 1971.*

SENATOR PHILLIP H. HART,
Senate Office Building,
Washington, D.C.

DEAR SIR: In being an insurance agent, for life, health and accident for six years, I have had to settle many claims unfairly. Then in February of 1968 I was involved in a near fatal accident which was no fault of mine. In my deficit and medical bills which totaled $24,011.98 by March of 1970 I was forced to settle for $23,828. net. My attorney received $8,125 net for almost doing nothing because I was informed that I would be awarded no more. Now after being in the hospital nine times, two operations and $60,000 medical bills incurred already and at a minimum it is still costing be $400 every 3 months. Being on total disability of $160 per month it seems I have no further recourse against the defendant's insurance company.

In South Carolina liability insurance is compulsory and it has become a political football. The lawyers and legislators which some of the lawmakers has insurance first of their own and the bar association work with the insurance companies against a no-fault or fixed-premium for the insurance company. I hope this will help out in the federal intervention of the insurance companies for their unfair settlements. If it is necessary when able I will even come to Washington at my own expense with legal documents to testify before your committee.

Respectfully,

ROSS D. BERRY.

MARINA DEL REY, CALIF., *May 13, 1971.*

HON. PHILLIP HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: Your efforts with respect to no-fault insurance are to be commended. I am an attorney, and am somewhat chagrined by the bread-and-butter reactions to your plan, on the part of some of my colleagues. In spite of their protests, trial attorneys can make a living by litigating matters other than automobile accidents.

I would also endorse your efforts in the Commerce Committee with respect to auto safety—i.e., automobile bumpers. My parents 1964 Chevrolet was hit in the rear some years ago, by a taxi travelling approximately 10 m.p.h. The total repair bill was over $400, and the Chevrolet agency that did the work never really did it properly. The frame, which had been bent, was not straightened, and the tail lights would often short circuit.

Lastly, I would ask you to be among those voting not to divert SST wind-up funds to further production of the two prototypes.

Sincerely yours,

ROBERT R. NIELSEN.

64-345 O - 71 - pt. 4 -- 32

Rehabilitation Institute of Chicago

May 24, 1971

Honorable Warren G. Magnuson
Chairman, Senate Committee on Commerce
United States Senate
Washington, D.C. 20510

401 East Ohio Street
Chicago, Illinois 60611
(312) 337-0775

Dear Senator Magnuson;

My purpose in writing is to add the endorsement of the Rehabilitation Institute of Chicago to the rehabilitation provisions which are incorporated in pending legislation on motor vehicle insurance now being considered by the Senate Commerce Committee (S. 945, 946 and S. Con. Res. 23). We note that S. 945, of which you are a sponsor, requires that insurance policies shall provide "all appropriate and reasonable expenses necessarily incurred for medical, hospital, surgical, professional nursing, dental, ambulance and prosthetic services" and "all appropriate and reasonable expenses necessarily incurred for physical and occupational therapy and rehabilitation." We should like to lend our support and encouragement to these provisions of the legislation.

I need not point out that our population is increasing, that there are more disabling accidents involving motor vehicles, and there are more heroic attempts at saving these lives. At the RIC we are engaged in rehabilitating those who are saved, but who may sustain extensive injuries and disabilities. Total rehabilitation care should be made available immediately to those who need it. Often this is a crucial factor in lessening the extent of the disability. It is encouraging, therefore, to find legislation that recognizes the very costly and time-consuming nature of this rehabilitation care and provides for it without undue delay and complications.

We greatly appreciate this opportunity to comment on this legislation.

Sincerely,

James O. Heyworth
President

JOH:nc

THE AMERICAN OCCUPATIONAL THERAPY ASSOCIATION, INC.
251 PARK AVENUE SOUTH, NEW YORK, N.Y. 10010 • (212) 777-5890

May 28, 1971

The Honorable Warren G. Magnuson
Chairman, Committee on Commerce
United States Senate
Washington, D.C. 20510

Dear Senator Magnuson:

The American Occupational Therapy Association would like to record its support of the rehabilitation provisions contained in S.945, S.946, and S.Con.Res.23, bills regarding "no-fault" motor vehicle insurance.

The membership of The American Occupational Therapy Association includes over 10,000 registered occupational therapists and certified occupational therapy assistants. As health personnel directly involved in providing medical care to the many thousands of individuals injured annually by motor vehicle accidents, we would like to call your attention to the following:

Motor vehicle accidents are probably the greatest single cause of injuries requiring extensive rehabilitative and restoratory care. They produce a shockingly high number of spinal cord injuries each year, resulting in paraplegia (permanent paralysis from the waist down) and quadriplegia (permanent paralysis from the neck down). Auto accidents are the cause also of large numbers of amputations, extensive and often parmanent damage to vital joints, internal injuries so severe that they are disabling for years or for life, and a great variety of other serious handicapping conditions.

The care required involves long periods of time in expensive hospital facilities, a vast array of medical equipment and devices (some of which must be custom-made), and the services of many types of health professionals. The amount of money required is usually far beyond an individual's or family's financial means, even with the assistance of hospital and medical insurance. If the injured person is the family's bread-winner, financial problems are obviously compounded.

The tragedy of accidental injury should not be unduly complicated by financial distress. To be most effective, total rehabilitation of the injured should proceed promptly, without delay due to financial problems. Large numbers of our professional occupational therapists work daily with patients who are the victims of these accidents and they see first-hand the results of neglect after injury, and particularly delays after the acute stages, because of the lack of an adequate system for paying the costs of full restorative care.

It is heartening, therefore, to note that the several measures now being considered by your committee embrace the concept of adequate coverage for total rehabilitative care for victims of accidents involving motor vehicles. We should like to endorse those provisions which provide coverage for "all appropriate and reasonable expenses necessarily incurred for medical, hospital, surgical, professional nursing, dental, ambulance, and prosthetic services" and "all appropriate and reasonable expenses necessarily incurred for physical and occupational therapy and rehabilitation."

We appreciate your action toward finding a better solution for these problems which are so devastating to so many of our people.

With our good wishes,

Sincerely yours,

Harriet Tiebel

(Mrs.) Harriet Tiebel, O.T.R.
Executive Director

HT/lj

MOTOR AND EQUIPMENT MANUFACTURERS ASSOCIATION

MEMA BUILDING, 304 WEST 58TH STREET, NEW YORK, N.Y. 10019 (CODE 212 PHONE 265-4544)

WILLIAM A. RAFTERY
EXECUTIVE VICE PRESIDENT

May 28, 1971

The Honorable Philip A. Hart
Chairman
Subcommittee on Antitrust and Monopoly
Committee on Commerce
United States Senate
Washington, D. C. 20510

RE: S. 976 -- "Motor Vehicle Information and Cost Savings Act"

Dear Senator Hart:

I am writing this letter on behalf of the Motor and Equipment Manufacturers Association (MEMA), which I serve as Executive Vice President, concerning S. 976, the "Motor Vehicle Information and Cost Savings Act." The Association requests that this letter be made a part of the official record of the Hearings on the bill held by the Subcommittee on Antitrust and Monopoly.

As you know from our previous submissions to and testimony before your Subcommittee, MEMA is composed of over 500 manufacturers of automotive parts, equipment, chemicals, accessories and tools, with plants located throughout the United States. As the trade association for the manufacturers of these automotive products, MEMA's membership is comprised of the producers of virtually every piece of equipment that is employed in, on or in connection with the servicing of motor vehicles. Some of these suppliers sell in the aftermarket only, some sell original equipment only, while still others sell both channels.

The provisions of S. 976 treated by this letter deal primarily with those providing for a nationwide system of diagnostic inspection stations and the promulgation by the Secretary of Transportation of property loss reduction standards.

MEMA is in full agreement with the bill's objective of reducing motor vehicle property damage and, as you aptly stated in your remarks when introducing the bill, the frustration felt by automobile owners when lengthy and expensive repair work is necessary though we believe that certain aspects of the bill can be fairly interpreted as not being directly safety-related. However, we cannot give our unqualified support to certain approaches suggested in S. 976 to accomplish these worthwhile objectives.

It must, of course, be recognized that support of this bill must also involve a commitment by the Congress to provide the necessary funds for implementation of it.

Section 501(a) of the bill requires that there be an inspection of a motor vehicle whenever title is transferred for purposes other than resale, or when the vehicle sustains damage of a safety-related mechanism. In general, the inspection must be conducted by a state-certified inspector who receives no compensation from a motor vehicle related business. Such an inspection procedure should, of course, serve as an adjunct to motor vehicle surveillance (inspection) programs which appear vital for implementation of vehicle-in-use standards which, unfortunately, have not as yet been adopted by the Department of Transportation.

Based upon available data, MEMA has been an advocate of periodic motor vehicle inspection, and until such time as contrary data is developed, we will continue to support this position. We suggest that the bill be expanded along these lines. A comprehensive motor vehicle inspection program for noise and air pollution, radio interference and sound suppression, in addition to the primary safety requirements, should, in our judgment, also be required since these are related areas in which the public has a justifiable interest. S. 976 does not provide for such a comprehensive program, however, but in fact limits the inspection program by requiring only post-crash and presale safety inspections. If these inspections are mandatory, it is reasonable to assume that neither state legislators nor the public will press for further comprehensive inspection programs. This problem is complicated by the uncertain meaning of "safety-related mechanism," since this would undoubtedly be interpreted differently by many states. It might also serve to encourage motorists not to report minor accidents so that they could avoid the otherwise required vehicle inspection.

The restrictive language in the bill pertaining to state-certified inspection stations should, we feel, also be amended. It seems reasonable to assume that an automotive repair outlet would encourage its inspectors to find defects during an inspection so that the outlet could also obtain the repair work. This is a problem which should concern anyone who drives a car. However, we do not believe that it is feasible for the federal government to prohibit inspections by these businesses. The bill recognizes the problems presented by lack of inspection facilities and capabilities in sparsely populated rural areas; however, there are many areas where mechanics and potential inspectors are in such short supply that a state would have difficulty operating its own inspection stations. In addition, a state may find the monetary investment in buildings, equipment and personnel prohibitive.

MEMA believes that the foregoing problems suggest that section 501 of the bill should be amended so that a determination of when and where vehicles shall be inspected is left to the individual states. Perhaps minimum requirements could be included which require states to insure that every motor vehicle is inspected at least annually for safety, noise and air pollution, radio interference and sound suppression, by a state-certified inspector.

Such minimum requirements would leave each state free to require additional inspections if it felt this necessary, and to specify when such inspections should occur. Further, it would permit a state which was hard pressed either for inspectors or funds to operate a state inspection or state-certified inspection program which met its own particular needs, within the minimum requirements of applicable federal legislation.

In the long term, MEMA is of the view that comprehensive changes should take place in vehicular inspection programs. I have discussed with officials of both federal and state governments, industry representatives and consumer representatives, the possible formation of a quasi-governmental corporation, structured along the lines of COMSAT and the newly formed Post Office Department. State governments will in the future be relying more and more heavily upon the resources of the federal government in this as well as other fields. Briefly, I urge that a study be undertaken to confirm the apparent advantages of forming such a corporation. This corporation would be initially funded (capitalized) either through the sale of federal bonds or through private capital (guaranteed by the Government), to develop research data and inspection program procedures for the inspection of all motor vehicles, with regard to their safety systems as well as noise and air pollutants, radio interference and sound suppression. It would, of course, work closely with such government agencies as the National Highway Traffic Safety Administration, the Environmental Protection Agency, the Federal Communications Commission and any other involved federal or state agencies. Such a corporation could develop inspection programs and offer them on a "franchise" basis to the individual states, the latter determining the type of franchise each would prefer, such as private inspection stations, government stations, mobile stations, etc. The franchise would, among other things, include inspection procedures, training of inspectors, and the improvement of inspection methods and equipment. As a "franchisee" the individual state would, in turn, pay this corporation on the basis of a pre-established fee per vehicle inspected. These inspection fees in many cases are already included in registration and license fees but, unfortunately, all too frequently the funds are diverted to other uses. I am therefore proposing that such a program would be financially self-sustaining without the need for further substantial financial commitments from the Congress.

We recognize that the development of such a corporation would involve extensive preparatory studies, and it is for this reason that we are making suggestions relating to the inspection provisions of S. 976 which can be implemented in the short run. We did, however, want to bring this idea to your attention, and felt that this letter was an appropriate medium in which to do so. I am, of course, available to discuss the concept and functions of such a government-sponsored corporation as has been outlined above, with you or your staff, so that a detailed proposal can be developed along these lines, should you desire to pursue this area further.

Before closing we would like to comment briefly on section 125 of the bill. Again, MEMA applauds your attempts to lessen the damage which occurs during minor accidents. However, we believe that any statutory authorization for vehicle standards dealing with property damage should clearly specify that

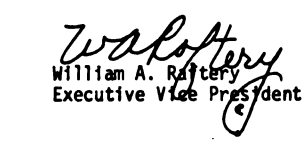
no such standard should jeopardize motor vehicle safety. Further, the inclusion of both safety and property damage standard authorizations in the same statute could very likely cause undesirable confusion on the part of the National Highway Traffic Safety Administration as well as automobile manufacturers. We also believe that such legislation should specify that the resultant cost to the car purchaser should be considered before any standard is enacted, so that new car prices do not rise so substantially that any decrease in repair costs becomes insignificant or is obscured entirely in the tradeoff between new car prices and vehicle in use repair costs. Further, we suggest that the bill should carefully distinguish, as it does not presently do, between passenger cars, trucks, buses and multipurpose passenger vehicles.

Finally, MEMA submits that Congress should not act as a standards' writing authority. Consequently, we believe that section 125(c), establishing minimum bumper damage performance standards, should be deleted. The Department of Transportation's bumper safety standard, although not as stringent as the S. 976 requirement, becomes effective more than two years before section 125(c)'s proposed effective date. The earlier effective date should act as a compensating factor for the somewhat weaker requirements under the DOT standard. In addition, as noted by former National Highway Safety Bureau Director Dr. William Haddon, Jr. in his testimony before your Subcommittee, writing such a standard into legislation serves to "freeze technology" and should be avoided if at all possible.

* * * * * * *

MEMA appreciates this opportunity to present its views on S. 976. The Association shares your continuing interest in automotive safety and the all too frequent, frustrating situations in which the automobile owner finds himself. The changes which we have recommended in S. 976 do not involve the bill's intent or purpose, but only the proper method of implementation.

Sincerely,



William A. Raftery
Executive Vice President

WAR/mc

1963

RIVERSIDE AUTO LAB INC.

8190 AUTO DRIVE • RIVERSIDE, CALIFORNIA 92504
(714) 687-5305

May 28, 1971

Senator Phillip A. Hart
Senate Office Building
Room 253
Washington, D.C. 20520

Dear Senator Hart:

As an independent diagnostic center who does not make repairs, we have been following, with interest, the Committee Hearings on your Hart-Magnuson Repair Bill.

Testimony in opposition to this section of the Bill has been erroneous and extremely self-serving. We can state from four years of experience and prove that:

1) Independent diagnostic inspection can be conducted promptly, professionally, and profitably.

2) The best diagnosticians are not drawn from the ranks of skilled mechanics since the nature of diagnostic inspection is completely different from the skills required in overhaul and repair.

3) In truth, it would do considerable toward relieving the problem of good automotive mechanic shortage by eliminating the costly "do over" time and diagnostic time which consumes so much of a mechanics time presently.

Independent diagnostic centers would go a long way toward curing the complaints of overselling, overcharging, and unnecessary repairs which are the greatest evils in the automotive repair business today.

It will also reduce the smog problem and help cut down on highway accidents. As a matter of interest, we took a random cross-section of automobiles checked out by our diagnostic service and found that 70% of them had smog equipment defects; 80% had one or more safety defects; and 30% had muffler-exhaust problems.

We have operated successfully and profitably in the Riverside-San Bernardino Metropolitan area (population 250,000) for over three years. During that time, we have participated in Department of Transportation Highway Safety Research, and in Mechanic Training Programs for the U.S. Government. For these reasons, we feel that our viewpoint is based on considerable experience, as opposed to the theoretical opinions previously expressed before your Committee.

Please feel free to call on us if we may furnish any further information to you or your Committee.

Sincerely yours,

RIVERSIDE AUTO LAB, INC.

Robert Wetzel
President

no such standard should jeopardize motor vehicle safety. Further, the inclusion of both safety and property damage standard authorizations in the same statute could very likely cause undesirable confusion on the part of the National Highway Traffic Safety Administration as well as automobile manufacturers. We also believe that such legislation should specify that the resultant cost to the car purchaser should be considered before any standard is enacted, so that new car prices do not rise so substantially that any decrease in repair costs becomes insignificant or is obscured entirely in the tradeoff between new car prices and vehicle in use repair costs. Further, we suggest that the bill should carefully distinguish, as it does not presently do, between passenger cars, trucks, buses and multipurpose passenger vehicles.

Finally, MEMA submits that Congress should not act as a standards' writing authority. Consequently, we believe that section 125(c), establishing minimum bumper damage performance standards, should be deleted. The Department of Transportation's bumper safety standard, although not as stringent as the S. 976 requirement, becomes effective more than two years before section 125(c)'s proposed effective date. The earlier effective date should act as a compensating factor for the somewhat weaker requirements under the DOT standard. In addition, as noted by former National Highway Safety Bureau Director Dr. William Haddon, Jr. in his testimony before your Subcommittee, writing such a standard into legislation serves to "freeze technology" and should be avoided if at all possible.

* * * * * * *

MEMA appreciates this opportunity to present its views on S. 976. The Association shares your continuing interest in automotive safety and the all too frequent, frustrating situations in which the automobile owner finds himself. The changes which we have recommended in S. 976 do not involve the bill's intent or purpose, but only the proper method of implementation.

Sincerely,

William A. Raftery
Executive Vice President

WAR/mc

RIVERSIDE AUTO LAB INC.

8190 AUTO DRIVE • RIVERSIDE, CALIFORNIA 92504
(714) 687-5305

May 28, 1971

Senator Phillip A. Hart
Senate Office Building
Room 253
Washington, D.C. 20520

Dear Senator Hart:

As an independent diagnostic center who does not make repairs, we have been following, with interest, the Committee Hearings on your Hart-Magnuson Repair Bill.

Testimony in opposition to this section of the Bill has been erroneous and extremely self-serving. We can state from four years of experience and prove that:

1) Independent diagnostic inspection can be conducted promptly, professionally, and profitably.

2) The best diagnosticians are not drawn from the ranks of skilled mechanics since the nature of diagnostic inspection is completely different from the skills required in overhaul and repair.

3) In truth, it would do considerable toward relieving the problem of good automotive mechanic shortage by eliminating the costly "do over" time and diagnostic time which consumes so much of a mechanics time presently.

Independent diagnostic centers would go a long way toward curing the complaints of overselling, overcharging, and unnecessary repairs which are the greatest evils in the automotive repair business today.

It will also reduce the smog problem and help cut down on highway accidents. As a matter of interest, we took a random cross-section of automobiles checked out by our diagnostic service and found that 70% of them had smog equipment defects; 80% had one or more safety defects; and 30% had muffler-exhaust problems.

We have operated successfully and profitably in the Riverside-San Bernardino Metropolitan area (population 250,000) for over three years. During that time, we have participated in Department of Transportation Highway Safety Research, and in Mechanic Training Programs for the U.S. Government. For these reasons, we feel that our viewpoint is based on considerable experience, as opposed to the theoretical opinions previously expressed before your Committee.

Please feel free to call on us if we may furnish any further information to you or your Committee.

Sincerely yours,

RIVERSIDE AUTO LAB, INC.

Robert Wetzel
President

ERIK A. NICOLAYSEN, Inc.

INSURANCE · MUTUAL FUNDS 77 S. Greeley Ave Chappaqua, N. Y. 10514 Bus CE 8-4456 RO 1-3323

June 1, 1971

Senator Philip Hart
Senate Office Building
Washington D.C.

Dear Senator Hart:

I testified along with Mr. Charles Rue for the Independent Mutual Agents of New York, New Jersey, and Connecticut on Friday, May 14. Your aide in the cross examination asked me a question regarding whether we would like auto to be primary or whether we would accept a federal hospitalization plan as primary. At that time I indicated that I thought we would. However, on reflection I must change my opinion.

From a philosophical view point we have always been in favor of the automobile paying its own way. However, one further thought has occurred to me in that the automobile is one of our major sources of air pollution along with other attendant problems. It seems ludicrous for us to spend millions of dollars to clean up air pollution and then to talk about encouraging the use of the automobile by shifting the insurance burden to the general population as a whole rather than the owners of the vehicles. For this very same reason I would have to be fundamentally opposed to your bill which advocates tax credits for employee mass merchandising programs. I feel much more should be spent in attempting to improve the rapid transit facilities of the country and in saving the existing railroad system and I do not see how, with any sense of priorities, we can turn around and encourage any further utilization of the automobile beyond that which is absolutely necessary.

Very truly yours,

Erik A. Nicolaysen, President
EAN:njm

CE AND PROTECTION FOR MILLIONS—SINCE 1902

STREET, NORTHWEST, WASHINGTON, D. C. 20006 · 638-4000 · AREA CODE 202 · CABLE ADDRESS: AMERAUTO · TELEX 24577

June 4, 1971

Senator Warren G. Magnuson
Chairman Senate Committee on Commerce
Room 5202
New Senate Office Building
Washington, D. C.

RE: Public Hearings S. 945, S. 946, S. 976
and S. Con. Res. 23
Auto Insurance Reform

Dear Senator Magnuson:

We understand that the Senate Commerce Committee held the last day of hearings on the above subject bills dealing with auto insurance reform on Friday, May 28th and that the hearing record will be held open for additional statements for ten days from such date.

The American Automobile Association supported Congressional Resolution calling for the two-year study by the Department of Transportation into all aspects of automobile insurance. We have carefully analyzed interim and final study reports and findings by the Department of Transportation.

The AAA Executive Committee, the later part of last month, approved a policy position on this subject which is herewith set forth.

"AUTOMOBILE INSURANCE AND ACCIDENT COMPENSATION

The American Automobile Association has a profound and continuing interest in the general availability of auto insurance that provides fair and equitable protection against economic loss and suffering resulting from motor vehicle accidents.

The AAA analysis of the study findings of the Department of Transportation confirms the immediate need for positive action to correct the present automobile accident compensation system.

AAA believes that private enterprise in a competitive market can best provide the quality of insurance protection required by the public. The AAA also supports continued State regulation of auto insurance to insure maintenance of a system which is responsive to local needs.

AAA advocates and calls upon the state legislatures to enact an auto insurance compensation system which embraces the following principles:

A) Basic benefits, within limits prescribed, should be payable to the injured person by his own insurance company without regard to fault.

B) Such basic benefits should provide coverage for the insured, resident relatives of his household, his guest passengers, and pedestrians struck by the insured automobile.

C) Such basic benefits should provide compensation for economic loss without regard to fault, subject to reasonable deductibles and limits, including the costs of medical care, hospitalization and wage losses. Insurance companies making such payments should be entitled to reimbursement by the responsible party or his insurer, with the requirement of inter-company arbitration between insurers in appropriate cases. So far as possible, claims other than basic benefits below a stated amount should be arbitrated.

D) Recovery by an injured party for any loss already covered by basic benefits should not be permitted in any private action for damages.

E) Reasonable standards for pain and suffering damages should be established.

F) Reasonable regulations limiting contingent attorney fees in auto accident cases should be established.

The AAA recognizes the problem of protecting persons justly claiming against insolvent automobile insurers. AAA supports speedy enactment at the state level of legislation to provide for assessment of sufficient funds to cover such losses from other automobile insurers doing business in such state after the insolvency has occurred."

It is requested that this letter be made a part of and be included in the committee's printed hearings.

Sincerely yours,

John de Lorenzi

John de Lorenzi
Managing Director
Public and Government Relations

JdeL:go

WHITE MOTOR CORPORATION
100 Erieview Plaza · Cleveland, Ohio 44114 · Area Code 216 / 523-5800

June 11, 1971

Senator Phillip A. Hart
Senate Commerce Committee
Room 5202
New Senate Office Building
Washington, D.C. 20510

SUBJECT: Senate Bill 976
Motor Vehicle Information and Cost Savings Act

Dear Senator Hart:

The White Motor Corporation is a diversified manufacturer of motor trucks, farm and construction equipment, and industrial power. In the case of motor trucks, we manufacture and/or distribute vehicles with a gross vehicle (total of chassis, body and payload) weight of approximately 24,000 pounds and up only.

This letter is intended to express our concern with certain provisions of the subject bill which would apparently be applicable to heavy trucks of the type which we manufacture and/or distribute. It is our opinion that the bill is primarily intended to bring about a reduction in the reported high repair costs of automobiles that are damaged in accidents occurring at relatively low vehicle speeds. However, the bill refers to "motor vehicles" in certain of its provisions, with the result that, in addition to automobiles, other types of vehicles, including heavy trucks, would be subject to these provisions.

Heavy trucks may be defined as those falling in gross vehicle weight classes 6, 7 and 8 which have gross vehicle weight ratings of 19,501 pounds and up. It is important to recognize that these G.V.W. classes represent a relatively small percentage of the total motor vehicles produced. Table I entitled "Motor Vehicle Factory Sales - By Type" shows the 1969 and 1970 total factory sales of motor vehicles by types. The total truck factory sales represent approximately 19-20% of the total vehicle production and represent a reasonably substantial number of vehicles.

However, Table II entitled "Truck Factory Sales - By G.V.W. Classes" provides data on the 1969 and 1970 factory sales of trucks by gross vehicle weight classes. It will be noted that G.V.W. classes 1 and 2 which have gross vehicle weight ratings of 10,000 pounds and less, represent approximately 81% of the total truck production, and that G.V.W. classes 6, 7 and 8 with gross vehicle weight ratings of 19,501 pounds and up, represent but approximately 14% of the total truck production and less than 3% of the total motor vehicle production. In 1969, total factory sales of such trucks were but 299,241, and in 1970 267,169.

Table III, "1970 Truck and Bus Factory Sales from U.S. Plants by Body Types and G.V.W." indicates that, after deducting buses, less than one percent of the total quantity of trucks in G.V.W. classes 6, 7 and 8 were produced as completed trucks. In other words, less than 2,000 of such vehicles were produced as completed trucks, with the remainder requiring further manufacture or modification after leaving the truck manufacturing plant.

In addition to this problem, combined with the relatively low total volume of such heavy trucks, there are a wide variety of basic types of such trucks produced. Among the various basic configurations are the following:

1. Types - Conventional; cab forward; cab over engine.

2. Cabs - Non-sleeper and sleeper; 2 and 3 man; half cabs; crew cabs, etc.

3. Front Axle Position - Front axle positions relative to the front bumper vary substantially from a minimum of approximately 25" to a maximum of approximately 100".

4. Types of Engine - Gasoline, LPG and diesel in a wide range of types, number of cylinders and horsepower output.

5. Gross Vehicle Weight Ratings - From 19,501 pounds up to approximately 80,000 pounds.

6. Number of Axles - From two to five.

7. Bumper to back of cab dimensions - Cab over engine and cab forward range from approximately 48" to approximately 104". The conventional models range from approximately 90" to approximately 156".

With these wide variations in basic configurations, the production of any one basic type of vehicle is necessarily limited. Furthermore, to meet the varied operating conditions encountered, it is necessary for each heavy truck manufacturer to offer a wide variety of standard and optional specifications in each basic configuration.

The above data have been provided to serve as background information in connection with the following specific comments and recommendations. One of our major concerns deals with the provision that all motor vehicles manufactured on or after a certain date and offered for sale in the United States must be designed and constructed with energy absorbing bumpers capable of withstanding impacts front and rear at fairly low speeds into a solid fixed barrier with a minimum prescribed amount of damage as may be determined by the Secretary of the Department of Transportation.

We strongly recommend that the term "motor vehicle" be deleted from this provision and the term "passenger car" or "automobile" be substituted. Our reasons for making this recommendation are as follows:

1. Damage to heavy trucks at relatively low impact speeds is limited because of the heavy construction furnished on such vehicles.

2. Because of the limited total production of heavy trucks and the fairly substantial variation in the quantities of specific types of heavy trucks, the volume in which certain parts of these vehicles are produced varies rather widely. Furthermore, the amount of tooling that can be justified on an economic basis varies with the volume, so that the cost of parts which may require replacement will also vary widely. As a result, it is not practical to establish a "minimum prescribed amount of damage" for such vehicles.

3. The cost of many heavy trucks ranges from $15,000 to $25,000. This fact, combined with the wide variety and the limited volume of each heavy truck type, would result in a severe economic burden on the manufacturers of such vehicles without any compensating benefit to the purchaser of such heavy trucks.

4. The amount of energy to be absorbed by the bumpers on heavy trucks would be exceptionally high, since gross vehicle and/or combination (with trailer) weights will range up to 80,000 pounds (and even more when operated under special permit.)

5. Trucks and combination vehicles are subject to specific overall length restrictions. The use of energy absorbing bumpers would require increases in permissible overall length, or in the absence of such increases, would result in reducing the cargo space available, adding a severe economic penalty to the operation of such vehicles, since, in practically all truck freight operations, the pay load that may be hauled is limited by available cargo space, rather than by weight restrictions.

6. Most heavy trucks are built to suit the specific requirements of the purchaser and will often include one or more items of equipment or specification variations that are specially engineered for that specific vehicle. As a result, many of these custom-built trucks are produced by relatively small manufacturers, with fairly small total production consisting of many varieties. The economic burden of the proposed requirements would fall most heavily on these smaller manufacturers.

7. As pointed out above, less than one percent of the heavy trucks are built as complete vehicles. As a result, most such vehicles are equipped with a body and/or other equipment after they leave the truck manufacturer's plant. Since the rear bumper could not be properly located or mounted until after the body and/or equipment are mounted on the incomplete vehicle, it would become the responsibility of the body and/or equipment supplier to install the rear bumper and to assume the responsibility for conformance with the proposed requirements.

8. Most body and/or equipment suppliers are relatively small manufacturers who do not have the facilities, technical background nor the technical manpower to conduct the necessary tests to assure conformance with the proposed requirements. Furthermore, since such suppliers mount bodies and/or equipment on many makes and types of heavy trucks, they would be faced with the necessity of testing a substantial number of completed vehicles in relation to their total production of such vehicles.

9. Finally, since property damage to heavy trucks involved in accidents at relatively limited speeds is not a problem, there is no necessity for making this provision applicable to heavy trucks.

For the same reasons, it is recommended that any reference to proposed property loss reduction standards included in the bill apply only to "passenger cars" or "automobiles" instead of to "motor vehicles."

We are also concerned with respect to the requirement that no motor vehicle inspector may be certified by any State if he owns or receives any benefit in or from a business or enterprise engaged in the repair or sale of motor vehicles, automotive repair parts or accessories. At present, many of the larger truck fleet operators are performing their own inspections which are required under many State programs. Our interpretation of this proposed provision is that inspections by employees of such fleet operators could not be continued.

If this interpretation is correct, we strongly recommend that the language of this provision be revised to permit the continuation of self-inspection by such fleet operators. Any change from such procedures would result in a severe economic burden being placed on these operators. In addition, the facilities for inspecting heavy trucks are limited and in many instances, located many miles from the locations where the trucks are domiciled.

We will appreciate your consideration of our recommendations. If we can supply you with further data, please let us know.

Very truly yours,
WHITE MOTOR CORPORATION

E. R. Sternberg
Director Engineering Planning
Truck Group

Attachments

TABLE I

MOTOR VEHICLE FACTORY SALES - BY TYPE

Type of Vehicle	1969 Quantity	1969 Per Cent	1970 Quantity	1970 Per Cent
Passenger Cars	9,251,318	80.5	7,466,049	79.8
Buses	39,455	.3	37,360	.4
Trucks	2,198,893	19.2	1,906,889	20.3
Total Motor Vehicles	11,489,666	100.0	9,410,298	100.0

March 30, 1971

64-345 O - 71 - pt. 4 -- 33

TABLE II

TRUCK FACTORY SALES - BY G.V.W.[1] CLASSES

Class	Range (Lbs.)	1969 Quantity	1969 Per Cent of Trucks	1969 Per Cent of Motor Vehicles	1970 Quantity	1970 Per Cent of Trucks	1970 Per Cent of Motor Vehicles
1	6,000 and Less	1,300,024	59.1	11.3	1,080,160	56.7	11.5
2	6,001 - 10,000	482,196	22.0	4.2	464,682	24.3	4.9
3	10,001 - 14,000	7,160	.3	.1	7,353	.4	.1
4	14,001 - 16,000	16,517	.7	.2	12,542	.7	.2
5	16,001 - 19,500	93,755	4.3	.8	74,983	3.9	.8
6	19,501 - 26,000	145,859	6.6	1.3	123,167	6.5	1.3
7	26,001 - 33,000	33,070	1.5	.3	38,971	2.0	.4
8	33,001 and Up	120,312	5.5	1.0	105,031	5.5	1.1
Total Trucks		2,198,893	100.0	19.2	1,906,889	100.0	20.3
1 & 2	10,000 & Less	1,782,216	81.1	15.5	1,544,842	81.0	16.4
6, 7 & 8	19,501 & Up	299,241	13.6	2.6	267,169	14.0	2.8

(1) G.V.W. - Gross Vehicle Weight

March 30, 1971

1972

TABLE III

1970 TRUCK AND BUS FACTORY SALES FROM U.S. PLANTS

BY BODY TYPES AND G.V.W.

G.V.W. (Lbs.)	6,000 & less	6,000-10,000	10,000-14,000	14,001-16,000	16,001-19,500	19,501-26,000	26,001-33,000	Over 33,000	Total
Pickup.....	673,841	224,973	-	-	-	-	-	-	898,814
General Utility.....	95,156	-	-	-	-	-	-	-	95,156
Panel.....	3,703	1,106	-	-	-	-	-	-	4,809
Van.....	119,476	48,605	-	-	-	-	-	-	168,081
Multi-stop.....	7,085	34,194	3,432	2,469	322	-	-	-	47,502
Platform, Stake & Rack.	448	3,790	104	68	1,229	615	9	17	6,280
Station Wagon (on truck chassis)....	36,616	5,282	-	-	-	-	-	-	41,898
Buses (Incl. school bus chassis).....	-	-	-	922	7,666	20,707	2,661	38	31,994
Other Body Types.....	3	120	14	-	-	169	45	819	1,170
Chassis with Cab.....	13,738	82,711	3,595	6,169	49,505	100,890	35,212	98,874	390,694
Chassis without Cab....	186	811	208	351	483	2,173	524	1,306	6,042
TOTAL	950,252	401,592	7,353	9,979	59,205	124,554	38,451	101,054	1,692,440
* Buses	-	-	-	922	7,666	20,707	2,661	38	31,994
* Total (less buses)	950,252	401,592	7,353	9,057	51,539	103,847	35,790	101,016	1,660,446
* Incomplete Vehicles	13,924	83,522	3,803	6,520	49,988	103,063	35,736	100,180	396,736
* % Incomplete Vehicles	1.5	20.8	51.7	71.8	96.8	99.4	99.7	99.4	23.8

Source of Basic Data: Economic Research and
Statistics Department
Automobile Manufacturers Association
320 New Center Building
Detroit, Michigan 48202

May 17, 1971

* Data added by White Motor Corporation.

1973

CORPORATE OFFICES
LAU INCORPORATED 2027 HOME AVENUE, DAYTON, OHIO 45407/TELEPHONE 513/263-3591

June 14, 1971

The Honorable Philip A. Hart
Vice Chairman
Sub-Committee for Consumers
Committee on Commerce
U. S. Senate
Washington, D. C.

Dear Senator Hart:

As a supplier of blowers and propellers to the central residential air conditioning manufacturers, as well as manufacturing residential humidifiers, we are aware that your committee is considering legislation which would establish federal standards for warranties. We believe the purpose that lies behind your effort to protect the concerns of the consuming public should be supported. There are several suggestions, however, which we hope your sub-committee will still have time to consider.

We urge the inclusion of the strongest legally permissible federal preemption provision in Title I of S. 986 in order that chaos resulting from having differing requirements in all of the states can be avoided. Failure to preempt would be chaotic from the point of view of a manufacturer's activity, but it would inevitably add to the cost of products to the ultimate consumer.

Unlike manufacturers of other types of appliances, a unique situation exists in the central residential air conditioning industry. The contracting installer is, in fact, the manufacturer who designs and installs the system in the home. As a result, contracting installers should be recognized in the legislation as the warrantor backed up by product warranties of the manufacturers of individual components which the contractor selects, such as furnaces, air conditioners, sheet metal for duct work, registers and grills, etc.

Your favorable consideration is also urgently requested of a separation of Titles I and II in order that further and more detailed consideration may be given in separate hearings to the proposals for strengthening the Federal Trade Commission.

Your regarding the foregoing as constructive comments will be appreciated since it is our purpose to be helpful in your effort. Should there be the opportunity for us to make a further contribution, we request that you afford us such an opportunity.

Respectfully yours,

William W. Morrisey
WILLIAM W. MORRISEY
Vice President, Marketing

WWM:gsg

tlcRichfieldCompany

Products Division
60' th Avenue
New. . ork, New York 10020
Telephone 212 246 0020

C. A. Walsh, Jr.
Vice President
Marketing

June 18, 1971

Senate Commerce Committee
Room 127
Old Senate Office Building
Washington, D. C. 20510

Gentlemen: Attn: S. Lynn Sutcliffe, Counsel

Re: Senate Bill 976

I would like to comment on Senate Bill 976 and more particularly on Section 501 (a) (2) of Title V which would prohibit service station dealers from conducting motor vehicle inspections. This provision would cause duplication of investment in testing equipment and facilities, gross inconvenience to motorists and economic discrimination against service station dealers.

The proposed system would require new facilities to be built to conduct tests in the many states where tests are now conducted in service stations and other existing establishments. Thus, the economy would be inflated by the needless construction of new facilities to provide services already supplied by existing operations. It would also require duplication of investment by repair shops and testing stations in testing equipment. (If this equipment were not installed in repair shops, they would have no way of knowing if their repairs had succeeded in bringing the automobile's repairs up to standard.)

These new testing facilities would not be able to operate except by charging very high fees or by virtue of increased state taxes as substantial income will be required to support the facilities and the manpower needed to test vehicles on a schedule that would be quick and convenient to motorists.

Many service station dealers today derive fees from performing inspection services and provide convenient one-stop service for inspections and repairs to those motorists who desire it. Of course, if a motorist prefers to have his car repaired at a garage or service station other than the one which conducts the test, he is now free to do so.

Under the proposed system, this convenience to the motorist would be destroyed. Motorists would be forced to go to one place for a test

and if repairs were needed, to go to another location to obtain repair work, and then return again to the testing facility. Coupled with this of course is the discrimination in the bill against many, many independent service station dealers who would be deprived of a much needed source of income.

Today service station dealers are trying to remain in business in the face of severe price wars, and motorists are increasingly dissatisfied with the inconvenience of repairing automobiles. Section 501 (a) (2) of Title V would aggravate these problems. To rectify these weaknesses of the present bill, I would suggest that the bill be amended by deleting that part of Section 501 (a) (2) that begins with the words "No motor vehicle inspector" and continues to the end of this subsection. In lieu thereof, you might wish to insert a provision stating that "Each state shall institute an audit and inspection program to protect the public from any misconduct by licensed inspectors."

Very truly yours,

C. A. Walsh, Jr.
Vice President Marketing
Atlantic Richfield Company

Georgia Association of Petroleum Retailers, Inc.

833 First National Bank Building

P. O. BOX 639 373-0605 DECATUR, GA. 30031

GAPR

JACK W HOUSTON, EXECUTIVE SECRETARY

M. F. BAILEY - ROME - PRESIDENT
MURRAY ANDERSON - WAYCROSS - FIRST VICE-PRESIDENT
W. DAVIS BARRON - ATLANTA - SECOND VICE-PRESIDENT
EARL C. KEEBLE - LAGRANGE - THIRD VICE-PRESIDENT
LEON F. MIMS - WAYNESBORO - TREASURER

June 23, 1971

The Honorable Warren G. Magnuson
Chairman, Senate Commerce Committee
Senate Office Building
Washington, D. C. 20510

Dear Senator Magnuson:

The attached resolution pertains to certain language contained in S 976 which we oppose.

We urge your serious consideration of our views and of our request in handling this proposed legislation.

Respectfully,

Jack W. Houston
Executive Secretary

JWH/cs
Encl.
cc: Commerce Committee Members
cc: Georgia's Congressional Delegation
cc: GAPR Board of Directors

1978

RESOLUTION

WHEREAS, Senate Bill 976, a bill to amend the National Traffic and Motor Vehicle Safety Act of 1966, provides under Title V, Section 501 in part as follows: "No motor vehicle inspector may be certified by any state if he owns or receives any benefits in or from a business or enterprise engaged in the repair or sale of motor vehicles, automotive repair parts or accessories;" and

WHEREAS, almost two thousand small businessmen of Georgia including more than five hundred gasoline and automotive service stations have invested substantial sums in equipment to meet minimum requirements to become an "approved inspection station" under Georgia's Vehicle Inspection Law; and

WHEREAS, adequate safeguards have been provided for in Georgia Law which may be strengthened as needed from time to time to protect the motorists; and

WHEREAS, the best interest of the tax paying motorists is served by the preservation of the free enterprise system of this State and Nation; and

WHEREAS, there is substantial value to motorists in the convenience provided under Georgia's Vehicle Inspection Law by the number of locations within easy access including the freedom "to select" their choice of an inspection station within their community; and

WHEREAS, a governmentally operated vehicle inspection facility would cost the tax payers an enormous sum for the initial facilities and equipment plus a continuing additional cost to many taxpayers for time and travel to and from a few scattered inspection stations; and

WHEREAS, passage of Senate Bill 976 as now worded would bring substantial economic harm to Georgia motorists and those who are presently "approved" as Vehicle Inspection Stations, now therefore

BE IT RESOLVED by this Board of Directors of the Nation's largest state oil industry trade association, THE GEORGIA ASSOCIATION OF PETROLEUM RETAILERS, with a membership of almost 3,000 small business gasoline and automotive service station operator members, that we respectfully request that that portion of aforementioned Title V- Section 501 of Senate Bill 976 and any other portions related thereto be removed from said proposed law so as to reserve to the sovereign State of Georgia its right to operate a vehicle inspection program in accordance with the will of the people; and

IT IS ORDERED that a copy of this Resolution be immediately transmitted to the members of the United States Senate Committee on Commerce and to each of Georgia's Congressional Delegation.

Adopted this 15th day of June, 1971.

(Seal) M. F. Bailey
M. F. Bailey,
President

Corporate Seal

(Seal) Jack W. Houston
Jack W. Houston,
Executive Secretary

GEORGIA ASSOCIATION OF PETROLEUM RETAILERS, INC.
P. O. Box 639 Decatur, Georgia 30031

Telephone: 404 / 373-0605
377-3648

BLOOMFIELD HILLS, MICH., *June 30, 1971.*

CHEVROLET MOTOR DIVISION,
GENERAL MOTORS CORP.,
Detroit, Mich.

Attention: Customer Relations.

GENTLEMEN: Ironically, on the very same day on which the enclosed item appeared in the Detroit Free Press Action Line, an almost identical incident happened at our house—only my car is a new Chevrolet—a 1971 Chevelle Malibu, purchased from Matthews-Hargreaves in Royal Oak on April 30. Our sixteen year old son closed the door on the driver side in "lock" position, but failing to slam it hard enough to make it catch completely he nudged it with his hip and put a depression in the door just in front of the door handle.

I find this absolutely appalling—first of all, the very nature of the mishap! To be able to so easily dent the body of the car (incidentally, the hip didn't even bruise!)—what feeling of safety can we possibly have riding in it? Then, the cost of repair as shown by enclosed estimates of $39.12 from Matthews-Hargreaves and $40.16 from Mike Savoie seems ridiculous, when, as in the case of the Buick, the paint isn't scratched nor does it show anything but a rounded depression with no sharp creases.

Have purchased nothing but Chevrolets since 1941, I find it hard to believe that this new model is going to be so fragile—and expensive. For our $3300.00 and some odd dollars, I am beginning to wonder *what* I got!

Thank you for whatever help you may be in this incident.

Very truly yours,

ALICE M. ALLAR.

Enclosures.

When my mom's new Buick Skylark was only 10 days old, she put a four-inch dent in the door. You won't believe how. She had her hands full of packages, and slammed the door shut with her rear end. She only weighs 180 pounds, and the dealer refuses to believe that's how she did it.—S.F., Westland.

Mom can forget body shop bill for $36. Harold Dietrick Buick in Wayne agreed to pay tab even though it said "nothing like this has ever happened." Sales manager Lee Bender couldn't believe dent was caused by mom's derriere, said "she must've run into the garage." Reason paint wasn't scratched, he explained, was because "that's very tough paint." Insurance Institute for Highway Safety reports that a side crash at 10 mph would cause $174 worth of damage to a Buick Skylark. Be glad mom didn't back into the front end. Bill for front end damage at 10 mph would be $354.

MATTHEWS-HARGREAVES CHEVROLET CO.

1616 S. MAIN • WOODWARD AT 10 MILE
ROYAL OAK, MICHIGAN 48067
PHONE 398-8800

ESTIMATE OF REPAIRS
X—MEANS REPAIR
NUMBER—MEANS REPLACE

Date 6-24-71 Our Number

Owner Mrs. A. M. Allan

Make of Car Chevelle Year 71 Model 2 Dr Ht Style

Serial Number Motor Number License Number Mileage

	LABOR	PARTS	NET
Wheel			
Tire			
Hubcap			
Front Suspension			
Frame			
Front Bumper			
Front Bumper Guards			
Front Gravel Pan			
Core			
Rad Support			
Fan			
Rad. Baffles			
Rad. Grille			
Headlamp			
Parking Lamp			
Horn			
Hood			
Fenders			
Cowl			
Quarter Panels			
Tail Lamp			
Rocker Panel			

	LABOR	PARTS	NET
Pillar Post			
X Doors	20.00		16.00
Rear Lid			
Rear Body Panel			
Rear Floor Panel			
Rear Bumper			
Rear Bumper Guards			
Rear Gravel Pan			
GROSS PARTS			
% DISCOUNT			
NET PARTS		16.00	
MISC. MATERIAL		3.00	
SUBLET			
STATE TAX		.17	
TOTAL LABOR		20.00	
GRAND TOTAL		39.17	

39.17

THIS IS NOT AN AUTHORIZATION FOR REPAIRS

1981

Chevrolet

MIKE SAVOIE CHEVROLET, Inc.
1900 W. Maple - 1 Mile East of Woodward Ave.
Telephone MI 4-2735
TROY, MICHIGAN

Chevrolet

BODY AND FENDER REPAIRS • EXPERT REFINISHING

NAME Alice Collar
ADDRESS 5096 Lahring
Bloomfield

DATE 6/25/71
PHONE
DATE WANTED

YEAR-MODEL-COLOR	MAKE OF CAR	BODY TYPE	LICENSE NO.	SERIAL NO.	MOTOR NO.	MILEAGE
71	Mb Ch		JBM 551			

REPAIR	REPLACE		LABOR		PARTS AND MATERIALS		SUBLET WORK	
✓		Left fender	20	00				
		Refinish left door	13	00				
		Material					4	00
			33	00			4	00
		TOTALS						

LABOR	33	00
PARTS AND MATERIALS		
SUBLET WORK	4	00
TAX		16
GRAND TOTAL	41	16

THIS ESTIMATE IS BASED ON OUR INSPECTION AND DOES NOT COVER ADDITIONAL PARTS OR LABOR WHICH MAY BE REQUIRED AFTER THE WORK HAS BEEN STARTED. AFTER THE WORK HAS STARTED, WORN OR DAMAGED PARTS WHICH ARE NOT EVIDENT ON FIRST INSPECTION MAY BE DISCOVERED. NATURALLY THIS ESTIMATE CANNOT COVER SUCH CONTINGENCIES. PARTS PRICES SUBJECT TO CHANGE WITHOUT NOTICE. THIS ESTIMATE IS FOR IMMEDIATE ACCEPTANCE.

THIS WORK AUTHORIZED BY _____

ESTIMATE SHEET AND REPAIR ORDER

FORM SA-87 THE REYNOLDS & REYNOLDS CO., CLEVELAND, OHIO LITHO IN U.S.A.

OMARK INDUSTRIES

CORPORATE OFFICES

2100 S. E. MILPORT ROAD, PORTLAND, OREGON 97222 TELEPHONE: 503/654-6631

June 8, 1971

Honorable Warren G. Magnuson
Chairman, Committee on Commerce
United States Senate
Washington D. C.

My dear Senator Magnuson: Reference: S.976

We are most interested in all activities that will promote and improve the safety of the increasing millions of people using our roads and highways. As concerned citizens, we are also most interested and concerned in these safety problems as well as in the costly methods proposed to solve some of the minor aspects of the overall problem.

Omark Industries, Inc. has developed and thoroughly tested a simple, three-piece, all metal, energy absorbing fastener that connects the bumper to the car frame. This unique design gives the car manufacturer a great deal of flexibility in the selection of the fastener size, cost, capacity, mounting arrangements, number used, and structure design. These small units are also relatively insensitive to a wide range of climate and road conditions. The Omark unit absorbs energy during impact at force levels that are predictable and uniform so that deceleration forces on the car and its critical system can be held to safe limits.

These units can be supplied now in large production quantities by my company on short notice.

Our tests have been conducted in our own laboratories as well as at the Automotive Research Associates in San Antonio, Texas. Using a special front bumper and mounting brackets with two Omark Energy Absorbing units, a 4500 pound car has been impacted 24 times into a standard S.A.E. barrier at speeds up to 12 miles per hour. The vehicles' sheet metal and safety systems were always protected and always drivable after impacts. A film of these tests is available.

. . . . . .

During the past six months, Omark employees have personally presented this bumper Energy Absorption concept to the principal automobile manufacturers in the United States, Europe, Japan and Australia. Most have expressed real interest in the concept because simple metal parts are used which are low in cost and size yet are highly efficient (95%) in their ability to absorb energy.

Concern has been expressed by each manufacturer, however, because of the current Department of Transportation bumper standard which specifies that 1974 model cars shall be tested front and rear with a total of 16 pendulum impacts and that no adjustment or replacement of parts may be made between impacts.

We feel this recycling requirement is not realistic with the nature of low speed (5 mph) impacts in real life. Published data indicate that the average car in the United States may be involved in such an accident about once in every 14 years. Such a requirement with the attendant higher costs is not necessary and creates an exorbitant premium to the U.S. public who buy in the neighborhood of 10,000,000 new cars each year.

The interests of the car owner and operators, the car manufacturers, and the car insuring companies are then best served by that type of Energy Absorber that will provide reliable safety to the car and its critical systems during the normal life of the car and provide this safety at the lowest cost.

By replacing our unit between impacts in test or in service, the energy absorbing element of the system will be restored to prime condition and give the service station operator the opportunity to inspect critical systems and to make or recommend repair of any needing attention. The car operator could have high exposure to failure of critical systems impaired by impacts occurring with or without his knowledge.

The Omark replacement-type Energy Absorber will provide real economic benefits to the car owner at the time of initial purchase. Our best estimates of the cost to the vehicle owner of comparable recycling and replacement units indicated 10 to 1 advantage of the Omark type over a competitive recycling one.

We have been advised by a large domestic car manufacturer that our style Energy Absorber can be mounted both on the front and rear with less costly support structures than the other types.

In summary, the current Omark system will provide the required protection to critical systems and mechanisms, the economic benefits are huge, and the Omark system is now designed and ready for providing protection a speeds higher than 5 mph.

In order to take advantage of the inherent benefits of the Omark system, realistic testing procedures of front and rear barrier impacts should be adopte with provisions permitting the replacement of consumed energy absorbing elements between impacts.

We have attached drawings, brochures and an actual sample of an Omark Energy Absorption unit for your examination. Two of these units will stop a 4000 pound car impacting a barrier at 5 mph in approximately 4".

We feel the American public should be given the opportunity to enjoy the technical and cost benefits of this system by a provision in S.976 requiring front and rear barrier impact tests on all new cars beginning with the 1973 models, and with the further provision that the energy absorption element may be replaced after each impact.

Sincerely yours,

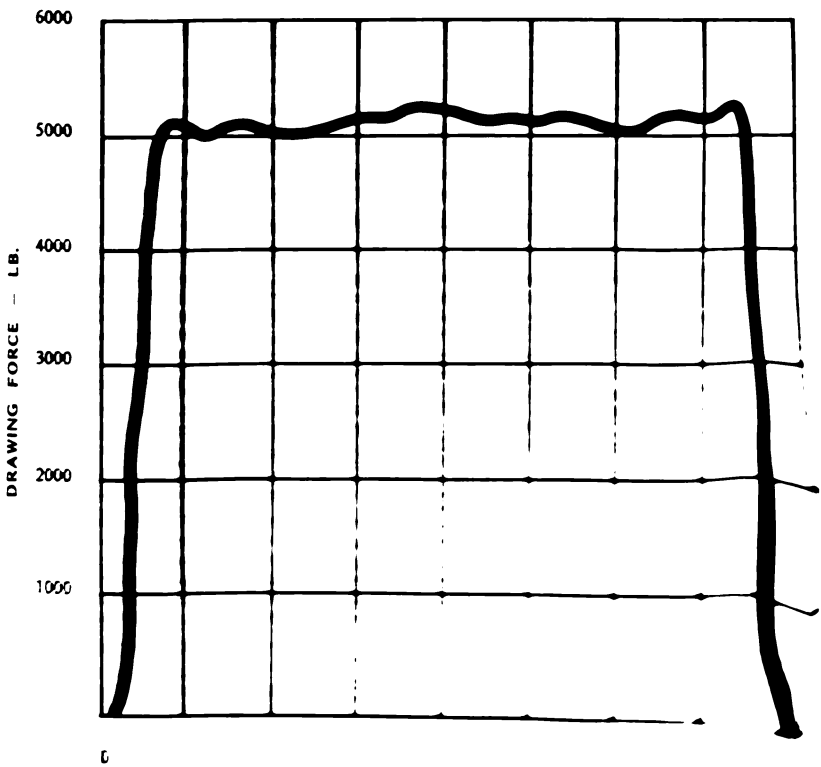
Austin F. Leach
Vice President-Corporate Projects

hf

Encls.

OMARK INDUSTRIES

ENERGY ABSORBERS



DRAW [illegible]

A [illegible]
mate[illegible]

We'd like to introduce you to our energy absorbers.* We believe they are quite an achievement and you may agree. They absorb energy – colossal amounts of it – simply and efficiently. They have a variety of application possibilities where energy must be dissipated reliably in a small space to prevent or reduce injury or damage. They are also force-limiting fasteners that allow you to accurately apply tension.

What are they called?

Well, we don't have a fancy name for them – but they **work**.

How do they work?

On the wire-drawing principle. A threaded high-strength-steel rod is pulled through a die that permanently reduces the rod's diameter. The plastic flow of metal during drawing absorbs and dissipates energy. The process is analogous to squeezing toothpaste from a tube.

Is this technology new to Omark?

Not at all. We are very comfortable with the plastic-flow concept. Omark has been using it for years in the manufacture of powder-actuated construction tools and rivets.

How efficient are the absorbers?

Approximately 95 per cent. A hydraulic shock absorber subjected to the same maximum load as an Omark EA travels 7 1/2 inches to absorb the energy that ours absorbs in 4 inches.

But that's obviously a constant-force absorber. You may ask: "Can you provide variable-force types?"

Certainly. We can produce virtually any force-deflection curve required.

Has the Omark EA been proven effective?

Yes. Our own engineers and an independent laboratory, Automotive Research Associates, tested the absorbers in automobile-barrier crashes and found them extremely effective at speeds up to 12 miles an hour. Two of them employed in a bumper stopped a 4,000-pound vehicle in a 10 m.p.h. barrier crash. There was no damage to the car.

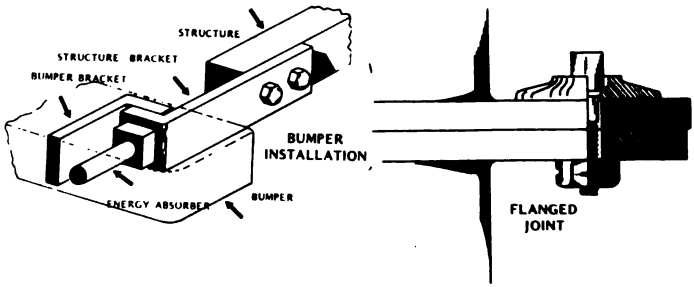
Were these large absorbers?

No. The ones used in the Automotive Research Associates' tests were 7/16-inch diameter and 8-1/4 inches long. They weighed 1 pound each. Newer designs have reduced their weight to 8 ounces apiece. You can't buy an equivalent energy-absorbing device lighter or smaller than ours. But we can make them in any size.

Are they expensive?

No. The small amount of steel required ensures low material cost. The simple design permits the use of high-speed-precision-manufacturing techniques with little waste. We estimate our devices have a 5-to-1 cost advantage over functionally comparable absorbers. Additionally, their small size and fastening capability can simplify the design of structures in which they are installed. This greatly contributes to reducing the cost of the structure.

* PATENTS PENDING



Are they reliable? Is performance predictable?

They are extremely reliable. The characteristics of steel, which are well known, allow us to determine the strength of the rod. The thread will support twice the rod's drawing force and the die is substantially stronger than the rod. Absorber-corrosion resistance is easily maintained through plating. They can also be made of stainless steel. Our tests show dynamic and static drawing forces are highly predictable.

Are the absorbers difficult to install?

No. Their bolt-like configuration makes them verv easy to install. In most cases, a standard wrench is the only tool needed. They can be used for blind-fastening applications, too.

How are they inspected?

Visual inspection reveals when the rods are drawn. Replacement or adjustment is then necessary. If the rod is partially drawn, adjustment is effected by turning the nut which tightens the absorber for reuse. These steps constitute the only maintenance.

How can the absorbers be used?

We've barely scratched the surface and don't know all the answers. But we believe the most promising applications are in bumpers, human safety systems and force-limiting fastening.

The Omark EA is a proven method of reducing automobile damage in low-speed collisions. We see excellent possibilities for the absorber as a railcar-coupler backup system, a truck-trailer underride protection unit, a cargo-protection system for vehicles, railcars and shipping docks and a cushion-landing mechanism for air-dropped supplies.

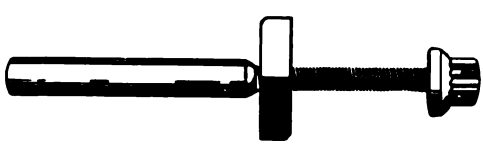
The Omark EA is ideally suited for use as automobile seat-belt anchors, highway safety-barrier and breakaway sign post fasteners, collapsible mountings for automobile dashboards and collapsible steering columns. We believe the EA could be effectively utilized as overloading indicators, a non-destructive testing device, an inexpensive calibration device for tensile-testing machines, a backup system for aircraft landing gear and cables used to stop planes after landing, elevator safety units, rocket hold-down bolts, structural fasteners for explosion- and hurricane-proof buildings, and spacecraft landing-gear components.

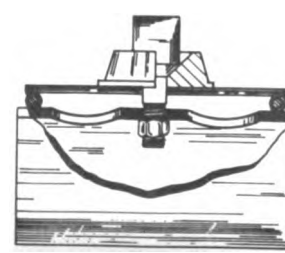
The absorbers, if used as force-limiting fasteners, replace torqued bolts. They allow the user to accurately apply tension. They can be employed to fasten compressors, engine heads, steam lines, turbines, heavy equipment in power plants, and flanges. They also can provide acceleration and deceleration control in ship launching, vessel docking and cable rigging.

We know we've overlooked many applications and invite your thoughts, comments or suggestions. Perhaps you have an application we can evaluate. Omark EA design equations include the effect on drawing force of yield strength, rod and die dimensions and friction factors. The equations have been programmed for our computer and designs can be swiftly prepared for all applications.

We are ready to help in a hurry.

Write Corporate Projects, Omark Industries, 2100 SE Milport Road, Portland, Ore. 97222 or telephone 503-654-6531, ext. 219.





PRESSURE RELIEF

** The force–deflection curve shown on the cover is produced by the energy absorber above, shown in actual size.*

1988

WHAT WE MAKE:

Cutting chain and accessories for power saws

Wood harvesting and processing equipment

Hydraulically operated equipment for materials handling

Aerospace tools and fasteners

Machine tools

Stud welding systems

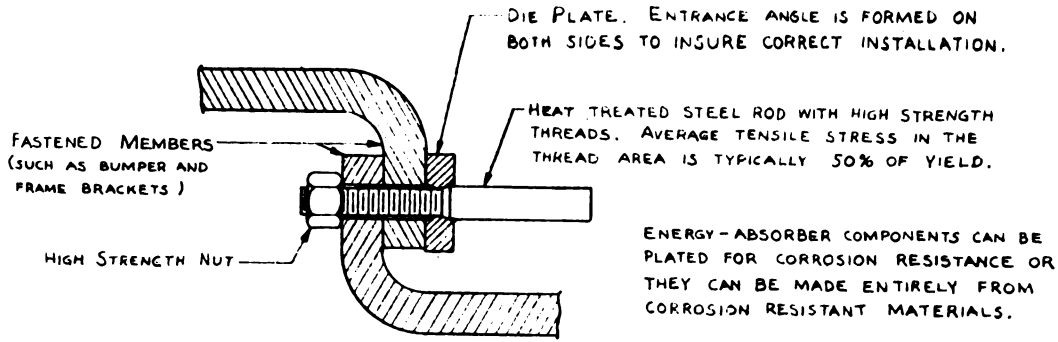
Construction fastener systems

Masonry and concrete cutting equipment

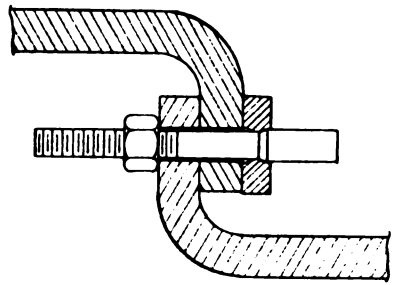
Air control systems

Sporting arms, small arms ammunition and ammunition primers

OMARK INDUSTRIES



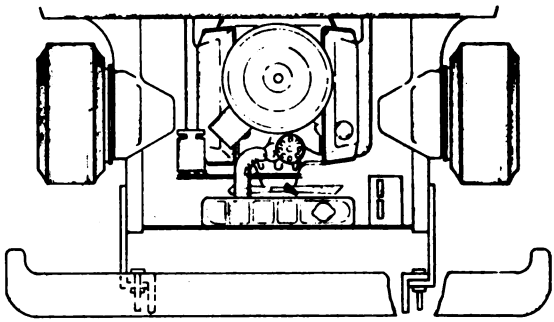
AS INSTALLED



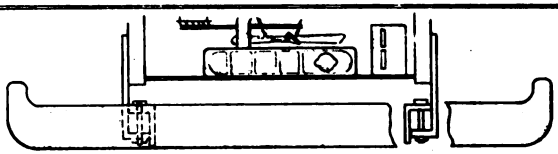
AS ADJUSTED AFTER INITIAL IMPACT

PATENT PENDING

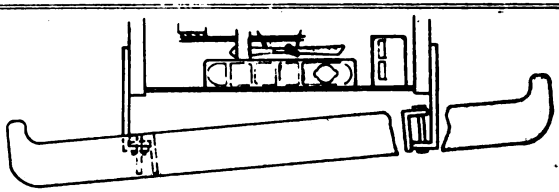
OMARK INDUSTRIES, INC.	
ENERGY-ABSORBING FASTENERS	
DRAWING NO. 81-4154-102	
NOT TO SCALE	3-30-71
GARY SANDBERG	



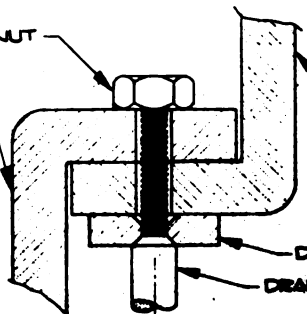
AS INSTALLED



HEAD ON IMPACT

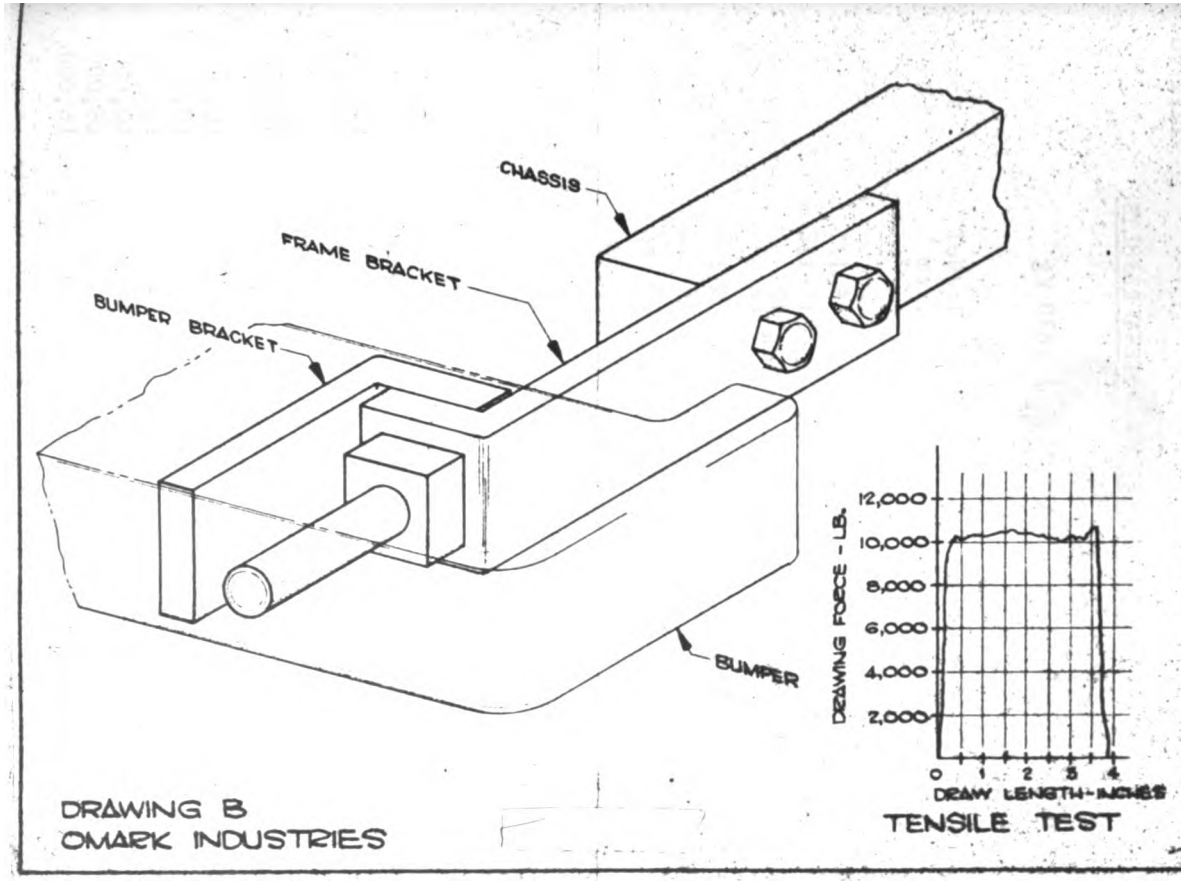


ANGLED IMPACT



DRAWING A
OMARK IND.

INSTALLATION DETAIL.


CHASSIS
FRAME BRACKET
BUMPER BRACKET
BUMPER
DRAWING FORCE - LB.
12,000
10,000
8,000
6,000
4,000
2,000
0
1
2
3
4
DRAW LENGTH-INCHES
TENSILE TEST
DRAWING B
OMARK INDUSTRIES

11/2/70

SUMMARY OF CRASH TEST RESULTS

Weight of vehicle = 4030 lbs. / 1830 Kg

	Test	Location*	Speed Kph	Travel cm	Force Kg
Metric Units	1	P	6-1/2	2	4540
	2	P	9-1/2	6-1/2	4540
	3	P	15-1/2	16-1/2	4540
	4	P	12	12	4540
	5	P	17	10	7260
	6	P	10-1/2	8-1/2	2720-6350
	7	P	10-1/2	6-1/2	4540
	8	S	9	6-1/2	4540
	9	S	6	2	4540
	10	S	7	2-1/2	4536
	11	S	14	9	7260
	12	S	19-1/2	14	7260
			mph	In.	Lb.
English Units	1	P	4	3/4	10,000
	2	P	6	2-1/2	10,000
	3	P	9-1/2	6-1/2	10,000
	4	P	7-1/2	4-3/4	10,000
	5	P	10-1/2	4	16,000
	6	P	6-1/2	3-1/4	6,000-14,000
	7	P	6-1/2	2-1/2	10,000
	8	S	5-1/2	2-1/2	10,000
	9	S	3-3/4	3/4	10,000
	10	S	4-1/3	1	10,000
	11	S	8-3/4	3-1/2	16,000
	12	S	12	5-1/2	16,000

* P = Portland, Oregon

S = San Antonio, Texas

1993

OMARK CONSOLIDATED BALANCE SHEET

ASSETS

	JUNE 30 1970	1969
CURRENT ASSETS:		
Cash	$ 3,587,854	$ 2,822,757
Marketable securities—at cost which approximates market	87,070	792,900
Notes receivable	227,667	284,634
Accounts receivable (less allowance for doubtful accounts: 1970—$586,384; 1969—$671,488)	17,137,962	15,310,738
Inventories (Note 2)	29,363,121	23,681,894
Prepaid expenses	879,017	1,113,481
Total current assets	51,282,691	44,006,404
INVESTMENTS AND OTHER ASSETS:		
Investment in associated company	356,506	356,506
Long-term notes receivable (less current portion: 1970—$227,667; 1969—$284,634)	330,027	201,303
Future tax benefits (Note 3)	1,480,000	—
Other—at cost	246,860	63,807
Total investments and other assets	2,413,393	621,616
PROPERTY AND EQUIPMENT—At Cost:		
Land	2,100,633	2,093,785
Buildings and improvements	11,736,743	10,345,966
Machinery and equipment	21,218,996	18,982,337
Plant and equipment under construction	1,108,469	826,124
Total	36,164,841	32,248,212
Less accumulated depreciation	11,596,265	9,478,083
Property—Net	24,568,576	22,770,129
INTANGIBLES—Cost Less Amortization:		
Patents, trademarks and formulae	4,480,914	4,508,282
Excess of purchase price over values ascribed to assets of businesses purchased	1,427,739	1,760,204
Intangibles—Net	5,836,653	6,268,486
TOTAL	$84,101,313	$73,666,635

LIABILITIES AND SHAREHOLDERS' EQUITY

	JUNE 30 1970	1969
CURRENT LIABILITIES:		
Notes payable	$11,551,000	$ 4,235,430
Current portion of long-term debt	590,419	638,630
Accounts payable and accrued liabilities	6,838,965	4,802,049
Profit-sharing contribution (Note 4)	1,217,882	1,824,218
Payroll and payroll taxes	2,219,169	2,719,151
Income taxes (Note 3)	1,423,918	2,918,857
Total current liabilities	23,042,153	17,138,335
LONG-TERM DEBT—Less portion above (Note 5):		
Term loan agreement	12,000,000	12,000,000
Contract payable	1,000,000	1,500,000
Other	1,445,936	1,554,860
Total long-term debt	14,445,936	15,054,860
DEFERRED INCOME TAXES (Note 3)	1,441,769	1,429,000
SHAREHOLDERS' EQUITY:		
Common stock—without par value: 1970—authorized 8,000,000 shares; issued 4,038,603 shares (Note 6)	15,212,974	11,067,446
Capital surplus	6,331,247	6,331,247
Retained earnings (Note 5)	24,478,126	22,645,747
Total	46,022,347	40,044,440
Less cost of common stock held in treasury—50,000 shares	850,892	—
Total shareholders' equity	45,171,455	40,044,440
TOTAL	$84,101,313	$73,666,635

See Notes to Financial Statements.

OMARK CONSOLIDATED EARNINGS AND RETAINED EARNINGS

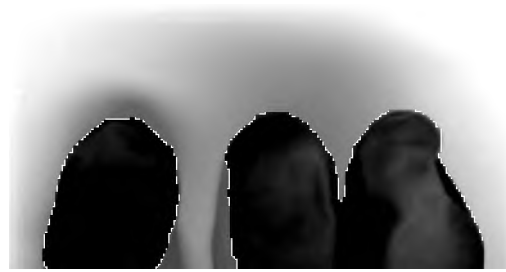
	YEARS ENDED JUNE 30	
	1970	1969
NET SALES	$90,078,199	$79 444,17[illegible]
Other income less sundry income deductions	210,376	331 56[illegible]
Total	90,288,575	79,775,73[illegible]
LESS:		
Cost of sales	53,088,013	43 000 41[illegible]
Selling, general and administrative expenses	26,174,388	21 780 663
Provision for profit-sharing (Note 4)	1,237,591	1 830 00[illegible]
Interest expense	1,832,870	1,226 722
Provision for income taxes (Note 3):		
Federal	1,968,000	3 558 000
State and foreign	1,223,000	1 392 000
Deferred—Net	(1,201,000)	125 000
Total	84,322,862	72,912 2[illegible]
NET EARNINGS	5,965,713	6,863,529
RETAINED EARNINGS AT BEGINNING OF YEAR	22,645,747	18,830 035
	28,611,460	25 693 564
DEDUCT:		
Stock dividends, 4% each year (shares issued, 1970—153,109 and 1969—121,906; at record date market value)	4,133,334	3 047,817
RETAINED EARNINGS AT END OF YEAR (Note 5)	$24,478,126	$22 645 747
Net earnings per share based on average shares outstanding after giving effect to August 7, 1970 stock dividend	$1.43	$1 65

See Notes to Financial Statements.

OMARK CONSOLIDATED SOURCE AND APPLICATION OF FUNDS

	YEARS ENDED JUNE 30	
	1970	1969
CASH AND MARKETABLE SECURITIES—beginning of year	$ 3,613,657	[illegible]
SOURCE OF FUNDS		
Net earnings	5,967,717	[illegible]
Depreciation expense—Generally straight-line	2,759,183	[illegible]
Amortization of intangibles	803,881	[illegible]
Exercise of stock options	64,000	[illegible]
Increase in long-term debt	—	[illegible]
Increase in deferred income taxes	12,764	[illegible]
Increase in notes payable	7,316,450	—
Other sources	257,141	[illegible]
Total	17,184,137	[illegible]
APPLICATION OF FUNDS		
Purchases of other businesses—less cash and other assets acquired	513,010	[illegible]
Increase in notes and accounts receivable	1,800,557	[illegible]
Increase in inventories	5,585,412	[illegible]
Future tax benefits (Note 3)	1,480,000	[illegible]
Plant, property and equipment—net addition	4,463,632	[illegible]
Purchase of intangibles—net	162,932	[illegible]
Reduction of current liabilities other than notes payable	1,412,632	[illegible]
Reduction of long-term debt	608,924	—
Reduction of notes payable	—	[illegible]
Purchase of treasury stock	850,892	
Other applications	239,859	[illegible]
Total	17,124,870	[illegible]
CASH AND MARKETABLE SECURITIES—end of year	$ 3,674,924	[illegible]

See Notes to Financial Statements



NOTES TO FINANCIAL STATEMENTS

1. Principles of Consolidation:

The consolidated financial statements include the accounts of all domestic and foreign subsidiaries of Omark. All significant intercompany transactions have been eliminated in these statements.

Assets and liabilities of the subsidiaries, other than U.S. and Canadian subsidiaries, included in the consolidated balance sheet at June 30, 1970 are: current assets, $6,289,379; property—net, $2,625,201; current liabilities, $2,647,355; and long-term debt, $93,780. The Company conducts a substantial portion of its international operations through U.S. (including Puerto Rican—see Note 3) and Canadian subsidiaries. The Company's equity in the net earnings of other than U.S. and Canadian subsidiaries was $171,000 and $357,000 for the years ended June 30, 1970 and 1969, respectively.

2. Inventories:

Inventories are valued at the lower of cost (first-in, first-out basis) or market. Major classes of inventory at June 30, 1970 and 1969 were as follows:

	1970	1969
Finished goods ..	$15,317,351	$ 9,416,551
Work in process .	9,496,849	10,765,263
Raw materials ...	4,548,921	3,500,080
	$29,363,121	$23,681,894

3. Income Taxes:

The statement of consolidated earnings and retained earnings includes the net earnings of a wholly-owned subsidiary operating in Puerto Rico. The manufacturing income is not subject to U.S. income tax and is exempt from Puerto Rican income tax for a ten-year period ending in May 1975. Under certain circumstances an additional ten-year exemption period may be granted. This exemption from Puerto Rican income tax, at an effective rate approximating 35%, reduced the provisions for income taxes by approximately $1,550,000 and $1,000,000 for the years ended June 30, 1970 and 1969, respectively. Any dividend paid to the parent by this or certain foreign subsidiaries would be subject to U.S. income taxes. It is anticipated that earnings of these subsidiaries will be reinvested in their operations and no dividends are contemplated.

By stipulated decision entered December 16, 1969 by the Tax Court of the United States, income tax deficiencies due from the Company and certain of its subsidiaries for fiscal years ended June 30, 1961, 1962, and 1963 were determined to aggregate $245,000, compared with asserted tax deficiencies and penalties amounting to $2,481,802, both amounts exclusive of interest. Now pending are asserted deficiencies and penalties for the years 1964, 1965, and 1966 in the approximate amount of $5,900,000, exclusive of interest. The Company and its subsidiaries have provided for deferred income taxes in the amount of $934,000 available for the 1964-66 asserted liabilities. In the opinion of Baker & McKenzie, tax counsel for the Company, this amount is adequate to provide for the liabilities that may ultimately be determined.

The 1970 provision for deferred income taxes consists of a credit of $1,480,000 for the future tax benefit arising from 1970 tax loss carryforwards of certain subsidiaries and from expenses not currently deductible for tax purposes, less a charge of $279,000 ($125,000 in 1969) for the use of accelerated depreciation for income tax purposes.

4. Profit-Sharing and Bonus Plans:

Under provisions of its profit-sharing plan, the Company is required to contribute each year generally an amount equal to the lesser of 15% of consolidated income before profit sharing and income taxes or 15% of the total eligible compensation. However, no contribution is required in any year in which the consolidated income described above is less than 8% of consolidated net sales.

The Company has a cash bonus plan for key employees based upon the amount by which consolidated income, before income taxes, exceeds 18% of consolidated shareholders' equity at the close of the preceding year. The aggregate amount payable is computed on a sliding scale of from 7% to 10% of such excess.

5. Long-Term Debt:

Under a Term Loan Agreement with a bank, dated December 31, 1968, the Company bor-

rowed $12,000,000 [illegible] ments of $2,400,000 [illegible] 31, 1971. The [illegible] at June 30, 1972 [illegible] annum greater than the [illegible] rate for short term commercial [illegible] bank in effect on the [illegible] calendar quarter. The [illegible] restrictions regarding the [illegible] dividends and [illegible] stock. As of June 30, 1972, [illegible] tained earnings was [illegible] purposes.

The contract [illegible] and $500,000 annual [illegible] at 4% [illegible] 8% or less [illegible] which amount [illegible] ing June 30, 1972.

6. Common Stock

On June 16, 1972, the [illegible] declared a four percent [illegible] able August [illegible] July 6, 1972 [illegible] in lieu of fractional shares.

As June 5, 1972 [illegible] shares of the [illegible] served under [illegible] and at the date of [illegible] the reserved shares [illegible]

ACCOUNTANTS' OPINION

To the Shareholders [illegible] three [illegible]

We have examined the [illegible] balance sheet [illegible] and the [illegible] and the related [illegible] balance sheet [illegible] and the [illegible] for the year [illegible] for we have made [illegible] shall [illegible] accounting [illegible] accounting principles [illegible] prior year.

NOTES TO FINANCIAL STATEMENTS

1. Principles of Consolidation:

The consolidated financial statements include the accounts of all domestic and foreign subsidiaries of Omark. All significant intercompany transactions have been eliminated in these statements.

Assets and liabilities of the subsidiaries, other than U.S. and Canadian subsidiaries, included in the consolidated balance sheet at June 30, 1970 are: current assets, $6,289,379; property—net, $2,625,201; current liabilities, $2,647,355; and long-term debt, $93,780. The Company conducts a substantial portion of its international operations through U.S. (including Puerto Rican—see Note 3) and Canadian subsidiaries. The Company's equity in the net earnings of other than U.S. and Canadian subsidiaries was $171,000 and $357,000 for the years ended June 30, 1970 and 1969, respectively.

2. Inventories:

Inventories are valued at the lower of cost (first-in, first-out basis) or market. Major classes of inventory at June 30, 1970 and 1969 were as follows:

	1970	1969
Finished goods ..	$15,317,351	$ 9,416,551
Work in process .	9,496,849	10,765,263
Raw materials ...	4,548,921	3,500,080
	$29,363,121	$23,681,894

3. Income Taxes:

The statement of consolidated earnings and retained earnings includes the net earnings of a wholly-owned subsidiary operating in Puerto Rico. The manufacturing income is not subject to U.S. income tax and is exempt from Puerto Rican income tax for a ten-year period ending in May 1975. Under certain circumstances an additional ten-year exemption period may be granted. This exemption from Puerto Rican income tax, at an effective rate approximating 35%, reduced the provisions for income taxes by approximately $1,550,000 and $1,000,000 for the years ended June 30, 1970 and 1969, respectively. Any dividend paid to the parent by this or certain foreign subsidiaries would be subject to U.S. income taxes. It is anticipated that earnings of these subsidiaries will be reinvested in their operations and no dividends are contemplated.

By stipulated decision entered December 16, 1969 by the Tax Court of the United States, income tax deficiencies due from the Company and certain of its subsidiaries for fiscal years ended June 30, 1961, 1962, and 1963 were determined to aggregate $245,000, compared with asserted tax deficiencies and penalties amounting to $2,481,802, both amounts exclusive of interest. Now pending are asserted deficiencies and penalties for the years 1964, 1965, and 1966 in the approximate amount of $5,900,000, exclusive of interest. The Company and its subsidiaries have provided for deferred income taxes in the amount of $934,000 available for the 1964-66 asserted liabilities. In the opinion of Baker & McKenzie, tax counsel for the Company, this amount is adequate to provide for the liabilities that may ultimately be determined.

The 1970 provision for deferred income taxes consists of a credit of $1,480,000 for the future tax benefit arising from 1970 tax loss carryforwards of certain subsidiaries and from expenses not currently deductible for tax purposes, less a charge of $279,000 ($125,000 in 1969) for the use of accelerated depreciation for income tax purposes.

4. Profit-Sharing and Bonus Plans:

Under provisions of its profit-sharing plan, the Company is required to contribute each year generally an amount equal to the lesser of 15% of consolidated income before profit sharing and income taxes or 15% of the total eligible compensation. However, no contribution is required in any year in which the consolidated income described above is less than 8% of consolidated net sales.

The Company has a cash bonus plan for key employees based upon the amount by which consolidated income, before income taxes, exceeds 18% of consolidated shareholders' equity at the close of the preceding year. The aggregate amount payable is computed on a sliding scale of from 7% to 10% of such excess.

5. Long-Term Debt:

Under a Term Loan Agreement with a bank, dated December 31, 1968, the Company bor-

rowed $12,000,000 payable in annual installments of $2,400,000 beginning December 31, 1971. The interest rate on the note (8¼% at June 30, 1970) is one-quarter percent per annum greater than the minimum lending rate for short term commercial loans of the bank in effect on the first business day of the calendar quarter. The Agreement contains restrictions regarding the payment of cash dividends and purchase of the Company's stock. As of June 30, 1970, $9,714,233 of retained earnings was unrestricted for these purposes.

The contract is payable $454,000 in 1970 and $500,000 annually thereafter plus interest at 4%. Other long-term debt, with interest of 8% or less, is payable in varying installments which amount to $136,419 for the year ending June 30, 1971.

6. Common Stock:

On June 16, 1970, the Board of Directors declared a four percent stock dividend payable August 7, 1970 to shareholders of record July 8, 1970; cash payments have been made in lieu of fractional shares.

At June 30, 1970, there were 184,550 shares of the Company's common stock reserved under a qualified stock option plan, and as of that date options to purchase all of the reserved shares were outstanding. The plan provides that the option price is the fair value (market price) on the date of grant. From the dates of grant, the options are exercisable after two years and expire at the end of five years.

During 1970, options were exercised for the purchase of 4,678 shares for $69,000 ($14.75 per share) and the market value on the date exercised was $107,594 ($23.00 per share). After giving effect to the four percent stock dividend payable August 7, 1970, there were options outstanding to purchase 191,921 shares for $3,635,766 (from $10.35 to $28.62 per share) of which options to purchase 72,000 shares for $839,148 (from $10.35 to $14.16 per share) were exercisable. No options became initially exercisable during the year.

7. General:

Under a lease expiring in 1987, a subsidiary of the Company is committed to pay an annual rental of $115,000, aggregating $1,945,000, plus property taxes, insurance, and certain maintenance costs. The Company also is committed to pay rentals aggregating $1,000,000 under 53 other leases expiring from 1970 to 1980. For the year ending June 30, 1971, rentals under these 53 leases approximate $340,000.

ACCOUNTANTS' OPINION

To the Shareholders of Omark Industries, Inc.:

We have examined the consolidated balance sheet of Omark Industries, Inc. and its subsidiaries as of June 30, 1970 and the related statements of consolidated earnings and retained earnings and of source and application of funds for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying statements present fairly the financial position of the companies at June 30, 1970 and the results of their operations and the source and application of their funds for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

HASKINS & SELLS

Portland, Oregon
August 21, 1970

OMARK FIVE-YEAR SUMMARY

OPERATIONS (000 omitted):

- Net sales .....
  - By product groups—See note below:
    - Saw chain and accessories .....
    - Hydraulic loaders and cranes .....
    - Stud welding systems .....
    - Construction tools and equipment .....
    - Precision fastening systems .....
    - Tooling and grinding equipment .....
    - Sporting equipment .....
    - Air controls and dental equipment .....
  - Net earnings:
    - Before taxes .....
    - Provision for taxes .....
    - After taxes .....
    - Per share:
      - Before August 7, 1970 stock dividend .....
      - After August 7, 1970 stock dividend .....
  - Depreciation and amortization expense .....

FINANCIAL (000 omitted):

- Total assets .....
- Plant, property and equipment—net .....
- Long-term debt .....
- Total liabilities .....
- Shareholders' equity—ending .....

OTHER STATISTICS:

- Net income as percent of sales .....
- Average number of shares outstanding during year (000 omitted):
  - Before August 7, 1970 stock dividend .....
  - After August 7, 1970 stock dividend .....
- Number of shareholders of record .....
- Return on beginning equity .....
- Book value per share on ending equity .....
- Ratio of ending equity to total liabilities .....
- Number of employees .....

NOTE: Product group net sales of acquired businesses accounted for as purchases are reported in prior years commencing with date of acquisition, whereas net sales of acquisitions accounted for as poolings of interest are restated retroactively to 1966.

2001

YEARS ENDED JUNE 30

1970	1969	1968	[illegible]	[illegible]
$ 90,078	$ [illegible]9,444	$ [illegible]	$ [illegible]	$ [illegible]
30,646	27,942	24,579	[illegible]	[illegible]
11,957	10,528	6,865		
9,947	9,189	8,244	8,389	[illegible]
8,361	6,624	6,781	9,255	[illegible]
16,178	13,714	13,517		
5,386	5,164	6,712	5,528	[illegible]
3,378	3,540	2,716	854	
4,225	2,743			
7,956	11,939	8,941	10,091	[illegible]
1,990	5,075	3,796	4,186	[illegible]
5,966	6,864	5,145	5,905	4,004
1.48	1.71	1.30	1.49	1.03
1.43	1.65	1.25	1.43	[illegible]
3,563	3,219	2,807	1,718	1,472
84,101	73,667	59,440	44,764	[illegible]
24,569	22,770	[illegible]	[illegible]	[illegible]
14,446	15,155	[illegible]	[illegible]	[illegible]
38,930	33,623	[illegible]	[illegible]	[illegible]
45,171	[illegible]	[illegible]	[illegible]	[illegible]
6.6%	[illegible]	[illegible]	[illegible]	[illegible]
4,824	[illegible]	[illegible]	[illegible]	[illegible]
4,181	[illegible]	[illegible]	[illegible]	[illegible]
6,542	[illegible]	[illegible]		
14.9%	[illegible]	[illegible]	[illegible]	[illegible]
11.23	[illegible]	[illegible]	[illegible]	[illegible]
1.16:1	[illegible]		[illegible]	[illegible]
4,277	[illegible]	[illegible]	[illegible]	[illegible]

11/2/70

SUMMARY OF CRASH TEST RESULTS

Weight of vehicle = 4030 lbs. / 1830 Kg

	Test	Location*	Speed Kph	Travel cm	Force Kg
Metric Units	1	P	6-1/2	2	4540
	2	P	9-1/2	6-1/2	4540
	3	P	15-1/2	16-1/2	4540
	4	P	12	12	4540
	5	P	17.	10	7260
	6	P	10-1/2	8-1/2	2720-6350
	7	P	10-1/2	6-1/2	4540
	8	S	9	6-1/2	4540
	9	S	6	2	4540
	10	S	7	2-1/2	4536
	11	S	14	9	7260
	12	S	19-1/2	14	7260
			mph	In.	Lb.
English Units	1	P	4	3/4	10,000
	2	P	6	2-1/2	10,000
	3	P	9-1/2	6-1/2	10,000
	4	P	7-1/2	4-3/4	10,000
	5	P	10-1/2	4	16,000
	6	P	6-1/2	3-1/4	6,000-14,000
	7	P	6-1/2	2-1/2	10,000
	8	S	5-1/2	2-1/2	10,000
	9	S	3-3/4	3/4	10,000
	10	S	4-1/3	1	10,000
	11	S	8-3/4	3-1/2	16,000
	12	S	12	5-1/2	16,000

* P = Portland, Oregon

S = San Antonio, Texas

1993

OMARK CONSOLIDATED BALANCE SHEET

ASSETS

	JUNE 30 1970	1969
CURRENT ASSETS:		
Cash	$ 3,587,854	$ 2,822,757
Marketable securities—at cost which approximates market	87,870	792,900
Notes receivable	227,667	284,634
Accounts receivable (less allowance for doubtful accounts: 1970—$586,384; 1969—$671,488)	17,137,962	15,310,738
Inventories (Note 2)	29,363,121	23,681,894
Prepaid expenses	879,017	1,113,481
Total current assets	51,282,691	44,006,404
INVESTMENTS AND OTHER ASSETS:		
Investment in associated company	356,506	356,506
Long-term notes receivable (less current portion: 1970—$227,667; 1969—$284,634)	330,027	201,303
Future tax benefits (Note 3)	1,480,000	—
Other—at cost	246,860	63,807
Total investments and other assets	2,413,393	621,616
PROPERTY AND EQUIPMENT—At Cost:		
Land	2,108,633	2,093,785
Buildings and improvements	11,736,743	10,345,966
Machinery and equipment	21,218,996	18,982,337
Plant and equipment under construction	1,108,469	826,124
Total	36,164,841	32,248,212
Less accumulated depreciation	11,596,265	9,478,083
Property—Net	24,568,576	22,770,129
INTANGIBLES—Cost Less Amortization:		
Patents, trademarks and formulae	4,408,914	4,508,282
Excess of purchase price over values ascribed to assets of businesses purchased	1,427,739	1,760,204
Intangibles—Net	5,836,653	6,268,486
TOTAL	$84,101,313	$73,666,635

LIABILITIES AND SHAREHOLDERS' EQUITY

	JUNE 30	
	1970	1969
CURRENT LIABILITIES:		
Notes payable	$11,551,000	$ 4,235,430
Current portion of long-term debt	590,419	638,630
Accounts payable and accrued liabilities	6,038,965	4,802,049
Profit-sharing contribution (Note 4)	1,217,002	1,824,218
Payroll and payroll taxes	2,219,169	2,719,151
Income taxes (Note 3)	1,423,918	2,918,857
Total current liabilities	23,042,153	17,138,335
LONG-TERM DEBT—Less portion above (Note 5):		
Term loan agreement	12,000,000	12,000,000
Contract payable	1,000,000	1,500,000
Other	1,445,936	1,554,860
Total long-term debt	14,445,936	15,054,860
DEFERRED INCOME TAXES (Note 3)	1,441,769	1,429,000
SHAREHOLDERS' EQUITY:		
Common stock—without par value: 1970—authorized 8,000,000 shares; issued 4,038,603 shares (Note 6)	15,212,974	11,067,446
Capital surplus	6,331,247	6,331,247
Retained earnings (Note 5)	24,478,126	22,645,747
Total	46,022,347	40,044,440
Less cost of common stock held in treasury—50,000 shares	850,892	—
Total shareholders' equity	45,171,455	40,044,440
TOTAL	$84,101,313	$73,666,635

See Notes to Financial Statements.

OMARK CONSOLIDATED EARNINGS AND RETAINED EARNINGS

	YEARS ENDED JUNE 30	
	1970	1969
NET SALES	$90,078,199	$79,444,371
Other income less sundry income deductions	210,376	331,362
Total	90,288,575	79,775,733
LESS:		
Cost of sales	53,088,013	43,000,459
Selling, general and administrative expenses	26,174,388	21,780,663
Provision for profit-sharing (Note 4)	1,237,591	1,830,[illegible]
Interest expense	1,832,870	1,226,922
Provision for income taxes (Note 3):		
Federal	1,968,000	3,558,000
State and foreign	1,223,000	1,392,000
Deferred—Net	(1,201,000)	125,000
Total	84,322,862	72,912,204
NET EARNINGS	5,965,713	6,863,529
RETAINED EARNINGS AT BEGINNING OF YEAR	22,645,747	18,830,035
	28,611,460	25,693,564
DEDUCT:		
Stock dividends, 4% each year (shares issued, 1970—153,109 and 1969—121,906; at record date market value)	4,133,334	3,047,817
RETAINED EARNINGS AT END OF YEAR (Note 5)	$24,478,126	$22,645,747
Net earnings per share based on average shares outstanding after giving effect to August 7, 1970 stock dividend	$1.43	$1.65

See Notes to Financial Statements.

OMARK CONSOLIDATED SOURCE AND APPLICATION OF FUNDS

	YEARS ENDED JUNE 30	
	1970	1969
CASH AND MARKETABLE SECURITIES—Beginning of year	$ 3,615,657	$ 4,405,933
SOURCE OF FUNDS:		
Net earnings	5,965,713	6,863,529
Depreciation expense—Generally straight line	2,759,183	2,454,747
Amortization of intangibles	803,881	764,588
Exercise of stock options	69,000	619,352
Increase in long-term debt	—	8,748,889
Increase in deferred income taxes	12,769	124,920
Increase in notes payable	7,316,450	—
Other sources	257,141	260,737
Total	17,184,137	19,836,762
APPLICATION OF FUNDS:		
Purchases of other businesses—less cash included in assets acquired	513,010	3,876,649
Increase in notes and accounts receivable	1,808,557	5,120,705
Increase in inventories	5,583,412	3,696,802
Future tax benefits (Note 3)	1,480,000	—
Plant, property and equipment—net additions	4,463,632	3,471,152
Purchase of intangibles—net	163,952	1,225,925
Reduction of current liabilities other than notes payable	1,412,632	1,285,248
Reduction of long-term debt	608,924	—
Reduction of notes payable	—	1,829,675
Purchase of treasury stock	850,892	—
Other applications	239,859	120,882
Total	17,124,870	20,627,038
CASH AND MARKETABLE SECURITIES—End of year	$ 3,674,924	$ 3,615,657

See Notes to Financial Statements.

NOTES TO FINANCIAL STATEMENTS

1. Principles of Consolidation:

The consolidated financial statements include the accounts of all domestic and foreign subsidiaries of Omark. All significant intercompany transactions have been eliminated in these statements.

Assets and liabilities of the subsidiaries, other than U.S. and Canadian subsidiaries, included in the consolidated balance sheet at June 30, 1970 are: current assets, $6,289,379; property—net, $2,625,201; current liabilities, $2,647,355; and long-term debt, $93,780. The Company conducts a substantial portion of its international operations through U.S. (including Puerto Rican—see Note 3) and Canadian subsidiaries. The Company's equity in the net earnings of other than U.S. and Canadian subsidiaries was $171,000 and $357,000 for the years ended June 30, 1970 and 1969, respectively.

2. Inventories:

Inventories are valued at the lower of cost (first-in, first-out basis) or market. Major classes of inventory at June 30, 1970 and 1969 were as follows:

	1970	1969
Finished goods ..	$15,317,351	$ 9,416,551
Work in process .	9,496,849	10,765,263
Raw materials ...	4,548,921	3,500,080
	$29,363,121	$23,681,894

3. Income Taxes:

The statement of consolidated earnings and retained earnings includes the net earnings of a wholly-owned subsidiary operating in Puerto Rico. The manufacturing income is not subject to U.S. income tax and is exempt from Puerto Rican income tax for a ten-year period ending in May 1975. Under certain circumstances an additional ten-year exemption period may be granted. This exemption from Puerto Rican income tax, at an effective rate approximating 35%, reduced the provisions for income taxes by approximately $1,550,000 and $1,000,000 for the years ended June 30, 1970 and 1969, respectively. Any dividend paid to the parent by this or certain foreign subsidiaries would be subject to U.S. income taxes. It is anticipated that earnings of these subsidiaries will be reinvested in their operations and no dividends are contemplated.

By stipulated decision entered December 16, 1969 by the Tax Court of the United States, income tax deficiencies due from the Company and certain of its subsidiaries for fiscal years ended June 30, 1961, 1962, and 1963 were determined to aggregate $245,000, compared with asserted tax deficiencies and penalties amounting to $2,481,802, both amounts exclusive of interest. Now pending are asserted deficiencies and penalties for the years 1964, 1965, and 1966 in the approximate amount of $5,900,000, exclusive of interest. The Company and its subsidiaries have provided for deferred income taxes in the amount of $934,000 available for the 1964-66 asserted liabilities. In the opinion of Baker & McKenzie, tax counsel for the Company, this amount is adequate to provide for the liabilities that may ultimately be determined.

The 1970 provision for deferred income taxes consists of a credit of $1,480,000 for the future tax benefit arising from 1970 tax loss carryforwards of certain subsidiaries and from expenses not currently deductible for tax purposes, less a charge of $279,000 ($125,000 in 1969) for the use of accelerated depreciation for income tax purposes.

4. Profit-Sharing and Bonus Plans:

Under provisions of its profit-sharing plan, the Company is required to contribute each year generally an amount equal to the lesser of 15% of consolidated income before profit sharing and income taxes or 15% of the total eligible compensation. However, no contribution is required in any year in which the consolidated income described above is less than 8% of consolidated net sales.

The Company has a cash bonus plan for key employees based upon the amount by which consolidated income, before income taxes, exceeds 18% of consolidated shareholders' equity at the close of the preceding year. The aggregate amount payable is computed on a sliding scale of from 7% to 10% of such excess.

5. Long-Term Debt:

Under a Term Loan Agreement with a bank, dated December 31, 1968, the Company bor-

rowed $12,000,000 payable in annual installments of $2,400,000 beginning December 31, 1971. The interest rate on the note ($8^1/_4$% at June 30, 1970) is one-quarter percent per annum greater than the minimum lending rate for short term commercial loans of the bank in effect on the first business day of the calendar quarter. The Agreement contains restrictions regarding the payment of cash dividends and purchase of the Company's stock. As of June 30, 1970, $9,714,233 of retained earnings was unrestricted for these purposes.

The contract is payable $454,000 in 1970 and $500,000 annually thereafter plus interest at 4%. Other long-term debt, with interest of 8% or less, is payable in varying installments which amount to $136,419 for the year ending June 30, 1971.

6. Common Stock:

On June 16, 1970, the Board of Directors declared a four percent stock dividend payable August 7, 1970 to shareholders of record July 8, 1970; cash payments have been made in lieu of fractional shares.

At June 30, 1970, there were 184,550 shares of the Company's common stock reserved under a qualified stock option plan, and as of that date options to purchase all of the reserved shares were outstanding. The plan provides that the option price is the fair value (market price) on the date of grant. From the dates of grant, the options are exercisable after two years and expire at the end of five years.

During 1970, options were exercised for the purchase of 4,678 shares for $69,000 ($14.75 per share) and the market value on the date exercised was $107,594 ($23.00 per share). After giving effect to the four percent stock dividend payable August 7, 1970, there were options outstanding to purchase 191,921 shares for $3,635,766 (from $10.35 to $28.62 per share) of which options to purchase 72,000 shares for $839,148 (from $10.35 to $14.16 per share) were exercisable. No options became initially exercisable during the year.

7. General:

Under a lease expiring in 1987, a subsidiary of the Company is committed to pay an annual rental of $115,000, aggregating $1,945,000, plus property taxes, insurance, and certain maintenance costs. The Company also is committed to pay rentals aggregating $1,000,000 under 53 other leases expiring from 1970 to 1980. For the year ending June 30, 1971, rentals under these 53 leases approximate $340,000.

ACCOUNTANTS' OPINION

To the Shareholders of Omark Industries, Inc.:

We have examined the consolidated balance sheet of Omark Industries, Inc. and its subsidiaries as of June 30, 1970 and the related statements of consolidated earnings and retained earnings and of source and application of funds for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying statements present fairly the financial position of the companies at June 30, 1970 and the results of their operations and the source and application of their funds for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

HASKINS & SELLS

Portland, Oregon
August 21, 1970

OMARK FIVE-YEAR SUMMARY

OPERATIONS (000 omitted):

- Net sales .....
  - By product groups—See note below:
    - Saw chain and accessories .....
    - Hydraulic loaders and cranes .....
    - Stud welding systems .....
    - Construction tools and equipment .....
    - Precision fastening systems .....
    - Tooling and grinding equipment .....
    - Sporting equipment .....
    - Air controls and dental equipment .....
  - Net earnings:
    - Before taxes .....
    - Provision for taxes .....
    - After taxes .....
    - Per share:
      - Before August 7, 1970 stock dividend .....
      - After August 7, 1970 stock dividend .....
  - Depreciation and amortization expense .....

FINANCIAL (000 omitted):

- Total assets .....
- Plant, property and equipment—net .....
- Long-term debt .....
- Total liabilities .....
- Shareholders' equity—ending .....

OTHER STATISTICS:

- Net income as percent of sales .....
- Average number of shares outstanding during year (000 omitted):
  - Before August 7, 1970 stock dividend .....
  - After August 7, 1970 stock dividend .....
- Number of shareholders of record .....
- Return on beginning equity .....
- Book value per share on ending equity .....
- Ratio of ending equity to total liabilities .....
- Number of employees .....

NOTE: Product group net sales of acquired businesses accounted for as purchases are reported in prior years commencing with date of acquisition, whereas net sales of acquisitions accounted for as poolings of interest are restated retroactively to 1966.

YEARS ENDED JUNE 30

1970	1969	1968	1967	1966
$ 90,078	$ 79,444	$ 69,414	$ 49,036	$ 41,416
30,646	27,942	24,579	25,010	20,274
11,957	10,528	6,865		
9,947	9,189	8,244	8,389	6,570
8,361	6,624	6,781	9,255	11,004
16,178	13,714	13,517		
5,386	5,164	6,712	5,528	3,568
3,378	3,540	2,716	854	
4,225	2,743			
7,956	11,939	8,941	10,091	6,593
1,990	5,075	3,796	4,186	2,589
5,966	6,864	5,145	5,905	4,004
1.48	1.71	1.30	1.49	1.03
1.43	1.65	1.25	1.43	.99
3,563	3,219	2,807	1,718	1,472
84,101	73,667	59,440	44,694	34,750
24,569	22,770	20,541	14,018	11,910
14,446	15,055	6,306	5,816	5,080
38,930	33,623	26,788	17,285	13,087
45,171	40,044	32,652	27,409	21,663
6.6%	8.6%	7.4%	12.0%	9.7%
4,024	4,012	3,967	3,954	3,892
4,181	4,172	4,126	4,112	4,048
6,542	5,981	5,740	5,753	5,203
14.9%	21.0%	18.8%	27.3%	24.0%
11.23	10.38	8.56	7.21	5.79
1.16:1	1.19:1	1.22:1	1.59:1	1.66:1
4,277	4,315	3,454	2,980	2,258

OMARK INDUSTRIES ANNUAL REPORT JUNE 30, 197

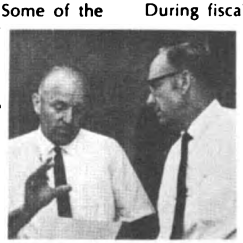
TABLE OF CONTENTS

TO OUR SHAREHOLDERS

The fiscal year ended June 30, 1970 was the company's second best in terms of after tax earnings in our 23-year history and it was a record year for sales.

Sales were $90,078,199 and net earnings were $5,965,713, or $1.43 a share, compared to fiscal 1969 sales of $79,444,171 and record net earnings of $6,863,529, or $1.65 a share. Per share earnings figures were adjusted for both years to reflect our sixth annual stock dividend, paid Aug. 7, 1970.

There were a number of reasons for the disappointing lag in earnings. Some of the major industries served by Omark were in a depressed state most of the year and this, in turn, affected the company. The lengthy teamsters' strike also had an adverse effect on several of our operations.



Mr. Gray Mr. Skralskis

Much more serious, however, were problems in the Williams Air Controls Division and the Winslow Aerospace Tool Subsidiary. Poor performances by both operations cut heavily into our 1970 profits. At Williams, costs of warranty repairs on a product Omark inherited when it acquired this business continued to be high. Additionally, at the end of the year, contingency reserves were accrued for estimated warranty expenses in future years. Inventory adjustments also had a substantially unfavorable effect. Winslow's difficulties were primarily the result of a large cost overrun in the development of a highly sophisticated machine for the aircraft industry. The estimated cost overrun has been charged against 1969-70 and should not be a significant drain in the current year.

Helping to offset these adverse factors was an increase in sales of cutting chain, our highest-volume line. The improving trend in sales and profits of construction tools, noted in last year's annual report, continued at an even greater rate in 1970, despite depressed conditions in building.

Recent events have focused attention on the balance sheets and liquidity positions of many companies. We feel that strength in the balance sheet is fundamental to good business management and should always be given the importance due it.

We note, in this respect, that, as of June 30, 1970, Omark's net working capital was $28,240,538 and the current ratio was 2.2 to 1. During fiscal 1970, Omark's total assets increased from $73,666,635 to $84,101,313. Shareholders' equity rose from $40,044,440 to $45,171,455, after a deduction for the purchase of 50,000 shares of the company's stock for the treasury at a cost of $850,892. The company's total borrowings did increase from $19,928,920 to $26,588,235, primarily to support higher working capital requirements for accounts receivable and inventories. This additional debt and higher interest rates increased interest expense by $606,748 over 1969.

On August 6, 1970, the Board elected a ninth director, Dr. J. Knight Allen. Dr. Allen has had a distinguished career in finance, education and business consulting. He brings added strength to a Board that already includes members who have many talents.

This year, we have a somewhat different annual report format than in the past. We believe a description of the markets Omark serves and their importance to the company is useful information to our shareholders. We have estimated the percentages of Omark's total business in each of its primary market areas. We hope this information will be helpful to you.

John D. Gray
Chairman of the Board

Edward P. Skralskis
President

August 31, 1970

CORPORATE CAPABILITIES

Omark's eight divisions, in order to best serve their many customers throughout the world, require support in a number of areas that can be provided most effectively by the company's corporate organization. These areas are financial resource management, legal and patent counsel, EDP systems and operations, industrial relations, forward planning, public relations and stockholder relations. Omark's corporate management is organized so as to give such support promptly to the divisions in their day-to-day operations. This assistance is available from operating teams that may act either in an advisory or control capacity, from individual officers or from established departments.

The eight-member Corporate Operations Council meets periodically to review divisional programs and budgets so that early remedies may be applied to any developing trouble areas. The Council comprises the President, the two group vice presidents, vice president-finance, general counsel, directors of corporate development and industrial relations and, as ex-officio member, the Chairman of the Board. The Council, primarily a policy-forming and advisory group, has no decision-making authority; the decision is made by the responsible officer.

While the Corporate Operations Council concerns itself with the current operations of the company, the Strategic Planning Council deals with growth objectives and the screening and selection of growth opportunities. Its members are the Chairman, President, group vice presidents, director of corporate development and vice president-finance. The director of corporate development and his staff constantly seek out and study opportunities for corporate growth that may come through product development or acquisition. They work closely with the operating divisions.

An example of how well the divisions employ the capabilities of corporate management is the average 2,000 computer reports completed each month for the divisions by the EDP Systems and Operations Department. The department, whose computers handle many routine as well as non-routine tasks, developed the "Touch-Tone" system of inventory control, which uses teletype, telephone and computer in an operation that saves the company over $25,000 a year.

The corporate level provides both guidance and control in the area of finance. All tax and insurance administration, cash management and budget guidance comes from corporate, which also supplies general legal counsel and patent counsel to the divisions.

Important to both the short-term and long-term needs of the company is the role the Industrial Relations Department plays in management development. It is responsible for administering all training and development programs in line with Omark's planned growth needs. It also recommends and implements broad policies and programs of employment, labor relations, manpower planning, administration of compensation and benefits and other related areas.

The diverse backgrounds of corporate managers and their staffs make the group especially well-equipped to support divisional requirements in many areas. These backgrounds include broad experience in marketing, finance, manufacturing, engineering, foreign trade, planning, tax and patent law, personnel, and communications. Several corporate managers have held positions in divisions and this enables them to be acutely aware of needs and to understand situations at the division level. Of the 38 corporate officers, managers and staff members, more than one-third hold advanced academic degrees.

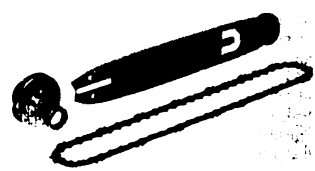
These resources of corporate management give Omark the capabilities necessary to make the most of the earning power of its combined divisions and to meet the overall growth goals of the company.

FORESTS

The forest industries—pulpwood and timber production—represent Omark's largest market, accounting for approximately 30 per cent of the company's sales. Of the two market segments, pulpwood is much the more important one to Omark.

Two of the company's divisions serve the forest industries: The OREGON Saw Chain Division and the Hydraulic Materials Handling Division.

The chain division is the world's largest producer of cutting chain for power saws. OREGON-manufactured chain is original equipment on saws made by most of the several dozen U. S. saw manufacturers, including such leaders as Homelite, McCulloch and Beaird-Poulan. Fifteen major foreign saw manufacturers also place Omark's chain on their saws. Replacement saw chain is marketed through a worldwide system of more than 30,000 outlets. Almost half of the chain produced by Omark is sold outside the United States. The division also produces the bars around which the chain travels, drive sprockets for saws and other accessories.



The Hydraulic Materials Handling Division manufactures several types of hydraulic logging loaders under the Prentice brand name. Other capital equipment produced by the division for the forest industries includes the Prentice Saw-Buck, a single-operator, remotely controlled saw mounted on a portable steel crib.

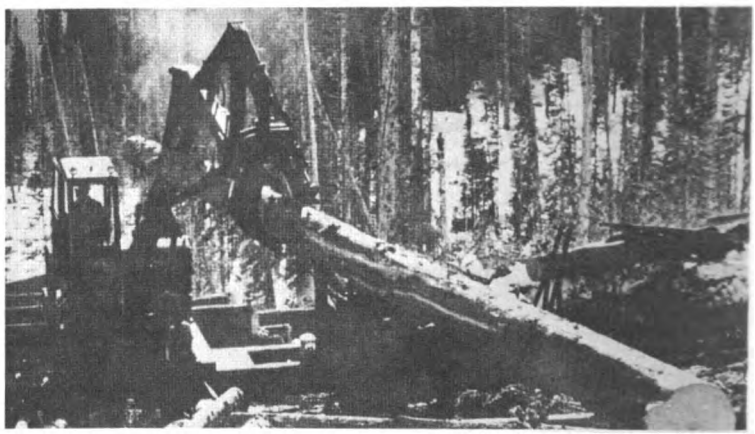
As is the case with most Omark products, the equipment it sells to the forest industries embodies many time- and labor-saving features. This fills a pressing need, for as wage rates in the forests continue to increase sharply and rapidly while the labor supply decreases, more and more pulpwood and timber producing operations are finding that complete mechanization often makes the difference between profit and loss.

About 70 per cent of sales by the materials handling division is accounted for by the forest industries. More than half of the company's cutting chain is used in the commercial harvesting of trees. Most of the remainder is sold to agricultural, commercial and leisure-recreation markets.

Cutting chain sales in fiscal 1970 exceeded those of the previous year, despite the unfavorable impact of the prolonged teamsters' strike and growing competitive pressures. Chain products were especially strong in Latin America, Europe, Japan and the U. S. A key factor in U. S. sales growth in the fourth quarter was a promotional program offering dealers extended terms. As last year progressed, the mix of chain sales shifted to the more profitable replacement market and there was improvement also in product mix. New supply contracts were signed with three major saw manufacturers.

Super Chisel, a strong, high-performance cutting chain was introduced during the year and found an enthusiastic acceptance in world markets. At year's end, the division was substantially back-ordered on this type. In March, the division introduced a chain not bearing the OREGON label that can compete in the lower-price field, a market segment that is new to the division. Also soon to be

Pulpwood harvesting is made easier with a Prentice Saw-Buck (top left) and a hydraulic loader (top right). The combination allows one man to cut pulpwood to required lengths and stack it on a truck for rapid transport to the mill. Chain saw (bottom photo) is the basic tool of the pulpwood industry. On opposite page, chain saw components are shown.



offered are an additional chain type designed more for the professional woodcutter and a new chain bar that has a sprocket in its tip.

Although the division is confident of achieving its budget for this quarter, the first in the new fiscal year, it does expect some weakening in the U.S. chain market. Near the end of the quarter the expansion of the Puerto Rican plant will be completed. The added 23,000 square feet, doubling the size of the plant, will provide this extremely profitable facility with a significant increase in its production capacity.

Strong competitive pressures are expected to continue throughout the year. However, the division's new products, the upgrading of three major products, new packaging and scheduled promotions should ease these pressures considerably.

The past year saw an interruption in the growth of the Hydraulic Materials Handling Division. In the three years since this division was acquired by Omark, it has grown to a two-plant operation, acquired two additional product lines, increased sales more than 65 per cent and established an organization structure capable of sustaining division growth.

With this kind of record, the division's poor performance for the year was especially dis-

Prentice Series 600 loader hoists a tree effortlessly in a Pacific Northwest timber-harvesting operation. On opposite page, an Indian deep in the Brazilian jungle fells a tree with saw equipped with Omark's OREGON chain.

appointing. Sales were slightly above a year ago, due almost altogether to a price increase. Profits declined sharply from the previous year's level.

There were a number of reasons for this interruption in the division's growth. A primary one was the very depressed residential construction market throughout the year. This cut sharply into sales of capital equipment used in the timber and lumber industry and also slowed sales to the division's other major market, the construction industry.

Near the end of the fiscal year, pulpwood production, which represents about 50 per cent of the division's entire market, began to decline.

Profits also were affected by substantial increases in costs of both materials and labor. Additionally, there were increases in marketing and administrative expenses. The latter were tied directly to startup costs of the new headquarters plant in Zebulon, North Carolina, which required a duplication of management personnel there and in Prentice, Wisconsin, the division's former headquarters.

A customer-oriented promotion and a dealer incentive program are expected to enhance the division's performance during the second and third quarters.

This year's performance also should be favorably affected by several steps that are being taken to keep costs down. These include a major program to improve control in manufacturing and in labor and materials requirements.

The division has weathered a period of instability in its markets with a minimum of disruption to its organization. It is now in an excellent position to benefit from improvements in the overall economy and the markets it serves.

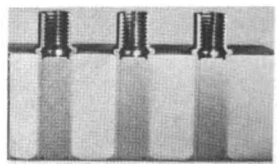
Omark's major original equipment customers in the forest industries market include:

Homelite Division of Textron, Inc.
McCulloch Corp.
Roper Corp.
American-Lincoln Division of Scott & Fetzer Co.
Beaird-Poulan, Inc.
Stihl American, Inc.
Eaton Yale & Towne, Inc.

AIRCRAFT-AEROSPACE

Omark is a major supplier to the aircraft-aerospace industry of fasteners, drilling and cutting tools that make the holes for the fasteners and equipment for sharpening and pointing these tools.

Today's high-performance aircraft would not be possible without lightweight and high-strength fasteners that can withstand tremendous stresses and sudden changes in temperature extremes. Some of these fasteners for critical structural components must have a minimum strength of 300,000 pounds per square inch and must be made to extremely close tolerances. To meet such exacting demands requires exceptional capabilities in metallurgical testing and manufacturing.



Precision drilling and countersinking tools are used to make holes measured in the millionths of an inch into which the fasteners must be properly fitted. This, too, requires unique capabilities. The machinery used to sharpen and joint these tools also must be designed and manufactured to meet exacting performance standards.

The principal product line of the Precision Fastening Subsidiary is the proprietary Taper-Lok system. Taper-Lok is an integrated fastening system comprising a tapered fastener installed in a precision-tapered hole with a matching washernut or swage collar. The system is licensed to three other manufacturers.

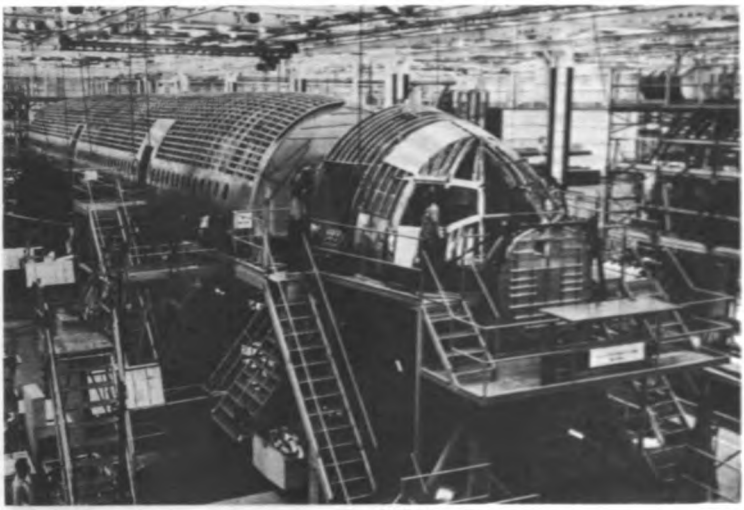
Other proprietary products of the subsidiary are tooling used to install Taper-Lok; Temp-Lok, a fastening system designed for extremly high and low temperature applications, and a strong, lightweight washer and nut assembly.

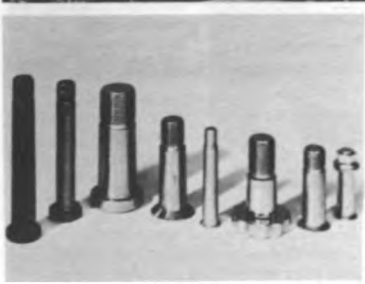
The Winslow Aerospace Tool Subsidiary designs, builds and markets high-precision drilling and countersinking, automatic riveting, drill-pointing and specialized grinding tools and equipment for the aircraft industry. Some of the hydraulic and pneumatic tooling is used to make the holes and install the fasteners produced by the Precision Fastening Subsidiary.

The aircraft-aerospace market accounted for about 22 per cent of Omark's total sales in fiscal 1970. Over 80 per cent of that volume was generated by the Precision Fastening Subsidiary, which sells only in this market. It was the market for approximately 60 per cent of Winslow's products.

Omark's sales to the industry were above those of the previous year, but softened significantly in the fourth quarter because of the depressed condition of the aircraft-aerospace industry. For Omark, at least, the effects of this softness are not expected to extend beyond the second half of the current fiscal year. Major customers of the Precision Fastening Subsidiary have been supplying themselves to a considerable extent from accumulated inventories during the stretch-out. They continue, however, to build aircraft and it is anticipated that, late in calendar 1970, they will resume ordering at a more normal rate.

A heavy drain on profits was caused by development expenses of an advanced-type grinding system for tools and, particularly, a large cost overrun in developing and building what is probably the world's largest automatic drill riveter. This machine will handle riveting operations on fuselage and wing sections of the Navy's F-14 supersonic fighter. It was due to be delivered in June 1970, but probably





The Precision Fastening Subsidiary will provide thousands of high-strength titanium Taper-Lok fasteners for the new McDonnell Douglas DC-10 airliner, shown under construction in top photo. The fasteners increase aircraft fatigue life. The subsidiary makes a wide range of precision tapered fasteners (below left and opposite page). Cutting drills (bottom right) made by the Winslow Aerospace Tool Subsidiary are used by many U. S. aircraft builders. Winslow also makes the pneumatic and hydraulic tools that drive the drills.

will not be shipped until the second quarter of the current year. This year's profits should be only minimally affected by pressures from this project.

A vigorous new management team at the Winslow subsidiary has reduced fixed expenses, increased efficiency, shortened delivery time and has put to work new practices in administration, engineering and manufacturing.

The ability to adjust quickly to customer needs has become increasingly important in serving the aircraft-aerospace market. A new fully integrated engineering model shop at the Precision Fastening Subsidiary, which began operating last year, gives Omark this capability. With this new quick-response engineering capacity, the subsidiary can solve most unanticipated application problems on as short a notice as 48 hours.

Three new fasteners that meet an existing need will be introduced to the market this year and a fourth is under development. The Winslow subsidiary's new hydraulic tools, recently introduced, make it possible to drill larger holes in harder and thicker material than was possible with pneumatic power. This fills an important need of the new generation of super-size aircraft.

The two subsidiaries are working closely together as a team where joint efforts promise to enhance the goals of one or the other, or both. For instance, taking a systems approach, they meet with customers to hold joint demonstrations of drillmotors, cutters and fasteners. Engineering information is exchanged, and mutual inspection procedures have been put into effect where feasible. A joint venture, now in progress in Europe, includes appointment of the first European distributor by the Precision Fastening Subsidiary.

Omark's sales to the aircraft-aerospace industry are expected to continue in the doldrums through calendar 1970, but it is anticipated they will show a steady increase in the first six months of 1971.

The company's major customers in this industry are:

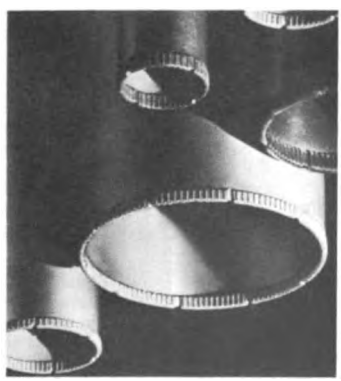
McDonnell Douglas Corp.
Lockheed Aircraft Corp.
General Dynamics Corp.
Grumman Aircraft Engineering Corp.
The Boeing Co.
North American Rockwell Corp.
Avco Corp.
Northrop Corp.

CONSTRUCTION

Omark serves all three major segments of the construction industry: nonresidential building, residential building and nonbuilding construction. Approximately 16 per cent of the company's sales are to the industry, which is an important market of three Omark divisions and a lesser market for a fourth division.

About 90 per cent of the Construction Tools Division's volume is accounted for by the equipment, tools and fasteners it supplies the construction industry.

Omark's construction tool system comprises a fastening tool that, with a powder load, drives metal fasteners of many sizes and configurations into concrete or steel. The company manufactures all three elements of the system — tool, powder load and fastener.



Diamond-segmented blades and core drills produced by the division are used to cut and drill into concrete or masonry. Welders that use metal pins to fasten insulation are made by the KSM Welding Systems Division and marketed by the Construction Tools Division. All products from this division are used primarily in construction other than homebuilding.

In terms of budgeted results and improvement over the previous year, the Construction Tools Division was Omark's best performer in fiscal 1970. A new approach to marketing was the major reason for the division's outstanding success during the year. The new approach is now being expanded.

During fiscal 1971, the division will introduce several new fasteners and pins in the U. S. market and a tool embodying a new fastening concept. By the end of the current fiscal year, development will be completed on a new type of fastening system that can greatly reduce labor costs at one stage of construction. The division soon will begin construction in Portland of a plant to manufacture fasteners. The Adelaide, Australia plant, where powder-actuated tools are produced, also is being expanded.

Sales by the KSM Welding Systems Division to the construction industry in 1970 increased 11 per cent over 1969, while overall division sales rose by 10 per cent. Construction is the largest single market for the automatic welders and welded stud fasteners produced by the division, which has customers in more than 70 other industries.

Cycles in the rate of construction of one- and two-family dwellings do not affect the sales of this division. Its equipment is used in constructing commercial, industrial and government buildings and in building bridges and highways.

A number of reasons are responsible for KSM's continued growth in construction. A significant one is the labor-saving features

Diamond-edged core drills (above) cut through concrete and masonry and come in several sizes.

stud welding offers an industry that has been hard-pressed by spiraling labor costs. Another is the division's recent penetration of market areas in this industry that were not previously served by KSM to any material extent. The increased use of pre-stressed concrete construction, which has provided new welding applications, also helped last year's growth, and products developed in previous years specifically for construction began to find increasing usage during the year.

The division expects to continue in the current year its growth in sales to the construction industry. It should benefit from the increase in nonresidential building that is forecast by the F. W. Dodge market outlook. Expanding Federal Government programs, especially including aid for hospital construction, can be expected to be another positive factor.

Considering the longer-term outlook, about 40 per cent of the 41,000-mile interstate highway network is yet to be completed, and KSM will continue to share in this market.

The construction industry is the second largest market for sales of hydraulic materials handling equipment, accounting in fiscal 1970 for more than 20 per cent of this division's volume. The construction line consists of telescopic cranes and folding booms, block unloaders, and loaders for handling stacked materials such as gypsum board, plywood and roofing. The line is marketed under the Prentice name.

The Hydraulic Materials Handling Division's sales to the construction industry were unfavorably influenced by the greatly diminished activity in residential building throughout the year. The division is considerably more dependent on this segment of the industry than are the other Omark operations tied to construction.

Another factor working against the division's performance was the time required to transfer production of the former Alenco line of cranes from Texas to the new North Carolina plant. During this transition, lead time on crane orders stretched to a point that caused loss of sales. The problem is past, however, and the division now is in position to meet the demand for this equipment.

During the first half of the present fiscal year, the division will introduce three products to serve the construction industry which will be compatible with equipment now produced by the division and marketed by its dealers. Each of the three will make possible reduced labor costs of materials handling at the construction site.

The fourth Omark operation selling to the construction industry is the Sporting Equipment Division. About 10 per cent of its sales last year was to this market and consisted of loads for powder-actuated tools to customers other than the Construction Tools Division, which it also supplies.

Omark serves the nation's construction industry with many time- and labor-saving products. Metal construction fasteners (opposite page) come in many shapes and sizes. More than 1 million Omark stud welded shear connectors that tie concrete to steel will be in the twin towers of New York's World Trade Center when completed (above, left). A shear connector (top right) is welded to the decking of the new headquarters building of the West Coast Transmission Co., Ltd., Vancouver, British Columbia. Omark telescopic crane (below right) raises precast concrete wall panel into place quickly and accurately.

LEISURE-RECREATION

The leisure-recreation market accounts for approximately 11 per cent of Omark's total sales volume. For two of the company's divisions, it is a very important market. It accounts for sales of less than $1 million by a third division.

About 21 per cent of the OREGON Saw Chain Division's sales are made directly, or through saw manufacturers, indirectly, to leisure-time users of chain saws. Two-thirds of chain saw owners are occasional users not employed in the forest industries. There is a chain saw in one out of every 19 American households. Homeowners use them to cut fireplace wood, make fence posts and to trim trees and large shrubs. A great many of these users are campers and hunters who take along their saws at vacation time to cut firewood and clear campsites in remote areas, or to dress large game such as moose or elk.

Homeowner use of chain saws is also growing in Canada. It is not, however, a significant market factor outside North America.

The Sporting Equipment Division's dollar sales to the leisure-recreation market amount to about half that of the saw chain division, but this market accounts for about 90 per cent of the division's total business. The division produces small arms ammunition and ammunition primers for sportsmen who prefer to assemble or reload their own ammunition. The products are marketed under the CCI brand name.

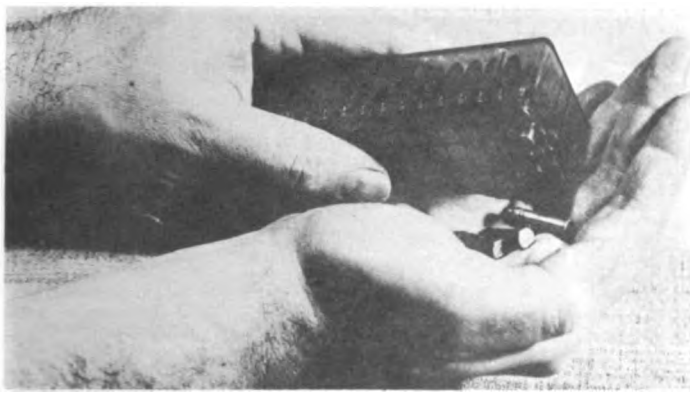
The division's sales and profits in fiscal 1970 were below those of the previous year. Several of the reasons for this performance lag stems from restrictions of Federal gun control legislation and the difficulties in administering this law. A large segment of the youth market was lost because of restrictions the law places on ammunition purchases by youths. Many of the smaller volume dealers abandoned the business because of the paperwork required. Aside from the legislation, high inventories and tight money caused some dealers to reduce buying. Additionally, the division's results were affected by higher costs of brass and lead and increased labor costs.

The brightest aspect of the past year was the spectacular reception given to the division's new 100-Pak Plastic .22 ammunition dispenser-package by shooting enthusiasts. Heavy demand for the 100-Pak required a three-shift schedule for several months in some operations at the division's Lewiston, Idaho plant.

The recent installation of modern new equipment at Lewiston is expected to increase production capacity while reducing costs. The division anticipates an increase in sales in the current year of about 30 per cent over those of fiscal 1970.

Small caliber rifles comprise less than 10 per cent of sales by the Construction Tools Division. They are manufactured in the division's Adelaide, Australia plant, which also produces powder-actuated construction tools. The rifles, marketed primarily in the British Commonwealth nations, are not at present available in the U. S.

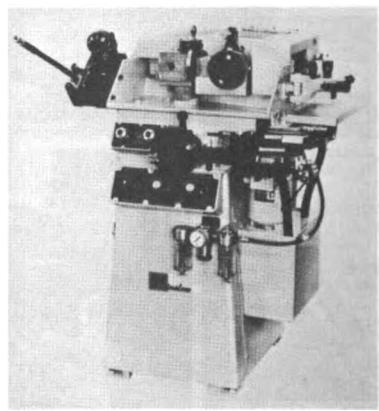
So long as leisure time for the working American continues while his disposable income also rises, this market can be expected to continue to grow at a rapid pace. Recognizing this, Omark is currently looking for promising acquisition opportunities in this area.



The leisure time becoming increasingly available to Americans provides Omark with significant marketing opportunities. The Sporting Equipment Division's 100-Pak .22 rimfire ammunition dispenser (top) has been enthusiastically received by sportsmen. Chain saws (below) have become an indispensible tool for many homeowners who use them for chores around the house, for camping and for gathering firewood.

OTHER MARKET AREAS

Approximately 20 per cent of Omark's total sales are to a wide range of industries. These industries provide markets in varying degrees of importance to five of the company's eight divisions. They include many general manufacturing companies, most of which are engaged in metal fabrication; utilities, electronics, transportation and agriculture. Also, Omark sales are made to enterprises in several service categories, and to state and municipal governments.



The Williams Air Controls Division, which accounts for less than 5 per cent of Omark's total dollar volume, primarily serves the truck manufacturing and health service industries. It produces air valving systems, air brake controls, compression brakes and stoplight switches for heavy trucks. Some of this equipment is also used on other large vehicles, such as earth-moving equipment. The division's Encore Operations is a leading supplier of portable and mobile dental office equipment, including high-speed, air-driven dental drills. Of the two lines, automotive products return the most dollars.

Due to a combination of factors, the Williams division in fiscal 1970 incurred losses substantial enough to significantly affect Omark's earnings for the year. A major problem throughout the year was warranty costs of a dental drill that had been introduced to the market before Omark acquired this business in 1968. These repairs have been quite costly to the company. Although warranties on some of the drills will be in effect for as long as four more years, their cost should have little if any impact on future year's earnings, since anticipated expenses of the remaining warranties were provided for in fiscal 1970.

Other problems besetting the Williams division were both internal and external. The very sharp downturn in truck manufacturing hurt sales. General economic conditions also had their effect on sales of the dental line. Significant year-end adjustments added to these pressures.

As fiscal 1971 began there were some indications of a moderate improvement in demand for the division's products. Plans for more aggressive marketing, more competitive pricing and new product introductions help to brighten the outlook for the current year.

The Winslow Aerospace Tool Subsidiary's specialized grinding tools for metalworking find their best market, aside from the aircraft industry, among manufacturers of twist drills and other cutting tools. These Winslow machine tools also are sold to the automotive industry, farm machinery manufacturers, ap-

Stud welders from the KSM Welding Systems Division continue to find new applications in shipbuilding, metal fabricating and general engineering. Welding a terminal housing (top) is done with the aid of a position jig. Stud welding is much faster than the old method of drilling and tapping holes. The use of air controls, air brake systems, valves and gauges in heavy-duty trucks (below) keeps Williams Air Controls Division engineers busy designing new products to meet the needs of the expanding road transport industry. Winslow's Exactamatic drill pointer (opposite page), widely used in many industries, sells for $4,500.

64-345 O - 71 - pt. 4 -- 36

pliance producers, manufacturers of road-building equipment and a variety of metal fabricating businesses.

Machine tool sales in fiscal 1970 were below those of the previous year. However, near the end of the year foreign sales began showing renewed strength and were ahead of budgeted sales in the early weeks of the current year. Domestic sales also began developing new vigor as the 1970-71 year began.

The KSM Welding Systems Division has customers in more than 70 industries. The largest volume from sales of welders and welded fasteners, other than the construction industry, is accounted for by general manufacturing in the metal fabricating area. This includes producers of office equipment, stainless steel furniture and fixtures, materials handling equipment, and forging operations. Other industries providing markets for KSM products include shipbuilding, railroad, automotive, electronics, appliance, electric utility and electrical equipment.

A low-cost, low-maintenance welding system consisting of a lightweight, automatically fed hand welder, a stud feed supply and a power source, introduced in the past fiscal year, received an excellent reception in domestic and overseas automotive markets. KSM supplied the studs for the first section of the Mersey Tunnel project in Great Britain and has the order for studs to be used in completing the second section.

The division's customers include the U.S. Navy, the Ingalls Shipyards of Litton Industries, Inc., the Avondale Shipyards subsidiary of Ogden Corp., Babcock & Wilcox Co., McGraw-Edison Co. and American Machine & Foundry Co.

Cutting chain sales outside the forest industries and the leisure-recreation market amounted to an estimated 6 per cent of the company's total volume in fiscal 1970. Most of these were to farmers, tree surgeons, nurserymen, municipalities and utilities.

Colform, an operation of the OREGON Saw Chain Division, is a contract manufacturer to other companies of small, high-precision metal parts made in large volume by cold forming processes.

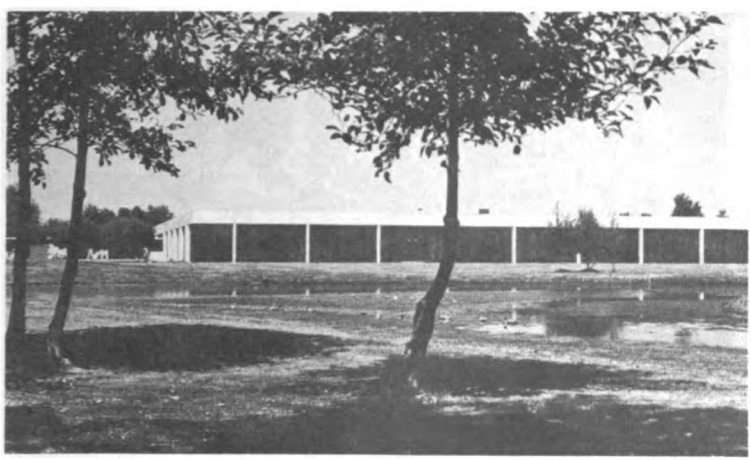
About 6 per cent of the Hydraulic Materials Handling Division's sales were to a broad range of industries and service businesses. Hydraulically operated Prentice cranes and booms are used by railroads, utilities, refineries, municipalities, engine rebuilders, airports, metal fabricators and pipeline companies. They are also used to handle monuments, burial vaults, tires, large trash bins and, with a bucket attachment, such bulk materials as lime, sand, gravel, sulfur and rock salt.

SOCIAL RESPONSIBILITY

In the fermenting world of the seventies, it is not enough for business merely to accept its responsibilities to society. Business and industry must be leaders in the struggle for a more liveable world for all. Omark is committed by policy to this principle.

Early in its history, the company determined that its plants and buildings would be constructed so as to enhance, rather than detract from, their surroundings. Two of its plants have won national awards for combining beauty with utility. The manufacturing processes in these plants do not produce significant amounts of pollutants that dirty air, water or soil. The relatively small amounts of acids used are neutralized before disposal. There is no dirty smoke from manufacturing; solid wastes are not burned. Gardeners are prohibited from using dangerous chemicals in the maintenance of the carefully landscaped grounds around Omark buildings.

Omark is an equal opportunity employer, not just in theory, but in reality. It has been an enthusiastic participant in the JOBS program of the National Alliance of Businessmen. Minority group members at Omark hold jobs at most levels from laborer to manager. Seventeen per cent of the company's skilled craftsmen are members of minority groups. In efforts to assume a greater responsibility in this area, Omark from time to time operates training programs for non-whites and it actively seeks them in recruiting efforts. The company also maintains deposits in Port-



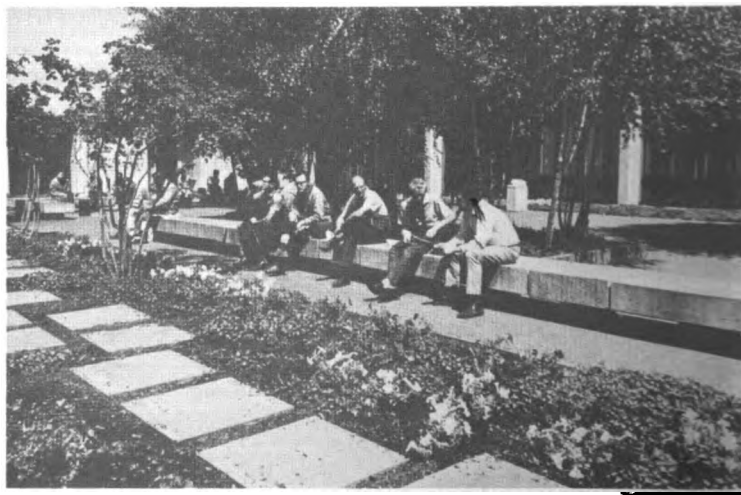
The Portland plant of the OREGON Saw Chain Division is typical of Omark's manufacturing facilities. Its clean architectural lines enhance carefully landscaped surroundings. The plant, named one of the 10 best in the U. S. by *Factory* magazine, produces no pollutants to dirty the air.

land's only black-operated bank, whose volunteer advisory board includes Omark's vice president-finance. And Omark is a substantial contributor to worthy projects in areas where the disadvantaged live.

Significant financial support also is given to colleges, art associations, orchestras, theatre groups, ballet associations and museums as well as to the community welfare organizations that are regularly supported by most businesses.

Omark actively encourages its employees to participate in activities aimed at improving the community and the quality of life, and many employees have responded with generous donations of time and talent. They are city councilmen, school and college board members, planning commissioners, scouting officials, park commissioners and UGN officials. Others are active leaders in groups concerned with environmental quality, such as the Sierra Club and the Izaak Walton League.

Omark will continue to meet its responsibilities to society generally and, specifically, to the communities in which it operates. The duty is obvious and good business demands it, for company conscience can enhance the balance sheet as well as help make communities a better place to live.



On a sunny day, Omark production employees enjoy their lunch hour on a patio designed for that purpose. Pleasant job surroundings are among the many free fringe benefits the company offers.

BOARD OF DIRECTORS

Each member of Omark's Board of Directors was chosen because of the distinct contribution he and his experience could bring to the operations of the company. Consequently, it is a well-balanced Board whose members have backgrounds in several disciplines. These include business management, marketing, finance, economics, science, engineering, law, education and manufacturing.

John D. Gray, Chairman of the Board and Chief Executive Officer, joined the company that later was to become Omark Industries, Inc. in 1948 as assistant general manager. In 1953, Mr. Gray became its president and principal owner. In 1967, he was elected Chairman and Chief Executive Officer.

Edward P. Skralskis, President of Omark, came to the company in 1954 as assistant to the president. He subsequently became general manager, executive vice president and, in 1967, President, succeeding Mr. Gray, who had held the dual positions of Chairman and President.

Dr. J. Knight Allen is management consultant to the Bechtel Corp. He formerly was senior staff specialist and director of corporate strategy research at Stanford Research Institute.

Dr. Robert T. Davis, professor of marketing at Stanford University, is the author of three books and numerous articles on marketing. He has also been on the faculties of Dartmouth, Harvard and St. Lawrence Universities and for two years was vice president, marketing, of Varian Associates.

Frank K. Kelemen has a background as engineer, inventor, publisher and industrialist. He founded KSM Products, Inc. in 1946 and was its president until 1966 when KSM was merged with Omark.

Dr. Wayne E. Kuhn, former general manager of research and technical development at Texaco, Inc., has been chairman or president of several professional chemical societies. He received the 1970 Honor Award of the Commercial Chemical Development Association.

David S. Pattullo is a partner in the law firm of Pattullo, Gleason & Hinson in Portland and a senior member of the firm of Pattullo, Gleason & O'Neill, Certified Public Accountants. He has been a lecturer on taxation for many years.

Ross B. Thompson, financial vice president and treasurer of Reed College, was treasurer of Litton Industries, Inc. from 1958 to 1966. Mr. Thompson is a Certified Public Accountant.

G. J. Ticoulat is a retired president of Crown Zellerbach International with strong marketing experience. He has held several U. S. Government posts and has been an officer or board member of many trade and civic organizations.

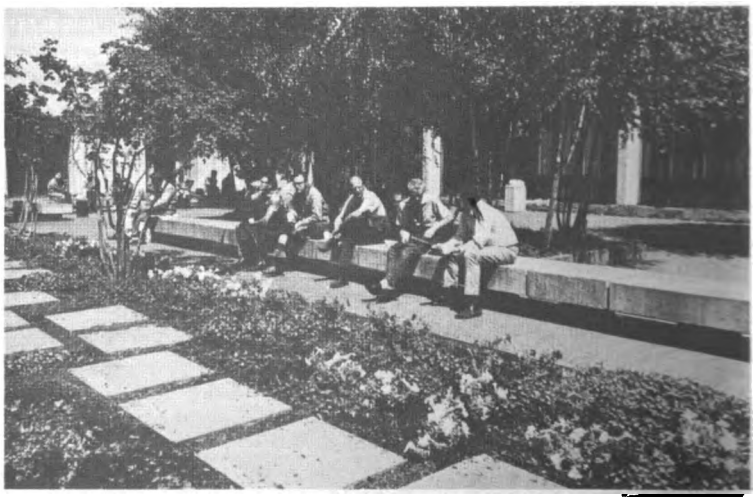
Clockwise, Dr. Robert T. Davis, Dr. Wayne E. Kuhn, David S. Pattullo, Edward P. Skralskis, John D. Gray, Donald J. Griswold, Secretary; Ross B. Thompson, G. J. Ticoulat, Frank K. Kelemen; not pictured, Dr. J. Knight Allen.

land's only black-operated bank, whose volunteer advisory board includes Omark's vice president-finance. And Omark is a substantial contributor to worthy projects in areas where the disadvantaged live.

Significant financial support also is given to colleges, art associations, orchestras, theatre groups, ballet associations and museums as well as to the community welfare organizations that are regularly supported by most businesses.

Omark actively encourages its employees to participate in activities aimed at improving the community and the quality of life, and many employees have responded with generous donations of time and talent. They are city councilmen, school and college board members, planning commissioners, scouting officials, park commissioners and UGN officials. Others are active leaders in groups concerned with environmental quality, such as the Sierra Club and the Izaak Walton League.

Omark will continue to meet its responsibilities to society generally and, specifically, to the communities in which it operates. The duty is obvious and good business demands it, for company conscience can enhance the balance sheet as well as help make communities a better place to live.



On a sunny day, Omark production employees enjoy their lunch hour on a patio designed for that purpose. Pleasant job surroundings are among the many free fringe benefits the company offers.

BOARD OF DIRECTORS

Each member of Omark's Board of Directors was chosen because of the distinct contribution he and his experience could bring to the operations of the company. Consequently, it is a well-balanced Board whose members have backgrounds in several disciplines. These include business management, marketing, finance, economics, science, engineering, law, education and manufacturing.

John D. Gray, Chairman of the Board and Chief Executive Officer, joined the company that later was to become Omark Industries, Inc. in 1948 as assistant general manager. In 1953, Mr. Gray became its president and principal owner. In 1967, he was elected Chairman and Chief Executive Officer.

Edward P. Skralskis, President of Omark, came to the company in 1954 as assistant to the president. He subsequently became general manager, executive vice president and, in 1967, President, succeeding Mr. Gray, who had held the dual positions of Chairman and President.

Dr. J. Knight Allen is management consultant to the Bechtel Corp. He formerly was senior staff specialist and director of corporate strategy research at Stanford Research Institute.

Dr. Robert T. Davis, professor of marketing at Stanford University, is the author of three books and numerous articles on marketing. He has also been on the faculties of Dartmouth, Harvard and St. Lawrence Universities and for two years was vice president, marketing, of Varian Associates.

Frank K. Kelemen has a background as engineer, inventor, publisher and industrialist. He founded KSM Products, Inc. in 1946 and was its president until 1966 when KSM was merged with Omark.

Dr. Wayne E. Kuhn, former general manager of research and technical development at Texaco, Inc., has been chairman or president of several professional chemical societies. He received the 1970 Honor Award of the Commercial Chemical Development Association.

David S. Pattullo is a partner in the law firm of Pattullo, Gleason & Hinson in Portland and a senior member of the firm of Pattullo, Gleason & O'Neill, Certified Public Accountants. He has been a lecturer on taxation for many years.

Ross B. Thompson, financial vice president and treasurer of Reed College, was treasurer of Litton Industries, Inc. from 1958 to 1966. Mr. Thompson is a Certified Public Accountant.

G. J. Ticoulat is a retired president of Crown Zellerbach International with strong marketing experience. He has held several U. S. Government posts and has been an officer or board member of many trade and civic organizations.

Clockwise, Dr. Robert T. Davis, Dr. Wayne E. Kuhn, David S. Pattullo, Edward P. Skralskis, John D. Gray, Donald J. Griswold, Secretary; Ross B. Thompson, G. J. Ticoulat, Frank K. Kelemen; not pictured, Dr. J. Knight Allen.

OMARK ORGANIZATION

John D. Gray
Chairman of the Board

Edward P. Skrabkis
President

Zane K. Campbell
Director
Corporate Development

Donald L. Griswold
Secretary and
General Counsel

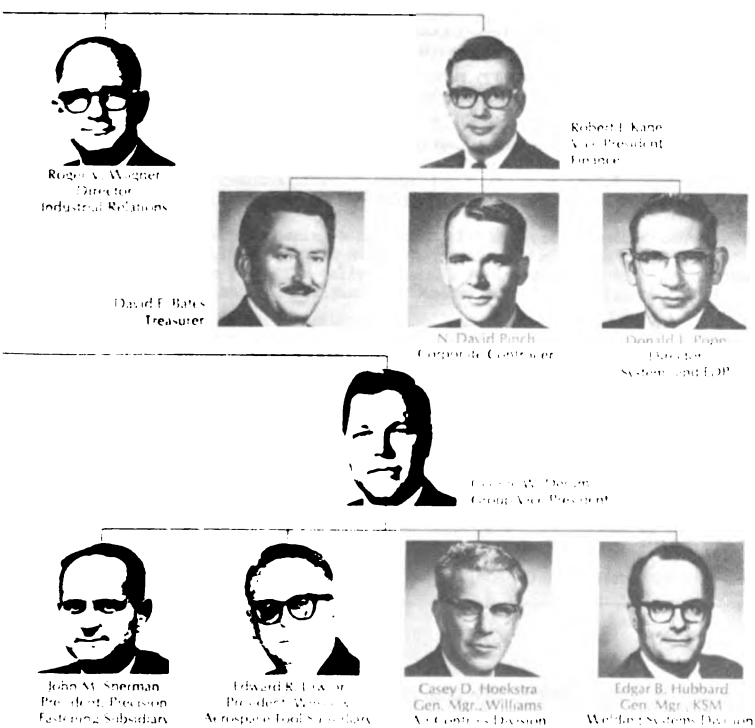
Edward S. Smith
Group Vice President

Ashton D. Marcus
Vice Pres., OREGON
Saw Chain Division

Austin F. Leach
Vice Pres., Sporting
Equipment Division

John L. Warne
Gen. Mgr., Construction
Tools Division

Harrison Peddie
Gen. Mgr., Hydraulic
Materials Handling Div.


Roger A. Wagner
Director
Industrial Relations
Robert L. Kane
Vice President
Finance
David F. Bates
Treasurer
N. David Pinch
Corporate Controller
Donald J. Payne
Director
Systems and EDP
John M. Sherman
President, Precision
Fastening Subsidiary
Edward R. Lexow
President, Williams
Aerospace Tool Subsidiary
Casey D. Hoekstra
Gen. Mgr., Williams
Vice Controls Division
Edgar B. Hubbard
Gen. Mgr., KSM
Wolfdale Systems Division

MANUFACTURING LOCATIONS

PORTLAND, OREGON
Cutting chain, bars and drive sprockets for power saws and fasteners for powder-actuated tools.

PORTLAND, OREGON
Air control systems and dental equipment.

PORTLAND, OREGON
(under construction)
Fasteners for powder-actuated tools.

MOORESTOWN, NEW JERSEY
Portable and console automatic stud welding equipment and fasteners.

ARCADIA, CALIFORNIA
Hydraulic and pneumatic drilling and countersinking tools, automatic riveters, and automatic drillpoint grinders and point splitters.

EL SEGUNDO, CALIFORNIA
Precision fasteners for the aircraft and aerospace industry.

LEWISTON, IDAHO
Power loads for powder-actuated tools, small arms ammunition and ammunition primers.

ZEBULON, NORTH CAROLINA
Hydraulic boom loaders and hydraulic cranes.

PRENTICE, WISCONSIN
Hydraulic boom loaders and hydraulic cranes.

WORCESTER, MASSACHUSETTS
Diamond-edged blades for cutting masonry and concrete.

BAYAMON, PUERTO RICO
Cutting chain for power saws.

MEXICO CITY, MEXICO
Fasteners for powder-actuated tools.

GUELPH, ONTARIO
Cutting chain and bars, fasteners for powder-actuated tools.

TORONTO, ONTARIO
Automatic stud welding equipment and welding fasteners.

FARNHAM, ENGLAND
Automatic stud welding equipment and welding fasteners.

NIVELLES, BELGIUM
Automatic stud welding equipment and welding fasteners.

MELBOURNE, AUSTRALIA
Automatic stud welding equipment and welding fasteners.

ADELAIDE, AUSTRALIA
Powder-actuated tools and fasteners, sporting rifles.

SAN LUIS POTOSI, MEXICO
(Affiliate)
Power loads for powder-actuated tools, small arms ammunition.

LEGAL COUNSEL

Corporate
Davies, Biggs, Strayer, Stoel & Boley
Pattullo, Gleason & Hinson

Special
Baker & McKenzie

Patent
Buckhorn, Blore, Klarquist & Sparkman

TRANSFER AGENTS

First National Bank of Oregon

First National City Bank of New York

REGISTRARS

United States National Bank of Oregon

The Chase Manhattan Bank of New York

NIAGARA 4-0725
(MOSTLY NIGHT)

We have never paid anybody for their personal time or service — this is a VOLUNTARY project.

SPEAKER AVAILABLE
(audience participation if desired)

CITIZENS COMMITTEE FOR ETHICAL INSURANCE

ORGANIZED APRIL 1964 — INCORPORATED AUGUST 1966

NON—PARTISAN
NON—PROFIT

DEDICATED TO HONORABLE RELATIONSHIP
BETWEEN INSURED AND INSURER
AND ELIMINATION OF HAZARDS

WE HAVE NOTHING TO SELL!
(except justice)

EXECUTIVE COMMITTEE

580 WOODSIDE ROAD
BERWYN, PENNSYLVANIA

We have never charged anybody who has come to us for help — and we have helped many.

FRANK K. JONES
President & Chairman Executive Comm.

May 28, 1971

S.Lynn Sutcliffe, Esq.
Staff Counsel Committee on Commerce
United States Senate
Washington, D. C. 20510

Dear Mr.Sutcliffe:

As requested in your letter of May 24th and discussed with you personally on May 26th, attached are a number of papers covering our activities and testimony here in Pennsylvania.

The items referring directly to automobile insurance we would like to have inserted in the record. The items on Blue Cross and medical insurance we would also like inserted in the record, if there is no objection since medical insurance is an integral part of automobile insurance costs.

We have testified at every Penna. hearing on all kinds of insurance -- in fact, we think we are the only organization which can make that statement.

We are preparing a letter to all Congressmen specifically asking for rejection of Senate Bill S-947 and giving our specific reasons why. As soon as this is ready for delivery (which we expect to do in person rather than mail them out) we will see that you receive a copy.

Sincerely yours,

CITIZENS COMMITTEE FOR ETHICAL INSURANCE

Frank K. Jones
President

j/s

P.S.- Will you be kind enough to let us have two copies of the record showing the portion of the record where this is recorded. We would like a complete copy of the record, if possible. When I personally testified before the Senate and House on income tax matters, they sent me a complete set of each.

IF YOU WILL SPEND ONE HALF HOUR A YEAR HELPING YOUR CAUSE, YOUR MEMBERSHIP IS SOLICITED.

NI-4-0725
(mostly nite)

CITIZENS COMMITTEE FOR ETHICAL INSURANCE
560 Woodside Rd., Berwyn, Pa. 19312
Frank K. Jones, President

Testimony Harrisburg, Pa. Wednesday May 5, 1971 - $100 Deductibles: Auto and other insurance, before Insurance Commission Herbert Denenberg.

We are alarmed at the present tendency to eliminate liability from the insurance industry without simultaneous specific required rate reductions tied to the package.

We note with alarm that Commissioner Denenberg testified in Washington that National control of insurance should not occur (This is another of the things the industry wants) He wants Congress to set National Standards and depend on State governments to enforce them.

We recommend National licensing of companies, establishment of National Standards and State administration. Our program outlines the method and we are working in Washington to that end.

We believe the most important thing to be done in the insurance reform is to have immediate total strict controls over advertising. Ridiculous advertising was the tool used to bring about the present chaotic insurance problem. We have repeatedly raised that point, most recently at the Blue Cross hearings in Phila. where we placed specimen advertisements on the record.

We present to the Department today a full page ad appearing in the Daily Local News, West Chester, Pa. on April 19, 1971 which National Home Life Assurance Co. gives the public three days to accept. The offering of "Free Cash" is alluring.

Not to be outdone, the Life Assurance Company of Pennsylvania, in the same paper on May 3, 1971, gives the public three days to accept a plan that "pays Twice."

On T.V. we saw another advertisement of a company which proclaimed that it paid so liberally, that you got reimbursement and had "enough cash left over for a party".

In the February 26th release of the Insurance Department in regard to the present hearing, it speaks out against the "trading of dollars" for small claims, in almost every kind of insurance. We see nothing which indicates that elimination of small claims will

a - keep the deductibles from expanding in the future to higher limits while the the rates, at best, remain the same. They will probably be higher.
b - require the dumping of excess service costs (mentioned by the Commissioner). That excess will probably be transferred to other operations and cause a continuing "unprofitable business" on the now profitable remaining part, and foster requests for still higher premiums.
(here again we state we are not looking at of now with the "fat on the fire" We are looking at what things will be like twenty years or more from now when the public has been lulled and the industry takes over again under another Insurance Commissioner.)
c - eliminating small claims, especially in automobile, will take all incentive from the companies to join in the fight for safer cars which are also less expensive to repair and for safer highways etc. etc. The $100 will hardly cover the same, or more, useless "trim" and collapsible fenders and useless bumpers, and fancy headlights, and tender windshields before you get into the serious business and repairing thw OPERATING PARTS of the cars.
d - The net cost to an insurance company for replacing a windshield is about $100. The net cost to an owner is $140.00. That $140 and all other "deductibles" from other claims will be another premium charge so far as the policyholder is concerned. We think such out-of-pocket expenditures should be used as a reduction of the Department's "trading dollars" to get a true picture.

e - We think you will bring on another wave of padded claims from some socially prominent places, let alone the previously accused lower echelon.
f - Commissioner Reed once said insurance was like membership in a club. We have always contended it was buying the right to support the Insurance Industry welfare fund.

We continue to insist that elimination of HAZARDS rather than elimination of claims and elimination of wastefull operation overheads rather than expanding them, will solve the problem -- arithmetic never will.

It seems to us that the Insurance Industry progressively developed an indefensible and complex insurance program via the "competition" trail and in doing it developed a vast plush "overhead". It is our opinion that this vast overhead will be defended and even expanded in the future unless

1 - strictly enforced laws are drawn up specifically outlining the coverages which can be sold
2 - specifically stating the NORMAL MINIMUM policy which MUST be sold (and let the companies bid for that policy via competition)
3 - specifically stating what additional coverages can be had by "rider" and the "rider" must be self-supporting, including all additional "overhead" created (no more million dollar coverages for "pennies a day" for those in the social register).
4 - specifically stating how much overhead can be set up against each coverage.
5 - specifically calling for approval of all fullpage newspaper advertising as weal as major radio/T.V. and magazine advertising.

We also want the Blue Book valuation of cars in insurance claims eliminated. The Blue Book is an evaluation for trade/in/sales purposes and has no place in the determination of actual value to the owner who keeps a car.

We believe that the advent of no-fault insurance (which also has $100 deductible) will have adverse effect. For years the insurance industry has been using the deductible on"collision" for getting additional premiums - I can give you specifics on this.

Summing up - we think we must abandon the idea that Arithmetic is insurance and it alone can solve this problem. Make the function and the contents of policies realistic and honorable and the arithmetic will take care of itself. Your main battle is that you are not really fighting insurance losses, you are fighting lucrative jobs of several million people (to use the statistics of the insurance industry) plus the Rating Bureau and "consultants" (actuaries) and expensive lobbies, along with 220 (their figures) associations which "don't even communicate with eachother" (also their statement).

We have frequently been critized for "straying from the point" in our presentations. The insurance mess is like a bucket of eels, you can't understand one eel without getting entangled in others. We hope you will be aware of every eel as you follow your own course.

NIAGARA 4-0725
(MOSTLY NIGHT)

NO COMMITTEE MEMBER
HAS EVER BEEN PAID
FOR PERSONAL SERVICES

SPEAKER AVAILABLE
(audience participation if desired)

CITIZENS
COMMITTEE FOR ETHICAL INSURANCE
ORGANIZED APRIL 1964 — INCORPORATED AUGUST 1968

NON-PARTISAN
NON-PROFIT

DEDICATED TO HONORABLE RELATIONSHIP
BETWEEN INSURED AND INSURER
AND ELIMINATION OF HAZARDS

WE HAVE NOTHING TO SELL!
(except justice)

EXECUTIVE COMMITTEE

560 WOODSIDE ROAD
BERWYN, PENNSYLVANIA

NOBODY HAS EVER BEEN CHARGED
FOR SERVICES RENDERED ON
CASES WE HAVE INVESTIGATED

FRANK K. JONES
President & Chairman Executive Comm.

MAY 5 1971

PRESS RELEASE

LEGISLATION IS NEEDED

We have frequently requested the Insurance Department over the years to seek legislation so that policyholders will be satisfied as to the amount charged for premiums. We have a continuing request to investigate if the current premiums contain "penalties" for use of the policy in the way of claims, etc. All information we have been able to obtain from whatever source beclouds the issue and leaves us completely frustrated as to the answers.

To clear this up, EVERY POLICY should be required to show ON ITS FACE —

Approved NORMAL RATE by the Penna. Insurance Department	$_____
Surcharge penalty (details enclosed and policyholder has right to appeal to Insurance Department if he does not consider this proper)	$_____
TOTAL AMOUNT OF PREMIUM	$_____

We think that the accumulated figures from the insurance company billings should be shown in this same detail in the official rate filing forecasts etc.

We have long contended that since the companies have this built-in increase which they can capriciously apply, that there is no need for such increases as they ask. We find no provision for "use of policy without penalty" and we have drawn this to the attention of the Insurance Department in our testimony at hearings.

Since "normal rate" increases generally make it impossible for the average person to know what the "current billing normal rate is", we believe he is entitled to know.

Niagara 4-0725
(NOSTRY NOSHIT)

560 Woodside Road
Berwyn, Pennsylvania

Frank K Jones CONSULTANT TO SMALL BUSINESS

Testimony before the Penna.Insurance Department, Harrisburg, Pa. 2.P.M. Wednesday, April 7, 1971 — William Penn Museum Bldg., re "Automobile Public Rate Hearings April 5, 6 7 and 8). (see also testimony of Citizens Committee For Ethical Insurance, Berwyn. Pa. same date).

Mr.Commissioner:

This statement relates more particularly to the rate filing of NATIONWIDE INSURANCE COMPANY, but insofar as appropriate I wish it to be combined with the dockets of all other companies included in the current series of hearings. In particular I wish it combined with the testimony of the Citizens Committee For Ethical Insurance which I shall also present.

I wish to refresh the record by reminding the Department that Nationwide Insurance Company started me on this insurance battle back in 1964 by improperly cancelling my insurance (I have a letter of apology from them). I subsequently organized the Citizens Committee For Ethical Insurance and we are now incorporated to carry this fight on permanently — eventually as a watchdog group. Our present effort will be mostly in Washington. D.C.

For years I have testified at hearings that it is entirely too easy to obtain the right to operate in Pennsylvania and too easy to maintain that right.

This Company has been in the forefront of disturbing elements in the insurance crisis. Through the Committee I have brought specific proof of its activities in Philadelphia as well as elsewhere in the matter of cancellations of completely innocent policyholders on a mass scale with blatant disregard on their part to the basic purpose of insurance, and the records of the insured, or the peace of the industry. They also initiated this present mass deluge of applications for increases.

I ask that you examine the financial reports of this Company. It now sells other lines of insurance than automobile. You should determine if, as each new line was taken on, the expense factors were properly corrected or whether they remained static.

I ask your consideration as to why this Company should not be denied the right to operate in Pennsylvania, on three grounds:

1 - Its cancellation record which is highly irresponsible.
2 - I have personally called over fifty of their outlets and not a single one of them indicated they are doing anything about hazard elimination or knew of anyone in the company who was, or if the company, in fact, had any program.
3 - The increase is not required for the other reasons which are being noted on the record by the Citizens Committee For Ethical Insurance, of Berwyn, Pa.

NIAGARA 4-0725
(MOSTLY NIGHT)

We have never paid anybody for their personal time or service — this is a VOLUNTARY project.

SPEAKER AVAILABLE
(audience participation if desired)

CITIZENS
COMMITTEE FOR ETHICAL INSURANCE
ORGANIZED APRIL 1964 — INCORPORATED AUGUST 1966

NON-PARTISAN
NON-PROFIT

DEDICATED TO HONORABLE RELATIONSHIP
BETWEEN INSURED AND INSURER
AND ELIMINATION OF HAZARDS

WE HAVE NOTHING TO SELL!
(except justice)

EXECUTIVE COMMITTEE

560 WOODSIDE ROAD
BERWYN, PENNSYLVANIA

We have never charged anybody who has come to us for help — and we have helped many

FRANK K. JONES
President & Chairman Executive Comm.

Testimony before the Penna.Insurance Department, Harrisburg. Pa. 2 P.M.Wednesday, April 7,1971 - William Penn Museum Bldg., re "Public Automobile Rate Hearings April 5, 6, 7 and 8 - (See also testimony of Frank K.Jones,Citizen, same date)

Mr.Commissioner:

We are not entering our customary testimony in depth because we now believe that only total Federal Insurance can possibly solve the insurance requirements of the people.

We ask that any increases you may authorize following these hearings be limited to one year and that they automatically revert to present rates at that time.

We have always contended that it is too easy to obtain right to operate in Penna. and too easy to maintain that right. We ask that the testimony of Frank K.Jones, citizen, be considered in conjunction with our own.

We have always asked that increases be denied until companies did things to eliminate hazards -- not just talk about them. On.Oct.2, 1970 they set up the Penna.Action Committee on Highway Safety (you, Mr.Commissioner, are Chairman of that Committee). We have paid for a series of reports and recommendations but see nothing of hazard elimination. Our Committee, for its part, since Oct.2nd, has arranged for a school bus unloading off street at one spot -- we had the confusing traffic lights on Market Street corrected (when PACHS was not interested when we told them about it) -- we are working on the traffic lights onWalnut Street,Phila. -- we have gotten numerous trees and bushes trimmed and potholes plugged -- we produced a motion picture on highway hazards (we have it here to show you if you wish) -- that is what we mean by A C T I O N. The industry is FIRST to know about accident clusters and contributing faults -- they can avoid claims and not need increases -- by ACTION.

Deny these increases as an incentive to all companies, so they will

1 - Actively work on hazard elimination and highway design and maintenance
2 - Actively work on car design (they have vastly more executive influence that we.
3 - Forecast in their rate application the savings to be obtained by such activity (you will find no such forecast -- in fact Allstate says the 1971 cars are 50% more damageable than 1970 models -- and do nothing about it. DON'T INSURE THOSE CARS AT ALL and they will stop making them.

Additionally

4 - The upcoming no-fault insurance (which we insist must be a rider form) can do much to cut down on insurance losses and should be reflected - so increase is not needed
5 - The upcoming $100 deductible on all claims will in effect be an "out-of-pocket-premium increase" to the policyholders and a drastic cut in claims for companies -- it is not forecast in the applications (incidentally the companies get 40% discount on repair bills and the public will not) -- where is the industry burying the 40% discount -- as stockholder income?

6 - Years ago the automobile industry and the steel industry tried to submerge the infant Ford Motor Company. The elder Ford retaliated by producing an auto body from soy beans. I saw the motion picture of Henry trying to puncture that body with the pointed end of a fire axe. He was very energetic in those days and inflicted not a single dent. -- Wonder why the insurance industry doesn't put on a massive campaign for indestructible bodies like they did for the Tax matter not so long ago?

7 - Break up rate fragmentation by having established rate districts. Our latest thought (which will fit into our National plan) is to use the Perndet District areas (there are 11 of them (#7 seems to have been washed out).

8 - WWindshields can be made of glass which will not rupture when struck by stones. You can see this on T. V. advertisements of glass people -- just why is it necessary to ever replace a windshield with such materials available. -- And justwhy are the insurance people so disinterested? I was told that when the $100000 deductible went into force they wouldn't have to pay for windshields -- there is the answer.

Note: The Insurance Company of North America is already advertising a "No-Fault" policy -- has it been submitted to you, and under what date did you approve it? (see Evening Bulletin 3/29/71 page 8)

4/18/70

HIAGARA 4 0725
MOSTLY NIGHT)

560 WOODSIDE ROAD
BERWYN, PENNSYLVANIA

CITIZENS COMMITTEE FOR ETHICAL INSURANCE

ORGANIZED APRIL 1964 — INCORPORATED AUGUST 1969

NON-PARTISAN
NON PROFIT

DEDICATED TO HONORABLE RELATIONSHIP
BETWEEN INSURED AND INSURER
AND ELIMINATION OF HAZARDS

WE HAVE NOTHING TO SELL!
(except justice)

EXECUTIVE COMMITTEE

SPEAKER AVAILABLE
(audience participation if desired)

FRANK K. JONES
President & Chairman Executive Comm.

The Evening Bulletin
PHILADELPHIA
Friday, April 17, 1970

Blue Cross 'Group' Plan Is Denounced

By DAVID M. CLEARY
Of The Bulletin Staff

Two spokesmen for con-umers yesterday denounced e "group" system under hich Blue Cross subscription ates are computed, and called pon State Insurance Commis-oner George F. Reed to re-uire a more equitable dis-ribution of the costs.

Frank K. Jones, of Berwyn, resident of the Citizens Com-ittee for Ethical Insurance an organization so impe-unious that Jones does his own pwg, called for total Blue ross payout to be divided by e number of persons insured, esulting in a premium that ould be the same for every-

David Neifeld, business man-ger of Retail Clerks Union 415, FL-CIO, complained that his embers have low incomes, eraging $2 an hour, but must y high Blue Cross premium ecause of the greater idence of illness in low inc amilies.

ate Increase Hearings

They testified during ld at the State Of L 1400 Spring Ga dent to a requ oss of Greate r permission to 29 per low Blue C illion mo e year Neifel ne ne

IMPECUNIUS - Webster says "not having money -- habitually without money -- poor

We adopt the slogan with pride. We are indeed habitually without money. We use ALL of the funds we receive for buying postage stamps, envelopes, and sending telegrams. Most of our "printing" is donated. Everything else has been paid out of our own pockets for six long years and continues.

and 1 - we NEVER charged anybody one single penny for any help we have given them. We don't brag, either.

2 - We have NEVER paid anybody one single penny for his services - including Frank K. Jones

So since we don't have money to hire an office force "we do our own typing" --With apologies for misspelled words, occasional skipped spaces, some overtyping). But then this is not a beauty contest.

We observe that most reporters do their own typing, in fact we know several editors who do their own typing. We sit down with them and "chew the fat" while they are doing it. Typing is an honorable activity which hardly needs highlighting.

So IF YOU would like to have a copy of the FOUR LEGAL SIZE SHEETS single spaced which is part of what we submitted in our testimony at the

BLUE CROSS HEARINGS on April 16, 1970

send us a donation of $1 for a set. We said A LOT MORE THAN WAS REPORTED and you will be interested in every word of it, or we will send your dollar back to you on request.

(incidentally at the Blue Cross hearings of 1969 a certain reporter promised us a copy of HIS lengthy presentation -- written by his private stenographer? -- and we have never gotten it).

We didn't cause this insurance mess -- we have nothing to gain if it continues -- the PUBLIC has a very great deal to lose. We would think the News Media would be striving for the public.

"Agnewizing" will just cause another outburst. Get things into the open COMPLETELY and LET THE PEOPLE KNOW FACTS EVEN IF YOU DON'T HAPPEN TO AGREE.

(Typed by Frank K.Jones. -- Sometimes I don't even the type is same)

Highway Safety Luncheon - Insurance Federation of Pennsylvania - Oct.2,1970
Bellevue Stratford Hotel - Phila., Pa.

- - - -

We are proud to have been included in the group invited to this luncheon and will endeavor to cooperate in any activity by submitting our experience over the last four years. Sorry we were not permitted to distribute a paper in full

The Industry has a tremendous influence - it also has a tremendous responsibili

Not too long ago a responsible safety expert remarked in print, that it was high time roads were designed and built to meet the habits of drivers, rathe than try to educate drivers to accommodate the roads.

We believe that between the two thoughts lies the solution to road design and safety.

- - - - - - -

WE RECOMMEND THAT T O M O R R O W M O R N I N G (even this afternoon!):-

WE STOP THIS INESSSANT TALKING AND A C T - for a starter ---

Get all traffic signs OUT OF THE WEEDS AND INTO FULL VIEW in your own area.

Get missing signs installed (the Highway Department a year ago said it could turn out signs in three days -- let's find out about that by action!

Get CONFUSING SIGNS corrected - When a route goes to the right, the arrow should NEVER point straight ahead. We have been TWO YEARS trying to get one such sign corrected - without success. Want details and photographs?

Get CINDER BARRELS located on all hills ready for winter -- EMPTY barrels are available free or for a nominal price. Cinders are available.

Get speed limits that make horse sense and can be enforced without blushing.

Get SPEED ALARMS (not speed limiters) on all cars, so drivers can spend more time watching traffic than they do watching police and speedometers. (General Motors "suggested retail price" is $16.50 - Factory cost $4.00?)
Those "Ghosts" in windshields can be completely eliminated for three cents!

Two years ago we succeeded in getting seven miles of highway paved from "Grass to grass", thus eliminating "dropoffs". That REDUCED maintenance costs in subsequent years, too. If we can do it, think what the Industry could have been doing all these years instead of penalizing the driver!

There are HUNDREDS of telephone poles in hazardous locations. We succeeded in getting some removed. We know of a lot more. So do you. A C T !

Our movie and still cameras are permanently active - want to help us ? We publish F A C T S that can reduce premiums and PRODUCE PROFITS.

There are, and always have been, too many studies, conferences, statistics, accusations -- and inaction. A C T P E R M A N E N T L Y

Insurance rates can come down and still leave a profit. Accidents can be reduced or be less severe.

Politics must be taken out of insurance. You play fairly with the public and we will see to it that you get a fair profit. We might even start writing what we know about politics in insurance, it isn't a nice story.

(please see other side and JOIN US or work with us)
The majority of our testimony has been based on information supplied by INSURANCE PEOPLE who are "reluctant" to stand out for fear of losing their franchises.

NIAGARA 4-0725
(MOSTLY NIGHT)

have never paid anybody for
ir personal time or service –
s is a VOLUNTARY project.

SPEAKER AVAILABLE
(without participation if desired)

CITIZENS COMMITTEE FOR ETHICAL INSURANCE

ORGANIZED APRIL 1964 — INCORPORATED AUGUST 1969

NON-PARTISAN
NON-PROFIT

DEDICATED TO HONORABLE RELATIONSHIP
BETWEEN INSURED AND INSURER
AND ELIMINATION OF HAZARDS

WE HAVE NOTHING TO SELL!
(except justice)

EXECUTIVE COMMITTEE

560 WOODSIDE ROAD
BERWYN, PENNSYLVANIA

We have never charged anybody
who has come to us for help –
and we have helped many.

FRANK K. JONES
President & Chairman Executive Comm.

Tear off and retain this section for reference. You may remain inactive, or AT YOUR ENTIRE CONTROL you may involve yourself deeper and deeper (we will not let you plunge – you MUST involve slowly to understand and to prove yourself. If you check square for more information you will receive first step. YOU CAN BECOME A FULL MEMBER, or a "specialist" in some phase.

retain part above

mail this section to address above

APPLICATION FOR FAMILY GROUP ENDORSING MEMBERSHIP

(includes ALL persons over 15 years of age residing at the same address (please have each sign). Not necessary to either own or drive a car -- we cover EVERY KIND of insurance. We will not publish names of members -- a certificate of TOTAL will be issued as needed.

We attach the sum of $1.00 to cover Family Group membership for the calendar year 1970. This is TO BE CONSIDERED AS A GENERAL SUPPORT OF THE PRINCIPLES OF THE Committee. It does not entitle us to voting privileges. We may obtain that privilege by becoming active later.

We understand our involvement is under our own permanent control. We can become involved in any phase of the activity in which we are most interested, or in the whole program, either in our own neighborhood, Statewide or Nationwide.

The general purpose of the Committee is to obtain adequate and proper insurance of ALL KINDS, with the right to use policies, and at a reasonable rate.

Insurance companies are entitled to a profit, but not to a "milking expedition".
We want a CONSUMER ORIENTED INSURANCE DEPARTMENT (permanently) with sufficient strategically located branches located for the CONVENIENCE OF THE PUBLIC.
We want to eliminate bad drivers, but the standards for judging them must be spelled out.
We want to eliminate drunk drivers.
We want Insurance Industry permanently active participation in ELIMINATION OF HAZARDS.
Traffic Laws, speed limits, traffic lights, traffic signs, etc. must be less confusing.
Roads and highways must be designed for maximum safety of drivers and not for maximum benefit of land developers. They must be designed for minimum repair cost -- don't put concrete where traffic DOES NOT MOVE and put blacktop where traffic DOES MOVE (especially at exits and entrances of expressways and at street intersections).
We want a SAFETY DEPARTMENT in every County in the State, where people can report hazardous things; a Department which will watch for accident clusters and get things corrected BEFORE deaths, accidents and insurance premium increases happen.

[ ] Send more information

[ ] Send____membership blanks

Head of family - PRINT NAME _____ Tel. No. ___

Address _____ City _____

County _____ Township _____ State ____ ZIP ____

ALL SIGNATURES TO BE ON REVERSE - please give age and sex of each

IF YOU WILL SPEND ONE HALF HOUR A YEAR HELPING YOUR CAUSE, YOUR MEMBERSHIP IS SOLICITED

64-345 O - 71 - pt. 4 -- 37

NIAGARA 4-0726
(MOSTLY NIGHT)

CITIZENS COMMITTEE FOR ETHICAL INSURANCE

ORGANIZED APRIL 1964 — INCORPORATED AUGUST 1969

NON-PARTISAN
NON-PROFIT

DEDICATED TO HONORABLE RELATIONSHIP
BETWEEN INSURED AND INSURER
AND ELIMINATION OF HAZARDS

WE HAVE NOTHING TO SELL!
(except justice)

EXECUTIVE COMMITTEE

580 WOODSIDE ROAD
BERWYN, PENNSYLVANIA

TALK without ACTION will never solve anything.

your industry CAN ACT while it is TALKING

SPEAKER AVAILABLE
(audience participation if desired)

FRANK K. JONES
President & Chairman Executive Comm

March 1, 1970

We are attending a safety luncheon-planning meeting called by the Insurance Federation of Pennsylvania. The tentative date is March 20, 1970. We will continue our efforts as the "Loyal Opposition", non-partisan, and energetically press for A C T I O N.

We have used many published things from Industry papers, to show that they are very unclear on their position except that the Driver is at fault and they are losing money. For example we have repeatedly placed in our testimony before the Insurance Commissioner such things as the following:

In "Analogy" published by Allstate Insurance Company, we find in the SPRING 1 9 6 8 (and this is Spring 1970, two YEARS later) report on conference in Northbrook, Ill.

"We need more effort, more SPECIFIC effort -- not something vague like "drive safely' ".

""having spent 35 years in highway accident prevention, I was made to realize how few of our efforts were based on scientifically-proved facts". (and science doggedly seems to avoid the frailty of man built in by God Himself. So we say build roads to fit the man and not try to make man fit into what YOU ENGINEERS think is a road).

Asked how delegates to the subject conference on highway safety in Northbrook Ill. being referred to, were impressed, one of them replied "Have less 'sitdown' time. I used my brain too little and my backside too much". (WE HOPE THIS PRESENT CONFERENCE WILL PUT T H A T remark in large letters in the minds of participants. For our part, we will exert every effort to see it happens. To that end, we suggest that the morning following the opening session LACKING SIGNS BE PLACED ON THE FIRST SECTION OF NEW Rt.202 at KING OF PRUSSIA, and that existing confusing ones be clarified. We have been taking pictures of these and publishing them, and asking for this action for over two years.

As to driver fault, we quote Mr.Hugh Miser, Vice President, Travelers Research Center and Chairman of the Research Advisory Committee of the Insurance Institute for Highway Safety - "I don't know how many miles one drives today between disabling accidents, but it certainly must be between 75,000 and 100,000 miles and there certainly are several million miles driven for every fatal accident.
"The question is, isn't that pretty good? I mean, drive a mile down the highway and think of all the hazards you have successfully avoided, (sic.and you underwrite without getting corrected) and then multiply that by these really big numbers. Aren't we doing pretty well

And from REPORT ON TOMORROW (which we thought was such a tremendously fine forecast of things to come that we secured a number of copies to place in strategic spots) published by The Journal of Insurance Information - January-February 1970, we pick the following gem -

"Most undersea ventures, being inherently high risk operations, represent a large potential for insurance coverages". WE THOUGHT YOU GOT THE "SHAKES" OVER HIGH RISKS !!!!

IF YOU WILL SPEND ONE HALF HOUR A YEAR HELPING YOUR CAUSE, YOUR MEMBERSHIP IS SOLICITED.

NIAGARA 4-6728
(MOSTLY NIGHT)

CITIZENS
COMMITTEE FOR ETHICAL INSURANCE
ORGANIZED APRIL 1964 INCORPORATED AUGUST 1968
NON-PARTISAN
NON-PROFIT
DEDICATED TO HONORABLE RELATIONSHIP
BETWEEN INSURED AND INSURER
AND ELIMINATION OF HAZARDS
WE HAVE NOTHING TO SELL!
(except justice)
EXECUTIVE COMMITTEE

809 WOODSIDE ROAD
BERWYN, PENNSYLVANIA

SPEAKER AVAILABLE
(audience participation if desired)

FRANK K. JONES
President & Chairman Executive Comm.

August 30, 1970

Hon. George Reed, Commissioner
Penna. Dept. of Insurance
Harrisburg, Pa.

Dear Commissioner:

The announcement of the October 2 luncheon conference in Philadelphia which has been called by the Insurance Federation of Penna. culminates another of our efforts to solve the insurance problem.

Our testimony before Commissioner Kelly, Commissioner Maxwell and yourself repeatedly called for involvement of the Insurance Industry and everybody else in ACTION.

We sincerely hope this will at last be an immediate and permanent ACTION. We will present to the luncheon our own paper on suggestions for "starters". This will include things which can be physically done starting on Saturday morning October 3. It will include things which will take a week or a month to get started. It will include things which will take considerable planning. It should be a constructive and pleasant activity.

Knowing full well that accidents will be greatly reduced, and knowing that losses will be greatly reduced, we now ask that you place a "HOLD" on all further increases until we see the result of these activities. If the Industry will truly put its weight and full energy to HAZARD ELIMINATION, then we can look confidently to our next request.

We ask that you look to requiring that insurance rates be DECREASED progressively to a sensible level. Economies to be accrued by reduction of accidents should not be permitted to be used up by more overhead expense. We will from time to time introduce specific bills in the Legislature to further clarify the insurance activity in full justice to the Industry, the brokers and agents, and the public. These will be discussed with the Insurance Department and we fully anticipate they will be endorsed by the Department.

We appreciate the invitation to attend the luncheon and note you are also invited. Our total effort will be extended to the assembled group.

Sincerely yours,
CITIZENS COMMITTEE FOR ETHICAL INSURANCE
Frank K. Jones
President

IF YOU WILL SPEND ONE HALF HOUR A YEAR HELPING YOUR CAUSE, YOUR MEMBERSHIP IS SOLICITED.

NIAGARA 4-0725
(MOSTLY NIGHT)

We have never paid anybody for their personal time or service — this is a VOLUNTARY project.

SPEAKER AVAILABLE
(audience participation if desired)

CITIZENS COMMITTEE FOR ETHICAL INSURANCE

ORGANIZED APRIL 1964 — INCORPORATED AUGUST 1966

NON-PARTISAN
NON-PROFIT

DEDICATED TO HONORABLE RELATIONSHIP
BETWEEN INSURED AND INSURER
AND ELIMINATION OF HAZARDS

WE HAVE NOTHING TO SELL!
(except justice)

EXECUTIVE COMMITTEE

560 WOODSIDE ROAD
BERWYN, PENN.

We have never charged anybody who has come to us for help — and we have helped many.

FRANK K. JONES
President & Chairman Executive Comm.

For distribution at Blue Cross Rate Hearing, Phila., Pa. 3/17/71

ENOUGH IS ENOUGH!

OUR GOAL NOW IS TOTAL GOVERNMENT INSURANCE

" Insurance Departments and Insurance Commissioners traditionally have had good channels of communication with the insurance industry. Experts in the field of insurance regulation point out that many insurance Commissioners become pro-insurance industry, whatever their intentions, because they are continuously in contact with industry representatives and rarely get feedback from the public. "

Herbert S Denenberg, Commissioner
Report #1 to the People 2/26/71

"We receive the views of the insurance industry in abundance. We have trouble getting the views of the consumer organizations, who are often not on the job, who are often not informed, and who often get what the sleepy and the uninformed get in the market place ..... the short end of the stick".

Herbert D. Denenberg, Commissioner
News release 3/11/71

Is it any wonder there is little feedback and that we get the short end of the stick?

Everybody knows what the industry and the medical field is going to say about its need for money, money, money, to fill its bottomless pit of professional luxury. So instead of giving them EVERY TIME the entire prime time and lots of it, why not reverse the procedure and let the public speak adequately first and put the industry in the off-hour darkness for a change.

SINCE 1962

For instance, our Committee (which has no paid employees and has never charged anybody for the vast amount of help we have given the public) has testified at every hearing on every subject the Pennsylvania Insurance Department has held on insurance matters from Harrisburg to the east (plus some in the west) — We doubt very much if ANY OTHER ORGANIZATION can make that claim). We had personal interviews with Mr. Denenberg before he was ever Commissioner. And yet we were forced to explain our "expertise" in Blue Cross matters, when our testimony before the Department time and time again set that forth. How many others were required to go through this to testify at this hearing? How could a private citizen possibly pass such a test?

And then, after a long and tortuous trail we finally were allotted (on March 12th)

TEN MINUTES AT 5 PM 3/17/71

That's after radio - T.V. - most of the press and the lions share of the public have gone home. WHO'S AFRAID OF US BEING HEARD? AND WHY?

We went through that affront during the regime of Comm. Kelly and Commissioner Maxwell. Commissioner Reed was a more understanding Commissioner and we often got a fair share of prime time — we thank Commissioner Reed for that consideration.

We are not accepting those nice noises coming from Harrisburg at present at face value.

We believe the preponderance of the indicated objectives are pro-industry at the expense the consumer and we ask time before the Department in public hearing to defend that opinion.

The main "cross we bear" is that we have no published membership list — we are not about to make such a list so the industry can computerize it and blacklist people. We went through that before — we rely on what we KNOW from talking every day to many many people, that the public is behind us.

COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT
HARRISBURG

February 18, 1971

Mr. Frank K. Jones
President & Chairman Executive
Committ e
Committee for Ethical Insurance
560 Woodside Road
Berwyn, Pennsylvania

Dear Frank:

I suspect wherever you go there will be earthquakes. Nevertheless, I look forward to hearing from you and seeing you in person.

I am considering putting together a consumer committee to advise the Insurance Department. Would you be willing to serve?

Let me hear from you.

With best regards, I am

Sincerely,

Herbert S. Denenberg

(publishing these letters will close the door of the Insurance Department to our Organization, no doubt. That is no loss to us, but to the public - obviously the facts we had to present glanced off like water off a ducks back). We will try The Legislature and the Streets.)

When we received that letter, we were impressed and on February 22nd we accepted the invitation with the one reservation that "working on your Committee will not be a substitute for our own activities".

With the Blue Cross and Automobile rate hearings coming up, we worked hard to get together testimony.

We had personal invitations from the Commissioner. We informed him how much time we would need, and each time got less promised, so we had to rewrite to allotted time.

If the entire insurance mess was one simple thing, or if there was complete blame on one side and attributable to one thing it would be easier.

If we had access to news media as readily as the Commissioner - especially now that he has a fulltime professional from a station which makes us vast promises and doesn't come through - it would be easier.

When this letter came, we were even more hopeful, although by this time the news releases from his department were beginning to alarm us by the areas to be covered in hearings, and the news indication that the public was ending up with less protection than it had. The premium was suppose to come down.

But even if it did, you can count your bottom dollar it would very shortly rise again and you will end up with LESS INSURANCE FOR MORE MONEY.

If you don't believe that, hang this up in a convenient place and see it happen.

BETTER YET - Help us with your time and money to fight the thing.

(We might just finish writing our book !)

COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT
HARRISBURG

March 3, 1971

. Frank K. Jones
itizens Committee for Ethical
Insurance
60 Woodside Road
erwyn, Pennsylvania

ear Mr. Jones:

I'm going full speed ahead on putting ogether a consumer committee, and hope to e back to you shortly on this.

Best regards.

Sincerely,

Herbert S. Denenberg

HSD:kn

We were asked to furnish a copy of our testimony before the Blue Cross Hearing. We mailed the copy to the Department on March 8th.

I have to make a living and have to organize my own time for that purpose. I called the Commissioner on March 11th to ask WHAT DAY I should set aside for the hearing. He was busy, so I left word to return the call at my expense. Toward the end of the day, not having a reply, I sent a telegram

"Must arrange my personal business schedule. Requested testimony sent May 8. Advise what day I should set aside to testify at Blue Cross Hearings, in Phila.".

I have never received a reply to that telegram. On Friday the 12th I asked the Insurance Department in Phila. to use its own lines to ask what day I was to arrange for. By 2 P.M. I had had no reply, so I called again. Finally a call came that the 17th was set aside and I would have ten minutes, at 5 P.M.

That meant we had to rewrite our presentation to fit into that time.

On the 17th we sat in the hearing listening to many witnesses. We detected no effort to confuse, retard, or embarrass any of the witnesses.

The gentleman who preceeded me on the stand was accorded better than a half hour of time, including their questioning.

When I was called, the panel immediately started harassment and I explained I had to arrange my papers (they wanted me to sit down). Then I asked the Commissioner if the ten minutes I was informed by telephone I could have and the ten minutes the panelist said was all I could have, or the fifteen minutes advised in the two letters we received after the abortive telegram would control.

Well the debate on that point continued and finally the panelist informed me that my time was running. I never did get a ruling from the Commissioner.

So I looked at the large clock in the Courtroom (it said 5 P.M. and I had until 5:10.) I kept watching that clock and short of the ten minutes the panelist said "your time is up" and raised a watch. So we wrangled over whether the court clock or his watch was the timepiece. We had a similar argument with Commissioner Maxwell over that same clock at a previous hearing. So Commissioner Denenberg remarked that "those clocks are never right" (City Hall Custodian please note).

Well we gained more by the argument than reading the abreviated paper — it just goes to show what these hearings are really intended to be.

So before the gavel dropped I told Commissioner Denenberg on the record, that whereas we had accepted his invitation to serve on his "Consumers Committee" we would no longer agree to that because if he wouldn't listen to us here in public we could expect even less up there.

We had inquired of Dr. Denenberg himself (face to face) as to whether there would be any conflict of interest in the public mind of him being Commissioner. Now we again pose that position.

1- He was (and still is) the Chairman of a Highway Safety Committee set up by the Pennsylvania Insurance Industry.
2 - At that time he was "Loman Professor of Insurance, University of Penna" - We understand he is retaining this chair even as Commissioner.
3 - On his Safety Committee (PACHS) was (he died recently, Mr. Denenberg told us) was Dr. Harry J Loman, Pres. Emeritus Amer. Inst. of Property & Liab. Underwriters Pres. Emeritus, Insurance Institute of America.
4 - When he shouts to the hills that he "has trouble getting the views of consumer organizations (and we are about the oldest one in Insurance matters) and he treats us the way he did at the Blue Cross hearings, we question sincerity.
5 - He is pushing for no-fault auto insurance — you will end up buying another policy and eventually, if not immediately, have to buy the one you now have also.
6 - He is about to let the Insurance Companies drop small claims — you will find that the remaining policy will cost you the same if not more, for less coverage and we are willing to wager that before long there will be NO MORE PUBLIC HEARINGS and the insurance will be back at the old stand getting "rubber Stamp increases".
7 - WE WERE THE ONLY ONES HECKLED OR CLOCKED.

We have nothing to lose — you do. Contact us if you want to help — don't cry later on, if you don't.

Keep this Insurance mess out in the light of day where it belongs!

WHAT KIND OF INSURANCE DEPARTMENT DO YOU WANT?

Tel.Niagara 4-0725
(mostly at night)

Citizens Committee For Ethical Insurance
(a corporation)
560 Woodside Rd., Berwyn,Pa.

Frank K Jones
President

(REPRINT)

(on March 12th we were assigned ten minutes to present a summary of our 9 page paper at 5 P.M. on March 17th, 1971 — we have previously testified at all hearings on all kinds of insurance, since 1963) (note-subsequently we received TWO letters saying we would have 15 minutes — finally got 8 minutes actual time OUR TIMING)
(With Department heckling)

BLUE CROSS RATES

Mr. Commissioner:

We mailed your Department an advance copy of our formal testimony on March 8th, at your request. This was the earliest we could get it prepared due to the short notice. We did, however, on February 19th acknowledge your personal invitation to testify and outlined the 29 areas of your paper which we would comment on in addition to our material.

I presume copies were made of that advance for others on your panel for preparation of possible questions. We have given copy to the stenographer and have additional copies if you did not bring panel copies along.

We are given the impossible task of summing up our presentation in ten minutes. Touching on highlights makes it impossible for us to explain our position to the panel or for the Press and public to ever be able to adequately understand our thoughts sharpened by pacing the sidewalks (without pay) and getting he thoughts of thousands of citizens over a wide area so we could present what we found. The 5 O'clock time is hardly the time when the audience would be above averagein size.

From things which have transpired mainly in the last few days, we now insist on TOTAL FEDERAL INSURANCE of every kind (or at least Federally controlled) and we offer the following suggestions as a stand-by insurance in the interim (health that is).

We also ask Federal laws declaring that all medical facilities, public or private, which receive any Federal money either as direct grant or reimbursement of services, shall become a public utility subject to regulation of theFederal Government.

We ask that you force the entire medical family, not only Blue Cross, to contain the cost of health services by denying the present application. In our main paper we have given a number of suggestions and we ask that our entire paper and exhibits as given to the Stenographer (including this summary) be made a part of the record.

We never have been, and are not now, looking at this insurance problem as of today with all the furore — we are looking at it as it SHOULD be twenty years and more away.

What we see at present not only irks, but downright shocks us. From the various recent news releases it looks to us as if the basic atmosphere is being deliberately engineered to favor the culprit insurance industry. This is sweetened by the lure of imediate lower premiums. Sweet music, indeed, but once im talled, the premiums will go right on up and the public will be paying more for less. What is needed is a new definition of Insurance — and it is not $$$$$$$$$$$$$$$$$$$$.

We are also rather adequately informed about the controlling of news - we, ourselves have been unfairly hobbled for some time past. That will leave a credibility gap which will keep this pot boiling for years and we will do our best to keep the steam on by resort to sidewalk activity, since the airways seem to be getting sterile of impartiality.

Now I know that our Committee, and I personally, and the public, do not have as much "accepted expertise" as some, but we sure do know when somebody is kicking us in the

face and the public is being kicked in the face right now.

The insurance industry has not only been subsidizing the computer industry at the expense of the public, but the Insurance Department has been accepting the data 100% and disbelieving human data from the public. That computer data is just as unreliable as you imagine ours to be when you ask us to explain our expertise when it is a matter of record in the Department over the years since 1963.

Do you realize that the figures you accept from the Industry is assembled as holes in cardboard by people who have no expertise at all and a slip of the finger can well alter the result — that this is progressively passed higher and higher until it reaches assembled form in the hands of "EXPERTS" who set on it to develope the desired logic and answer or else get fired? It's that simple.

I know you will immediately say that is the most ridiculous statement you have ever heard — but I repeat it. We question if you, or any other Commissioner has ever made a detailed audit of any individual filing and it is absolutely impossible to make a detailed audit of a combined filing. Simplify the rate structure, and you might be able to do it — and you will cut the fictitious losses at the same time.

We note in the Phila. Inquirer of 3/14/71 an article headed "People just might replace computers". We say "PEOPLE MUST replace computers".

We think that inasmuch as God brought humans into the world one at a time and since we leave this world one at a time, it is high time that we accepted that fact insofar as health insurance and medical attention is concerned. We believe that everybody regardless of social status or pecuniary substance is entitled to equal medical service. One way to do this is to make charges more nearly equal, if not entirely so. Groups have no prior preference so far as we are concerned. This will still not preclude those affluents who wish lavish attention obtaining and paying for it. We do not think the general public should subsidize any part of the marble halls where they receive this attention, however. Socialized medical care COULD be avoided, but we very much doubt if the influential portion of our society will PERMIT it to be avoided. Today is the Gettysburg of that battle — which way will we go?

ADVERTISING CAMPAIGNS - this is the seedbed from which the hogwallow insurance mess is spread forth. I give you an envelope full of recent material in all kinds of media — full pages extolling bonuses for being sick. We have done this in other hearings. We ask you to jump on this thing with both feet here and now and stop!

PIRATING — another reason insurance goes up is that every company (not only Blue Cross) tries to gobble up 100% of the business. To do this they steal from eachother in the large group area where the best business is. They progressively offer higher coverages at smaller premiums and end up with insufficient money. At the same time they automatically set the die for what non-group individuals who really need medical insurance have to pay out of their own pockets (Groups being "fringe payments".

We have asked every Commissioner from Comm. Kelly on down to obtain figures on what it would cost for equal insurance per person if everybody got the same coverage. We ask you to establish that figure as a guidpost, and give it full publicity. Cut out the credible and non-credible stuff — we say it is "INcredible".

Your news release of 3/12/71 on Blue Shield covering doctors services for patients in extended care facilities was received 3/15. This same thing is bound to come up in Blue Cross and other insurance coverages, so we will inject it here.

We are in complete favor of the THEORY of this. We are NOT in favor of
setting the precedent now. Wait until the Legislature has passed laws which will contain the cost area of extended care facilities of every kind, be it nursing home, rest home, lying in hospital, geriatric hospitals, recuperation homes, or anything else (our plan includes very low cost operating at a highly dignified level).

DON'T let that group of facilities develope into another hogwallow like the hospitals became, and then we have another mess to clean up. Savings over present hospital costs may be highly deceiving.

We have made a survey of such facilities (we think you should first make a similar survey before you rush blindly into ruling on the Blue Shield request.

We have placed in evidence the brochures and prospectuses of such ventures for private profit. Rates run as high as $350 per week and it is stated that a considerable amount of the operating receipts (and profits) will be from Medicare. There is your hogwallow stating already — in fact it is already in operation.

If you believe the lush insurance industry is going to abandons any part of its high living, you are naive. Their cost accounting requires hard-nose examination.

We ask that you seek legislation to set up ten insurance districts (fully staffed — and we will tell you how to finance it without additional taxes).
These districts would be for rate making purposes, for medical attention coordination purposes and for population distribution purposes. They would be useful even when National insurance comes into being in the future (and it certainly is coming).
We give you a map of our suggestions, it ignores topography and follows county lines for obvious reasons. We prepared this as part of our study on rating areas which was announced by Commissioner Reed. If you continue that (and we hope you do) we will want to testify and let you have the benefit of our talks with a great number of people and insurance agents.

We place the dedicated purpose of theCitizens CommitteeFor Ethical Insurance at your disposal — which includes my own personal professional experience in auditing a number of hospitals and wide conversations with medical men, some of whom were clients in my personal business of Consultant to Small Businesses.

Thank you.

Not on the original paper, which we were prevented from fully reading.

FOOTNOTE: Subsequently we withdrew our offer to serve on a Consumer Group at the personal written invitation of the Commissioner. We were subjected to deliberate harassment and restriction of written scheduled time at the hearing and we could see no possibility of any service to the public if we were to be subjected to the "tripping" we received in public. We prefer to remain independent and will place our efforts on the streets.

Committee for Ethical Insurance
560 Woodside Rd., Berwyn, Pa.

Hearings on B lue Cross of Greater Philadelphia, 9 A.M. 3/17, 3/18, 319, 1971 - Room 296 City Hall, Philadelphia.

Testimony presented for the Committee by Frank K.Jones, President

Mr.Commissioner, in accepting your invitation to testify at these hearings, we advised you that we hoped to pres ent our own National medical service plan at this hearing. Unfortunately it is not yet ready for release. The general idea has been discussed with a good crossection - including State and National Legislators.

We also wish to officially state to you, as we have to former Commissioners Kelly, Maxwell and Reed, that we are more interested in the insurance outlook twenty years from now, after this hew and cry is over, than we are in the present turmoil. We want meaningful legislation which will prevent a recurrence of the present inexcusable debacle.

We have heretofore testified at hearings that insurance of every kind is indispensable in modern life. Unfortunately the Industry doggedly insists it is a private enterprise for profit and the newly evolved "Plans" seem intent on building lucrative private clubs rather than accomplish original purposes.

We contend that the entire Industry has been subsidising everything without organized continuous an d purposeful elimination of hazards and costs of which they w ere aware -- they used to deny this, but in the January February 1971 issue of the Journal of Insurance the President of one company ask "Must insurance subsidize society?".

Our answer to that is, no they do not have to subsidize everything. Let a risk, imagined, actual or forecast, arise and they rush headlong into covering it with a verve.

They are now apparently intent on subsidising the computer industry. This technology makes it practical to build up a tremendous proliferation of risk classifications which it was impossible to do with the pen and pencil. We question the cost of these procedures can be justified.

The procedure up until now has been to supply medical service to upper echelon and major employee groups at ridiculous prices because this is where social prestige and political influence is concentrated which could upset their "private club tranquility". Now the industry has responded to the inevitable

public outcry by coming into the open with its avowed political activity. Previously the activity was just as real but was carried on underground.

There is an apparent intent to deprive full equal service to those who most need it -- probably to force an outcry and force the Government to take over that section of insurance (in each classification) which the industry prefers not to cover. This would then leave them with the "best cows to be milked".

Already the Government is speaking of a $50 per month family charge for all hospital and medical attention. That is $600 per year and is based on the presently established mad hog wallow price structure, which simply MUST NOT CONTINUE. It means that most low income people will have to be on the relief rolls and the rest of us pay the cost on top of a deliberately engineered ridiculous cost. The only ones to benefit would be the Medical/Insurance family. It will kill the dignity of man and bring on total socialized medicine.

We introduced in evidence at one hearing of the Department the brochure of one nursing home group in its stock offer, stating that it was anticipated to receive a substantial return from Medicare services. The charges of that home could only be met by affluent people, but at the same time, would milk money from the Medicare funds which were needed to take care of less pretentious services to less affluent folk.

On the other hand, our own Committee's plan will give reasonable medical attention without the ridiculous schedule of charges.

ADVERTISING CAMPAIGNS induce gross inequities and high costs. We hand you, as we have handed other Commissioners, some advertising material of recent date -- mail, stuffer, fullpage newspaper. You should jump on this kind of thing with both feet right now and stop it. We have asked this action time and time again without success. It is the root of the insurance evil. We know of at least one newspaper editor who will not accept such advertising because he thinks it is not "good for his subscribers". (don't try to guess which editor -- you would be entirely wrong -- this particular paper has never printed any of our releases.

The advertising of wild-eyed offerings of vast wealth creates the hog wallow in which the hospitals and medical men, as well as the insurance companies revel. It makes the "Ready Cash" props.

The availability of cash is the basis on which medical charges are based at every level - doctor, hospital, insurance policy etc. Years ago when Abington Hospital initiated the Intercounty Hospital Plan, it was the first in the Phila. area. I was on the hospital auditing staff of a prominent Public Accounting Firm at the time. The industrialists on the Board of directors of one hospital asked if they should join the plan. We told them they should, since it would mean they could collect their accounts receivable -- and without a pause one member of the Board said "Yes and we can increase our rates".

Our suggested remedy to this is to stabilize the industry and medical services by forming a Federal Authority of a "Lloy'd of London" type to license all insurance companies. The Authority would have a subdivision Federal Health Insurance Pool finance by assessments on all insurance companies to control the operating matters. The Main authority would be the "Reinsurence and High Risk pool".

We believe the Insurance Industry Family could do much themselves to stabilize things and start getting insurance back on proper track. They could have a self-appointed CZAR who could certainly have secured results equal to those obtained in sports. One of the highlights of our efforts was the many conferences we had with J. Harry La Brum. The sincerity and objectiveness of this man was so great that we suggested he be named the CZAR of the industry in our testimony and elsewhere. He could have done a job which the Public would have applauded. He had a desire to solve things and we learned from his lips some of the things which even he refused to condone on the Industry side of the fence.

But when we made our initial suggestion back in Commissioner Kelly's days, the published reaction of the Industry, through its official public relations arm, was that "they trembled at the though of a CZAR -- it would destroy competition".

We believe that our suggest F.H.I.P. setup will bolster weaker elements of the entire medical system, would do much to reduce costs, provide personnel and permit a more uniform quality of medical care

throughout the United States. This coupled to a transportation grid would permit facilities to be established in underdeveloped areas and have them ready when the area is developed — in the meantime they would bolster to built-up areas. It would have other advantages covered by our plan.

DONATED FUNDS -
Now medical attention is one thing everybody is vitally interested in. It is one of the heartstrings of America. That is the reason the many laudible fund appeals find the public rising to the call to carry on research, build hospitals, help hospitals with operating costs, and assist the less fortunate with medical services.

It is therefore downright frustrating and alarming to face the situation where you, yourself, are in need of the things you contributed to help time and time again, only to find that you are financially unable to obtain them — unless, of course, you are willing to pour your substance into the maw of medical practice, become a pauper and then qualify.

A thorough airing of just what happens to all the funds collected, should be undertaken — it would have a salutary result. I know during my own auditing experience we were continually requiring funds be removed from expansion programs and placed into operating funds where the public was led to believe they would be used. Our Committee can inform you of the deliberate squandering of money on a hospital construction — in fact we can show you the thing in motion pictures.

IMPORTANCE OF MEDICAL INSURANCE - In our opinion this coverage is the most important of the entire field - it also affects the majority of other forms of insurance, especially automobile insurance. We find that Life Insurance Companies (in direct statements to us by top officials) are not concerned with highway deaths "because they are so few in relation to the total claims". We also fail to detect any great movement on the part of the Automobile Casualty people to reduce their claims by better medical costs. They are only very recently getting into our design and road hazards — a very late start in attitude from plain "subsidizing".

One of the reasons the companies (including Blue Cross) are short of funds is that in their individual company jurisdiction for the market (they insist it is a losing market) have pushed a policy which is not needed (thus forcing a need). As one company comes out with one idea, the others strive to surpass it, at the same price or better — then demand rate increases to cover up. In doing this they leave holes in coverages, necessitating purchase of other policies. A classic instance is the problem of the elderly. Medicare, must be augmented by 65 special and other forms. By this time one single policy should be in existence to take the worry and uncertainty out of the minds of our senior citizens. Your Department should ride hard until such a policy is obtainable at reasonable rates.
SPECIAL POLICIES AND RATES:
We are mindful of the very favorable rates available to some organizations and groups (particularly the news and broadcasting radio). Some of these are policies sold by commercial companies and some are self-insuring policies. However, what is available to some can certainly be made available to all on a much nearly equal basis than at present. If you will collect this information and publicize it as to rates and coverage (without mentioning names, of course) you could very well break the Gordian Knot.

A publication of this sort could be the Bible of the Consumer in knowing what he should be able to get in insurance. With this criteria available to the customer, the companies would be held in control and still have room for legitimate competition. Many people come to us asking "What is a Good Company and what is a good policy" — we wish we could answer that one.

PIRATING - In my own capacity as a Consultant to Small Businesses, I find my own clients being dogged by insurance representatives to leave their present insurance company and come with another with greatly expanded benefits at very little additional cost and in some instances at even less cost.

Now the worst part of that procedure, as we have testified to this Department time and time again, is that most of the large group plans are already, or are rapidly becoming, "fringe benefits". The employee pays nothing and the total cost is passed on to the consumer, plus overhead, in sales price.

The employer isn't hurt, the employee is pleased, and the insurance company has insufficient funds. There is when that sudden sinking feeling in the stomach of any individual leaving the group by retirement or other cause and becoming conscious of what was being done behind his back as he was dies into his own pocket.

The ideal thing would be for every individual to pay for insurance. If this were so, the outcry from the streets would be many fold worse than it is.

That not being possible, we think the next thing is to strive to get as closely as possible to where the cost per subscriber (regardless of who pays the bill) is almost identical for the same service or coverage, and regardless of size of group he is in.

We have asked before and just for your own information (even if you use it as a way to prove that we are wrong in our viewpoint), we would like to see you compile the following:

Credible groups
- total persons in largest five classes, median five classes, smallest five.
- The coverages accorded to each of these
- The premiums for each of these
- divide the above into categories
  - (a) employer pays entire premium
  - (b) employer pays part premium
  - (c) employee pays entire premium (employer pays nothing)
- Total claims paid out in each category

INCREDIBLE GROUPS get same information

NON GROUP INDIVIDUALS get same information

Now divide the number of individuals into the claims paid, to get the average per person. Then add the whole mess together and divide by total people covered and see how that average figure compares.

Then determine how much electronic equipment, how many highcost rentals and other overheads can be eliminated from the administrative costs. We think with this kind of arithmetic you can get a more equitable premium.

Oh yes, that brings a howl from the employees layed off — but they aren't layed off — they go to work (as we testified before) on weeding out unrendered service charges, overcharges, unnecessary things and HAZARDS. That will pay their entire salaries and leave a very large plus to further reduce the premiums.

Another advantage to be gained is that your own Department would have a filing presented to you which could be understood. We contend that the very immensity of the current system of fragmented rates and classifications makes it impossible for you to keep up with it. They have more "fire power" with their total computer equipment than you have with yours. And when you merge a lot of statistics from many companies and file jointly through a Rating Bureau, you might as well take the figures from a calendar. As an auditor, I would hate to certify to such figures. How can you possibly know how many trade association costs, how many lush conventions at vacation spas, how much high rental to insurance industry satellites, what poorly allocated salaries etc etc are included?

BASIC POLICIES - We think that your Department (or the suggested FHIP) should draw up "minimum policies" which every company must market in order to be given a license to operate in any State. The fear of the policy should show that basic premium and a schedule of possible rider additions that can be had. The premium of each rider should be sufficient to cover that rider and not be a bonus as is now done. And the riders should carry a lions share of the "plant cost" of the hospitals etc.

You attached a copy of your ten suggestions of areas for improving the present situation. The following are our direct comments on these items and we will cover as many of them as our assigned time permits. We ask that all items not covered be entered on the record as if we had covered them.

1 a - A very serious study and prompt solution of this matter of reimbursement methods must be made. The present paper work (which is not standard as to all companies) which is generated even retards the reimbursement and causes avoidable heavy expense both to the hospital, the medical man, and Blue Cross. The simplification of the policy coverage will eliminate a vast amount of the cost and confusion.

s - Fostering of group practice prepayment plans. We are opposed to the continuation of stress on group coverage. The benefit gap between various group sizes and individuals, not only causes tremendous costs in record keeping, but is contrary to the concept of insurance, which is the sharing of risk by the many.

d - Depreciation is in effect a deferred maintenance charge. Proper current

maintenance should restore depreciation wastage. Rather than accelerate Depreciation, we think building depreciation and major equipment depreciation should be adjusted downward to some extent by the actual cash maintenance expenditures each month. Many hospitals are built and equipped by donated cash and the total replacement in all probability will be done with donated cash.

f - Reimbursement of low utilization facilities. The FHIP we suggest might well work out with various areahospitals just what facilities are needed. Then instead of each hospital being in total competition withmm eachother, they would be in total cooperation with eachother in rendering a full broadbased medical service. Not every hospital would have the identical facilities, but each mmxt area would have what is needed, available to patients of any hospital. (in this connection our Committee's suggestion of ten insurance districts in Pennsylvania might produce the basis for determining area hospital equipment).
Some excess standby facilities must be available and might well be subsidised by FHIP.

Open heart surgery is becoming a much used benefit. We think there must be a special study made as to how this can be made available at better cost to those who are not covered by the deluxe hospital plans. In low utilization hospitals, the cost should be equalised by FHIP or the patient should be assigned (along with his own doctor even if not accredited to that hospital) to a hospital which is designated in that area for such service.

j - Bad debts should be eliminated entirely from costs. There should be an interhospital fund set up to reimburse themselves for bad debts. The agency supervising this reimbursement should contuct a hard-nose audit of what charges are on bad debt accounts to see if the very improper nature (such as unrendered services) charges might be the cause of the bad debt and refuse to reimburse that loss. This would be a self-policing of improper charging and unnecessary services.

Research costs should not be reimbursed. There are ample funds donated for such things and these funds can be obtained. This does not, of cours e, mean the normal laboratory tests — it refers just to longterm exploratory research which is using the hospital equipment and patients as a ready laboratory in place of establishing an self-contained commercial enterprise elsewhere.

2 a - The State should be divided into Insurance Districts (ten of them). Each district could then also be a Hospital Utilization district. The object would be (under FHIP) to endeavor to spread out the various facilities so as to obtain maximum utilization. Then the individual utilization would be a lot more meaningful for rate study.

c - Some reasonable guideline of required hospital stays should be worked out. We think this again should be done by FHIP, in cooperation with the medical profession (We are not questioning the dedication of the medical profession — we are proud of them — but the present escalation of costs has even them rocking on the rope.. In our opinion "recuperation and rehabilitation" joint facilities would have a major effect on this problem.

d - Not much use debating this — disallow it in one place and it would be buried skillfully in another. a proper "hardnosed policing" of hospital bills will go a long way to correcting the matter.

3 a Disclosure of Blue Cross/Hospital contracts. Since Federal and State funds are permanently locked into payment of hospital bills, the private contracts should be a matter of record in the Insurance Department where proper committees from the Legislators could examine them. It is correct that the Insurance Department should keep well abreastof such contracts.

This is needed to keep the lid on radical medical cost increases just to make a high-level professional income for some at the expense of the public.

b - We question the desirability of advising patients the cost of the services shown on their bills. We doubt if the vast majority of the patients would know what it was all about and might suffer a heart attack trying to work it out. In addition the cost of doing such a thing would be indefensible.

3 b cont'd However, we do think that every bill should have on it a prominent footnote "If the patient has any question as to any charge hereon, particularly as to whether the service was rendered, he has the right to refer the matter to the Penna. Insurance Department in Harrisburg, Pa.".

Such a note would help greatly in breaking up those improper charges because "you don't pay the bill, so why worry".

c With the Insurance Department and other proper Government agencies watching the interests of the public as well as the hospitals, it is hoped that there would be a minimum of things the public should watch. It is desireable that the hospitals be spared the tremendous cost of making miriads of unneeded "shim reports". A simplified medical coverage will release hundreds of hands to do necessary medical operating things which are now not done or inadequately done. This, in itself, should further cut down on costs.

d Cost of per diem charges by hospitals should be publicised twice a year, particularly to the Legislators. We recommend that this be on the basis of the Insurance Districts previously mentioned for ready comparison. Then the Insurance Department in cooperation with the suggest FHIP should delve into the reasons for the discrepancies and endeavor to minimize them, knowing full well that you just can't get equal costs in every unit.

e Not only should there be a disclosure of payments to such specialists who are not on a fixed annual salary and on the fulltime staff, but the matter of supplying suffient help should be the function of the suggested FHIP. In my own experience, an anaesthestist was billed by the hospital and the same technician sent an additional personal bill because the hospital scale was not high enough.

We do not question adequate pay for medical experts and technicians but we think their own associations should set some reasonable guide lines

At the last Blue Cross hearings in Phila, we and others suggested that your Department obtain lists of everybody receiving over $10,000 per year, especially the technologists and then crosscheck each list to locate the same name appearing on more than one hospital list — I know, professionally, that such things did occur and presume that they still do. A little light could have a great effect in reducing costs. (Our own plan, when released will chart the way.)

5 e We recommend that something be done along the lines of having standard hospital plans drawn up for buildings, allowing for expansion. The facilities would then be more familiar to changing personnel and save much in construction and operating costs. This is mostly adaptable to new construction in open rural areas where the maximum load is still in the future. It permits those rural units to better function as standby and auxiliary facilities for urban plants, especially during crisis.

6 b Duplication of benefits, and/or duplication of reimbursements should be prohibited (as suggested in our remarks on advertising). Since such duplications are based on the premise that some policies do not cover certain items, it is imperitive that the policies offered to the public must be strictly regulated so the consumer is not faced with a bewildering maze. This clarification of policies will, in itself, vastly cut down on the paper work and operating costs of even the insurance companies themselves, as well as hospitals.

c This point is covered by our prior remarks asking for basic minimums which cover MUSTS, plus riders covering non-essentials at additional adequate premium.

7 a The matter of pre-admission testing and useage of outpatient care must be a matter to be supervised by an agency such as FHIP so as to gradually circumvent the unnecessary hospital entrance and length of stay and the services used on admittance. In other words, medical practice should again revert to a service and not to expend further into a research effort. Such control must be monitored by a meaningful department of FHIP.

7 f Looking to the eventual (and obviously unavoidable) Nationalization of medical attention at all levels - it is imperitive that all account and reporting forms (ALL PAPER WORK) become uniform as promptly as possible. Those who are opposed to nationalization should be the loudest in calling for this standardization because it will permit proper comparisons which are impossible now. The present confusion precludes fair evaluation ~~mf~~ either to the medical community or to the public.

8 a The public has only recently become aware of the fact that the Blue Cross organizations are under the control of the medical community. The Board should be service oriented, certainly not a political football, nor a medical/insurance company bonanza. Possibly only by area or state board supervision (FHIP) can such broad principles be attained. Otherwise it can be ego/competetive.

Blue Cross must be, what it started to be, a purchasing agency for the public. There is even frailty in thot concept, however, in industry.

Until very recently, at least, Blue Cross has resisted public information. We bring to your attention our testimony in the hearings onBlue Cross in Phila. on April 16-17-18, 1970. We ask you to review that testimony and make it a part of the record of this hearing. In that we reported the downright arrogance of the Blue Cross officials in refusing to let us have access to papers on the filing. Following that hearing, we were given the courtesy of talking to those who should have been available without the unpleasantness. We think the entire medical community and the Blue Cross (the same as insurance companies in other fields) is engaged in "pulling the wool" over the eyes of the Insurance Commissioner for the benefit of others than the public. Up until now the smirk on their faces has been even visible — we find the smirk has been gradually disappearing, but the intent remains obvious. We for our part, will continue to fight.

b We believe there should always be a consumer representative on all boards such as Blue Cross. Consumer groups themselves are not enough. There is no communication between consumer groups either and that is a calamity. Do not for a minute think that whereas Blue Cross started consumer oriented and became a desireable employment haven to be protected, that consumer groups cannot become the same. We hope your office will forever hold public hearings on rate increases to avoid the quiet "job pools" perpetuating.

c We think that not only all Blue Cross subscribers, but that every other policyholder of every other type of Insurance should receive notice of requests for rate adjustments, plus notification of availability of appeal for help from the Insurance Commissioner, plus notification of the Insurance Commissioner by the Insurance Company/and or plan of each and every cancellation, refusal to renew, or refusal to sell.

We do not believe that either the public or the Insurance Commissioner is fully aware of what is going on. In fact, we note that you, Mr. Commissioner are asking for 50,000 policyholders to enter protests in automobile insurance. If what we have been asking for eitht long years had been done (and we repeat that request above) you would have that 50,000 plus some 100,000 more protests right now. We will ask legislation on this particular point this year.

d Yes, most decidedly policyholders should be advised of hearings. Just start this kind of notification and the number of requests will subside to what is really required and stop the "fat-calf-living" of insurance people.

e We believe that if special T.V.forums were arranged at least once a year, or that some portion of the annual meeting of Blue Cross would be televised (like school board meetings etc). that people would become more interested because they would be better informed. At present most are simply disgusted and don't trustk anything including Blue Cross and the Insurance Department itself.

It would also be meaningful if the Press (I mean a joint press-club) would hold televised interviews - excluding politicians and get down to earth discussion and debate at the people level.

9 a to f We believe the answer to a to f items in this category can be grouped as one.

Since health is an individual matter, health insurance is an individual matter.

If every health agency is controlled through the suggested HMP then you would have uniform standards, you would have uniform coverage, and you would have uniform charges.

Improper charges should never be paid. The real thing is that they should never be charged in the first place. Merely refusing to pay such charges is not the answer, because as an accountant, I know full well they will be buried somewhere else where you don't see them. You have to restore cash to the properly operated health agency. The answer is to have a health agency which doesnot want to live in ivory towers, especially when they are not being watched.

We are supposed to group coverages at special rates, especially when they carry more benefits, and this applies particularly to the medical field.

In our opinion the concept of credible and non-credible groups is an archaic premise which can't stand the test of human application. Arithmetic is a very inhuman thing. It has already been carried to the point of popular outcry — let's not carry it further to popular demand for socialists. In fact we call on the Penna. State Legislature to outlaw the concept of-credible/ non-credible and get down to health insurance.

10 a to c Yes the public can be better informed about the cost and dangers of over-utilization — and its own part in stopping such use. We think it could, and should, use in the form of the "forums" heretofore suggested. Such forums should be frequent and have uninhibited people participation and just not a platform for top officials to expound and cover up.

It could also be in the form of properly drawn leaflets or pamphlets, handed to each patient or attached to each bill to a patient. We think a a "news short" at very frequent intervals on T.V./radio (possibly sponsored by the Advertising Council of America — or the insurance industry) would be very helpful.

Possibly a leaflet for insertion AT NO CHARGE in the newspapers, like they put the miriad of bargain rate insurance advertising material, would be helpful.

And above all, we think that HARD-NOSE POLICING OF ADVERTISING COMPAIGNS by the Penna..Insurance Department (and the suggested Insurance Industry CZAR) which induce the overutilization, would be a prime curb on the practice.

And then maybe a public display of intentional overcharges might have an effect.

- 0 - 0 - 0

TO SUM UP - We think that inasmuch as God brought humans into the world one at a time, and since we leave this world one at a time, it is high time that we accepted that fact insofar as health insurance and medical attention is concerned. We believe that everybody regardless of social status or pecuniary substance is entitled to equal medical service. One way to accomplish this is to make charges more nearly equal, if not entirely so. Groups have no prior preference so far as we are concerned. This will still not preclude those affluents who wish lavish attention obtaining and paying for it. We do not think the general public should subsidize the marble halls where they receive this attention, however. Socialized medical COUL[illegible] avoided, but we very much doubt if the influential parti[illegible] will PERMIT it to be avoided. Today [illegible] that battle [illegible] way will we go?

7 f Looking to the eventual (and obviously unavoidable) Nationalization of medical attention at all levels - it is imperitive that all account and reporting forms (ALL PAPER WORK) become uniform as promptly as possible. Those who are opposed to nationalization should be the loudest in calling for this standardization because it will permit proper comparisons which are impossible now. The present confusion precludes fair evaluation ~~of~~ either to the medical community or to the public.

8 a The public has only recently become aware of the fact that the Blue Cross organizations are under the control of the medical community. The Board should be service oriented, certainly not a political football, nor a medical/insurance company bonanza. Possibly only by area or state board supervision (FHIP) can such broad principles be attained. Otherwise it can be ego/competetive.

Blue Cross must be, what it started to be, a purchasing agency for the public. There is even frailty in that concept, however, in industry.

Until very recently, at least, Blue Cross has resisted public information. We bring to your attention our testimony in the hearings onBlue Cross in Phila. on April 16-17-18, 1970. We ask you to review that testimony and make it a part of the record of this hearing. In that we reported the downright arrogance of the Blue Cross officials in refusing to let us have access to papers on the filing. Following that hearing, we were given the courtesy of talking to those who should have been available without the unpleasantness. We think the entire medical community and the Blue Cross (the same as insurance companies in other fields) is engaged in "pulling the wool" over the eyes of the Insurance Commissioner for the benefit of others than the public. Up until now the smirk on their faces has been even visible — we find the smirk has been gradually disappearing, but the intent remains obvious. We for our part, will continue to fight.

b We believe there should always be a consumer representative on all boards such as Blue Cross. Consumer groups themselves are not enough. There is no communication between consumer groups either and that is a calamity. Do not for a minute think that whereas Blue Cross started consumer oriented and became a desireable employment haven to be protected, that consumer groups cannot become the same. We hope your office will forever hold public hearings on rate increases to avoid the quiet "job pools" perpetuating.

c We think that not only all Blue Cross subscribers, but that every other policyholder of every other type of Insurance should receive notice of requests for rate adjustments, plus notification of availability of appeal for help from the Insurance Commissioner, plus notification of the Insurance Commissioner by the Insurance Company/and or plan of each and every cancellation, refusal to renew, or refusal to sell.

We do not believe that either the public or the Insurance Commissioner is fully aware of what is going on. In fact, we note that you, Mr. Commissioner are asking for 50,000 policyholders to enter protests in automobile insurance. If what we have been asking for eitht long years had been done (and we repeat that request above) you would have that 50,000 plus some 100,000 more protests right now. We will ask legislation on this particular point this year.

d Yes, most decidedly policyholders should be advised of hearings. Just start this kind of notification and the number of requests will subside to what is really required and stop the "fat-calf-living" of insurance people.

e We believe that if special T.V.forums were arranged at least once a year, or that some portion of the annual meeting of Blue Cross would be televised (like school board meetings etc). that people would become more interested because they would be better informed. At present most are simply disgusted and don't trust anything including Blue Cross and the Insurance Department itself.

It would also be meaningful if the Press (I mean a joint press-club) would hold televised interviews - excluding politicians and get down to earth discussion and debate at the people level.

9 a to f We believe the answer to a to f items in this category can be grouped as one.

Since health is an individual matter, health insurance is an individual matter.

If every health agency is controlled through the suggested HHIP then you would have uniform standards, you would have uniform coverage, and you would have uniform charges.

Improper charges should never be paid. The real thing is that they should never be charged in the first place. Mirely refusing to pay such charges is not the answer, because as an accountant, I know full well they will be buried somewhere else where you don't see them. You have to restore cash to the properly operated health agency. The answer is to have a health agency which doesnot want to live in ivory towers, especially when they are not being watched.

We are opposed to group coveraged at special rates, especially when they carry more benefits, and this applies particularly to the medical field.

In our opinion the concept of credible and non-credible groups is an archaic premise which can't stand the test of human application. Arithmetic is a very inhuman thing. It has already been carried to the point of popular outcry — let's not carry it further to popular demand for socialism. In fact we call on the Penna. State Legislature to outlaw the concept of-credible/ non-credible and get down to health insurance.

10 a to c Yes the public can be better informed about the cost and dangers of over-utilisations.— and its own part in stopping such use. We think it could, and should, bue in the form of the "forums" heretofore suggested. Such forums should be frequent and have uninhibited people participation and just not a platform for top officials to expound and cover up.

It could also be in the form of properly drawn leaflets or pamphlets, handed to each patient or attached to each bill to a patient. We think a x "news short" at very frequent intervals on T.V./radio (possibly sponsored by the Advertising Council of America — or the insurance industry) would be very helpful.

Possibly a leaflet for insertion AT NO CHARGE in the newspapers, like they put the miriad of bargain rate insurance advertising material, would be helpful.

And above all, we think that HARD-NOSE POLICING OF ADVERTISING CAMPAIGNS by the Penna..Insurance Department (and the suggested Insurance Industry CZAR) which induce the overutilization, would be a prime curb on the practice.

And then maybe a public display of intentional overcharges might have an effect.

- 0 - 0 - 0

TO SUM UP - We think that inasmuch as God brought humans into the world one at a time, and since we leave this world one at a time, it is high time that we accepted that fact insofar as health insurance and medical attention is concerned. We believe that everybody regardless of social status or pecuniary substance is entitled to equal medical service. One way to accomplish this is to make charges more nearly equal, if not entirely so. Groups have no prior preference so far as we are concerned. This will still not preclude those affluents who wish lavish attention obtaining and paying for it. We do not think the general public should subsidize the marble halls where they receive this attention, however. Socialized medical COULD be avoided, but we very much doubt if the influential portion of our society will PERMIT it to be avoided. Today is the Gettysburg of that battle — which way will we go?

Testimony of Citizens Committee For Ethical Insurance, Bergen, Pa. presented by Frank K. Jones, President before Insurance Commissioner George F Reed, Phila., Pa. April 16-17-18, 1970 in the matter of rate increase application of BLUE CROSS * PHILADELPHIA

An Article "viewpoint" published in the Sunday Philadelphia Inquirer of April 1 2,1970 quotes R.D.Chapin, Jr., Chairman of American Motors Corp. as saying

"had business been less effective in meeting consumer demands for better goods and services, life would be considerably more simple. "The question that must be answered, concerns whether progress has been worth the problems".

We think that same thing summarizes our own testimony on Insurance all these years.

The Concept of insurance in the United States is very much "on the spot". We are at a high-water mark in insurance history. We are at a point where we either have well-considered equitable insurance under private enterprise (which we sincerely hope it will be), or we are going to have a kind of socialized Government insurance brought about by the clamor of the public. If we have the latter, the Insurance industry will be to blame, because it made all kinds of insurance necessary and then works to deprive those who need it most.

Insurance is one of the most necessary things in our economic life, next to food and clothing. We could not and can not progress without it.

There is nothing more important in the insurance field than life insurance and health ins urance. God made man and he made him frail, and he made him subject to all kinds of ailments, including death, and he did not exempt anybody from these hazards. The insurance industry acknowledging and seeing this. developed a lot of plans and then the sheer magnitude of the population explosion brought about some things they had not contemplated and they did not keep abreast of it.

They caused problems to be created because, with an eye only to pure profit, they tried to phase out everthing and everybody which in their opinion seemed to cause a so-called loss. They did this rather than adjust the industry to changing times. They created policies they cannot afford to sell and in doing so actually established socialism of a sort.

They are only now becoming conscious of the fact that possibly, to use their words, possibly they have some responsibility to look into the social aspects of insurance. And if they do not look into the social aspects of insurance, the Government will have to do it for them. We have some instances of this in the Social Security laws, the FDIC laws, the newflood and storm damage laws, Medicare and Medicaid, Fair plan fir fire insurance etc. , all caused because industry did not voluntarily do the necessary.

In the opinion of our Committee, in the matter of health insurance, including hospital and medical coverages, the industry is showing up in its worst light. These particular kinds of insurance affect every other kind of insurance to some extent, most particularly the automobile insurance.

But dwelling entirely on the health phase, we have already testified to your Department a number of times that the Blue Cross groups have a class ic opportunity to make insurance what it really should be — a broadbased sharing of risk. And since they are basicly a non-profit organization there is no reason in the world why they should not consider every individual as one s tandard risk. The Supreme Court has ruled on the "one man- one vote" issues, and we think that idea should be developed into the matter of health insurance. We realize that it is much easier to sell a large industrial plant than it is to sell each individual who may be employed in that plant. But by giving preferential rates, in addition to preferential coverages which are not available to smaller groups or individuals who are not in any group, you simply accentuate a social condition which penalizes the very segment of our society which needs the most help. (Necessity is the mother of invention, so if you can't get what is reasonalby needed, you fight tooth and claw for all you can get and end up with the undesireable misuse of social legislation which crops up. We think obstinate-minded endeavor to deprive, actually orbates such conditions. So stop depriving and solve it). If this is not taken care of by private enterprise it simply makes this vast number of people demand that the government do something about it. Of course, eventually government (regardless of party) becomes s ensitive to this clamor.

We suggest again with all of our sincerity and with all of the weight we can that your Department again, as we have requested before, return this rate application to the Blue Cross group and tell them to send you a proposal of a single flat premium per individual for the same specific schedule of things which will beeavailable to everybody who is a resident of the State of Pennsylvania, or covered by any policy issued by the Blue Cross.

This would show:	A No.ofPolicies	B No.of Individ.	C $ paid out
policies in credible groups			
policies in noncredible groups			
policiew as individuals			
Totals			

C divided by B equals
Premium per person

This rate would apply whether they are a single individual or whether they are included in a large group. We think if you will do this, and if Blue Cross will respond to it, that the remaining portion of the industry will have to fall in line and do the same thing. Then TOTAL EFFORT could be exerted into study and reduction of specific costs making up the average premium charge.

Now like in every other kind of insurance rate, as we have testified time and time again, there will be a loud howl because a vast army of insurance employees will fear for their jobs by such a simplification. We have said before, and we reiterate thatnot one single necessary employee should be eliminated. All displaced persons would be put to work getting information as to the content of the figures which make up the arithmetic which your Department is asked to examine and act on. Stop underwriting budgets - buy a medical service on a competitive basis. And we question very much, as we have on every other kind of insurance, that you actually know what the content of these figures are.

For example, we would like to suggest that you call on the Blue Cross, or undertake the examination yourself, to get a list of the major departments of t the hospitals, list the names of the top specialists and their remuneration and see how many times the same identical name shows up in other hospitals and the gross remuneration in relation to the gross income of the corresponding Department.

The purpose of this is to determine the possibility of each hospital having its own complete salaried staff operating within a proper budget. We believe this idea is being explored by the University of Pennsylvania Hospital.

There has been a vast amount of discussion and testimony on masspurchasing and avoidance of duplication of equipment etc. A good bit of the duplication is due to matters of pride rather than necessity.

Another thing we wonder about and I know it was a matter of considerable conjecture at the time I was actually auditing hospitals is that many people keep asking "why is it that we are continually called on to make donations and to run various hospital benefits and the rates still keep going up and we hear so many people complain that they don't seem to get any direct benefits in reducing the cost to them". We think it would be quite a fair thing to have a proper publication of what funds are received by the hospital groups and how they are actually disbursed. Are they all used for expansion of facilities? So that C O S T S of Departments and services can reflect any part of these receipts, are they used to REDUCE the expenditures in making the cost calculation, or are they included simply in receipts where they are not reflected at all.

To my own personal knowledge the operation of the billing and reimbursement procedure of Blue Cross,Blue Shield,Medicare is cumbersome, duplicating, and very unsatisfactory. In recent years it has become to bad that I personally have been getting into arguments with my own doctors. They no longer want to do the paper work of reports. The system is so slow that they start asking about payment of bills (and I previously had an enviable credit standing). So I tell them I'll check up. I do, only to be informed that the System has no unpaid bills on my account. So I go back to the doctor and ask for duplicates to start all over. This is not pleasant to go through. Before I finally get things together, checks start to arrive.

Such a cumbersome system must be unnecessarily costly and have unnecessary duplications - at any rate two or more checks cover the same bill before you finally get the total — that's unnecessary clerical work, and unnecessary postage and stationery and rental of VASTLY EXPENSIVE ELECTRONIC MACHINERY.

I realize Blue Cross doesn't get paid directly for trying to evolve a system, neither do we. However they have alot to gain and the net cost to them would be exactly nothing and the net gain would be restoration of confidence in the function of Blue Cross. Or do they feel that with such confusion it provides more justification for more of their people to have a good fat job, so they don't care how much it costs. We can't afford that luxury.

Now I believe it is stated that the overhead cost load of Blue Cross is somewhere around 5%. At any rate it is a rather small percentage on the face. But as the volume goes up, does it still have to be that percentage? Can't it go down to 4%, 3%, 2%, 1% 1/2% as the total receipts go up, or must it stay at some static level just to provide an expanding fund rather than a controlled fund? We think you should look into this. (We know you will need a larger staff to do so — we have already endorsed this on several occasions).

Now we have made reference in past hearings, on fire insurance for example, that we thought the insurance companies might well subsidize the matter of fire schools to train firemen so as to reduce their own fire loss outlays. We think the Blue Cross might well participate in such an idea with all other insurance plans where hospital operations are involved. Such a fund would be used UNDER A BOARD OF GOVERNORS ON WHICH THEY WOULD HAVE REPRESENTATION to educate doctors, nurses, practical nurses, medical technicians etc etc. in order to build up a work force which is now admittedly inadequate and will become much more inadequate at an alarming rate as the days go by (and I don't mean years in this connection). We think the provision of these necessary hands would cut down tremendously on the unconscionable nervous strain now placed on our very dedicated nursing staffs and the doctors themselves. We think it would be self-supporting and a good investment. We ourselves are currently involved with others in working out such a program and we hope to be able to announce something before very long.

Now as to the office appointments of Blue Cross and others, it seems to us that there is no necessity of having such a luxurious decor and quarters. It is obvious that great pride can be had in working in such surroundings, but can we afford it — do we have such things in our own homes — I don't, and there are thousands and thousands of otherw who do not, even in their own places of employment. Do they need a receptionist at the elevator on each floor? Thought should be given to freezing what is, and avoid a proliferation in the future. Most profit making businesses have a central receptionist who refers people to the proper floor and room number.

One of the easiest ways to get unpopular is to attack the very great luxury of hospital room care. Hospitals are heartstrings and you don't question heartstrings. Our socialites delight in the excitement of the campaigns to raise a never-ending source of funds. So we will have to be unpopular— it won't be the first time. There is no end to the ability to use all possible cash in the bottomless pit known as "Hospital Costs". There is a bottom, however, and I personally know it and will work diligently with your Department or anyone else to prove the point IF YOU WANT TO GET RESULTS AND NOT JUST COVER THINGS UP.

The cost of sleeping and eating in a hospital (without any other services at all) is greater than the most expensive hotel anywhere and a great deal has been said about the fact that people stay in hospitals longer than they need to be for recuperative purposes, at high rates — luxurious rates. (and that keeps other people out). There are some kinds of illnesses and some particular cases where the patient must remain long periods under agonizing and uncomfortable conditions. We can see the need for air-conditioning and all the rest for them. But just to lie around 1 ongerthan is really necessary seems ridiculous. And I know the medical profession will be at my throat on that, but let me remind them that some of their own profession told me that.

We think the Blue Cross should be daily watching to see that hospital caredoes not pass the point of necessity and stop the hospital fostering this kind of thing. (Maybe the Medial Association should have a "CZAR" to watch also).

There have been many times, some of them to my personal knowledge, where hospitals put things on bills which were not rendered and simply say "well you don't pay the bill so why worry about it?". We think Blue cross shouldbe outspoken in this regard and it certainly has available means of detecting it. It should lead a fight against stuch practices. We think your Department must be aware of it and should insist on the entire insurance industry involving itself in the fight —INCLUDING EQUAL USE OF POLICIES TO ALL.

The automobile insurance group is at long last crying about unnecessary repair costs (and we think they SHOULD PAY PROPER COSTS and not try to get out of them) so Blue cross and Blue Shield should stop being a vehicle for transferring money from sick peopheople to hospitals and be a policeman of the costs and service

If they don't have the right to do it, and your Department doesn't have the power to do it or ask them to do it, then we think your Department should take a forward step and get legislation to initiate it. We will back you.

Now we realize that the matter of a flat rate plan for all of the State might not be as practical as an area rate. So we again suggest, as we have in the automobile rate cases, that the same ten insurance districts we have proposed shall also be rate districts for health and accident and hospital coverages,

with a Blue Cross group for each or for any combination of such districts, but always just that particular district, unless it covers the entire State.

Now one of the great problems about this health insurance thing is the inequality of the economic structure and who pays the cost. The industry, including Blue Cross and Blue Shield, have been doing identical thinking of getting mass coverage — what I believe you call the "credible groups". If you will eliminate the "credible idea" and get down to "people" I think you might solve the problem. But when you get into the large groups, you are then talking about an economic thing where the employer can put out a health and accident policy as a so-called"fringe benefit". We have remarked on this before. In some companies the entire cost is paid by them and then promptly passed on to the public as a part of the product price. So nobody except thepublic gets stuck and there can be no complaint. Consequently management doesn't argue and the employee doesn't argue and that's the basic thing behind what these insurance companies are doing — avoid top echelon dissent (and the low echelon suffers more and more) As businesses consultant I freq uently run into first hand information on the offerings and thinking. Now in some companies the employees pay a part or maybe allof the premium. But the non-group individual pays out of his own pocket always (and don't forget that the large groups have much greater benefitsand the smaller groups and non-groups get boiled-down minimums. The cost is in direct reverse to the benefits).

So if the companies had to pay the same identical rate as the "man on the street" who is not in these groupsk there would be some kind of justice in the thing, whereas now there is no justice at all. And let me point out that on top of this there are two other benefits which aggravate the problem.

1 - The "Sickpay" deduction on your income tax is available to most large-group participants but not to the ordinary "man on the street" or to the self-employed. It pays some to go into the hospital and lie around!

2 - The " pie in the sky" multiplicity of policies which permit two and three and four recoveries for the same identical illness, makes it profitable. We have furnished copies of advertisements fostering this to your Department.

Outlawing this practice will have a stabilizing effect. Many companies will cry, of course, because of reduction of "cash intake". Many individuals, without thinking, will be at our throats because "their policies don't cover everything and the extra collection will pay for gaps". They are correct in this and the insurance companies themselves have published advertisements telling them so in positive language. We say REQUIRE THAT A PROPER POLICY GIVING 100% of needed coverage be drawn up and sold to everybody. That will cure the problem, and we think your Department should undertake getting it into existence.

The "little guy" is just stuck and he doesn't have a soul to defend him. We again ask for a "public defender to fill that gap. We insist he will be of great assistance to the Insurance Commissioner by taking a lot of political pressure off of him.

People in authority do not like opposition and they like things to progress in an orderly manner so they can be praised for having conducted a very splendid program. This is understandable, and we would be the first to applaud such a thing IF IT DID NOT SIMPLY RESULT IN A CONDITION where they get the idea that "now the pressure is off, let's go golfing or have a convention in Florida or Hawaii" — at public expense, of course. They should be continuallylooking for the possibility of new problems arising and predetermine and start them in motion counter measures without the necessity of a public uprising.

That should be their first consideration and I frankly think that was the thinking of the InterCounty Hospital Group when it first started the idea in this area. From some things which I know Intercounty does voluntarily now, I think they still have that objective.

So we are opposed to silencing opposition and silencing expression of views. That is the worst thing that can happen to this country, when you can't have the full right to express your views. And we think the Press and the News Media and the radio and the T.V. had better stick closer to this continuing problem and stop Agnewising the news — and that's not a political speech.

We have been told to our face that we don't have any advertising income to offer them for coverage. So a public defender might accomplish the fact and we might eventually dry up the slush fund which is making the escalation of hospital charges continue. As long as the cash is readily available, the total will be soaked up and more demanded.

We will continue our efforts and we again ask that you reject this filing.

Now I believe it is stated that the overhead cost load of Blue Cross is somewhere around 5%. At any rate it is a rather small percentage on the face. But as the volume goes up, does it still have to be that percentage? Can't it go down to 4%, 3%, 2%, 1% 1/2% as the total receipts go up, or must it stay at some static level just to provide an expanding fund rather than a controlled fund? We think you should look into this. (We know you will need a larger staff to do so — we have already endorsed this on several occasions).

Now we have made reference in past hearings, on fire insurance for example, that we thought the insurance companies might well subsidize the matter of fire schools to train firemen so as to reduce their own fire loss outlays. We think the Blue Cross might well participate in such an idea with all other insurance plans where hospital operations are involved. Such a fund would be used UNDER A BOARD OF GOVERNORS ON WHICH THEY WOULD HAVE REPRESENTATION to educate doctors, nurses, practical nurses, medical technicians etc etc. in order to build up a work force which is now admittedly inadequate and will become much more inadequate at an alarming rate as the days go by (and I don't mean years in this connection). We think the provision of these necessary hands would cut down tremendously on the unconscionable nervous strain now placed on our very dedicated nursing staffs and the doctors themselves. We think it would be self-supporting and a good investment. We ourselves are currently involved with others in working out such a program and we hope to be able to announce something before very long.

Now as to the office appointments of Blue Cross and others, it seems to us that there is no necessity of having such a luxurious decor and quarters. It is obvious that great pride can be had in working in such surroundings, but can we afford it — do we have such things in our own homes — I don't, and there are thousands and thousands of otherw who do not, even in their own places of employment. Do they need a receptionist at the elevator on each floor? Thought should be given to freezing what is, and avoid a proliferation in the future. Most profit making businesses have a central receptionist who refers people to the proper floor and room number.

One of the easiest ways to get unpopular is to attack the very great luxury of hospital room care. Hospitals are heartstrings and you don't question heartstrings. Our socialites delight in the excitement of the campaigns to raise a never-ending source of funds. So we will have to be unpopular— it won't be the first time. There is no end to the ability to use all possible cash in the bottomless pit known as "Hospital Costs". There is a bottom, however, and I personally know it and will work diligently with your Department or anyone else to prove the point IF YOU WANT TO GET RESULTS AND NOT JUST COVER THINGS UP.

The cost of sleeping and eating in a hospital (without any other services at all) is greater than the most expensive hotel anywhere and a great deal has been said about the fact that people stay in hospitals longer than they need to be for recuperative purposes, at high rates — luxurious rates. (and that keeps other people out). There are some kinds of illnesses and some particular cases where the patient must remain long periods under agonizing and uncomfortable conditions. We can see the need for air-conditioning and all the rest for them. But just to lie around 1 longer than is really necessary seems ridiculous. And I know the medical profession will be at my throat on that, but let me remind them that some of their own profession told me that.

We think the Blue Cross should be daily watching to see that hospital care does not pass the point of necessity and stop the hospital fostering this kind of thing. (Maybe the Medial Association should have a "CZAR" to watch also).

There have been many times, some of them to my personal knowledge, where hospitals put things on bills which were not rendered and simply say "well you don't pay the bill so why worry about it?". We think Blue cross should be outspoken in this regard and it certainly has available means of detecting it. It should lead a fight against stuch practices. We think your Department must be aware of it and should insist on the entire insurance industry involving itself in the fight —INCLUDING EQUAL USE OF POLICIES TO ALL.

The automobile insurance group is at long last crying about unnecessary repair costs (and we think they SHOULD PAY PROPER COSTS and not try to get out of them) so Blue cross and Blue Shield should stop being a vehicle for transferring money from sick peopheople to hospitals and be a policeman of the costs and services

If they don't have the right to do it, and your Department doesn't have the power to do it or ask them to do it, then we think your Department should take a forward step and get legislation to initiate it. We will back you.

Now we realize that the matter of a flat rate plan for all of the State might not be as practical as an area rate. So we again suggest, as we have in the automobile rate cases, that the same ten insurance districts we have proposed shall also be rate districts for health and accident and hospital coverages,

with a Blue Cross group for each or for any combination of such districts, but always just that particular district, unless it covers the entire State.

Now one of the great problems about this health insurance thing is the inequality of the economic structure and who pays the cost. The industry, including Blue Cross and Blue Shield, have been doing identical thinking of getting mass coverage — what I believe you call the "credible groups". If you will eliminate the "credible idea" and get down to "people" I think you might solve the problem. But when you get into the large groups, you are then talking about an economic thing where the employer can put out a health and accident policy as a so-called "fringe benefit". We have remarked on this before. In some companies the entire cost is paid by them and then promptly passed on to the public as a part of the product price. So nobody except the public gets stuck and there can be no complaint. Consequently management doesn't argue and the employee doesn't argue and that's the basic thing behind what these insurance companies are doing — avoid top echelon dissent (and the low echelon suffers more and more). As a business consultant I freq uently run into first hand information on the offerings and thinking. Now in some companies the employees pay a part or maybe all of the premium. But the non-group individual pays out of his own pocket always (and don't forget that the large groups have much greater benefits and the smaller groups and non-groups get boiled-down minimums. The cost is in direct reverse to the benefits).

So if the companies had to pay the same identical rate as the "man on the street" who is not in these groups there would be some kind of justice in the thing, whereas now there is no justice at all. And let me point out that on top of this there are two other benefits which aggravate the problem.

1 - The "Sickpay" deduction on your income tax is available to most large-group participants but not to the ordinary "man on the street" or to the self-employed. It pays some to go into the hospital and lie around!

2 - The " pie in the sky" multiplicity of policies which permit two and three and four recoveries for the same identical illness, makes it profitable. We have furnished copies of advertisements fostering this to your Department.

Outlawing this practice will have a stabilizing effect. Many companies will say, of course, because of reduction of "cash intake". Many individuals, without thinking, will be at our throats because "their policies don't cover everything and the extra collection will pay for gaps". They are correct in this and the insurance companies themselves have published advertisements telling them so in positive language. We say REQUIRE THAT A PROPER POLICY GIVING 100% of needed coverage be drawn up and sold to everybody. That will cure the problem, and we think your Department should undertake getting it into existance.

The "little guy" is just stuck and he doesn't have a soul to defend him. We again ask for a "public defender to fill that gap. We insist he will be of great assistance to the Insurance Commissioner by taking a lot of political pressure off of him.

People in authority do not like opposition and they like things to progress in an orderly manner so they can be praised for having conducted a very splendid program. This is understandable, and we would be the first to applaud such a thing IF IT DID NOT SIMPLY RESULT IN A CONDITION where they get the idea that "now the pressure is off, let's go golfing or have a convention in Florida or Hawaii" — at public expense, of course. They should be continually looking for the possibility of new problems arising and predetermine and start them in motion counter measures without the necessity of a public uprising.

That should be their first consideration and I frankly think that was the thinking of the InterCounty Hospital Group when it first started the idea in this area. From some things which I know Intercounty does voluntarily now, I think they still have that objective.

So we are opposed to silencing opposition and silencing expression of views. That is the worst thing that can happen to this country, when you can't have the full right to express your views. And we think the Press and the News Media and the radio and the T.V. had better stick closer to this continuing problem and stop Agnewizing the news — and that's not a political speech.

We have been told to our face that we don't have any advertising income to offer them for coverage. So a public defender might accomplish the fact and we might eventually dry up the slush fund which is making the escalation of hospital charges continue. As long as the cash is readily available, the total will be soaked up and more demanded.

We will continue our efforts and we again ask that you reject this filing.

NIAGARA 4-0726
(MOSTLY NIGHT)

560 WOODSIDE ROAD
BERWYN, PENNSYLVANIA

CITIZENS COMMITTEE FOR ETHICAL INSURANCE

ORGANIZED APRIL 1964 — INCORPORATED AUGUST 1966

NON-PARTISAN
NON-PROFIT

DEDICATED TO HONORABLE RELATIONSHIP
BETWEEN INSURED AND INSURER
AND ELIMINATION OF HAZARDS

WE HAVE NOTHING TO SELL!
(except justice)

EXECUTIVE COMMITTEE

SPEAKER AVAILABLE
(audience participation if desired)

FRANK K. JONES
President & Chairman Executive Comm.

Hearings on B lue Cross of Greater Philadelphia, 9 A.M. 3/17, 3/18, 319, 1971 - Room 296 City Hall, Philadelphia.

Testimony presented for the Committee by Frank K.Jones, President

Mr.Commissioner, in accepting your invitation to testify at these hearings, we advised you that we hoped to pres ent our own National medical service plan at this hearing. Unfortunately it is not yet ready for release. The general idea has been discussed with a good crossection - including State and National Legislators.

We also wish to officially state to you, as we have to former Commissioners Kelly, Maxwell and Reed, that we are more interested in the insurance outlook twenty years from now, after this hew and cry is over, than we are in the present turmoil. We want meaningful legislation which will prevent a recurrence of the present inexcusable debacle.

We have heretofore testified at hearings that insurance of every kind is indispensable in modern life. Unfortunately the Industry doggedly insists it is a private enterprise for profit and the newly evolved "Plans" seem intent on building lucrative private clubs rather than accomplish original purposes.

We contend that the entire Industry has been subsidising everything without organized continuous an d purposeful elimination of hazards and costs of which they w ere aware -- they used to deny this, but in the January February 1971 issue of the Journal of Insurance the President of one company ask "Must insurance subsidize society?".

Our answer to that is, no they do not have to subsidize everything. Let a risk, imagined, actual or forecast, arise and they rush headlong into covering it with a verve.

They are now apparently intent on subsidising the computer industry. This technology makes it practical to build up a tremendous proliferation of risk classifications which it was impossible to do with the pen and pencil. We question the cost of these proceedures can be justified.

The procedure up until now has been to supply medical service to upper echelon and major employee groups at ridiculous prices because this is where social prestige and political influence is concentrated which could upset their "private club tranquility". Now the industry has responded to the inevitable

public outcry by coming into the open with its avowed political activity. Previously the activity was just as real but was carried on underground.

There is an apparent intent to deprive full equal service to those who most need it -- probably to force an outcry and force the Government to take over that section of insurance (in each classification) which the industry prefers not to cover. This would then leave them with the "best cows to be milked".

Already the Government is speaking of a $50 per month family charge for all hospital and medical attention. That is $600 per year and is based on the presently established mad hog wallow price structure, which simply MUST NOT CONTINUE. It means that most low income people will have to be on the relief rolls and the rest of us pay the cost on top of a deliberately engineered ridiculous cost. The only ones to benefit would be the Medical/Insurance family. It will kill the dignity of man and bring on total socialized medicine.

We introduced in evidence at one hearing of the Department the brochure of one nursing home group in its stock offer, stating that it was anticipated to receive a substantial return from Medicare services. The charges of that home could only be met by affluent people, but at the same time, would milk money from the Medicare funds which were needed to take care of less pretentious services to less affluent folk.

On the other hand, our own Committee's plan will give reasonalble medical attention without the ridiculous schedule of charges.

ADVERTISING CAMPAIGNS induce gross inequities and high costs. We hand you, as w e have handed other Commissioners, some advertising material of recent date -- mail, stuffer, fullpage newspaper. You should jump on this kind of thing with both feet right now and stop it. We have asked this action time and time again without success. It is the root of the insurance evil. We know of at least one newspaper editor who will not accept such advertising because he thinks it is not "good for his subscribers". (don't try to guess which editor -- you would be entirely wrong -- this particular paper has never printed any of our releases.

The advertising of wild-eyed offerings of vast wealth creates the hog wallow in which the hospitals and medical men, as well as the insurance companies revel. It makes the "Ready Cash" props.

The availability of cash is the basis on which medical charges are based at every level - doctor, hospital, insurance policy etc. Years ago when Abington Hospital initiated the Intercounty Hospital Plan, it was the first in the Phila. area. I was on the hospital auditing staff of a prominent Public Accounting Firm at the time. The industrialists on the Board of directors of one hospital asked if they should join the plan. We told them they should, since it would mean they could collect their accounts receivable -- and without a pause one member of the Board said "Yes and we can increase our rates".

Our suggested remedy to this is to stabilize the industry and medical services by forming a Federal Authority of a "Lloy'd of London" type to license all insurance companies. The Authority would have a subdivision Federal Health Insurance Pool finance by assessments on all insurance companies to control the operating matters. The Main authority would be the "Reinsurance and High Risk pool".

We believe the Insurance Industry Family could do much themselves to stabilize things and start getting insurance back on proper track. They could have a self-appointed CZAR who could certainly have secured results equal to those obtained in sports. One of the highlights of our efforts was the many conferences we had with J. Harry Le Brun. The sincerity and objectiveness of this man was so great that we suggested he be named the CZAR of the industry in our testimony and elsewhere. He could have done a job which the Public would have applauded. He had a desire to solve things and we learned from his lips some of the things which even he refused to condone on the Industry side of the fence.

But when we made our initial suggestion back in Commissioner Kelly's days, the published reaction of the Industry, through its official public relations arm, was that "they trembled at the though of a CZAR -- it would destroy competition".

We believe that our suggest F.H.I.P. setup will bolster weaker elements of the entire medical system, would do much to reduce costs, provide personnel and permit a more uniform quality of medical care

throughout the United States. This coupled to a transportation grid would permit facilities to be established in underdeveloped areas and have them ready when the area is developed -- in the meantime they would bolster to built-up areas. It would have other advantages covered by our plan.

DONATED FUNDS -
Now medical attention is one thing everybody is vitally interested in. It is one of the heartstrings of America. That is the reason the many laudable fund appeals find the public rising to the call to carry on research, build hospitals, help hospitals with operating costs, and assist the less fortunate with medical services.

It is therefore downright frustrating and alarming to face the situation where you, yourself, are in need of the things you contributed to help time and time again, only to find that you are financially unable to obtain them -- unless, of course, you are willing to pour your substance into the maw of medical practice, become a pauper and then qualify.

A thorough airing of just what happens to all the funds collected, should be undertaken -- it would have a salutary result. I know during my own auditing experience we were continually requiring funds be removed from expansion programs and placed into operating funds where the public was led to believe they would be used. Our Committee can inform you of the deliberate squandering of money on a hospital construction -- in fact we can show you the thing in motion pictures.

IMPORTANCE OF MEDICAL INSURANCE - In our opinion this coverage is the most important of the entire field - it also affects the majority of other forms of insurance, especially automobile insurance. We find that Life Insurance Companies (in direct statements to us by top officials) are not concerned with highway deaths "because they are so few in relation to the total claims". We also fail to detect any great movement on the part of the Automobile Casualty people to reduce their claims by better medical costs. They are only very recently getting into car design and road hazards -- a very late start in attitude from plain "subsidising".

One of the reasons the companies (including Blue Cross) are short of funds is that in their individual company scrable for the market (they insist it is a losing market) have pushed a policy which is not needed (thus forcing a need). As one company comes out with one idea, the others strive to surpass it, at the same price or better -- then demand rate increases to cover up. In doing this they leave holes in coverages, necessitating purchase of other policies. A classic instance is the problem of the elderly. Medicare, must be augmented by 65 special and other forms. By this time one single policy should be in existance to take the worry and uncertainty out of the minds of our senior citizens. Your Department should ride herd until such a policy is obtainable at reasonable rates.
SPECIAL POLICIES AND RATES:
We are mindful of the very favorable rates available to some organizations and groups (particularly the news and broadcasting media). Some of these are policies sold by commercial companies and some are self-insuring policies. However, what is available to some can certainly be made available to all on a much nearly equal basis than at present. If you will collect this information and publicize it as to rates and coverages (without mentioning names, of co urse) you could very well break the Gordian Knot.

A publication of this sort could be the Bible of the Consumer in knowing what he should be able to get in insurance. With this criteria available to the customer, the companies would be held in control and still have room for legitimate competition. Many people come to us asking "What is a Good Company and what is a good policy" -- we wish we could answer that one.

PIRATING - In my own capacity as a Consultant to Small Businesses, I find my own clients being dogged by insurance representatives to leave their present insurance company and come with another with greatly expanded benefits at very little additional cost and in some instances at even less cost.

Now the worst part of that proceedure, as we have testified to this Department time and time again, is that most of the large group plans are already, or are rapidly becoming, "fringe benefits". The employee pays nothing and the total cost is passed on to the consumer, plus overhead, in sales price.

The employer isn't hurt, the employee is pleased, and the insurance company has insufficient funds. There is then that sudden sinking feeling in the stomach of any individual leaving the group by retirement or other cause and becoming conscious of what was being done behind his back as he now digs into his own pocket.

The ideal thing would be for every individual to pay for insurance. If this were so, the outcry from the streets would be many fold worse than it is.

That not being possible, we think the next thing is to strive to get as closely as possible to where the cost per subscriber (regardless of who pays the bill) is almost identical for the same service or coverage, and regardless of size of group he is in.

We have asked before and just for your own information (even if you use it as a way to prove that we are wrong in our viewpoint), we would like to see you compile the following:

Credible groups
- total persons in largest five classes, medium five classes, smallest five.
- The coverages accorded to each of these
- The premiums for each of these
- divide the above into categories
  - (a) employer pays entire premium
  - (b) employer pays part premium
  - (c) employee pays entire premium (employer pays nothing)
- Total claims paid out in each category

INCREDIBLE GROUPS get same information

NON GROUP INDIVIDUALS get same information

Now divide the number of individuals into the claims paid, to get the average per person. Then add the whole mess together and divide by total people covered and see how that average figure compares.

Then determine how much electronic equipment, how many highcost rentals and other overheads can be eliminated from the administrative costs. We think with this kind of arithmetic you can get a more equitable premium.

Oh yes, that brings a howl from the employees layed off — but they aren't layed off — they go to work (as we testified before) on weeding out unrendered service charges, overcharges, unnecessary things and BOLOGNS. That will pay their entire salaries and leave a very large plum to further reduce the premiums.

Another advantage to be gained is that your own Department would have a filing presented to you which could be understood. We contend that the very immensity of the current system of fragmented rates and classifications makes it impossible for you to keep up with it. They have more "fire power" with their total computer equipment than you have with yours. And when you merge a lot of statistics from many companies and file jointly through a Rating Bureau, you might as well take the figures from a calendar. As an auditor, I would hate to certify to such figures. How can you possibly know how many trade association costs, how many lush conventions at vacation spas, how much high rental to insurance industry satellites, what poorly allocated salaries etc etc are included?

BASIC POLICIES - We think that your Department (or the suggested FHIP) should draw up "minimum policies" which every company must market in order to be given a license to operate in any State. The face of the policy should show that basic premium and a schedule of possible rider additions that can be had. The premium of each rider should be sufficient to cover that rider and not be a bonus as is now done. And the riders should carry a lions share of the "plant cost" of the hospitals etc.

You attached a copy of your ten suggestions of areas for improving the present situation. The following are our direct comments on these items and we will cover as many of them as our assigned time permits. We ask that all items not covered be entered on the record as if we had covered them.

I a - A very serious study and prompt solution of this matter of reimbursement methods must be made. The present paper work (which is not standard as to all companies) which is generated even retards the reimbursement and causes avoidable heavy expense both to the hospital, the medical man, and Blue Cross. The simplification of the policy coverage will eliminate a vast amount of the cost and confusion.

c - Fostering of group practice prepayment plans. We are opposed to the continuation of stress on group coverage. The benefit gap between various group sizes and individuals, not only causes tremendous costs in record keeping, but is contrary to the concept of insurance, which is the sharing of risk by the many.

d - Depreciation is in effect a deferred maintenance charge. Proper current

throughout the United States. This coupled to a transportation grid would permit facilities to be established in underdeveloped areas and have them ready when the area is developed — in the meantime they would bolster to built-up areas. It would have other advantages covered by our plan.

DONATED FUNDS -
Now medical attention is one thing everybody is vitally interested in. It is one of the heartstrings of America. That is the reason the many laudable fund appeals find the public rising to the call to carry on research, build hospitals, help hospitals with operating costs, and assist the less fortunate with medical services.

It is therefore downright frustrating and alarming to face the situation where you, yourself, are in need of the things you contributed to help time and time again, only to find that you are financially unable to obtain them — unless, of course, you are willing to pour your substance into the maw of medical practice, become a pauper and then qualify.

A thorough airing of just what happens to all the funds collected, should be undertaken — it would have a salutary result. I know during my own auditing experience we were continually requiring funds be removed from expansion programs and placed into operating funds where the public was led to believe they would be used. Our Committee can inform you of the deliberate squandering of money on a hospital construction — in fact we can show you the thing in motion pictures.

IMPORTANCE OF MEDICAL INSURANCE - In our opinion this coverage is the most important of the entire field - it also affects the majority of other forms of insurance, especially automobile insurance. We find that Life Insurance Companies (in direct statements to us by top officials) are not concerned with highway deaths "because they are so few in relation to the total claims". We also fail to detect any great movement on the part of the Automobile Casualty people to reduce their claims by better medical costs. They are only very recently getting into car design and road hazards — a very late start in attitude from plain "subsidising".

One of the reasons the companies (including Blue Cross) are short of funds is that in their individual company scrable for the market (they insist it is a losing market) have pushed a policy which is not needed (thus forcing a need). As one company comes out with one idea, the others strive to surpass it, at the same price or better — then demand rate increases to cover up. In doing this they leave holes in coverages, necessitating purchase of other policies. A classic instance is the problem of the elderly. Medicare, must be augmented by 65 special and other forms. By this time one single policy should be in existance to take the worry and uncertainty out of the minds of our senior citizens. Your Department should ride hard until such a policy is obtainable at reasonable rates.
SPECIAL POLICIES AND RATES:
We are mindful of the very favorable rates available to some organizations and groups (particularly the news and broadcasting media). Some of these are policies sold by commercial companies and some are self-insuring policies. However, what is available to some can certainly be made available to all on a much nearly equal basis than at present. If you will collect this information and publicize it as to rates and coverages (without mentioning names, of co urse) you could very well break the Gordian Knot.

A publication of this sort could be the Bible of the Consumer in knowing what he should be able to get in insurance. With this criteria available to the customer, the companies would be held in control and still have room for legitimate competition. Many people come to us asking "What is a Good Company and what is a good policy" — we wish we could answer that one.

PIRATING - In my own capacity as a Consultant to Small Businesses, I find my own clients being dogged by insurance representatives to leave their present insurance company and come with another with greatly expanded benefits at very little additional cost and in some instances at even less cost.

Now the worst part of that proceedure, as we have testified to this Department time and time again, is that most of the large group plans are already, or are rapidly becoming, "fringe benefits". The employee pays nothing and the total cost is passed on to the consumer, plus overhead, in sales price.

The employer isn't hurt, the employee is pleased, and the insurance company has insufficient funds. There is then that sudden sinking feeling in the stomach of any individual leaving the group by retirement or other cause and becoming conscious of what was being done behind his back as he now digs into his own pocket.

The ideal thing would be for every individual to pay for insurance. If this were so, the outcry from the streets would be many fold worse than it is.

That not being possible, we think the next thing is to strive to get as closely as possible to where the cost per subscriber (regardless of who pays the bill) is almost identical for the same service or coverage, and regardless of size of group he is in.

We have asked before and just for your own information (even if you use it as a way to prove that we are wrong in our viewpoint), we would like to see you compile the following:

Credible groups
total persons in largest five classes, median five classes, smallest five.
The coverages accorded to each of these
The premiums for each of these
divide the above into categories
(a) employer pays entire premium
(b) employer pays part premium
(c) employee pays entire premium (employer pays nothing)
Total claims paid out in each category
INCREDIBLE GROUPS get same information

NON GROUP INDIVIDUALS get same information

Now divide the number of individuals into the claims paid, to get the average per person. Then add the whole mess together and divide by total people covered and see how that average figure compares.

Then determine how much electronic equipment, how many highcost rentals and other overheads can be eliminated from the administrative costs. We think with this kind of arithmetic you can get a more equitable premium.

Oh yes, that brings a howl from the employees layed off — but they aren't layed off — they go to work (as w e testified before) on weeding out unrendered service charges, overcharges, unnecessary things and HAZARDS. That will pay their entire salaries and leave a very large plum to further reduce the premiums.

Another advantage to be gained is that your own Department would have a filing presented to you which could be understood. We contend that the very immensity of the current system of fragmented rates and classifications makes it impossible for you to keep up with it. They have more "fire power" with their total computer equipment than you have with yours. And when you merge a lot of statistics from many companies and file jointly through a Rating Bureau, you might as well take the figures from a calendar. As an auditor, I would hate to certify to such figures. How can you possibly know how many trade association costs, how many lush conventions at vacation spas, how much high rental to insurance industry satellites, what poorly allocated salaries etc etc are included?

BASIC POLICIES - We think that your Department (or the suggested FHIP) should draw up "minimum policies" which every company must market in order to be given a license to operate in any State. The face of the policy should show that basic premium and a schedule of possible rider additions that can be had. The premium of each rider should be sufficient to cover that rider and not be a bonus as is now done. And the riders should carry a lions share of the "plant cost" of the hospitals etc.

You attached a copy of your ten suggestions of areas for improving the present situation. The following are our direct comments on these items and we will cover as many of them as our assigned time permits. We ask that all items not covered be entered on the record as if we had covered them.

I a - A very serious study and prompt solution of this matter of reimbursement methods must be made. The present paper work (which is not standard as to all companies) which is generated even retards the reimbursement and causes avoidable heavy expense both to the hospital, the medical man, and Blue Cross. The simplification of the policy coverage will eliminate a vast amount of the cost and confusion.

c - Fostering of group practice prepayment plans. We are opposed to the continuation of stress on group coverage. The benefit gap between various group sizes and individuals, not only causes tremendous costs in record keeping, but is contrary to the concept of insurance, which is the sharing of risk by the many.

d - Depreciation is in effect a deferred maintenance charge. Proper current

throughout the United States. This coupled to a transportation grid would permit facilities to be established in underdeveloped areas and have them ready when the area is developed — in the meantime they would bolster to built-up areas. It would have other advantages covered by our plan.

DONATED FUNDS -
Now medical attention is one thing everybody is vitally interested in. It is one of the heartstrings of America. That is the reason the many laudable fund appeals find the public rising to the call to carry on research, build hospitals, help hospitals with operating costs, and assist the less fortunate with medical services.

It is therefore downright frustrating and alarming to face the situation where you, yourself, are in need of the things you contributed to help time and time again, only to find that you are financially unable to obtain them — unless, of course, you are willing to pour your substance into the maw of medical practice, become a pauper and then qualify.

A thorough airing of just what happens to all the funds collected, should be undertaken — it would have a salutary result. I know during my own auditing experience we were continually requiring funds be removed from expansion programs and placed into operating funds where the public was led to believe they would be used. Our Committee can inform you of the deliberate squandering of money on a hospital construction — in fact we can show you the thing in motion pictures.

IMPORTANCE OF MEDICAL INSURANCE - In our opinion this coverage is the most important of the entire field - it also affects the majority of other forms of insurance, especially automobile insurance. We find that Life Insurance Companies (in direct statements to us by top officials) are not concerned with highway deaths "because they are so few in relation to the total claims". We also fail to detect any great movement on the part of the Automobile Casualty people to reduce their claims by better medical costs. They are only very recently getting into car design and road hazards — a very late start in attitude from plain "subsidising".

One of the reasons the companies (including Blue Cross) are short of funds is that in their individual company scrable for the market (they insist it is a losing market) have pushed a policy which is not needed (thus forcing a need). As one company comes out with one idea, the others strive to surpass it, at the same price or better — then demand rate increases to cover up. In doing this they leave holes in coverages, necessitating purchase of other policies. A classic instance is the problem of the elderly. Medicare, must be augmented by 65 special and other forms. By this time one single policy should be in existance to take the worry and uncertainty out of the minds of our senior citizens. Your Department should ride herd until such a policy is obtainable at reasonable rates.
SPECIAL POLICIES AND RATES:
We are mindful of the very favorable rates available to some organizations and groups (particularly the news and broadcasting media). Some of these are policies sold by commercial companies and some are self-insuring policies. However, what is available to some can certainly be made available to all on a much nearly equal basis than at present. If you will collect this information and publicise it as to rates and coverages (without mentioning names, of co urse) you could very well break the Gordian Knot.

A publication of this sort could be the Bible of the Consumer in knowing what he should be able to get in insurance. With this criteria available to the customer, the companies would be held in control and still have room for legitimate competition. Many people come to us asking "What is a Good Company and what is a good policy" — we wish we could answer that one.

PIRATING - In my own capacity as a Consultant to Small Businesses, I find my own clients being dogged by insurance representatives to leave their present insurance company and come with another with greatly expanded benefits at very little additional cost and in some instances at even less cost.

Now the worst part of that procedure, as we have testified to this Department time and time again, is that most of the large group plans are already, or are rapidly becoming, "fringe benefits". The employee pays nothing and the total cost is passed on to the consumer, plus overhead, in sales price.

The employer isn't hurt, the employee is pleased, and the insurance company has insufficient funds. There is then that sudden sinking feeling in the stomach of any individual leaving the group by retirement or other cause and becoming conscious of what was being done behind his back as he now digs into his own pocket.

The ideal thing would be for every individual to pay for insurance. If this were so, the outcry from the streets would be many fold worse than it is.

That not being possible, we think the next thing is to strive to get as closely as possible to where the cost per subscriber (regardless of who pays the bill) is almost identical for the same service or coverage, and regardless of size of group he is in.

We have asked before and just for your own information (even if you use it as a way to prove that we are wrong in our viewpoint), we would like to see you compile the following:

Credible groups
total persons in largest five classes, median five classes, smallest five.
The coverages accorded to each of these
The premiums for each of these
divide the above into categories
(a) employer pays entire premium
(b) employer pays part premium
(c) employee pays entire premium (employer pays nothing)
Total claims paid out in each category
INCREDIBLE GROUPS get same information

NON GROUP INDIVIDUALS get same information

Now divide the number of individuals into the claims paid, to get the average per person. Then add the whole mess together and divide by total people covered and see how that average figure compares.

Then determine how much electronic equipment, how many highcost rentals and other overheads can be eliminated from the administrative costs. We think with this kind of arithmetic you can get a more equitable premium.

Oh yes, that brings a howl from the employees layed off — but they aren't layed off — they go to work (as we testified before) on weeding out unrendered service charges, overcharges, unnecessary things and HAZARDS. That will pay their entire salaries and leave a very large plum to further reduce the premiums.

Another advantage to be gained is that your own Department would have a filing presented to you which could be understood. We contend that the very immensity of the current system of fragmented rates and classifications makes it impossible for you to keep up with it. They have more "fire power" with their total computer equipment than you have with yours. And when you merge a lot of statistics from many companies and file jointly through a Rating Bureau, you might as well take the figures from a calendar. As an auditor, I would hate to certify to such figures. How can you possibly know how many trade association costs, how many lush conventions at vacation spas, how much high rental to insurance industry satellites, what poorly allocated salaries etc etc are included?

BASIC POLICIES - We think that your Department (or the suggested FHIP) should draw up "minimum policies" which every company must market in order to be given a license to operate in any State. The face of the policy should show that basic premium and a schedule of possible rider additions that can be had. The premium of each rider should be sufficient to cover that rider and not be a bonus as is now done. And the riders should carry a lions share of the "plant cost" of the hospitals etc.

You attached a copy of your ten suggestions of areas for improving the present situation. The following are our direct comments on these items and we will cover as many of them as our assigned time permits. We ask that all items not covered be entered on the record as if we had covered them.

I a - A very serious study and prompt solution of this matter of reimbursement methods must be made. The present paper work (which is not standard as to all companies) which is generated even retards the reimbursement and causes avoidable heavy expense both to the hospital, the medical man, and Blue Cross. The simplification of the policy coverage will eliminate a vast amount of the cost and confusion.

c - Fostering of group practice prepayment plans. We are opposed to the continuation of stress on group coverage. The benefit gap between various group sizes and individuals, not only causes tremendous costs in record keeping, but is contrary to the concept of insurance, which is the sharing of risk by the many.

d - Depreciation is in effect a deferred maintenance charge. Proper current

maintenance should restore depreciation wastage. Rather than accelerate Depreciation, we think building depreciation and major equipment depreciation should be adjusted downward to some extent by the actual cash maintenance expenditures each month. Many hospitals are built and equipped by donated cash and the total replacement in all probability will be done with donated cash.

f - Reimbursement of low utilization facilities. The FHIP we suggest might well work out with various areahospitals just what facilities are needed. Then instead of each hospital being in total competition with eachother, they would be in total cooperation with eachother in rendering a full broadbased medical service. Not every hospital would have the identical facilities, but each area would have what is needed, available to patients of any hospital. (in this connection our Committee's suggestion of ten insurance districts in Pennsylvania might produce the basis for determining area hospital equipment).
Some excess standby facilities must be available and might well be subsidized by FHIP.

Open heart surgery is becoming a much used benefit. We think there must be a special study made as to how this can be made available at better cost to those who are not covered by the deluxe hospital plans. In low utilization hospitals, the cost should be equalized by FHIP or the patient should be assigned (along with his own doctor even if not accredited to that hospital) to a hospital which is designated in that area for such service.

j - Bad debts should be eliminated entirely from costs. There should be an interhospital fund set up to reimburse themselves for bad debts. The agency supervising this reimbursement should contact a hard-nose audit of what charges are on bad debt accounts to see if the very improper nature (such as unrendered services) charges might be the cause of the bad debt and refuse to reimburse that loss. This would be a self-policing of improper charging and unnecessary services.

Research costs should not be reimbursed. There are ample funds donated for such things and these funds can be obtained. This does not, of cours e, mean the normal laboratory tests -- it refers just to longterm exploratory research which is using the hospital equipment and patients as a ready laboratory in place of establishing an self-contained commercial enterprise elsewhere.

2 a - The State should be divided into Insurance Districts (ten of them). Each district could then also be a Hospital Utilization district. The object would be (under FHIP) to endeavor to spread out the various facilities so as to obtain maximum utilization. Then the individual utilization would be a lot more meaningful for rate study.

c - Some reasonable guideline of required hospital stays should be worked out. We think this again should be done by FHIP, in cooperation with the medical profession (We are not questioning the dedication of the medical profession -- we are proud of them -- but the present escalation of costs has even them rocking on the ropes. In our opinion "recuperation and rehabilitation" joint facilities would have a major effect on this problem.

d - Not much use debating this -- disallow it in one place and it would be buried skillfully in another. a proper "hardnosed policing" of hospital bills will go a long way to correcting the matter.

3 a Disclosure of Blue Cross/Hospital contracts. Since Federal and State funds are permanently locked into payment of hospital bills, the private contracts should be a matter of record in the Insurance Department where proper committees from the Legislature could examine them. It is correct that the Insurance Department should keep well abreast of such contracts.

This is needed to keep the lid on radical medical cost increases just to make a high-level professional income for some at the expense of the public.

b -
We question the desireability of advising patients the cost of the services shown on their bills. We doubt if the vast majority of the patients would know what it was all about and might suffer a heart attack trying to work it out. In addition the cost of doing such a thing would be indefensible.

3 b cont'd However, we do think that every bill should have on it a prominent footnote "If the patient has any question as to any charge hereon, particularly as to whether the service was rendered, he has the right to refer the matter to the Penna. Insurance Department in Harrisburg, Pa.".

Such a note would help greatly in breaking up those improper charges because "you don't pay the bill, so why worry".

c With the Insurance Department and other proper Government agencies watching the interests of the public as well as the hospitals, it is hoped that there would be a minimum of things the public should watch. It is desirable that the hospitals be spared the tremendous cost of making miriads of unneeded "shim reports". A simplified medical coverage will release hundreds of hands to do necessary medical operating things which are now not done or inadequately done. This, in itself, should further cut down on costs.

d Cost of per diem charges by hospitals should be publicized twice a year, particularly to the Legislators. We recommend that this be on the basis of the Insurance Districts previously mentioned for ready comparison. Then the Insurance Department in cooperation with the suggest FHIP should delve into the reasons for the discrepancies and endeavor to minimize them, knowing full well that you just can't get equal costs in every unit.

e Not only should there be a disclosure of payments to such specialists who are not on a fixed annual salary and on the fulltime staff, but the matter of supplying suffient help should be the function of the suggested FHIP. In my own experience, an anaesthestist was billed by the hospital and the same technician sent an additional personal bill because the hospital scale was not high enough.

We do not question adequate pay for medical experts and technicians but we think their own associations should set some reasonable guide lines

At the last Blue Cross hearings in Phila, we and others suggested that your Department obtain lists of everybody receiving over $10,000 per year, especially the technologists and then crosscheck each list to locate the same name appearing on more than one hospital list — I know, professionally, that such things did occur and presume that they still do. A little light could have a great effect in reducing costs. (Our own plan, when released will chart the way.)

5 c We recommend that something be done along the lines of having standard hospital plans drawn up for buildings, allowing for expansion. The facilities would then be more familiar to changing personnel and save much in construction and operating costs. This is mostly adaptable to new construction in open rural areas where the maximum load is still in the future. It permits those rural units to better function as standby and auxiliary facilities for urban plants, especially during crisis.

6 b Duplication of benefits, and/or duplication of reimbursements should be prohibited (as suggested in our remarks on advertising). Since such duplications are based on the premise that some policies do not cover certain items, it is imperitive that the policies offered to the public must be strictly regulated so the consumer is not faced with a bewildering maze. This clarification of policies will, in itself, vastly cut down on the paper work and operating costs of even the insurance companies themselves, as well as hospitals.

c This point is covered by our prior remarks asking for basic minimums which cover MUSTS, plus riders covering non-essentials at additional adequate premium.

7 a The matter of pre-admission testing and useage of outpatient care must be a matter to be supervised by an agency such as FHIP so as to gradually circumvent the unnecessary hospital entrance and length of stay and the services used on admittance. In other words, medical practice should again revert to a service and not to expand further into a research effort. Such control must be monitored by a meaningful department of FHIP.

7 f Looking to the eventual (and obviously unavoidable) Nationalization of medical attention at all levels - it is imperitive that all account and reporting forms (ALL PAPER WORK) become uniform as promptly as possible. Those who are opposed to nationalization should be the loudest in calling for this standardization because it will permit proper comparisons which are impossible now. The present confusion precludes fair evaluation ~~of~~ either to the medical community or to the public.

8 a The public has only recently become aware of the fact that the Blue Cross organizations are under the control of the medical community. The Board should be service oriented, certainly not a political football, nor a medical/insurance company bonanza. Possibly only by area or state board supervision (FEHP) can such broad principles be attained. Otherwise it can be ego/competetive.

Blue Cross must be, what it started to be, a purchasing agency for the public. There is even frailty in that concept, however, in industry.

Until very recently, at least, Blue Cross has resisted public information. We bring to your attention our testimony in the hearings onBlue Cross in Phila. on April 16-17-18, 1970. We ask you to review that testimony and make it a part of the record of this hearing. In that we reported the downright arrogance of the Blue Cross officials in refusing to let us have access to papers on the filing. Following that hearing, we were given the courtesy of talking to those who should have been available without the unpleasantness. We think the entire medical community and the Blue Cross (the same as insurance companies in other fields) is engaged in "pulling the wool" over the eyes of the Insurance Commissioner for the benefit of others than the public. Up until now the smirk on their faces has been even visible — we find the smirk has been gradually disappearing, but the intent remains obvious. We for our part, will continue to fight.

b We believe there should always be a consumer representative on all boards such as Blue Cross. Consumer groups themselves are not enough. There is no communication between consumer groups either and that is a calamity. Do not for a minute think that whereas Blue Cross started consumer oriented and became a desireable employment haven to be protected, that consumer groups cannot become the same. We hope your office will forever hold public hearings on rate increases to avoid the quiet "job pools" perpetuating.

c We think that not only all Blue Cross subscribers, but that every other policyholder of every other type of Insurance should receive notice of requests for rate adjustments, plus notification of availability of appeal for help from the Insurance Commissioner, plus notification of the Insurance Commissioner by the Insurance Company/and or plan of each and every cancellation, refusal to renew, or refusal to sell.

We do not believe that either the public or the Insurance Commissioner is fully aware of what is going on. In fact, we note that you, Mr. Commissioner are asking for 50,000 policyholders to enter protests in automobile insurance. If what we have been asking for eitht long years had been done (and we repeat that request above) you would have that 50,000 plus some 100,000 more protests right now. We will ask legislation on this particular point this year.

d Yes, most decidedly policyholders should be advised of hearings. Just start this kind of notification and the number of requests will subside to what is really required and stop the "fat-self-living" of insurance people.

e We believe that if special T.V.forums were arranged at least once a year, or that some portion of the annual meeting of Blue Cross would be televised (like school board meetings etc). that people would become more interested because they would be better informed. At present most are simply disgusted and don't trust anything including Blue Cross and the Insurance Department itself.

It would also be meaningful if the Press (I mean a joint press-club) would hold televised interviews - excluding politicians and get down to earth discussion and debate at the people level.

9 a to f We believe the [illegible] to [illegible] in this [illegible] are to ground we can.

[illegible] is an individual [illegible], health insurance is an individual [illegible].

If every health agency is controlled through the suggested HMP then you would have uniform standards, you would have uniform coverage, and you would have uniform charges.

Improper charges should never be made. The real thing is that they should never be charged in the first place. Merely refusing to pay such charges is not the answer because as an accountant, I know full well they will be written somewhere else where you don't see them. The [illegible] is to make sure the properly operated health agency. The answer is to make a health agency which doesn't care how it lives in many homes, especially when they are not being [illegible].

We are opposed to group coverage of special [illegible], especially when they carry more benefits, and this [illegible] permanently to the medical field.

In our opinion the concept of credible and non-credible groups is an outside possibility which won't stand the test of [illegible] application. Arithmetic is a very [illegible] thing. It has already been carried to the point of popular comedy — [illegible] not carry it further to popular [illegible] for [illegible]. In fact we call on the Press, State Legislatures to outlaw the concept of credible non-credible and get down to [illegible] insurance.

10 a to c Yes the public can be better informed about the cost and dangers of over-utilization — and the [illegible] part in changing [illegible]. We think it could, and should, [illegible] in the form of the "Forums" heretofore suggested. Such forums could be frequent and have unlimited people participation and just not a [illegible] for top officials to expound and answer to.

It could also be in the form of [illegible] from leaflets or pamphlets, handed to each patient or attached to each bill to a patient. We think a [illegible] at very frequent intervals on T.V./radio, possibly sponsored by the Advertising Council of America — or the insurance industry, would be very helpful.

Possibly a leaflet for insertion [illegible] in the newspapers, like they put the mirror of bargain [illegible] insurance advertising material, would be helpful.

And above all, we think that [illegible] POLICIES OF REPUTABLE COMPANIES by the Press, Insurance Department and the suggested Insurance Industry CMHP) which induce the over-utilization, would be a prime cure on the problem.

And then maybe a public display of intentional overcharges might have an effect.

- 0 - 0 - 0

TO SUM UP - We think that inasmuch as God brought humans into the world one at a time, and since we leave this world one at a time, it is high time that we accepted that fact insofar as health insurance and medical attention is concerned. We believe that everybody regardless of social status or pecuniary substance is entitled to equal medical service. One way to accomplish this is to make charges more nearly equal, if not entirely so. Groups have no prior preference so far as we are concerned. This will still not preclude those affluents who wish lavish attention obtaining and paying for it. We do not think the general public should subsidize the marble halls where they receive this attention, however. Socialized medical SOULD be avoided, but we very much doubt if the influential portion of our society will PERMIT it to be avoided. Today is the Gettysburg of that battle — which way will we go?

STATEMENT OF H. C. THOMPSON, PRESIDENT, AND JOHN HUEMMRICH, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF PETROLEUM RETAILERS

The National Congress of Petroleum Retailers supports most of the provisions of S. 976. Auto safety, the cost and efficacy of automobile repairs, the high cost of automobile insurance are issues in which our 75,000 gasoline retailer members have a vital interest. We deal face-to-face with the consumer on a day-to-day basis. We must, therefore, equate our self-interest with the consumer interest.

We believe, however, that certain aspects of Section 501(a)(2) of this bill run counter to such interests. As written, it would adversely affect approximately 60,000 retail gasoline dealers. These dealers are certified as vehicle inspectors under various State inspection programs. They have done this job well and in the best interest of the motoring public. This Section would wipe out their investments and operations. Yet, there is little likelihood that a better system would result.

Certainly, we agree with the need for a national and uniform motor vehicle inspection program. But, before State *supervised* inspection is eliminated in favor of a State *operated* system, we believe there should be substantial evidence that such a change will, in fact, benefit the motorist. Such evidence presently does not exist.

Indeed, there is evidence to the contrary. Pennsylvania, for instance, has perhaps the finest inspection law in the country and statistics have shown the beneficial effect it has had in creating safety on Pennsylvania highways. Citizens in other States deserve a system at least as effective.

However, Pennsylvania does not operate its own inspection system. Inspection stations in Pennsylvania are licensed and these stations themselves are inspected by the State Police. If a car owner feels aggrieved, he can complain to the authorities and if the complaint is found to be valid, the inspection station can lose its license.

In our opinion, a good nationwide periodic motor vehicle inspection act requiring inspections at least twice a year, makes good sense. However, a State, if it desires, should be free to utilize private facilities. Such facilities can be required to use qualified, certified mechanics licensed to do this work.

A private system saves the State the expense of building and equipping State inspection stations. It keeps manpower, such as trained, skilled mechanics from being drained from present repair shops where there is already a shortage. The inconvenience, cost and time involved when a car owner has to deal with the State monopoly may be far greater than through the utilization of private licensed inspection stations.

We submit that the most efficient and effective way to handle this problem is to utilize the private inspection system but under stringent State supervision. Both large fines and the revocation of licenses should be effective sanctions if it appears that the facility is not treating the consumer fairly.

We support tough State standards, adequate policing and licensing procedures. The public is entitled to no less.

But, we also believe our dealers are entitled to operate, as various States have licensed us to do, so long as we continue to operate with high standards. As long as private enterprise is demonstrating that it can do the job well, this method of operation should be available to the States if they desire to use it.

We ask only that we be judged on our performance. To date, that performance has operated in the best interest of the motoring public. Certainly, 60,000 dealers should not be legislated out of their investments and operations, unless strong evidence exists that there will be commensurate benefits to the consumer.

Presently, the evidence is to the contrary. It indicates that private inspection under stiff State licensing procedures is an excellent method of insuring safer highways.

We respectfully request, therefore, that Section 501(a)(2) be struck from the bill or otherwise altered to meet the objections raised in this statement.

STATEMENT OF CLARK E. FEGRAUS, PRESIDENT, AND M. VAN LOAN, VICE PRESIDENT, AUTOMOTIVE ENVIRONMENTAL SYSTEMS, INC. SAN BERNARDINO, CALIF.

Automotive Environmental Systems, Inc. is pleased to have this opportunity to present our views on S. 976 as introduced by Senator Philip A. Hart and Amendment No. 67 submitted by Senator Ribicoff. Our comments will be confined to the subject of Diagnostic Inspections for safety and pollution.

The Subcommittee on Antitrust and Monopoly in a thorough investigation of automobile repairs, received thousands of letters from citizens concerned about their automobile, its repair problems and its maintainence and repair costs. We too, in our capacity as engineers and consultants in the field of automotive air pollution and safety, have received similar comments from the consumer. We have compiled and digested considerable literature on this subject, and have thoroughly investigated various schemes for vehicle safety and pollution inspection. Following are observations which we have made during recent years which are technically supported and which are highly pertinent to the proposed "Motor Vehicle Information and Cost Savings Act".

The consumer is generally unaware of the numerous safety problems that exist in his automobile. Studies by diagnostic centers and the Missouri Automobile Club indicate that the vast majority of cars on the road have potential safety defects. The number of actual safety defects is far less but still is a significant fraction. The contribution of these unsafe vehicle to the accident and mortality rate on our highways is not accurately known, but whatever this contribution, it is too much.

The consumer is unaware that the daily operation of his vehicle is costing him far more than it should because the engine is not operating efficiently or the transmission and brakes are improperly adjusted. Surveys show that the consumer feels that tuneups are too inconvenient, that a tuneup is too expensive or that their car is running properly. In addition, a majority of consumers rate their tuneup service good or excellent. However, a tuneup performed on the average car will cause a reduction in fuel consumption of 5–10% and an increase in power of about 10%. These figures may be considerably higher on older or poorly maintained cars. The irony here is that those consumers who can least afford a proper tuneup can least afford to waste gasoline.

The consumer is not generally aware that his automobile is a major source of air pollution in the United States, and is even less aware of pollution causing defects in his vehicle. Numerous studies by industry, states and the Federal government have indicated that vehicles emit far more pollutants than need be emitted. Vehicles which have been digested to meet low pollution standards deteriorate with use in the hands of the consumer. Because low pollution from vehicles is so intimately tied to proper engine operation, the normal lack of maintenance causes a severe increase in pollutants. For example, a misfiring spark plug can cause a 300–1000% increase in hydrocarbon emission levels. Improper idle mixture settings can cause a 50–200% increase in carbon monoxide emissions. A dirty air cleaner or improperly adjusted choke can cause a 50–200% increase in carbon monoxide and hydrocarbons. Improperly adjusted carburetion and spark timing can also cause great increases in oxides of nitrogen.

People are susceptible to sales efforts by mechanics or car salesmen. There is no attempt by the consumer to ascertain the vehicle's actual condition. Frequently the consumer has no place to turn to verify the safety, operational or emissions performance of his car.

Automobiles are becoming much more complex, as the consumer requires many power accessories, greater performance, larger automobiles; and as the government establishes safety and pollution standards. The average repairman or mechanic can not keep up with the latest information available about all aspects of all cars, and therefore certain aspects of repair or service do not get accomplished properly. Another reason for a lack of proper automotive service and repair is that the number of vehicles on our highways is increasing at a rate far greater than the number of mechanics and service facilities.

The foregoing observations serve to strongly uphold the urgent need for legislation such as S. 976 and Amendment No. 67. We view the diagnostic inspection system proposed in this bill as a potential incentive to the consumer to take better care of his vehicle and not as a government edict. The bill offers incentive to the manufacturers to consider maintenance and repair of safety, operational and pollution items in the design of new cars. It offers incentive to the service industry to upgrade and do a proper job.

An independent diagnostic inspection system would, if properly implemented on a periodic basis by states, provide the consumer with an unbiased evaluation of his vehicle. He could decide whether to repair it or to buy another; he could be assured of a vehicle's condition before purchase; and he would be guaranteed that after damage his car would be safe.

Periodic diagnostic inspections are essential to effective vehicle pollution control and vehicle safety because:

Many people will defer needed repairs as long as possible unless they are compelled to correct deficiencies determined by inspection.

Conversely, many people will strive to upgrade their vehicles in anticipation of inspection, if the inspection is generally accepted to be effective and thorough.

Many pollution and safety related deficiencies develop gradually and the motorist if often unaware of their existence. Only by suitable inspection are such deficiencies likely to be determined.

The information and data that may be derived from vehicle inspections will be extremely valuable in pinpointing automotive service problem areas, as well as developing ongoing controls.

Periodic motor vehicle inspections of a diagnostic type may serve as an important measure in reducing automotive service costs by diagnosing vehicle ills more accurately.

We at Automotive Environmental Systems, Inc are very concerned that diagnostic inspections *per se* will be construed by many, as the solution to our vehicle repair, safety and pollution problems. Diagnostic inspection is not the solution, but an important means to effect or induce the solution. The true solution is, of course, accurate, honest and economical automotive service. If this bill or any vehicle safety or pollution control measures are to be effective, a major change in the profile of the automotive service industry is essential.

Regardless of how clean and safe new cars are, new cars become used cars as soon as they are driven home by the proud purchasers. All vehicle systems, including safety and pollution control systems, deteriorate with time and use, and will continue to do so for the foreseeable future. Unless these systems are properly maintained, vehicle pollution and vehicle safety will continue to be serious national problems.

Periodic diagnostic inspections will involve the use of procedures and equipment with varying degrees of sophistication. If deficiencies determined during inspection are to be corrected properly, the procedures and equipment at the service facility must be at least equivalent in sophistication.

New cars are safer and "cleaner," from a pollution standpoint. However, they are more complex and require more precise tuning and adjustment. Furthermore, this trend will continue and intensify in the next few years. Accordingly, automotive technicians must be better trained and capable of using new and more sophisticated equipment and procedures.

As has been emphasized in last year's hearings by the Senate Subcommittee on Antitrust and Monopoly concerning the automotive service industry, there is a serious and growing shortage of qualified automotive service personnel. If the vehicle safety and pollution challenges of the 1970's are to be met successfully, this problem must be solved through new concepts in recruiting and training. New Federally sponsored employment and training programs should be directed to this end.

Depending upon the stringency of inspection standards set, a dramatic increase in workload for the automotive service industry can occur with the inception of periodic inspections. This will further aggravate the problem of personnel shortage previously mentioned.

In conclusion, our experience has convinced us that periodic motor vehicle inspection, together with a major upgrading and expansion of the automotive service industry, are absolutely essential for vehicle pollution control and improved vehicle safety. Any actions, such as S. 976 and the amendment which will promote these measures, are urgently needed.

STATEMENT OF CHARLES L. RUE, CPCU, CHAIRMAN, NATIONAL AFFAIRS COMMITTEE INDEPENDENT MUTUAL INSURANCE AGENTS ASSOCIATION OF NEW YORK, NEW JERSEY AND CONNECTICUT

PURPOSE

This statement is submitted in lieu of verbal testimony to outline the position of the Independent Mutual Insurance Agents Associations of New York, New Jersey and Connecticut relative to HR-4994 in particular and the concept of "first party" or "no fault" automobile insurance in general. These associations represent a total of approximately 3,500 independent insurance agencies and 10,000 [illegible]

ual agents. We respectfully request that this document be entered in the record of the current hearings on HR-4994.

POSITION ON FIRST PARTY REPARATIONS SYSTEM

These three associations, individually and collectively, strongly support the concept of a first party automobile accident reparations system, commonly referred to as a "no fault" system. This position stems from an intensive study of accident reparations initiated by our own three-state Auto Study Committee in 1967, the findings of which were published in September of 1968 and can be provided upon request.

Although we have not proposed and do not contemplate proposing a specific reparations plan of our own, our ultimate objective is a pure no fault system. At this time, however, we are prepared to support any limited or hybrid plan which represents an intelligent evolutionary step in that direction.

OBJECTION TO TORT SYSTEM

Our objections to the present tort liability system may be summarized as follows:

1. Claim settlements have tended to be painfully slow, with delays of anywhere from several months to several years remaining commonplace in the case of large claims associated with serious accidents.
2. Many accident victims presently receive no compensation for their losses, perhaps because of some insignificant degree of contributory negligence. Similarly, many are grossly underpaid for their losses.
3. A significant portion of many tort settlements is diverted to court costs and legal fees, never reaching the accident victim.
4. The tort system appears to have created serious court congestion.
5. Fault itself, the basis of the tort system, is extremely difficult to prove in many cases and impossible to prove in some.
6. The process of proving fault generates high investigation costs for the insurance companies involved.
7. Finally—despite its supposedly punitive nature, the tort system has apparently done little to reduce our disgraceful highway accident rate or remove chronic offenders from the road.

ADVANTAGES OF FIRST PARTY SYSTEM

Our studies lead us to believe that at least five major advantages would accrue from a first party system:

1. It would result in faster claim settlement. This is a decisive factor in the immediate aftermath of serious accidents, when medical and/or repairs bills accumulate most rapidly, when victims most frequently find themselves confronted with financial crisis and when funds are urgently needed for rehabilitation of seriously-injured persons.
2. It would lead to more equitable settlements, with every accident victim receiving reasonable compensation for his losses and a smaller portion of any settlement being eroded by litigation costs.
3. The direct buyer-seller relationship between the insured person and his insurance company would probably minimize the tendency of some companies to resist *all* claim settlements, even those which are clearly justified.
4. It would probably reduce court congestion.
5. It would eliminate the costly and difficult problem of proving fault before compensating the accident victim.

MINIMUM REQUIREMENTS

We consider the following to be the minimum requirements for any acceptable first party reparations plan:

1. It *must* place the automobile insurance in a primary coverage position (See subsequent comments).
2. Mandatory coverage—whether pure first party or some combination of first party and tort rights—must be high enough to insure reasonable repayment and rehabilitation of the accident victim and prevent his becoming a public charge.
3. It must offer sufficient first party protection to cover costs which might reasonably be anticipated in the immediate aftermath of an accident.

throughout the United States. This coupled to a transportation grid would permit facilities to be established in underdeveloped areas and have them ready when the area is developed — in the meantime they would bolster to built-up areas. It would have other advantages covered by our plan.

DONATED FUNDS -
Now medical attention is one thing everybody is vitally interested in. It is one of the heartstrings of America. That is the reason the many laudable fund appeals find the public rising to the call to carry on research, build hospitals, help hospitals with operating costs, and assist the less fortunate with medical services.

It is therefore downright frustrating and alarming to face the situation where you, yourself, are in need of the things you contributed to help time and time again, only to find that you are financially unable to obtain them — unless, of course, you are willing to pour your substance into the maw of medical practice, become a pauper and then qualify.

A thorough airing of just what happens to all the funds collected, should be undertaken — it would have a salutary result. I know during my own auditing experience we were continually requiring funds be removed from expansion programs and placed into operating funds where the public was led to believe they would be used. Our Committee can inform you of the deliberate squandering of money on a hospital construction — in fact we can show you the thing in motion pictures.

IMPORTANCE OF MEDICAL INSURANCE - In our opinion this coverage is the most important of the entire field - it also affects the majority of other forms of insurance, especially automobile insurance. We find that Life Insurance Companies (in direct statements to us by top officials) are not concerned with highway deaths "because they are so few in relation to the total claims". We also fail to detect any great movement on the part of the Automobile Casualty people to reduce their claims by better medical costs. They are only very recently getting into car design and road hazards — a very late start in attitude from plain "subsidising".

One of the reasons the companies (including Blue Cross) are short of funds is that in their individual company scrable for the market (they insist it is a losing market) have pushed a policy which is not needed (thus forcing a need). As one company comes out with one idea, the others strive to surpass it, at the same price or better — then demand rate increases to cover up. In doing this they leave holes in coverages, necessitating purchase of other policies. A classic instance is the problem of the elderly. Medicare, must be augmented by 65 special and other forms. By this time one single policy should be in existance to take the worry and uncertainty out of the minds of our senior citizens. Your Department should ride herd until such a policy is obtainable at reasonable rates.
SPECIAL POLICIES AND RATES:
We are mindful of the very favorable rates available to some organizations and groups (particularly the news and broadcasting media). Some of these are policies sold by commercial companies and some are self-insuring policies. However, what is available to some can certainly be made available to all on a much nearly equal basis than at present. If you will collect this information and publicise it as to rates and coverages (without mentioning names, of co urse) you could very well break the Gordian Knot.

A publication of this sort could be the Bible of the Consumer in knowing what he should be able to get in insurance. With this criteria available to the customer, the companies would be held in control and still have room for legitimate competition. Many people come to us asking "What is a Good Company and what is a good policy" — we wish we could answer that one.

PIRATING - In my own capacity as a Consultant to Small Businesses, I find my own clients being dogged by insurance representatives to leave their present insurance company and come with another with greatly expanded benefits at very little additional cost and in some instances at even less cost.

Now the worst part of that procedure, as we have testified to this Department time and time again, is that most of the large group plans are already, or are rapidly becoming, "fringe benefits". The employee pays nothing and the total cost is passed on to the consumer, plus overhead, in sales price.

The employer isn't hurt, the employee is pleased, and the insurance company has insufficient funds. There is then that sudden sinking feeling in the stomach of any individual leaving the group by retirement or other cause and becoming conscious of what was being done behind his back as he now digs into his own pocket.

The ideal thing would be for every individual to pay for insurance. If this were so, the outcry from the streets would be many fold worse than it is.

That not being possible, we think the next thing is to strive to get as closely as possible to where the cost per subscriber (regardless of who pays the bill) is almost identical for the same service or coverage, and regardless of size of group he is in.

We have asked before and just for your own information (even if you use it as a way to prove that we are wrong in our viewpoint), we would like to see you compile the followings

Credible groups
- total persons in largest five classes, median five classes, smallest five.
- The coverages accorded to each of these
- The premiums for each of these
- divide the above into categories
  - (a) employer pays entire premium
  - (b) employer pays part premium
  - (c) employee pays entire premium (employer pays nothing)
- Total claims paid out in each category

UNCREDIBLE GROUPS get same information

NON GROUP INDIVIDUALS get same information

Now divide the number of individuals into the claims paid, to get the average per person. Then add the whole mess together and divide by total people covered and see how that average figure compares.

Then determine how much electronic equipment, how many highcost rentals and other overheads can be eliminated from the administrative costs. We think with this kind of arithmetic you can get a more equitable premium.

Oh yes, that brings a howl from the employees layed off — but they aren't layed off — they go to work (as w e testified before) on weeding out unrendered service charges, overcharges, unnecessary things and HAZARDS. That will pay their entire salaries and leave a very large plum to further reduce the premiums.

Another advantage to be gained is that your own Department would have a filing presented to you which could be understood. We contend that the very immensity of the current system of fragmented rates and classifications makes it impossible for you to keep up with it. They have more "fire power" with their total computer equipment than you have with yours. And when you merge a lot of statistics from many companies and file jointly through a Rating Bureau, you might as well take the figures from a calendar. As an auditor, I would hate to certify to such figures. How can you possibly know how many trade association costs, how many lush conventions at vacation spas, how much high rental to insurance industry satellites, what poorly allocated salaries etc etc are included?

BASIC POLICIES - We think that your Department (or the suggested FHIP) should draw up "minimum policies" which every company must market in order to be given a license to operate in any State. The face of the policy should show that basic premium and a schedule of possible rider additions that can be had. The premium of each rider should be sufficient to cover that rider and not be a bonus as is now done. And the riders should carry a lions share of the "plant cost" of the hospitals etc.

You attached a copy of your ten suggestions of areas for improving the present situation. The following are our direct comments on these items and we will cover as many of them as our assigned time permits. We ask that all items not covered be entered on the record as if we had covered them.

I a - A very serious study and prompt solution of this matter of reimbursement methods must be made. The present paper work (which is not standard as to all companies) which is generated even retards the reimbursement and causes avoidable heavy expense both to the hospital, the medical man, and Blue Cross. The simplification of the policy coverage will eliminate a vast amount of the cost and confusion.

c - Fostering of group practice prepayment plans. We are opposed to the continuation of stress on group coverage. The benefit gap between various group sizes and individuals, not only causes tremendous costs in record keeping, but is contrary to the concept of insurance, which is the sharing of risk by the many.

d - Depreciation is in effect a deferred maintenance charge. Proper current

maintenance should restore depreciation wastage. Rather than accelerate Depreciation, we think building depreciation and major equipment depreciation should be adjusted downward to some extent by the actual cash maintenance expenditures each month. Many hospitals are built and equipped by donated cash and the total replacement in all probability will be done with donated cash.

f - Reimbursement of low utilization facilities. The FHIP we suggest might well work out with various areahospitals just what facilities are needed. Then instead of each hospital being in total competition withmx eachother, they would be in total cooperation with eachother in rendering a full broadbased medical service. Not every hospital would have the identical facilities, but each mmxk area would have what is needed, available to patients of any hospital. (in this connection our Committee's suggestion of ten insurance districts in Pennsylvania might produce the basis for determining area hospital equipment).
Some excess standby facilities must be available and might well be subsidized by FHIP.

Open heart surgery is becoming a much used benefit. We think there must be a special study made as to how this can be made available at better cost to those who are not covered by the deluxe hospital plans. In low utilization hospitals, the cost should be equalized by FHIP or the patient should be assigned (along with his own doctor even if not accredited to that hospital) to a hospital which is designated in that area for such services.

j - Bad debts should be eliminated entirely from costs. There should be an interhospital fund set up to reimburse themselves for bad debts. The agency supervising this reimbursement should contact a hard-nose audit of what charges are on bad debt accounts to see if the very improper nature (such as unrendered services) charges might be the cause of the bad debt and refuse to reimburse that loss. This would be a self-policing of improper charging and unnecessary services.

Research costs should not be reimbursed. There are ample funds donated for such things and these funds can be obtained. This does not, of cours e, mean the normal laboratory tests -- it refers just to longterm exploratory research which is using the hospital equipment and patients as a ready laboratory in place of establishing an self-contained commercial enterprise elsewhere.

2 a - The State should be divided into Insurance Districts (ten of them). Each district could then also be a Hospital Utilization district. The object would be (under FHIP) to endeavor to spread out the various facilities so as to obtain maximum utilization. Then the individual utilization would be a lot more meaningful for rate study.

c - Some reasonable guideline of required hospital stays should be worked out. We think this again should be done by FHIP, in cooperation with the medical profession (We are not questioning the dedication of the medical profession -- we are proud of them -- but the present escalation of costs has even them rocking on the ropes. In our opinion "recuperation and rehabilitation" joint facilities would have a major effect on this problem.

d - Not much use debating this -- disallow it in one place and it would be buried skillfully in another. a proper "hardnosed policing" of hospital bills will go a long way to correcting the matter.

3 a Disclosure of Blue Cross/Hospital contracts. Since Federal and State funds are permanently locked into payment of hospital bills, the private contracts should be a matter of record in the Insurance Department where proper committees from the Legislators could examine them. It is correct that the Insurance Department should keep well abreastof such contracts.

This is needed to keep the lid on medical medical cost increases just to make a high-level professional income for some at the expense of the public.

b -
We question the desireability of advising patients the cost of the services shown on their bills. We doubt if the vast majority of the patients would know what it was all about and might suffer a heart attack trying to work it out. In addition the cost of doing such a thing would be indefensible.

3 b cont'd However, we do think that every bill should have on it a prominent footnote "If the patient has any question as to any charge hereon, particularly as to whether the service was rendered, he has the right to refer the matter to the Penna. Insurance Department in Harrisburg, Pa.".

Such a note would help greatly in breaking up those improper charges because "you don't pay the bill, so why worry".

c With the Insurance Department and other proper Government agencies watching the interests of the public as well as the hospitals, it is hoped that there would be a minimum of things the public should watch. It is desireable that the hospitals be spared the tremendous cost of making miriads of unneeded "whim reports". A simplified medical coverage will release hundreds of hands to do necessary medical operating things which are now not done or inadequately done. This, in itself, should further cut down on costs.

d Cost of per diem charges by hospitals should be publicised twice a year, particularly to the Legislators. We recommend that this be on the basis of the Insurance Districts previously mentioned for ready comparison. Then the Insurance Department in cooperation with the suggest FHIP should delve into the reasons for the discrepancies and endeavor to minimize them, knowing full well that you just can't get equal costs in every unit.

e Not only should there be a disclosure of payments to such specialists who are not on a fixed annual salary and on the fulltime staff, but the matter of supplying suffient help should be the function of the suggested FHIP. In my own experience, an anaesthestist was billed by the hospital and the same technician sent an additional personal bill because the hospital scale was not high enough.

We do not question adequate pay for medical experts and technicians but we think their own associations should set some reasonable guide lines

At the last Blue Cross hearings in Phila, we and others suggested that your Department obtain lists of everybody receiving over $10,000 per year, especially the technologists and then crosscheck each list to locate the same name appearing on more than one hospital list — I knew, professionally, that such things did occur and presume that they still do. A little light could have a great effect in reducing costs. (Our own plan, when released will chart the way.)

5 c We recommend that something be done along the lines of having standard hospital plans drawn up for buildings, allowing for expansion. The facilities would then be more familiar to changing personnel and save much in construction and operating costs. This is mostly adaptable to new construction in open rural areas where the maximum load is still in the future. It permits those rural units to better function as standby and auxiliary facilities for urban plants, especially during crisis.

6 b Duplication of benefits, and/or duplication of reimbursements should be prohibited (as suggested in our remarks on advertising). Since such duplications are based on the premise that some policies do not cover certain items, it is imperitive that the policies offered to the public must be strictly regulated so the consumer is not faced with a bewildering maze. This clarification of policies will, in itself, vastly cut down on the paper work and operating costs of even the insurance companies themselves, as well as hospitals.

c This point is covered by our prior remarks asking for basic minimums which cover MUSTS, plus riders covering non-essentials at additional adequate premium.

7 a The matter of pre-admission testing and useage of outpatient care must be a matter to be supervised by an agency such as FHIP so as to gradually circumvent the unnecessary hospital entrance and & length of stay and the services used on admittance. In other words, medical practice should again revert to a service and not to expand further into a research effort. Such control must be monitored by a meaningful department of FHIP.

7 f Looking to the eventual (and obviously unavoidable) Nationalization of medical attention at all levels - it is imperitive that all account and reporting forms (ALL PAPER WORK) become uniform as promptly as possible. Those who are opposed to nationalization should be the loudest in calling for this standardization because it will permit proper comparisons which are impossible now. The present confusion precludes fair evaluation ~~of~~ either to the medical community or to the public.

8 a The public has only recently become aware of the fact that the Blue Cross organizations are under the control of the medical community. The Board should be service oriented, certainly not a political football, nor a medical/insurance company bonanza. Possibly only by area or state board supervision (FEIP) can such broad principles be attained. Otherwise it can be ego/competetive.

Blue Cross must be, what it started to be, a purchasing agency for the public. There is even frailty in that concept, however, in industry.

Until very recently, at least, Blue Cross has resisted public information. We bring to your attention our testimony in the hearings onBlue Cross in Phila. on April 16-17-18, 1970. We ask you to review that testimony and make it a part of the record of this hearing. In that we reported the downright arrogance of the Blue Cross officials in refusing to let us have access to papers on the filing. Following that hearing, we were given the courtesy of talking to those who should have been available without the unpleasantness. We think the entire medical community and the Blue Cross (the same as insurance companies in other fields) is engaged in "pulling the wool" over the eyes of the Insurance Commissioner for the benefit of others than the public. Up until now the smirk on their faces has been even visible — we find the smirk has been gradually disappearing, but the intent remains obvious. We for our part, will continue to fight.

b We believe there should always be a consumer representative on all boards such as Blue Cross. Consumer groups themselves are not enough. There is no communication between consumer groups either and that is a calamity. Do not for a minute think that whereas Blue Cross started consumer oriented and became a desireable employment haven to be protected, that consumer groups cannot become the same. We hope your office will forever hold public hearings on rate increases to avoid the quiet "job pools" perpetuating.

c We think that not only all Blue Cross subscribers, but that every other policyholder of every other type of Insurance should receive notice of requests for rate adjustments, plus notification of availability of appeal for help from the Insurance Commissioner, plus notification of the Insurance Commissioner by the Insurance Company/and or plan of each and every cancellation, refusal to renew, or refusal to sell.

We do not believe that either the public or the Insurance Commissioner is fully aware of what is going on. In fact, we note that you, Mr. Commissioner are asking for 50,000 policyholders to enter protests in automobile insurance. If what we have been asking for eitht long years had been done (and we repeat that request above) you would have that 50,000 plus some 100,000 more protests right now. We will ask legislation on this particular point this year.

d Yes, most decidedly policyholders should be advised of hearings. Just start this kind of notification and the number of requests will subside to what is really required and stop the "fat-calf-living" of insurance people.

e We believe that if special T.V.forums were arranged at least once a year, or that some portion of the annual meeting of Blue Cross would be televised (like school board meetings etc). that people would become more interested because they would be better informed. At present most are simply disgusted and don't trust anything including Blue Cross and the Insurance Department itself.

It would also be meaningful if the Press (I mean a joint press-club) would hold televised interviews - excluding politicians and get down to earth discussion and debate at the people level.

9 a to f We believe the answer to a to f items in this category can be grouped as one.

Since health is an individual matter, health insurance is an individual matter.

If every health agency is controlled through the suggested HHIP then you would have uniform standards, you would have uniform coverage, and you would have uniform charges.

Improper charges should never be paid. The real thing is that they should never be charged in the first place. Merely refusing to pay such charges is not the answer, because as an accountant, I know full well they will be buried somewhere else where you don't see them. You have to restore cash to the properly operated health agency. The answer is to have a health agency which doesnot want to live in ivory towers, especially when they are not being watched.

We are opposed to group coverages at special rates, especially when they carry more benefits, and this applies particularly to the medical field.

In our opinion the concept of credible and non-credible groups is an archaic premise which can't stand the test of human application. Arithmetic is a very inhuman thing. It has already been carried to the point of popular outcry — let's not carry it further to popular demand for socialism. In fact we call on the Penna. State Legislature to outlaw the concept of-credible/ non-credible and get down to health insurance.

10 a to c Yes the public can be better informed about the cost and dangers of over-utilizations.— and its own part in stopping such use. We think it could, and should, bue in the form of the "forums" heretofore suggested. Such forums should be frequent and have uninhibited people participation and just not a platform for top officials to expound and cover up.

It could also be in the form of properly drawn leaflets or pamphlets, handed to each patient or attached to each bill to a patient. We think a x "news short" at very frequent intervals on T.V./radio (possibly sponsored by the Advertising Council of America — or the insurance industry) would be very helpful.

Possibly a leaflet for insertion AT NO CHARGE in the newspapers, like they put the mirad of bargain rate insurance advertising material, would be helpful.

And above all, we think that HARD-NOSE POLICING OF ADVERTISING COMPAIGNS by the Penna..Insurance Department (and the suggested Insurance Industry CZAR) which induce the overutilization, would be a prime curb on the practice.

And then maybe a public display of intentional overcharges might have an effect.

- 0 - 0 - 0

TO SUM UP - We think that inasmuch as God brought humans into the world one at a time, and since we leave this world one at a time, it is high time that we accepted that fact insofar as health insurance and medical attention is concerned. We believe that everybody regardless of social status or pecuniary substance is entitled to equal medical service. One way to accomplish this is to make charges more nearly equal, if not entirely so. Groups have no prior preference so far as we are concerned. This will still not preclude those affluents who wish lavish attention obtaining and paying for it. We do not think the general public should subsidise the marble halls where they receive this attention, however. Socialized medical COULD be avoided, but we very much doubt if the influential portion of our society will PERMIT it to be avoided. Today is the Gettysburg of that battle — which way will we go?

STATEMENT OF H. C. THOMPSON, PRESIDENT, AND JOHN HUEMMRICH, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF PETROLEUM RETAILERS

The National Congress of Petroleum Retailers supports most of the provisions of S. 976. Auto safety, the cost and efficacy of automobile repairs, the high cost of automobile insurance are issues in which our 75,000 gasoline retailer members have a vital interest. We deal face-to-face with the consumer on a day-to-day basis. We must, therefore, equate our self-interest with the consumer interest.

We believe, however, that certain aspects of Section 501(a)(2) of this bill run counter to such interests. As written, it would adversely affect approximately 60,000 retail gasoline dealers. These dealers are certified as vehicle inspectors under various State inspection programs. They have done this job well and in the best interest of the motoring public. This Section would wipe out their investments and operations. Yet, there is little likelihood that a better system would result.

Certainly, we agree with the need for a national and uniform motor vehicle inspection program. But, before State *supervised* inspection is eliminated in favor of a State *operated* system, we believe there should be substantial evidence that such a change will, in fact, benefit the motorist. Such evidence presently does not exist.

Indeed, there is evidence to the contrary. Pennsylvania, for instance, has perhaps the finest inspection law in the country and statistics have shown the beneficial effect it has had in creating safety on Pennsylvania highways. Citizens in other States deserve a system at least as effective.

However, Pennsylvania does not operate its own inspection system. Inspection stations in Pennsylvania are licensed and these stations themselves are inspected by the State Police. If a car owner feels aggrieved, he can complain to the authorities and if the complaint is found to be valid, the inspection station can lose its license.

In our opinion, a good nationwide periodic motor vehicle inspection act requiring inspections at least twice a year, makes good sense. However, a State, if it desires, should be free to utilize private facilities. Such facilities can be required to use qualified, certified mechanics licensed to do this work.

A private system saves the State the expense of building and equipping State inspection stations. It keeps manpower, such as trained, skilled mechanics from being drained from present repair shops where there is already a shortage. The inconvenience, cost and time involved when a car owner has to deal with the State monopoly may be far greater than through the utilization of private licensed inspection stations.

We submit that the most efficient and effective way to handle this problem is to utilize the private inspection system but under stringent State supervision. Both large fines and the revocation of licenses should be effective sanctions if it appears that the facility is not treating the consumer fairly.

We support tough State standards, adequate policing and licensing procedures. The public is entitled to no less.

But, we also believe our dealers are entitled to operate, as various States have licensed us to do, so long as we continue to operate with high standards. As long as private enterprise is demonstrating that it can do the job well, this method of operation should be available to the States if they desire to use it.

We ask only that we be judged on our performance. To date, that performance has operated in the best interest of the motoring public. Certainly, 60,000 dealers should not be legislated out of their investments and operations, unless strong evidence exists that there will be commensurate benefits to the consumer.

Presently, the evidence is to the contrary. It indicates that private inspection under stiff State licensing procedures is an excellent method of insuring safer highways.

We respectfully request, therefore, that Section 501(a)(2) be struck from the bill or otherwise altered to meet the objections raised in this statement.

STATEMENT OF CLARK E. FEGRAUS, PRESIDENT, AND M. VAN LOAN, VICE PRESIDENT, AUTOMOTIVE ENVIRONMENTAL SYSTEMS, INC. SAN BERNARDINO, CALIF.

Automotive Environmental Systems, Inc. is pleased to have this opportunity to present our views on S. 976 as introduced by Senator Philip A. Hart and Amendment No. 67 submitted by Senator Ribicoff. Our comments will be confined to the subject of Diagnostic Inspections for safety and pollution.

The Subcommittee on Antitrust and Monopoly in a thorough investigation of automobile repairs, received thousands of letters from citizens concerned about their automobile, its repair problems and its maintainence and repair costs. We too, in our capacity as engineers and consultants in the field of automotive air pollution and safety, have received similar comments from the consumer. We have compiled and digested considerable literature on this subject, and have thoroughly investigated various schemes for vehicle safety and pollution inspection. Following are observations which we have made during recent years which are technically supported and which are highly pertinent to the proposed "Motor Vehicle Information and Cost Savings Act".

The consumer is generally unaware of the numerous safety problems that exist in his automobile. Studies by diagnostic centers and the Missouri Automobile Club indicate that the vast majority of cars on the road have potential safety defects. The number of actual safety defects is far less but still is a significant fraction. The contribution of these unsafe vehicle to the accident and mortality rate on our highways is not accurately known, but whatever this contribution, it is too much.

The consumer is unaware that the daily operation of his vehicle is costing him far more than it should because the engine is not operating efficiently or the transmission and brakes are improperly adjusted. Surveys show that the consumer feels that tuneups are too inconvenient, that a tuneup is too expensive or that their car is running properly. In addition, a majority of consumers rate their tuneup service good or excellent. However, a tuneup performed on the average car will cause a reduction in fuel consumption of 5–10% and an increase in power of about 10%. These figures may be considerably higher on older or poorly maintained cars. The irony here is that those consumers who can least afford a proper tuneup can least afford to waste gasoline.

The consumer is not generally aware that his automobile is a major source of air pollution in the United States, and is even less aware of pollution causing defects in his vehicle. Numerous studies by industry, states and the Federal government have indicated that vehicles emit far more pollutants than need be emitted. Vehicles which have been digested to meet low pollution standards deteriorate with use in the hands of the consumer. Because low pollution from vehicles is so intimately tied to proper engine operation, the normal lack of maintenance causes a severe increase in pollutants. For example, a misfiring spark plug can cause a 300–1000% increase in hydrocarbon emission levels. Improper idle mixture settings can cause a 50–200% increase in carbon monoxide emissions. A dirty air cleaner or improperly adjusted choke can cause a 50–200% increase in carbon monoxide and hydrocarbons. Improperly adjusted carburetion and spark timing can also cause great increases in oxides of nitrogen.

People are susceptible to sales efforts by mechanics or car salesmen. There is no attempt by the consumer to ascertain the vehicle's actual condition. Frequently the consumer has no place to turn to verify the safety, operational or emissions performance of his car.

Automobiles are becoming much more complex, as the consumer requires many power accessories, greater performance, larger automobiles; and as the government establishes safety and pollution standards. The average repairman or mechanic can not keep up with the latest information available about all aspects of all cars, and therefore certain aspects of repair or service do not get accomplished properly. Another reason for a lack of proper automotive service and repair is that the number of vehicles on our highways is increasing at a rate far greater than the number of mechanics and service facilities.

The foregoing observations serve to strongly uphold the urgent need for legislation such as S. 976 and Amendment No. 67. We view the diagnostic inspection system proposed in this bill as a potential incentive to the consumer to take better care of his vehicle and not as a government edict. The bill offers incentive to the manufacturers to consider maintenance and repair of safety, operational and pollution items in the design of new cars. It offers incentive to the service industry to upgrade and do a proper job.

An independent diagnostic inspection system would, if properly implemented on a periodic basis by states, provide the consumer with an unbiased evaluation of his vehicle. He could decide whether to repair it or to buy another; he could be assured of a vehicle's condition before purchase; and he would be guaranteed that after damage his car would be safe.

Periodic diagnostic inspections are essential to effective vehicle pollution control and vehicle safety because:

Many people will defer needed repairs as long as possible unless they are compelled to correct deficiencies determined by inspection.

Conversely, many people will strive to upgrade their vehicles in anticipation of inspection, if the inspection is generally accepted to be effective and thorough.

Many pollution and safety related deficiencies develop gradually and the motorist if often unaware of their existence. Only by suitable inspection are such deficiencies likely to be determined.

The information and data that may be derived from vehicle inspections will be extremely valuable in pinpointing automotive service problem areas, as well as developing ongoing controls.

Periodic motor vehicle inspections of a diagnostic type may serve as an important measure in reducing automotive service costs by diagnosing vehicle ills more accurately.

We at Automotive Environmental Systems, Inc are very concerned that diagnostic inspections *per se* will be construed by many, as the solution to our vehicle repair, safety and pollution problems. Diagnostic inspection is not the solution, but an important means to effect or induce the solution. The true solution is, of course, accurate, honest and economical automotive service. If this bill or any vehicle safety or pollution control measures are to be effective, a major change in the profile of the automotive service industry is essential.

Regardless of how clean and safe new cars are, new cars become used cars as soon as they are driven home by the proud purchasers. All vehicle systems, including safety and pollution control systems, deteriorate with time and use, and will continue to do so for the foreseeable future. Unless these systems are properly maintained, vehicle pollution and vehicle safety will continue to be serious national problems.

Periodic diagnostic inspections will involve the use of procedures and equipment with varying degrees of sophistication. If deficiencies determined during inspection are to be corrected properly, the procedures and equipment at the service facility must be at least equivalent in sophistication.

New cars are safer and "cleaner," from a pollution standpoint. However, they are more complex and require more precise tuning and adjustment. Furthermore, this trend will continue and intensify in the next few years. Accordingly, automotive technicians must be better trained and capable of using new and more sophisticated equipment and procedures.

As has been emphasized in last year's hearings by the Senate Subcommittee on Antitrust and Monopoly concerning the automotive service industry, there is a serious and growing shortage of qualified automotive service personnel. If the vehicle safety and pollution challenges of the 1970's are to be met successfully, this problem must be solved through new concepts in recruiting and training. New Federally sponsored employment and training programs should be directed to this end.

Depending upon the stringency of inspection standards set, a dramatic increase in workload for the automotive service industry can occur with the inception of periodic inspections. This will further aggravate the problem of personnel shortage previously mentioned.

In conclusion, our experience has convinced us that periodic motor vehicle inspection, together with a major upgrading and expansion of the automotive service industry, are absolutely essential for vehicle pollution control and improved vehicle safety. Any actions, such as S. 976 and the amendment which will promote these measures, are urgently needed.

STATEMENT OF CHARLES L. RUE, CPCU, CHAIRMAN, NATIONAL AFFAIRS COMMITTEE INDEPENDENT MUTUAL INSURANCE AGENTS ASSOCIATION OF NEW YORK, NEW JERSEY AND CONNECTICUT

PURPOSE

This statement is submitted in lieu of verbal testimony to outline the position of the Independent Mutual Insurance Agents Associations of New York, New Jersey and Connecticut relative to HR-4994 in particular and the concept of "no party" or "no fault" automobile insurance in general. These associations represent a total of approximately 3,500 independent insurance agencies and 10,000 independ-

ual agents. We respectfully request that this document be entered in the record of the current hearings on HR—[illegible].

POSITION ON FIRST PARTY REPARATIONS SYSTEM

These three associations individually and collectively strongly support the concept of a first party automobile accident reparations system commonly referred to as a "no fault" system. This position stems from an intensive study of accident reparations initiated by our own Interstate Auto Study Committee in 1967, the findings of which were published in September of 1968 and can be provided upon request.

Although we have not proposed and do not contemplate proposing a specific reparations plan of our own, our ultimate objective is a pure no fault system. At this time, however, we are prepared to support any limited or hybrid plan which represents an intelligent evolutionary step in that direction.

OBJECTION TO TORT SYSTEM

Our objections to the present tort liability system may be summarized as follows:

1. Claim settlements have tended to be painfully slow, with delays of anywhere from several months to several years remaining commonplace in the case of large claims associated with serious accidents.

2. Many accident victims presently receive no compensation for their losses, perhaps because of some insignificant degree of contributory negligence. Similarly, many are grossly underpaid for their losses.

3. A significant portion of many tort settlements is diverted to court costs and legal fees, never reaching the accident victim.

4. The tort system appears to have created serious court congestion.

5. Fault itself, the basis of the tort system, is extremely difficult to prove in many cases and impossible to prove in some.

6. The process of proving fault generates high investigation costs for the insurance companies involved.

7. Finally—despite its supposedly punitive nature, the tort system has apparently done little to reduce our disgraceful highway accident rate or remove chronic offenders from the road.

ADVANTAGES OF FIRST PARTY SYSTEM

Our studies lead us to believe that at least five major advantages would accrue from a first party system:

1. It would result in faster claim settlement. This is a decisive factor in the immediate aftermath of serious accidents, when medical and or repairs bills accumulate most rapidly, when victims most frequently find themselves confronted with financial crisis and when funds are urgently needed for rehabilitation of seriously-injured persons.

2. It would lead to more equitable settlements, with every accident victim receiving reasonable compensation for his losses and a smaller portion of any settlement being eroded by litigation costs.

3. The direct buyer-seller relationship between the insured person and his insurance company would probably minimize the tendency of some companies to resist all claim settlements, even those which are clearly justified.

4. It would probably reduce court congestion.

5. It would eliminate the costly and difficult problem of proving fault before compensating the accident victim.

MINIMUM REQUIREMENTS

We consider the following to be the minimum requirements for any acceptable first party reparations plan:

1. It *must* place the automobile insurance in a primary coverage position (See subsequent comments).

2. Mandatory coverage—whether pure first party or some combination of first party and tort rights—must be high enough to insure reasonable repayment and rehabilitation of the accident victim and prevent his becoming a public charge.

3. It must offer sufficient first party protection to cover costs which might reasonably be anticipated in the immediate aftermath of an accident.

4. It must make some provision above and beyond basic statutory coverage for unusual circumstances such as permanent impairment, disfigurement, dismemberment or death.

5. It must offer some form of optional coverage for catastrophic losses.

6. It must provide liability coverage for out-of-state accidents.

7. It must provide ample residual liability protection to cover situations not otherwise covered in the basic provisions of the plan.

PRIMARY VS. SECONDARY COVERAGE

On one point we are adamant and will not compromise: Automobile insurance *absolutely must* occupy the primary coverage position in the settlement of any and all claims arising from automobile accidents. Conversely, it *must not* be placed in a position secondary to collateral coverages held by the insured. We base this reasoning upon the following four points:

1. Persons carrying valid automobile insurance who are injured in automobile accidents should not be required to exhaust benefits which they have accrued to protect themselves against natural illness or other mishaps.

2. Administrative confusion resulting from a secondary coverage system would be monumental. It would be virtually impossible to devise a comprehensive rating system for automobile insurance which would mesh with the staggering number of accident, health, medical and income protection plans offered through other sectors of the insurance industry.

Furthermore, shifting administrative costs of processing bodily injury claims to hospitalization insurers would not greatly reduce the administrative burden on the auto insurer, since any accident causing significant injury will undoubtedly be accompanied by a considerable degree of property damage. Hence, the auto insurer is already in the act, and the additional administrative cost of processing the injury portion of the claim would be negligible.

3. The economic cost of highway accidents should be borne entirely by highway users. Yet, a secondary coverage statute, while undoubtedly effecting some savings in automobile insurance premium, would simply shift the burden of highway economic losses to the rest of the public in the form of higher premiums for other hospitalization and/or medical insurance.

4. People buy automobile insurance to protect themselves against losses suffered in automobile accidents, and that insurance alone should protect them fully against all such losses, except where covered by workmens compensation.

Despite our full support of the first party concept, we will commit all of the resources at our disposal against any plan or any bill which relegates automobile insurance to a secondary position.

OBJECTIONS TO H.R. 4994

H.R. 4994 has many meritorious provisions, which point toward our own ultimate objectives. However, we have objections (two of them serious) and/or reservations with regard to the following provisions:

1. Sec. 2(12)(A)—definition of "net economic loss." Places automobile insurance in secondary coverage position to collateral coverages. Totally unacceptable to our associations for reasons outlined immediately above.

2. Sec. 3. Virtually mandates compulsory bodily injury automobile insurance on a nationwide basis. While the idea may have some merit, it is infringement upon state rights. Furthermore, even in such states as New York, one of the pioneers in strict compulsory automobile insurance, a significant percentage of uninsured drivers still find access to the highway.

3. Sec. 5(a)(7)(A)—places certain responsibilities for "a percentage" of net economic loss upon the insurer of a "larger" vehicle. Far too vague. What percentage, and what is a "larger" vehicle?

4. Sec. 5(d)(1)—an ironclad mandatory issue, guaranteed renewal, guaranteed non-cancellation provision. This is unprecedented coersion of private enterprise, which would probably lead to bankruptcy of the private insurance industry in short order and would also mandate perpetuation on American highways, by a captive insurance industry, of the criminally negligent and the chronic offender. Even the most stringent state cancellation and non-renewal laws grant exclusions to insurers for such reasons as use of an automobile in commission of a felony, conviction for driving while under the influence of alcohol or drugs, conviction for leaving the scene of an accident, and other serious offenses. This provision of this act would grant free rein to these undesirables. Totally unacceptable to our associations.

5. Sec. 7(a)—would establish, at state level, an "assigned claims plan." The objective is obvious and basically sound—namely, to deal with contingencies not otherwise covered in the basic law. We have no specific comments, no specific suggestions, and our reservations are intuitive rather than tangible. We simply wonder if this is the only, or even the best, approach to this problem. We suggest that this mechanism be reviewed and analyzed *very* carefully before it is implemented.

If amended to eliminate the five deficiencies outlined above, H.R. 4994 would be considered highly acceptable to our associations—*if* presented in the context of model guidelines for state level legislation.

STATE VS. FEDERAL REGULATION

The concept of federally-mandated *standardization* of automobile accident reparations law is by no means distasteful to our associations. In fact, it has considerable merit.

However, the concept of federal *control* of the system is utterly repulsive. It would, for one thing, require the establishment of still another layer of expensive federal bureaucracy, which could rapidly negate any savings that might otherwise accrue from such a system.

Secondly, it would constitute another serious infringement upon state rights, the foundation of which, in terms of insurance regulatory power, was clearly recognized and defined in the McCarren Act of 1945. In context with this, we submit that the states, for the most part, have done a fairly respectable job of regulating the insurance industry.

Finally, we warn that the imposition of additional expensive controls at still another level of government could further inhibit operations of the private insurance industry and further restrict already deteriorating insurance markets.

Therefore, we hope this committee will limit its objectives to the establishment of reasonable standards for auto accident reparations and tread with extreme caution in the area of local control. A very large industry, employing millions of people and serving the entire population of the United States, could be at stake.

STATEMENT OF BENJAMIN S. MACKOFF, ADMINISTRATIVE DIRECTOR, CIRCUIT COURT OF COOK COUNTY, ILL., TO THE SUBCOMMITTEE ON COMMERCE AND FINANCE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

In the past 20 years, the nation's courts have been deluged by civil litigation arising out of automobile accidents. This has occurred because of the staggering increase in motor vehicle registration and because courts have historically provided the only forum in which to seek compensation.

As long as the case load was manageable. the courts were able to provide adequate and speedy justice in such matters and still dispense services needed in other areas of the law. But in most metropolitan areas of this country today, the time it takes to get to trial in personal injury cases is measured in years. Despite the implementation of a variety of techniques to expedite litigation, the delay continues at an increased rate. Those courts that have kept pace with the steady rise of such filings have done so only at the expense of other vital areas of the law which then suffer from similar delays, or worse yet, "bargain basement justice".

Delay in the courts is becoming an embarrassing contradiction to our entire system of justice. It deprives citizens of a basic public service; lapse of time frequently causes deterioration of evidence; delay may cause severe hardship to some parties and affect litigants differentially; and, it generally brings to the entire court system a loss of public confidence, respect and pride.[1]

As Justice Ulysses S. Schwartz of the Illinois Appellate Court stated in *Gray v. Gray*, 6 Ill. App. 2d 571 (1955):

> The law's delay in many lands and throughout history has been the theme of tragedy and comedy. Hamlet summarized the seven burdens of man and put the law's delay fifth on his list. If the meter of his verse had permitted, he would perhaps have put it first. Dickens memorialized it in Bleak House, Chekhov, the Russian, and Moliere, the Frenchman, have written tragedies based on it. Gilbert and Sullivan have satirized it in song. Thus it is no new problem for the profession, although we doubt that it has ever assumed the

[1] "Delay in the Court," by Buchholz, Kalven, Jr., and Zeisel.

proportions which now confront us. "Justice delayed is justice denied," and regardless of the antiquity of the problem and the difficulties it presents the courts and the bar must do everything possible to solve it.

And yet there is very little incentive for the speedy disposition of a pending personal injury lawsuit under the present system. Neither the culpable defendant nor the plaintiff with a very tenuous nuisance claim has reason to hasten the day of reckoning. The insurance company makes money during the delay on its reserves—the money it does not pay out as claims. The defense lawyer gets paid by the thickness of his file—the amount of work and the number of court appearances he has made. Even the plaintiff's lawyer has sound economic reasons for not wanting his case disposed of. If the plaintiff's lawyer accumulates a certain number of dispositions, his fees are greatly diminished by taxes and, I am told, the prudent lawyer will always want an inventory or backlog of pending cases for the proverbial "rainy day".

Other than the courts prodding the cases through to conclusion, there is generally no real effort by any of the participants to gain a measure of speedy justice. Some courts even refuse to hurry the matters along, preferring to wait until the lawyers indicate that they are ready to proceed.

And other abuses have grown with the system. A few well-publicized "big verdicts" have led many of the public to believe that they are entitled to enormous sums for minor injuries or could receive such sums if they are represented by a lawyer who will "build a case" for them. And there are always those few who will prey on these expectations. Unscrupulous lawyers, attracted by large contingent fees solicit cases personally or through agents, contrary to the ethics of the legal profession. They sign up accident victims by promising fantastic sums even while the would-be client is stretched out on the street or en route to emergency surgery. These same lawyers corrupt police officers and firemen, who may be the first to the scene of the accident, to direct them to the victim for a fee and even to color their testimony if it becomes necessary. "Ambulance chasing" induces some clients and doctors to exaggerate injuries and tradesmen to inflate bills or approve such inflated bills. The system, at its worst, encourages accidents to be contrived and injuries to be fabricated to defraud the unsuspecting defendant or the unwarry insurance company.

Nor are the unscrupulous lawyers the only culprits in the system. Eying the large sums spent annually for casualty insurance premiums, many investors have organized insurance companies for the sole purpose of paying themselves high salaries while contesting claims, so as to milk the company until it is insolvent.

One can imagine the shock to the defendant driver when he realizes that rather than being insured against a claim, he must pay the judgment out of his own pocket, or even be assessed an additional one year's premium to pay for claims against other defrauded by the same insurer. And what of the tragic consequences to the severely injured plaintiff who discovers that the uninsured defendant has insufficient funds to pay even a portion of whatever judgment may be rendered against him.

Others have pointed out the high cost of acquiring casualty and the difficulty of obtaining renewals. But an often overlooked problem is the cost to the taxpayer of maintaining the system. It has been estimated that it costs approximately $250 per hour to try a jury case before adding attorney's fees and witness expenses. That cost is hardly less for non-jury court time. If one considers that many courts throughout the country assign a substantial portion of their trial bench to the processing of automobile accident cases, one may appreciate the handsome contribution which the taxpayer makes.

And what does the taxpayer get in return for his tax dollar? An orderly and effective litigation of actual disputes? On the contrary, it is a rather distressing symptom of the abuses now ensnaring the courts that a very low ratio of cases is actually decided by a trial of the issues. In some courts that ratio is as low as two or three per cent. This statistic indicates to me that the court is being used merely as a forum for the claims adjusting bargaining process. The judge becomes an umpire between two parties who do not really seek a determination of the legal matters involved. The court, sacrificing its traditional function of deciding actual disputes, simply oversees the haggling between lawyers of whether or how much to pay to whom. In no uncertain terms, the taxpayer is subsidizing insurance companies to negotiate its own claims within public facilities and on judge-time.

All this occurs at a time when new and important matters are being thrust upon the courts for decision. Expanding constitutional requirements of due process have added new aspects to criminal proceedings and demand a more formal trial

in juvenile cases. Third party and class actions are now commonplace in many areas of civil litigation. New remedies available for consumer and environmental protection, as well as for welfare recipients and apartment dwellers, represent new demands on court time.

Judges are key human resources of our nation's courts, whose time must be allocated consciously to reflect our country's priorities. The heavy burden of automobile accident litigation may be relieved in some measure by providing the courts with more judges. But for the moment, the litigation of these cases consumes a disproportionate and totally unjustifiable amount of judge time. There is no question but that the continued over-emphasis on personal injury cases will divert attention from other deserving areas of the law.

In my judgment, the extension of tort remedies to automobile accident victims is in no way vital to our system of government. It is simply a convenient device conceived in the 13th and 14th centuries as an extension of the laws of trespass and handed down from the English common law. While it is important that victims of motor vehicle accidents be compensated in a just and efficient manner, it is not critical that this system of compensation operate as part of our judicial system. In certain respects, the courts are an inappropriate forum. Abuses and inefficiencies abound in the present arrangement. For these reasons—that the continued maintenance of this scheme of compensation not only fails to serve its own ends effectively, but also impairs the disposition of litigation more vital to our liberties, a reordering of priorities is called for.

The time has come for new and bold measures to compensate automobile accident victims which will allow the courts to more effectively serve the public. One such way may very well be through the adoption of the legislation now pending before this subcommittee. Congress has seen fit to legislate certain minimum highway safety standards to minimize the risks of driving. Surely Congress has the authority to set down minimum standards for compensation to accident victims to mitigate the harsh consequences of accidents that do occur.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION
NINETEENTH BIENNIAL CONVENTION, HONOLULU, HAWAII

STATEMENT OF POLICY OF AUTO INSURANCE REFORM

Soaring premiums, inequitable settlements, lengthy delays in the settlement of claims and unfair cancellations of policies are major reasons why consumers are up in arms over auto insurance. A $2 million, two and one-half year study of auto insurance conducted by the Department of Transportation has concluded among other things that (1) fewer than half of those persons killed or injured in car accidents receive payments from the present liability system, (2) victims with economic losses of more than $25,000 are repaid only an average of one-third of their losses, and (3) the major portion of auto insurance premiums goes for court and lawyer costs, and other non-benefit expenses. In New York alone, for example, about 23% of injury liability premiums go to lawyers and claims investigators.

Following completion of its study the Department of Transportation was prepared to make an extensive series of legislative recommendations for reform in the industry. The President, apparently having checked with major insurance carriers and such groups as the American Trial Lawyers Association, blocked them. Richard Barber, who headed up the study, described the President's recommendations for auto insurance reform as "disgraceful sham." Compared to the Original Department of Transportation recommendations, he described the White House approach as "pale, anemic, and lacking in substance."

Senators Philip Hart and Warren Magnuson, in opposition to the President, have sponsored meaningful legislation for auto insurance reform. Their approach provides partial no-fault insurance for everyone. One's own insurance company would compensate accident victims for lost wages, medical care costs, and rehabilitation and death benefits immediately, and without determination of fault. Victims could subsequently seek redress through the courts for claims in excess of $30,000. The Hart-Magnuson program would allow cancellation of policies only for lack of payment of premiums or loss of driver's license. It would also abolish the legal prohibitions in 36 states against the selling of lower cost, true group auto insurance.

In the long run, the ultimate solution to our auto insurance headaches is government run insurance operated along the same lines as workmen's compen-

sation. Short of there being an immediate prospect for a comprehensive government plan, the ILWU joins the rest of the labor movement in demanding prompt enactment of the Hart-Magnuson proposals for auto insurance reform—a long overdue first step toward making the present system one which is equitable, efficient, and less expensive.

STATEMENT OF ANTHONY SCARIANO BEFORE THE COMMERCE AND FINANCE SUBCOMMITTEE OF THE HOUSE INTERSTATE AND FOREIGN COMMERCE COMMITTEE ON H.R. 7514

Mr. Chairman and members of the subcommittee: The current auto accident compensation system "needs change badly, and needs it now." Secretary Volpe's conclusion is borne out by the detailed study conducted by his department. The Transportation Department's study and final report summarizes on a national level the results of many, many studies, including the landmark Keeton-O'Connell work. All of these documented conclusively the urgent need for change. I fully support H.R. 7514 and urge you to report it out as soon as possible.

In 1967, after reading the Keeton-O'Connell book—*Basic Protection for the Traffic Victim*—I sponsored with five of my colleagues a no-fault auto insurance bill in the Illinois House. The bill was modeled after the Keeton-O'Connell Basic Protection Plan. It died in committee. As a matter of fact, I wasn't even accorded the courtesy of a vote on the bill. In 1969, I again introduced a no-fault Keeton-O'Connell type plan. "What are you trying to do", asked my lawyer-colleagues in the House, "repeal our livelihood?" Many of the legislators actively engaged in the insurance business expressed the same attitude. It's not surprising that a good no-fault bill has little chance of passage in Illinois.

According to the 1969 Handbook of the Illinois Legislature, out of 177 Members of the House, 55 listed their occupations as "lawyer", and 25 listed their as "insurance". Out of 58 Members of the Senate, 19 were lawyers and 11 were in the insurance business. But, as you gentlemen know, the business of a legislature is conducted, for the most part, in its committees and subcommittees. The Illinois House Insurance Committee, to which my no-fault bills were referred, had eight lawyers and four men in the insurance business as members. There were 12 potential votes against no-fault out of a total committee membership of 17. The 12 member Insurance Division of our Senate Financial Institutions Division Committee had six lawyers and three insurance people on its roster. These data do not include the number of legislators who have an interest, direct or indirect, in surance companies.

In Illinois, as in most of the States, the job of being a legislator is not full time. Of course, there are some exceptions, as with retired persons. However, nearly all the lawyers in our legislature are actively engaged in the practice of law. A number are plaintiff and defense lawyers.

Now Illinons is not the exception. Attached to my statement are two presentations of data showing the number of members on State legislative committees having jurisdiction over no -fault bills whose occupations were listed as lawyer and insurance for ten states in 1969, and the number of members of the same ten state legislatures who were lawyers and in the insurance business that year. By the way, one-half the motor vehicles registered in the United States in 1969 were in these ten states.

An up-to-date survey of the occupations of the members of the committees having jurisdiction over no-fault bills in the ten states with the largest number of motor vehicle registrations in 1969, show that there were 105 million registered motor vehicles that year, and 55 million were in these ten states. I ask, Mr. Chairman, that this survey be made a part of this record.

I think that we all are deluding ourselves if we expect State legislators who are in the active daily practice of law, or who are selling insurance, to enact good no fault plans similar to H.R. 7514, or containing the type of benefits outlined under the Department of Transportation's "Specific Recommendations" at pages 133–137 of its Final Report. And those who suggest that such meaningful reform can be brought about at the State level during the next 5 years, and urge the public to support a state by state approach, are playing a cruel hoax on the long suffering auto accident policyholder and potential victim.

A number of state constitutions prohibit limitation of the amount which may be recovered in actions for wrongful death, or in any suit for personal injury or death. Some of these states are: Arizona, Kentucky, New York, [illegible] Pennsylvania. (See: *Constitutional Problems in Automobile Accident Compensation Reform*, Department of Transportation, April, 1970, p. 43, footnote [illegible]).

Obviously, it will take longer in these states to enact no-fault auto insurance.

Even if the states were to enact reform now, what would their programs be like? Take for instance the Illinois Auto Reparations Plan made public last month by Governor Ogilvie and Insurance Director Baylor. This proposal provides for some compulsory medical and wage benefits to be paid by an injured persons own insurance company on a first party basis, but retains completely the fault-liability concept for everyone and for all claims. This plan would increase litigation and would require motorists in Illinois to buy the mandatory first party coverage as well as liability insurance—thus two policies would be sold the public. Director Baylor's letter transmitting in his insurance department's plan to Governor Ogilvie contains the following concluding paragraph: (and I quote) "By the adoption of the Illinois Plan, our State will be in the vanguard of improvement to the reparations system. In so doing we shall fulfill by action our promise, "In the New Illinois, We Accommodate"

I commend the Illinois Insurance Director for his candor. The Illinois Plan, if ever enacted, would "accommodate"—the pocketbooks of lawyers, insurance companies and their agents.

That the Governor's benefit program for lawyers and insurance companies is not fooling everyone, I submit for this record a copy of a column by Jack Mabley in *Chicago Today*, April 15, 1971. A copy of that column is attached to my remarks. With your permission Mr. Chairman, I would like to provide also for this record a copy of Professor Jeffrey O'Connell's paper criticizing the Governor's plan.

If the enactment of a no-fault system beneficial to all the people is the national goal, as this Administration claims, then as a State legislator with over 15 years experience, I cannot understand how that goal is going to be achieved on a state-by-state basis. There must be a national uniform program as envisioned in H.R. 7514.

Gentlemen, I repeat, I support H.R. 7514.

TABLE 1.—MEMBERS ON STATE LEGISLATIVE COMMITTEES HAVING JURISDICTION OVER NO-FAULT BILLS WHOSE OCCUPATIONS WERE LISTED AS LAWYERS AND INSURANCE—10 SELECTED STATES, 1969

State	House			Senate		
	Total committee	Lawyers	Insurance	Total committee	Lawyers	Insurance
California	14	[1] 7	1	9	[1] 4	0
Florida	13	[1] 8	1	7	[1] 2	1
Illinois	17	8	4	[2] 12	[1] 6	3
Michigan	11	[1] 2	1	5	[1] 1	0
Missouri	17	[1] 8	6	8	[1] 5	1
New Jersey	7	[1] 2	1	5	[1] 5	0
New York	18	[1] 10	5	18	[1] 14	1
North Carolina	21	11	3	14	[1] 7	1
Pennsylvania	23	[1] 9	8	14	1	[1] 4
Texas	21	9	7	17	[1] 13	0

[1] Includes chairman.
[2] Insurance Division, Financial Institutions Committee.

Source: State legislative handbooks and manuals.

TABLE 2.—MEMBERS OF 10 SELECTED STATE LEGISLATURES WHOSE OCCUPATIONS WERE LISTED AS LAWYER AND INSURANCE, 1969

State	House			Senate		
	Total body	Lawyers	Insurance	Total body	Lawyers	Insurance
California	80	29	5	40	20	2
Florida	119	42	17	48	22	9
Illinois	177	55	25	58	19	11
Michigan	110	19	3	38	8	2
Missouri	163	33	18	35	22	1
New Jersey	80	29	6	40	26	1
New York	150	85	10	57	42	2
North Carolina	120	44	6	50	21	3
Pennsylvania	203	58	23	50	15	6
Texas	150	56	14	31	20	0

Source: State legislative handbooks and manuals.

sation. Short of there being an immediate prospect for a comprehensive government plan, the ILWU joins the rest of the labor movement in demanding prompt enactment of the Hart-Magnuson proposals for auto insurance reform—a long overdue first step toward making the present system one which is equitable, efficient, and less expensive.

STATEMENT OF ANTHONY SCARIANO BEFORE THE COMMERCE AND FINANCE SUBCOMMITTEE OF THE HOUSE INTERSTATE AND FOREIGN COMMERCE COMMITTEE ON H.R. 7514

Mr. Chairman and members of the subcommittee: The current auto accident compensation system "needs change badly, and needs it now." Secretary Volpe's conclusion is borne out by the detailed study conducted by his department. The Transportation Department's study and final report summarizes on a national level the results of many, many studies, including the landmark Keeton-O'Connell work. All of these documented conclusively the urgent need for change. I fully support H.R. 7514 and urge you to report it out as soon as possible.

In 1967, after reading the Keeton-O'Connell book—*Basic Protection for the Traffic Victim*—I sponsored with five of my colleagues a no-fault auto insurance bill in the Illinois House. The bill was modeled after the Keeton-O'Connell Basic Protection Plan. It died in committee. As a matter of fact, I wasn't even accorded the courtesy of a vote on the bill. In 1969, I again introduced a no-fault Keeton-O'Connell type plan. "What are you trying to do", asked my lawyer-colleagues in the House, "repeal our livelihood?" Many of the legislators actively engaged in the insurance business expressed the same attitude. It's not surprising that a good no-fault bill has little chance of passage in Illinois.

According to the 1969 Handbook of the Illinois Legislature, out of 177 Members of the House, 55 listed their occupations as "lawyer", and 25 listed their as "insurance". Out of 58 Members of the Senate, 19 were lawyers and 11 were in the insurance business. But, as you gentlemen know, the business of a legislature is conducted, for the most part, in its committees and subcommittees. The Illinois House Insurance Committee, to which my no-fault bills were referred, had eight lawyers and four men in the insurance business as members. There were 12 potential votes against no-fault out of a total committee membership of 17. The 12 member Insurance Division of our Senate Financial Institutions Division Committee had six lawyers and three insurance people on its roster. These data do not include the number of legislators who have an interest, direct or indirect, in surance companies.

In Illinois, as in most of the States, the job of being a legislator is not full time. Of course, there are some exceptions, as with retired persons. However, nearly all the lawyers in our legislature are actively engaged in the practice of law. A number are plaintiff and defense lawyers.

Now Illinons is not the exception. Attached to my statement are two presentations of data showing the number of members on State legislative committees having jurisdiction over no -fault bills whose occupations were listed as lawyer and insurance for ten states in 1969, and the number of members of the same ten state legislatures who were lawyers and in the insurance business that year. By the way, one-half the motor vehicles registered in the United States in 1969 were in these ten states.

An up-to-date survey of the occupations of the members of the committees having jurisdiction over no-fault bills in the ten states with the largest number of motor vehicle registrations in 1969, show that there were 105 million registered motor vehicles that year, and 55 million were in these ten states. I ask, Mr. Chairman, that this survey be made a part of this record.

I think that we all are deluding ourselves if we expect State legislators who are in the active daily practice of law, or who are selling insurance, to enact good no fault plans similar to H.R. 7514, or containing the type of benefits outlined under the Department of Transportation's "Specific Recommendation" at pages 133–137 of its Final Report. And those who suggest that such meaningful reform can be brought about at the State level during the next 5 years, and urge the public to support a state by state approach, are playing a cruel hoax on the long suffering auto accident policyholder and potential victim.

A number of state constitutions prohibit limitation of the amount which may be recovered in actions for wrongful death, or in any suit for personal injury or death. Some of these states are: Arizona, Kentucky, New York, Oklahoma, Pennsylvania. (See: *Constitutional Problems in Automobile Accident Compensation Reform*, Department of Transportation, April, 1970, p. 42, footnote 30).

Obviously, it will take longer in these states to enact no-fault auto insurance.

Even if the states were to enact reform now, what would their programs be like? Take for instance the Illinois Auto Reparations Plan made public last month by Governor Ogilvie and Insurance Director Baylor. This proposal provides for some compulsory medical and wage benefits to be paid by an injured persons own insurance company on a first party basis, but retains completely the fault-liability concept for everyone and for all claims. This plan would increase litigation and would require motorists in Illinois to buy the mandatory first party coverage as well as liability insurance—thus two policies would be sold the public. Director Baylor's letter transmitting in his insurance department's plan to Governor Ogilvie contains the following concluding paragraph: (and I quote) "By the adoption of the Illinois Plan, our State will be in the vanguard of improvement to the reparations system. In so doing we shall fulfill by action our promise, "In the New Illinois, We Accommodate"

I commend the Illinois Insurance Director for his candor. The Illinois Plan, if ever enacted, would "accommodate"—the pocketbooks of lawyers, insurance companies and their agents.

That the Governor's benefit program for lawyers and insurance companies is not fooling everyone, I submit for this record a copy of a column by Jack Mabley in *Chicago Today*, April 15, 1971. A copy of that column is attached to my remarks. With your permission Mr. Chairman, I would like to provide also for this record a copy of Professor Jeffrey O'Connell's paper criticizing the Governor's plan.

If the enactment of a no-fault system beneficial to all the people is the national goal, as this Administration claims, then as a State legislator with over 15 years experience, I cannot understand how that goal is going to be achieved on a state-by-state basis. There must be a national uniform program as envisioned in H.R. 7514.

Gentlemen, I repeat, I support H.R. 7514.

TABLE 1.—MEMBERS ON STATE LEGISLATIVE COMMITTEES HAVING JURISDICTION OVER NO-FAULT BILLS WHOSE OCCUPATIONS WERE LISTED AS LAWYERS AND INSURANCE—10 SELECTED STATES, 1969

State	House			Senate		
	Total committee	Lawyers	Insurance	Total committee	Lawyers	Insurance
California	14	[1] 7	1	9	[1] 4	0
Florida	13	[1] 8	1	7	[1] 2	1
Illinois	17	8	4	[2] 12	[1] 6	3
Michigan	11	[1] 2	1	5	[1] 1	0
Missouri	17	[1] 8	6	8	[1] 5	1
New Jersey	7	[1] 2	1	5	[1] 5	0
New York	18	[1] 10	5	18	[1] 14	1
North Carolina	21	11	3	14	[1] 7	1
Pennsylvania	23	[1] 9	8	14	1	[1] 4
Texas	21	9	7	17	[1] 13	0

[1] Includes chairman.
[2] Insurance Division, Financial Institutions Committee.

Source: State legislative handbooks and manuals.

TABLE 2.—MEMBERS OF 10 SELECTED STATE LEGISLATURES WHOSE OCCUPATIONS WERE LISTED AS LAWYER AND INSURANCE, 1969

State	House			Senate		
	Total body	Lawyers	Insurance	Total body	Lawyers	Insurance
California	80	29	5	40	20	2
Florida	119	42	17	48	22	9
Illinois	177	55	25	58	19	11
Michigan	110	19	3	38	8	2
Missouri	163	33	18	35	22	1
New Jersey	80	29	6	40	26	1
New York	150	85	10	57	42	2
North Carolina	120	44	6	50	21	3
Pennsylvania	203	58	23	50	15	6
Texas	150	56	14	31	20	0

Source: State legislative handbooks and manuals.

[From Chicago Today, Thursday, Apr. 15, 1971]

No-Fault Car Insurance Has Faults

(By Jack Mabley)

If you don't own a car and there is none in your family, you can sit back and laugh at the ballooning expenses of car owners.

But if you are tied to auto cost one way or another, your troubles are getting worse.

The Illinois Insurance Department two weeks ago, proposed what is called a "limited" no-fault automobile insurance system. On paper it looks great. Insurance Director James Baylor said it probably would reduce the cost of auto insurance.

No-fault auto insurance works the way fire insurance works. If there is an accident [fire], the insurance company pays for your loss, regardless of the cause, or fault.

It would save motorists money because more than half of the billions in premiums paid by motorists goes to lawyers, adjusters, agents and insurance companies. Less than half of the consumer's premium winds up with the accident victim.

The no-fault system is the brainchild of Prof. Jeffrey O'Connell of the University of Illinois Law School and Harvard law professor Robert E. Keeton. They proposed it in 1965 [and we reported it then] and because it is an idea whose time has come, it is gradually being adopted around the country.

But O'Connell has taken a good look at the Illinois proposal, and shaken his head in dismay. "In essence, the governor proposes to add on no-fault insurance to the present fault system, thereby preserving much of the waste and inefficiency and corruption of the fault system," says O'Connell.

The Illinois proposal provides for some no-fault benefits, but retains the right of everybody to sue under a fault claim.

"Governor Ogilvie's bill is closely fashioned after bills recently proposed by the National Association of Independent Insurers and the American Mutual Insurance Alliance—two of the principal trade organizations that write over half of all auto insurance in the United States, and which have long been bitterly opposed to no-fault insurance," stated O'Connell.

"If those segments of the insurance industry succeed in selling their plan or variations of it to the public, they will have succeeded in putting over a system they like best—a system whereby they get to sell everyone two policies covering every accident instead of one: one policy for fault insurance, and the other for no-fault insurance.

"No wonder these segments of the industry back the governor's proposal," O'Connell said.

The plan has been put up to the legislature. Over in Champaign they have the man who wrote the book. He must be called to testify on the bill. Then the legislators can listen to Baylor, and decide who's right.

Maybe you can escape auto costs by shunning autos, but I don't know any way you can duck medical costs unless you are willing to risk financial catastrophe by going without insurance.

There is an unbelievable situation existing in hospitals since the Illinois Supreme Court decision in September that hospitals may be sued if a patient gets hepatitis thru a blood transfusion.

Any hospital or doctor giving a transfusion today faces the chance of being sued if the blood is contaminated. There is no fool-proof way to screen blood or donors.

The alternative is not to give the transfusion, in which case the patient may die, and the doctor and hospital may be sued for malpractice.

The real horror of this is the reality that from a dollars and cents standpoint it is better not to give the transfusion because damage awards in deaths are much lower than damage awards given to patients who survive.

Fortunately, a bill has passed the Illinois House, and is pending in the Senate Judiciary Committee, relieving hospitals and doctors of liability for hepatitis transmitted thru blood transfusions.

If this bill doesn't become law, liability insurance for hospitals will go sky high. It could cost a patient as much as $15 a day per room.

A hospital with which I am familiar paid $2,500 for liability insurance 8 years ago. This year the cost is $37,000, and that doesn't even reflect the hepatitis problem.

And to frost this whole cake, it might interest you to know that lawyers for hospitals and drug firms are worried that if the no-fault insurance plan becomes law, the personal injury lawyers who have made fortunes in accident cases are going to turn to new fields to conquer—and there sits the health care industry, ripe for plucking.

STATEMENT OF PROF. JEFF O'CONNELL CRITICIZING OGILVIE "NO-FAULT" INSURANCE BILL

Governor Ogilvie's proposal for reform of auto insurance is an acute disappointment to those who have labored long for reform in this area.

In essence, the Governor proposes to add on no-fault insurance to the present fault system, thereby preserving much of the waste and inefficiency and corruption of the fault system: and yet it is the inadequacies of the fault system which lead to the need for no-fault insurance in the first place. In other words, while the Governor's plan provides for some no-fault benefits, it retains the right of everyone to still sue under a fault claim. So all of us will now need two auto insurance policies covering the same range of loss: one for no-fault claims *by* us, and a second for fault claims *against* us. Says the Governor's report, announcing his proposal, "Even though the plan provides prompt payment [by no-fault insurance] of most of the economic losses which the injured victims suffer, they are not prevented from making a claim against the wrongdoer, or his insurance company, for other damages or losses they may have incurred as a result of the accident, including pain and suffering."

The folly of the kind of reform proposed by Governor Ogilvie can best be illustrated this way: Today under auto insurance, I am called on by law to insure myself for paying your losses if I am at fault, and you are called on by law to insure yourself for paying my losses if you are at fault. But "who is at fault" is so unpredictable that for years insurance companies have offered the option of some no-fault coverages whereby I can insure payment to myself and my family regardless of fault, and you can likewise insure yourself and your family regardless of fault. But these supplemental no-fault coverages (payable only for car damage and limited medical expenses) in no way diminish the need for—or payment under—fault insurance payable to the occupants of the other car.

And now, Governor Ogilvie is advocating as a solution to the ills of auto insurance move required supplemental no-fault insurance. But since I must thereby insure myself and you must thereby insure yourself, each regardless of fault, why do we also need liability insurance based on fault as the Governor proposes? Especially is the question pertinent when fault insurance is so wasteful, paying much more for lawyers and insurance overhead than in bneefits to you and me. *In other words, since you cover yourself for your loss regardless of who was at fault, and I cover myself for my loss regardless of who was at fault, why do we need to sue each other over who was at fault? Who benefits from all those suits over who was at fault except lawyers and insurance companies?*

What truly meaningful reform entails, then, is going much further with no-fault coverage by amending the law so that it no longer calls for me to insure you and you to insure me under an unworkable [fault] coverage. Rather each of us will insure himself under a workable [no-fault] coverage, with each of us then being in a position to *forget* about claims based on fault.

Even the recent Massachusetts no-fault law—which is a very limited and inadequate no-fault law—goes much further in crucial respects than Governor Ogilvie's proposal. At least the Massachusetts law eliminates *all* fault claims where medical loss does not exceed $500. But the danger of even the Massachusetts bill is that the fault claims are preserved in so many cases that there is a danger that sooner or later they will increase to the point where we will approach that dangerous situation of having both fault and no-fault applicable to the great mass of smaller and medium size claims, with the corresponding risks of corruption and skyrocketing costs.

After all, at today's medical costs, by putting a person in a hospital for a few days and running a battery of tests, the $500 Massachusetts ceiling before fault claims can be brought can readily be breached. Given the long history of lawyers, doctors and victims exaggerating traffic claims for their profit, such a plan offers thin protection against the evils of the present fault system.

But Governor Ogilvie's proposal is much worse than the weak Massachusetts law. The bill calls for substantial no-fault payments up to around $2,000 for medical bills, for example, and for wage loss, but would also allow fault claims

still to be brought within the same range of coverage in every case. Damages for pain and suffering in such fault claims would be limited to one-half of the amount of medical bills if those bills were less than $500 and to an amount equal to the medical bills if they were over $500. In cases of very serious injury (death, permanent disability, etc.), there would be no limit on payments for pain and suffering. In all cases, any no-fault auto insurance payments would be allowed to duplicate most payments made from other no-fault coverages, such as Blue Cross or sick leave.

There are at least two fatal flaws in such a proposal. Note that in *every* case, fault claims are preserved, retaining the possibility of lawyers and adjusters fighting over who is at fault in every accident. Secondly, there is still the temptation in every case to pad on medical bills, to duplicate payment already made from Blue Cross and sick leave, etc., and to increase payment for pain and suffering. So the nuisance value and waste of small claims—the cancer of the present system—are retained, albeit with the jackpot cut down somewhat. What could be greater folly than to waste precious medical and insurance resources by (1) guaranteeing people that their medical bills will be paid and (2) then encouraging them to incur unnecessary medical bills (which are guaranteed) by assuring them that for every guaranteed dollar expended for medical loss they will be paid an extra 50 cents or a dollar, supposedly for their pain and suffering. What have they to lose by padding their medical bills? Isn't this a way of coining money? Indeed it may be even worse: Under Governor Ogilvie's plan, if a person is paid $100, say, from Blue Cross for his medical bills, he will be entitled to the $100 all over again from his auto no-fault insurance. He is then allowed to sue the other driver to be paid $50 for his pain and suffering, *plus* apparently $100 more to duplicate the Blue Cross payment. (The plan is ambiguous on this last point.) But even without that last $100 payment, the waste and duplication is shocking and scarcely much of an improvement over the present shockingly bad system. What sensible no-fault insurance ought to do is to see to it that such medical loss is paid *once* and have that be an end of it. Under the Governor's plan, then, a person receiving no-fault benefits may still sue under a fault claim for:

(1) his pain and suffering.
(2) 15% of his wage loss up to a total wage of $150 a week.
(3) all of his wage loss above $150 a week.
(4) all of his losses already covered by, say, Blue Cross or sick leave.
(5) his property damage.

Won't that inevitably mean many fault claims on top of no-fault claims?

Governor Ogilvie's bill is closely fashioned after bills recently proposed by the National Association of Independent Insurers and the American Mutual Insurance Alliance—two of the principal trade organizations of insurance companies representing companies that write well over half of all auto insurance within the United States and which have long been bitterly opposed to no-fault insurance. If those segments of the insurance industry succeed in selling their plan or variations of it to the public, they will have succeeded in putting over a system they like best—a system, as suggested earlier, whereby they get to sell everyone two policies covering every accident instead of one: one policy for fault insurance and the other one for no-fault insurance. No wonder these segments of the industry are backing the Governor's proposal.

It is significant that this business of having *both* fault and no-fault claims applicable to every accident, large or small, directly contravenes the standards for no-fault insurance proposed recently by the Nixon Administration through the U.S. Department of Transportation. Once substantial no-fault insurance is instituted, said the Department of Transportation, "no person should recover for [pain and suffering] . . . unless he established that he suffered permanent [injury] . . . or that he incurred personal medical expenses . . . in excess of a *rather* high dollar threshold [emphasis supplied]." Governor Ogilvie's bill has no threshold at all, not *even* the overly modest one included in the Massachusetts law. On the other hand, the no-fault bills proposed, for example, by U.S. Senator Philip Hart (D. Mich.) and Professor Robert E. Keeton of the Harvard Law School and myself, as well as the criteria set forth by the U.S. Department of Transportation, all entail real *substitution* of expeditious no-fault insurance for cumbersome fault insurance, not adding no-fault insurance onto fault insurance and thereby retaining so many of the evils of the fault system.

In recommending his proposal to Governor Ogilvie, Illinois Insurance [illegible] James Baylor said, "I emphasize that what we propose will not [illegible] departure from the traditional American Judicial system [illegible]

cidents]. Rather does it call for a supplement to it." But the legal system applicable to smaller and medium size auto accidents has long been a disaster. We should not *supplement* it: we should *replace* it.

A no-fault bill accomplishing what Governor Ogilvie's bill does not—and covering property damage as well—is being introduced before the General Assembly by Representative Anthony Scariano (D. Park Forest).

STATEMENT OF JAMES MARSHALL, COUNSEL

James Marshall is a member of the New York Bar; counsel for the firm of Marshall, Bratter, Greene, Allison & Tucker; he is the author of *Law and Psychology In Conflict*, Bobbs-Merrill (1966), paperback edition Anchor Books (1969); Mr. Marshall has done research jointly with psychologists at New York University and the University of Michigan on problems of recall of witnesses; he is the joint author of an article entitled "Effects of Kind of Question and Atmosphere of Interrogation on Accuracy and Completeness of Testimony" that will appear in the May, 1971 issue of the Harvard Law Review.

There appear to be three threats in the proposals for no-fault insurance. First, there is a threat that the skills of many attorneys representing plaintiffs, insurance companies and other defendants will become obsolete and that consequently their income will be reduced. This is, of course, similar to the argument against the introduction of technological changes in industry. But should the public interest not be paramount? In a similar situation the public interest substituted Workmen's Compensation for the traditional, unfair system of employer's liability.

Second, there is a threat to the ideology of insurance companies because their thinking will have to be different and their actuarial calculations will have to change. But in view of the losses that have been incurred in automobile insurance for quite a number of years now, it should not be difficult to face this threat.

Finally there is a threat to the attitudes and value systems of a large part of the population, including lawyers and insurance companies. We have been brought up on the principle that he who does wrong—or even makes a mistake—should be punished and pay a penalty. It might have therapeutic values if the present system of reparations for motor vehicle accidents did reward the good and punish the bad. But it does not. Furthermore, a negligent driver does not feel punished when an insurance company foots the bill. Rather it is the careful drivers who justifiably feel punished, when their insurance premiums are raised, because the insurors are paying out money for the negligence of others.

Let me say at the outset that one need not swallow the whole no-fault pill in order to get the benefits of the proposal. I am sure it would be less bitter to many if, for example, some allowance were made for pain and suffering. It should be perfectly possible to work out a formula to compensate for pain and suffering in relation to the extent and duration of the injury.

Another matter troubling some, which adds to the bitterness of the pill, is the idea that people who are drunken drivers, or under the influence of drugs, or repeatedly reckless would nevertheless be "rewarded" by payments for their injury. But if they are injured somebody, and frequently the community, has to pay the penalty for their injury. The penalty, it seems to me, should not be to deprive them of funds needed to pay their doctors and their hospital expenses (which would otherwise fall upon the community), but to deprive them of the right to have a driver's license or to own a motor vehicle for x numbers of years.

PRESENT FAULT SYSTEM IS BASED ON FALSE ASSUMPTIONS

A major failing of the present fault system is that it is based upon a number of false assumptions. First, it is assumed that in an automotive action one party is at fault whereas neither party may actually be at fault. A study conducted a few years ago by Norman for the World Health Organziation found: ". . . road accidents do not usually have a single 'cause'" and that "each individual accident is likely to have several causative factors . . .The search for single causes of accidents is usually likely to prove unproductive." (*Road Traffic Accidents*, 11 No. 12 World Health Organization Paper 19, 1962).

Furthermore, it cannot be said that if driving along the road one misjudges the speed of another car that this is negligence. Misperceptions are the natural course of events in our lives. This has been described in considerable detail in my book *Law and Psychology in Conflict* (Bobbs-Merrill 1966) in chapter I.

The second false assumption is that if the plaintiff has contributed in any way to the accident he is not entitled to recover. The only justification for the

contributory negligence principle seems to be that it carries out in a distorted form our punitive value system. It says that we must punish a man careless enough to have been hurt by another's carelessness and this exculpates the man who caused the damages. It results, however, in "appalling cases of incomplete coverage . . . ." Daniel Moynihan, *Next: A New Auto Insurance Policy*, N.Y. Times Mag. 26, 78 (Aug. 27, 1967).

In other words, what the present law says is that if neither party is at fault or if both parties are at fault, there can be no compensation for injuries sustained. This may have made sense in the horse and buggy or ox-cart eras but does it make sense today when almost everybody in a large community or who travels along a highway, whether as driver, occupant of a car or pedestrian, is likely to be involved in an automotive accident at some time in his life? What the no-fault insurance theory is saying is that injuries received as a result of automotive accidents should be insured as lives are (with the exceptions, of course, when someone commits suicide or intentionally maims himself).

Under a no-fault system such inequities would be eliminated. The harsh and unrealistic rule that excludes some victims from benefits would be discarded. A victim's right to compensation would endure regardless of whether or not he could find someone else to blame.

A third assumption is that, under the present system, the good will triumph and, thus, the "faultless" party will always win. However, experts agree that this is far from the case. Consider the following comment by Dean Prosser:

"The evidence given in personal injury cases usually consists of highly contradictory statements . . . estimating such factors as time, speed, distance and visibility, offered months after the event by witnesses who were never very sure just what happened when they saw it, and whose faulty memories are undermined by lapse of time, by bias, by conversations with others and by the subtle influence of counsel. Upon such evidence, a jury of 12 inexperienced citizens . . . are invited to . . . make the best guess they can as to whether the defendant, the plaintiff, or both were 'negligent', which is itself a wobbly and uncertain standard based upon the supposed mental processes of a hypothetical and non-existent reasonable man." W. Prosser, *Handbook of the Law of Torts* 12 (3rd ed. 1964).

In other words, it is assumed that the evidence that proves the righteous cause in an automotive accident case is reliable. However, all lawyers know that this is not a fact.

Furthermore, we perceive more inaccurately under stress than in normal situations. Under stress we do not recall fully and completely what has occurred. There are numerous phychological studies to the effect. Moreover, witnesses are subject to the influence of other witnesses and to the questions asked by counsel in preparation for and during the trial, even when counsel and witnesses are acting in good faith. These, too, distort recall.

Finally, as I have already mentioned, the assumption is that punitiveness will cure negligence. There is far from a one-to-one relationship between the two. There is no evidence that negligence law has any substantial effect on the conduct of drivers. A study by the American Insurance Association shows that less than 10% of the injuries in one-car accidents are associated with serious traffic violations and less than 5% in multi-car accidents. (A.I.A. Report at 16)

THE INEQUITIES OF THE FAULT LIABILITY SYSTEM

Under the present system approximately one out of every four persons suffering bodily injury receives no compensation either for out-of-pocket expenses, economic loss or pain and suffering. Two studies of statewide data in New York have confirmed that approximately 25% of automobile accident victims do not receive any compensation from the fault insurance system in New York State. One of these studies by F. Harwayne estimated that 22% of the victims got nothing from the present system. (*Automobile Basic Protection Costs Evaluated* * * * 7, 1968) A further study undertaken at the request of the State Department of Insurance, by Jeffrey Lange, surveyed close to 11,000 claim records of bodily injury accidents. (*Report of Special Committee to Study and Evaluate the Kecton-O'Connell Basic Protection Plan and Automobile Accident Reparations* 1968) (hereinafter cited as A.I.A. Report) From these data it has been estimated that 29% of New York State victims receive no payment through the fault insurance system.

The amounts recovered are frequently unrelated to the severity of the injury. A victim who has suffered a great physical injury may receive proportionately

less than one who has suffered a minor one. This is so because in a typical small case it is worth more to the insurance company to dispose of the claim. The excess over economic loss is written off by the company as "general damages" or "pain and suffering." (American Mutual Insurance Alliance, *Statement on Automobile Accident Law and Automobile Insurance* 10 Nov. 21, 1969.) In larger cases, however, the claimant may be in greater need of certainty than the company. Hence such claimants are in a weaker bargaining position and are underpaid. (*Automobile Insurance . . . For Whose Benefit?*, A Report by the Ins. Dept. of N.Y.S. 29 1970) (hereinafter cited as Ins. Dept. Rep.) Thus, a survey taken by the U.S. Department of Transportation reveals that dissatisfaction with insurance settlements was greatest when claimants received compensation for serious physical injuries. (*Public Attitudes Toward Auto Insurance*, A Rep. of the Survey Research Center Inst. for Soc. Research—Univ. of Mich., Dept. of Trans. Auto Insurance Compensation Study at 59 (1970).)

The realities of the present system undermine the argument advanced by its supporters that "pain and suffering" is a humanitarian principle to be coveted in our law. Recovery for "pain and suffering" is no more than a tool with which the plaintiff's attorney may either drive a hard bargain out of court, or exploit for the purpose of attaining jurors sympathy to an exhorbitant recovery in court. Consider the following:

"All this is not to say that pain is not real, or that money is of no use as a balm. But it does make clear that in the typical case under today's fault insurance system, 'pain and suffering' is a misnomer and an expensive one." (Ins. Dept. of Rep. 29.)

The present fault liability system is particularly oppressive to those who are poor. For example, an individual who is financially secure will be better able to absorb medical expenses and loss of wages over an extended period of time until he is finally compensated than a poor man. This is true whether the suit comes to trial or is settled. The poor person is generally under pressure to agree to a speedy settlement notwithstanding the fact that he would receive increased recovery had he been able to endure his economic pressures.

This has been well put by the late Judge Samuel H. Hofstadter and Robert Pesner:

"But can we say that the 'justice gap' did not weaken the bargaining position of many claimants? Are not many of the settlements based upon the immediate economic need of the claimant . . . rather than upon actual loss? And what of those who endure the extended wait? May they not say that 'justice delayed is justice denied'?" (A National Compensation Plan for Automobile Accident Cases, 22 Ass'n. of the Bar of the City of N.Y., No. 8, 615, 617, Nov. 1967.)

The distortion in recoveries under the fault system is another source of injustice. Victims of great economic injury receive proportionately less than victims suffering minor economic losses. A survey made by the American Insurance Association confirms that the total amount paid to settle a bodily injury claim averages 2.4 times the amount of the economic loss. However, the ratio is much higher where the economic loss is small and it diminished as the amount of economic loss increases. (A.I.A. Report at 16)

Whether by trial or settlement, what really happens is that the man who can afford to pay a negligence lawyer with great expertise and histrionic capacity will fare better than one who has a lawyer with less competence in this field. Furthermore verdicts, and therefore settlements, vary greatly for the same injury in different jurisdictions. Awards for pain and suffering, for example, tend to be far greater in metropolitan areas than in rural areas. The extent of a victim's pain and suffering is not contingent upon jurisdiction; yet, juries' standards of value often differ depending upon locality.

Both from a personal and social standpoint, lump sum payments may prove to be inequitable. Rehabilitation and loss of capacity to earn a living may be of short duration in some cases but a lifetime in others. When the lump sum has been exhausted the victim requiring long rehabilitatiton or whose injury is chronic will be without funds to meet his needs or become a charge on the community. (See, e.g., Professor Alfred Conrad, Automobile Accident Costs and Payments: Studies in the Economics of Injury Reparation, 147–49 (1964).

In those cases where prolonged observation is necessary a no-fault system deals more adequately with the situation. This is because long term continuous payments rather than lump sum awards promote greater flexibility in determining the financial needs of a victim over an extended period. In the meantime, the injured person would receive reimbursement for his immediate medical expenses and loss of work.

COURT DELAYS AND CLOGGED CALENDARS

The present fault system causes an overwhelming burden upon the courts, resulting in long delayed settlements.

Ex-Senator Joseph D. Tydings points out:

"Today the average waiting period for personal injury suits in civil courts in major metropolitan areas is twenty-one months and in counties having a population of more than 750,000, exceeds twenty-nine months. In the Supreme Court of Rockland County, New York, the time from service of answer to trial is 64.6 months." (American Bar Association Journal 57, 1971, 154, 155)

Judgments or settlements long delayed deprive injured persons of compensation when they most need it. The disasterous effect of long, uncompensated periods was noted by Professor Maurice Rosenberg:

"[Studies] find . . . that the more seriously injured victims feel the pinch of delay and feel the weight of the full system in general very, very, heavily, that is, that they are very often left as economic derelicts, they suffer a great amount of privation and their economic lives are destroyed by this system. M. Rosenberg, *Meeting of N.Y. Governor's Committee on Compensating Victims of Automobile Accidents*, Transcript 82 84 (Feb. 29, 1968).

When calendars are clogged settlements too tend to be postponed. If you are out of work and if you have medical bills to pay, delays of years become unfair and intolerable. They can be a prime cause for discontent with and contempt of law.

Surveys made for the year 1969 show that the average delay in paying automobile personal injury liability claims is well over a year in New York State (Ins. Dept. Rep. 20). On the average, claimants wait 15.8 months for recovery (Id. at 20 N.N. 27). The average large claim encounters greater delays than small claims. Often wage claims are not satisfied until the expiration of a 4 to 5 year period. (Id. at 21). During this period the injured party receives nothing under the present system.

Surveys also show that for non-litigated claims 36% remained unpaid after one year and 23% after two years (Dept. of Transp. Closed Claim Survey-N.Y., Table 131).

The Insurance Department statistics (N.Y.S. Ins. Dept. 1968 Loss and Expense Ratios 118) show that the situation is growing worse and that the proportion of unpaid claims after periods of two to five years from the date of the accident, is increasing. The following Table indicates this:

RATIO OF LOSSES OUTSTANDING TO LOSSES INCURRED

Policy year	After 2 years	After 3 years	After 4 years	After 5 years
1959	.41	.27	.17	.10
1960	.42	.28	.18	.10
1961	.44	.29	.19	.12
1962	.44	.30	.19	.12
1963	.46	.31	.21	.13
1964	.45	.32	.23	
1965	.47	.34		
1966	.47			

The number of cases that do reach trial, although proportionately small, are mammoth in number. In discussing this problem, Chief Justice Burger has suggested that personal injury cases which now make up the largest category of civil cases be entirely eliminated (Fred P. Graham, *Burger Suggests Judicial Changes*, N.Y. Times, Nov. 15, 1970 Col. 1, p. 32). The no-fault system is the fairest way of reducing this large backlog of cases.

COSTS OF THE SYSTEM

If the courts were not loaded with motor vehicle cases judges, their secretaries, courtrooms and their factotums could be utilized to dispose of the dangerous backlog of untried criminal cases. It would not then be so necessary to keep adding judges or crowding courts to the great expense of the State.

The cost of attorneys' fees would also be reduced under a no-fault system. And, of course, there is the rub so far as lawyers are concerned. A no-fault system presents them with a conflict of interest.

Today, out of every insurance dollar spent, insurance companies and [illegible] use up 33 cents; lawyers and claim investigators 23 cents. The [illegible] could [illegible]

of every premium dollar may be considered operating costs. The remaining 44 cents is returned to injured parties as a class. Of this 44 cents, 21.5 cents goes to compensate victims for pain and suffering, leaving 22.5 out of the premium dollar as compensation for the net economic losses of the accident victim. Furthermore, 8 cents out of the 22.5 goes to compensate economic losses which have already been reimbursed from another source. R. Keeton, *Compensation Systems: The Search for a Viable Alternative to Negligence Law*, 33 (1969 Supp. 2 Seavy, Keeton and Keeton's Cases and Materials on Torts, 2d ed. 1964)

The New York State Insurance Department estimates considerable savings in premiums under a no-fault plan. For example, under statutory coverage in Brooklyn, the highest rated premium territory in the State, the present cost for two retired persons would be 186. The proposed rate would be 67. In the northern counties of New York, which have the lowest premium rating, for a family of two retired persons the present rating would be 73 and under the proposed system, 24. Similar relationships exist for larger families and where other variables exist. (Ins. Dept. Rep., Appendix A, pp. 135, 136, 137. See also Appendix B, Tables I, II and III, pp. 132–146).

When one considers that the average attorney's fee is about one-third of the recovery and that the plaintiff has been paying his own insurance premiums over the years, one gets the feeling that even when he recovers he is in much the same position as the parties to *Jarndyce and Jarndyce* in Dicken's *Bleak House* where fees and expenses devoured the estate.

In conclusion, our present fault system of compensation is based on false assumptions, is inequitable, results in unfair and unreasonable delays which deprive an injured person of compensation when he most needs it, clogs the courts and is expensive, socially as well as economically. Therefore, while a no-fault plan may require further refinement, in principle the system is sound from practical, equitable and economic viewpoints. A no-fault system could free the courts for more important business than managing calendars and trying cases that depend upon unreliable evidence and are determined, for the most part, by the skill of counsel, the idiosyncrasies of juries and the venue of the case.

STATEMENT OF NORMAN L. ROGERS, PRESIDENT, LAWYER REFORM OF THE UNITED STATES

I do not pretend to represent a large number of people or powerful economic interests. The organization I represent is very new and very small. We want to improve the honesty and efficiency of the legal processes.

This country needs no-fault insurance. Not only because it is a sensible improvement, but because we badly need demonstrations that the unorganized, public interest can win out over organized, vested interest.

The legal profession has no moral right to expect that the automobile insurance system shall be structured primarily for its own benefit. The special pleading of the lawyers should be rejected.

A larger issue at stake here is whether we can afford the luxury of choosing inefficiency over efficiency. In an editorial in the May 14, 1971 issue of *Life* magazine, it was pointed out that spendable real income declined during the last five years for the average white and blue collar worker. Our standard of living is directly related to the efficiency of our economic activity. The editors of *Life* stated: ". . . we certainly can improve on such things as an automobile insurance system that pays out only 42 cents in liability benefits for every dollar of premiums collected."

Make-work is not economically productive. Not even when it is done by lawyers and insurance claims adjusters.

STATEMENT OF THE NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

The National Association of Mutual Insurance Companies, as a professional trade organization, has a total membership of over 1,000 mutual insurance companies in the United States and Canada.

The problems facing the private insurance industry, Federal and State Government in the transportation field, particularly with the automobile, would have probably been beyond the imagination of the first automobile manufacturer and insurance underwriter, yet these problems are very real today. The solution to these problems does not lie in the hurling of accusations between manu-

facturers, repair shops, insurance companies, the public and, yes, regulators and lawmakers.

The automobile manufacturers feel that the automobiles they produce, with all of their power and cosmetic design, are what the public wants. The automobile repairman feels he has become a "replacement" man, rather than being able to repair. The insurance company has become a maintenance contractor, rather than a protector of the public against financial disaster. The public becomes outraged at having to pay the attendant costs but yet expects to be reimbursed for the first dollar, and many times an inflated first dollar, of every type loss. The regulator and legislator are caught on the horns of dilemma, i.e. protecting the public against abuses, real or otherwise, and making sure the insurance company remains solvent to meet its financial obligations, present and future.

These hearings, hopefully, are not to air more accusations but to bring responsible people together so that responsible solutions can be achieved.

The review of past explorations in the area of the automobile insurance reparations system would serve no useful purpose at this time. To find a solution by using the experience of the past and projecting the results into the future must then be the prime goal.

The National Association of Mutual Insurance Companies feels strongly that an expansion of a first party reparations system in the automobile insurance field is feasible, however, we do not feel that the complete abolition of the tort liability system is the complete answer. A melding of a first party system with tort liability has more merit than completely eliminating a tried and true system (tort) for an unknown plan. If indeed the public wants a reform in the reparations system, then we think it is incumbent on the insurance industry to act responsibly instead of reacting by going off in many different directions and solving nothing.

Our Association has officially adopted the above position as evidenced by the attached addendum A. To expand the first party concept, we recommend a first party injury recovery of $5,000.00 with the right of recovery through the tort system for the serious injury caused by flagrant violators of the accepted laws of our society. The retention of Uninsured Motorists Coverage should be continued so that the responsible public would be protected against the relatively small percentage of the motoring public that is irresponsible. In expanding the first party concept as respects Bodily Coverage to $5,000.00 immediate economic losses would be recovered and thus eliminate the need for separate Medical Payments Coverage. Further exploration is possible in the Property Damage and Collision Coverages regarding the expansion of first party recovery. The Property Damage Coverage could also include the first party concept by applying reasonable deductibles when two or more motor vehicles are involved in an accident. The deductible, of course, would not apply to damage to property other than motor vehicles but would be paid without regard to fault only as respects stationary objects such as buildings, telephone poles, etc. By expanding first party coverage to Property Damage in this manner, the separate Collision Coverage could be eliminated. Thus the automobile insurance policy would become an indivisible package of Bodily Injury, Property Damage and Uninsured Motorists Coverages. Optional coverages such as Comprehensive, Additional Death Benefits, Increased Limits, Towing and Labor, etc. could be offered.

Department of Transportation Secretary Volpe on March 18, 1971 recommended that a period of time be provided for the State Governments to develop and implement plans which would provide a first party reparations system. Secretary Volpe is to be commended for this position in view of the ever increasing drive for more and more Federalism and socialistic trends that have been developing in the past few years.

The National Association of Mutual Insurance Companies supports Secretary Volpe's recommendation and pledges its support to those who are willing to work responsibly for a solution to the nation's automobile problems of today and tomorrow.

IN THE MATTER OF: NO FAULT AUTOMOBILE PROPOSALS

The National Association of Mutual Insurance Companies continues to subscribe to a system by which parties injured in automobile accidents are reimbursed for damages sustained on the basis of fault, and to the position that the [illegible]

fault should be held responsible for injuries and damages sustained as a result thereof.

The Association recognizes, however, that many persons at fault receive injuries in automobile accidents and that a system providing for reimbursing such individuals, even though at fault, for their medical, hospital, funeral bills and loss of earnings has merit. It is the position of the Association that such loss to a person at fault can best be handled by reasonable expansion of a first party insurance program for payment to such injured party and at the same time retain the fault concept.

The Association further supports both of these programs and urges that the same be carried out by the inclusion of a fair and reasonable premium charge for such coverages.

STATEMENT OF JOSEPH A. BEIRNE, PRESIDENT COMMUNICATIONS WORKERS OF AMERICA

The 92d Congress has an opportunity to pass legislation which will eradicate a great injustice against millions of Americans, and at the same time assure these millions that government is responsive to the individual American consumer.

This legislation is the package that has been introduced in the Senate and the House (S. 945, S. 946, S. 947, S. 948, S. 976, H.R. 4994, H.R. 4995, H.R. 4997, H.R. 4998, H.R. 4999) to establish no-fault auto insurance nationally, and to develop safer cars and honest repair practices.

Millions of Americans, including the hundreds of thousands who are members of the Communications Workers of America, have been seeing only continually rising premium prices, accompanied by dismal delivery of auto insurance protections. They need the benefits which this legislation would provide and—just as badly—they need a demonstration on the part of Congress which shows them that government means more than frustration and taxation.

The elements needed to satisfy those purposes are in the package introduced by Senators Hart and Magnuson, and Representatives Moss, Dingell and Carney.

This is an opportunity Congress should seize.

It is also an opportunity which the Nixon Administration should seize, especially since that Administration has spoken frequently in terms of enhancing the life of the American individual and returning political power to the people.

Establishing no-fault auto insurance on a national basis would be as clear and vivid a demonstration of the rights of the individual consumer over the powerful blocks of lawyers who specialize in auto injuries and the insurance companies, but the Administration, by its Congressional tsetimony, has shown no willingness to stand with the individual consumer.

Treasury Secretary Volpe's testimony, has said, in effect, that no-fault auto insurance is a good idea but let's allow it to languish in the state legislatures for a while, where it can be stalled easily, so that those who are now milking the consumer's auto insurance dollar can continue to gorge themselves.

It would be redundant for me to go into a detailed discussion of the elements of no-fault—the Congress has the massive study of the Department of Transportation, and other information which shows that less than 50 percent of personal injury premiums go back to the injured persons, but are eaten up by legal and insurance selling expenses.

The Congress should also be aware that no-fault has been in operation in Puerto Rico for more than a year and a half, and that it has been even more successful than anticipated. All of the scare cries that have come from the opponents of no-fault auto insurance have been dispelled by the evidence of the Puerto Rico experience.

Of course, this will not prevent opponents from buying advertisements to try to scare the public into believing that their right to sue will be taken away if no-fault passes, and other false claims.

Perhaps the most effective counters to the falsehoods of the opponents would be constant reiteration of the following facts:

Of 220,000 personal injury lawsuits in 1968, the victims netted $700 million and the lawyers netted $600 million.

Under no-fault, the victim would be paid for the economic loss, but could still sue for additional pain and suffering.

This issue, like so many others, boils down to a matter of educating the people. With auto insurance, the knowledge that it is a problem is established. Many

people, additionally, are finding out that no-fault is the solution, but more and more must be informed.

But the public must also be informed about the tactics of the segments of society which want to maintain the status quo which they find so lucrative—the phoney claims, the phony ads. Congressional hearings can show this.

All of us who are interested in seeing an America where the individual can feel secure in knowing that his government is responsive to him and to his needs should continually make every effort possible to show that the opponent's of no-fault auto insurance are also opponents of responsive government.

STATEMENT OF THE AMERICAN ASSOCIATION OF RETIRED PERSONS NATIONAL RETIRED TEACHERS ASSOCIATION

The American Association of Retired Persons and The National Retired Teachers Association support the principle of no-fault insurance whereby accident victims may recover losses from their own insurers without undue delay and without regard as to who is at fault. We, therefore, request that State insurance laws be revised wherever necessary to introduce no-fault personal injury automobile insurance. We ask that no-fault coverage be made mandatory for every motor vehicle owner and that all insurance companies be required to sell no-fault policies to all licensed drivers. As Associations representing over 3 million elderly, we feel that no-fault insurance is especially important to the elderly who, as a class, have proved to be safe drivers, but who in too many cases are being denied insurance or otherwise discriminated against simply because of age.

We favor the implementation of no-fault at the State level to encourage experimentation on a State-by-State basis in order that this new concept may be adequately developed and perfected.

At the same time we urge legislation by the U.S. Congress providing certain minimum no-fault standards which each State must achieve within the next few years. The standards must include:

1. The benefits of Medicare should be utilized by those receiving social security and companies should be permitted to sell no-fault insurance as excess benefits over those provided by Medicare, at substantially lower premium rates.
2. Maximum benefits should be high enough to cover all medical costs in the vast majority of cases. The right to tort action should be limited to cases involving serious misconduct or serious injuries. We believe that a maximum benefit of $5,000 and a medical expense threshold of $2,000 (in determining the right to tort) will achieve these desirable objectives.
3. Compulsory automobile insurance as respects no-fault personal injury protections, residual bodily injury liability insurance and property damage liability insurance.

In the event that any State or States do not enact no-fault auto insurance programs within a reasonable period of time, the Federal Government should preempt their rights to regulate the automobile insurance business.

○

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARING

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

COMMITTEE PRINT NO. 1

OCTOBER 13, AND 14, 1971

PART 5

Serial No. 92–18

Printed for the use of the Committee on Commerce

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARING

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

COMMITTEE PRINT NO. 1

OCTOBER 13, AND 14, 1971

PART 5

Serial No. 92–18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE

64-345 O WASHINGTON : 1971

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARING

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

COMMITTEE PRINT NO. 1

OCTOBER 13, AND 14, 1971

PART 5

Serial No. 92-18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE

64-345 O WASHINGTON : 1971

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
WILLIAM B. SPONG, Jr., Virginia

NORRIS COTTON, New Hampshire
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan
HOWARD H. BAKER, Jr., Tennessee
MARLOW W. COOK, Kentucky
MARK O. HATFIELD, Oregon
TED STEVENS, Alaska
J. GLENN BEALL, Jr., Maryland

FREDERICK J. LORDAN, *Staff Director*
MICHAEL PERTSCHUK, *Chief Counsel*
S. LYNN SUTCLIFFE, *Staff Counsel*
ARTHUR PANKOPF, Jr., *Minority Staff Director*
PETER POWELL, *Minority Professional Staff*

CONTENTS

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

WEDNESDAY, OCTOBER 13, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to notice, at 11:10 a.m., in room 5110, New Senate Office Building, Hon. Philip A. Hart presiding.

Present: Senators Hart, Cotton, Baker, Cook, Stevens, and Beall.

Senator HART. The committee will be in order.

Hearings are resuming on legislation designed to correct the present automobile insurance system to the extent there are inefficiencies and inequities in it today.

May I, for the record, read the letter which was submitted by the ranking minority member, Senator Cotton, along with Senator Baker and Senator Cook, which prompted these hearings. It is addressed to Senator Magnuson as chairman of the Commerce Committee.

UNITED STATES SENATE COMMITTEE ON COMMERCE,
September 28, 1971

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: It is our understanding that the Committee will shortly take up in Executive Session Committee Print One of S. 945, the No-Fault Insurance bill, which was prepared by the Staff and has been made available to members of the Committee.

In view of the extensive changes which have been incorporated in Committee Print One, both in the fundamental concept and the cost of coverage, we feel that further hearings would be advisable. We have had correspondence from numerous individuals and companies directly involved expressing a similar concern and a desire to testify at such hearings. We will, of course, be pleased to make copies of this correspondence available to you.

We request, therefore, a continuation of hearings on this bill to fully develop the issues raised by Committee Print One of S. 945.

NORRIS COTTON,
HOWARD H. BAKER,
MARLOW W. COOK,
U.S. Senators.

The chairman of the committee, Senator Magnuson, in response has scheduled these hearings.

I am sure we will have constructive comments on this committee print as a result thereof.

Senator Cotton.

Senator COTTON. Mr. Chairman, I have a letter dated October 6, 1971 from Secretary of Transportation Volpe relative to committee print No. 1 of S. 945. I would like unanimous consent to insert the letter at this point in the record.

Staff member assigned to these hearings: S. Lynn Sutcliffe.

Senator HART. Without objection.

(The letter follows:)

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., October 6, 1971.

Hon. NORRIS COTTON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR COTTON: You have asked for the comments of the Department of Transportation on the Committee Print of S. 945, the National No-Fault Motor Vehicle Insurance Act.

As you know, the Administration, drawing on the results of the Department of Transportation's Auto Insurance and Compensation Study, testified before your Committee last March on the general subject of reform of the auto accident reparations system. In essence, the Administration concluded that the existing system should be changed promptly to predominant reliance on first party, no-fault insurance, but that this change should take place at the State level with the States being free to experiment with various types of no-fault reforms to the ultimate benefit of all.

Our views on the need for reform and the direction that reform should take have not changed since last March. Moreover, the basic desirability of approaching reform through State action seems even clearer today than it did six months ago. At that time, only one State, Massachusetts, had begun the shift towards a first party, no-fault system; since then States have been acting at the rate of one a month, and the prospects for an acceleration of that pace in the months ahead seem far brighter than anyone would have predicted six months ago. In view of this progress and this prospect, we do not believe that enactment of S. 945, which would deprive all States the benefits of experimentation with different no-fault approaches, is either necessary, or wise, or likely to produce the optimum result in the end.

Moreover, the National Conference of Commissioners on Uniform State Laws has joined with the Department to draft legislation embracing the Administration's no-fault reform principles and designed for implementation at the State level. The Nation's Governors, when they met recently in Puerto Rico, strongly endorsed the concept of State by State action in this area and took special notes of the work of the Uniform Law Commissioners. Surely, it would be hard to argue that there is not a strong pro-no-fault reform tide running in the States today. We believe that they should be given a fair opportunity to reform their own reparations system before we resort to Federal pre-emption.

It should also be noted that the proponents of Federal action now have been unable to collect must support. Favoring the Administration's position of State by State action were all of the insurance industry, all of the agents' associations, the bar, the National Association of Insurance Commissioners and, as mentioned earlier, the Governors. At least for the foreseeable future, the Administration's position would seem to be able to commend the support of the overwhelming majority of the interested constituencies of this problem.

We do believe that sound reform would be hastened, however, by Congressional passage of the Concurrent Resolution proposed by the Administration last March. This would assure the States they would be given a chance to accomplish their own reform and at the same time remove any ambiguity about our shared conviction that meaningful change must come soon. We urge your Committee to give favorable consideration to this Resolution as constituting a more desirable course of action at this time than S. 945.

Sincerely,

JOHN A. VOLPE.

Senator COTTON. May I say that the general position of Secretary Volpe, and to that extent perhaps representing the administration's viewpoint, is that since his last communication with this committee, which was last March, States have enacted various forms of so-called "no-fault" insurance at the rate of about one State per month. I believe now there are seven States plus Puerto Rico that have enacted some form of no-fault insurance.

The Nation's Governors when they met took the position that reform is needed, but they want the States to have further opportunity to enact that reform at the State level before the Congress intervenes with Federal legislation.

The concluding paragraph of Secretary Volpe's letter says:

> We do believe that sound reform would be hastened, however, by Congressional passage of the Concurrent Resolution proposed by the Administration last March. This would assure the States they would be given a chance to accomplish their own reform and at the same time remove any ambiguity about our shared conviction that meaningful change must come soon. We urge your Committee to give favorable consideration to this Resolution as constituting a more desirable course of action at this time than S. 945.

May I say, Mr. Chairman, that my own feeling, independent of any expression by the Department of Transportation or by the administration is this: Only Massachusetts and perhaps Puerto Rico have had any form of "no-fault" insurance in effect long enough to gain experience from its application. I have a feeling that some reform such as is generally referred to as "no-fault" insurance is probably bound to come.

I feel, however, that when you have States adopting various approaches that the wisest course is to wait long enough so that the Congress can avail itself of the experience and of the testing of this approach to insurance in whatever various forms may be adopted by the States before turning to Federal law.

It is noteworthy that the action taken by the States thus far aims for the same objective but through different modes and moods of approach.

So, not to take up the time of witnesses and the time of the committee, I feel very strongly that legislation may be necessary in the future, and that reform of this type seems to me very desirable, but I don't believe we should act until we get enough time to observe the workings of these various State approaches and other approaches, because many other States have statutes under consideration.

I thank you, Mr. Chairman.

Senator HART. The point made by Senator Cotton just now is one that he has with conviction voiced earlier. Knowing the reach of his voice, I am sure that the committee will hear it again.

Perhaps we can resolve prudentially and wisely the course that the committee should take.

Senator BAKER. Mr. Chairman, I would like to express my appreciation to Chairman Magnuson for scheduling these 2 days of hearings on the committee print of S. 945. I am sure that the testimony we receive today and tomorrow will enable us to analyze the merits and deficiencies of this bill objectively and with careful regard for the impact this legislation would have on the automobile accident reparations system.

The modifications in S. 945 which are made by th[illegible] e print are very basic and very broad. At the hearings held, [illegible] several witnesses addressed themselves to the problem o[illegible] cover-age provided by the bill in its original form.

I note that in the revision most, if not all, of [illegible] are closed, with the effect that the tort system of reparat[illegible] ally abrogated. But while the print addressed itself to [illegible] these gaps,

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARING

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

COMMITTEE PRINT NO. 1

OCTOBER 13, AND 14, 1971

PART 5

Serial No. 92–18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE

64-345 O WASHINGTON : 1971

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
WILLIAM B. SPONG, JR., Virginia

NORRIS COTTON, New Hampshire
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan
HOWARD H. BAKER, JR., Tennessee
MARLOW W. COOK, Kentucky
MARK O. HATFIELD, Oregon
TED STEVENS, Alaska
J. GLENN BEALL, JR., Maryland

FREDERICK J. LORDAN, *Staff Director*
MICHAEL PERTSCHUK, *Chief Counsel*
S. LYNN SUTCLIFFE, *Staff Counsel*
ARTHUR PANKOPF, Jr., *Minority Staff Director*
PETER POWELL, *Minority Professional Staff*

CONTENTS

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARING

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

COMMITTEE PRINT NO. 1

OCTOBER 13, AND 14, 1971

PART 5

Serial No. 92–18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE

64-345 O WASHINGTON : 1971

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
WILLIAM B. SPONG, JR., Virginia

NORRIS COTTON, New Hampshire
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan
HOWARD H. BAKER, JR., Tennessee
MARLOW W. COOK, Kentucky
MARK O. HATFIELD, Oregon
TED STEVENS, Alaska
J. GLENN BEALL, JR., Maryland

FREDERICK J. LORDAN, *Staff Director*
MICHAEL PERTSCHUK, *Chief Counsel*
S. LYNN SUTCLIFFE, *Staff Counsel*
ARTHUR PANKOFF, JR., *Minority Staff Director*
PETER POWELL, *Minority Professional Staff*

CONTENTS

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

WEDNESDAY, OCTOBER 13, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to notice, at 11:10 a.m., in room 5110, New Senate Office Building, Hon. Philip A. Hart presiding.

Present: Senators Hart, Cotton, Baker, Cook, Stevens, and Beall.

Senator HART. The committee will be in order.

Hearings are resuming on legislation designed to correct the present automobile insurance system to the extent there are inefficiencies and inequities in it today.

May I, for the record, read the letter which was submitted by the ranking minority member, Senator Cotton, along with Senator Baker and Senator Cook, which prompted these hearings. It is addressed to Senator Magnuson as chairman of the Commerce Committee.

UNITED STATES SENATE COMMITTEE ON COMMERCE,
September 28, 1971

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: It is our understanding that the Committee will shortly take up in Executive Session Committee Print One of S. 945, the No-Fault Insurance bill, which was prepared by the Staff and has been made available to members of the Committee.

In view of the extensive changes which have been incorporated in Committee Print One, both in the fundamental concept and the cost of coverage, we feel that further hearings would be advisable. We have had correspondence from numerous individuals and companies directly involved expressing a similar concern and a desire to testify at such hearings. We will, of course, be pleased to make copies of this correspondence available to you.

We request, therefore, a continuation of hearings on this bill to fully develop the issues raised by Committee Print One of S. 945.

NORRIS COTTON,
HOWARD H. BAKER,
MARLOW W. COOK,
U.S. Senators.

The chairman of the committee, Senator Magnuson, in response has scheduled these hearings.

I am sure we will have constructive comments on this committee print as a result thereof.

Senator Cotton.

Senator COTTON. Mr. Chairman, I have a letter dated October 6, 1971 from Secretary of Transportation Volpe relative to committee print No. 1 of S. 945. I would like unanimous consent to insert the letter at this point in the record.

Staff member assigned to these hearings: S. Lynn Sutcliffe.

Senator HART. Without objection.

(The letter follows:)

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., October 6, 1971.

Hon. NORRIS COTTON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR COTTON: You have asked for the comments of the Department of Transportation on the Committee Print of S. 945, the National No-Fault Motor Vehicle Insurance Act.

As you know, the Administration, drawing on the results of the Department of Transportation's Auto Insurance and Compensation Study, testified before your Committee last March on the general subject of reform of the auto accident reparations system. In essence, the Administration concluded that the existing system should be changed promptly to predominant reliance on first party, no-fault insurance, but that this change should take place at the State level with the States being free to experiment with various types of no-fault reforms to the ultimate benefit of all.

Our views on the need for reform and the direction that reform should take have not changed since last March. Moreover, the basic desirability of approaching reform through State action seems even clearer today than it did six months ago. At that time, only one State, Massachusetts, had begun the shift towards a first party, no-fault system; since then States have been acting at the rate of one a month, and the prospects for an acceleration of that pace in the months ahead seem far brighter than anyone would have predicted six months ago. In view of this progress and this prospect, we do not believe that enactment of S. 945, which would deprive all States the benefits of experimentation with different no-fault approaches, is either necessary, or wise, or likely to produce the optimum result in the end.

Moreover, the National Conference of Commissioners on Uniform State Laws has joined with the Department to draft legislation embracing the Administration's no-fault reform principles and designed for implementation at the State level. The Nation's Governors, when they met recently in Puerto Rico, strongly endorsed the concept of State by State action in this area and took special notes of the work of the Uniform Law Commissioners. Surely, it would be hard to argue that there is not a strong pro-no-fault reform tide running in the States today. We believe that they should be given a fair opportunity to reform their own reparations system before we resort to Federal pre-emption.

It should also be noted that the proponents of Federal action now have been unable to collect must support. Favoring the Administration's position of State by State action were all of the insurance industry, all of the agents' associations, the bar, the National Association of Insurance Commissioners and, as mentioned earlier, the Governors. At least for the foreseeable future, the Administration's position would seem to be able to commend the support of the overwhelming majority of the interested constituencies of this problem.

We do believe that sound reform would be hastened, however, by Congressional passage of the Concurrent Resolution proposed by the Administration last March. This would assure the States they would be given a chance to accomplish their own reform and at the same time remove any ambiguity about our shared conviction that meaningful change must come soon. We urge your Committee to give favorable consideration to this Resolution as constituting a more desirable course of action at this time than S. 945.

Sincerely,

JOHN A. VOLPE.

Senator COTTON. May I say that the general position of Secretary Volpe, and to that extent perhaps representing the administration's viewpoint, is that since his last communication with this committee, which was last March, States have enacted various forms of so-called "no-fault" insurance at the rate of about one State per month. I believe now there are seven States plus Puerto Rico that have enacted some form of no-fault insurance.

The Nation's Governors when they met took the position that reform is needed, but they want the States to have further opportunity to enact that reform at the State level before the Congress intervenes with Federal legislation.

The concluding paragraph of Secretary Volpe's letter says:

> We do believe that sound reform would be hastened, however, by Congressional passage of the Concurrent Resolution proposed by the Administration last March. This would assure the States they would be given a chance to accomplish their own reform and at the same time remove any ambiguity about our shared conviction that meaningful change must come soon. We urge your Committee to give favorable consideration to this Resolution as constituting a more desirable course of action at this time than S. 945.

May I say, Mr. Chairman, that my own feeling, independent of any expression by the Department of Transportation or by the administration is this: Only Massachusetts and perhaps Puerto Rico have had any form of "no-fault" insurance in effect long enough to gain experience from its application. I have a feeling that some reform such as is generally referred to as "no-fault" insurance is probably bound to come.

I feel, however, that when you have States adopting various approaches that the wisest course is to wait long enough so that the Congress can avail itself of the experience and of the testing of this approach to insurance in whatever various forms may be adopted by the States before turning to Federal law.

It is noteworthy that the action taken by the States thus far aims for the same objective but through different modes and moods of approach.

So, not to take up the time of witnesses and the time of the committee, I feel very strongly that legislation may be necessary in the future, and that reform of this type seems to me very desirable, but I don't believe we should act until we get enough time to observe the workings of these various State approaches and other approaches, because many other States have statutes under consideration.

I thank you, Mr. Chairman.

Senator HART. The point made by Senator Cotton just now is one that he has with conviction voiced earlier. Knowing the reach of his voice, I am sure that the committee will hear it again.

Perhaps we can resolve prudentially and wisely the course that the committee should take.

Senator BAKER. Mr. Chairman, I would like to express my appreciation to Chairman Magnuson for scheduling these 2 days of hearings on the committee print of S. 945. I am sure that the testimony we receive today and tomorrow will enable us to analyze the merits and deficiencies of this bill objectively and with careful regard for the impact this legislation would have on the automobile accident reparations system.

The modifications in S. 945 which are made by the committee print are very basic and very broad. At the hearings held last spring, several witnesses addressed themselves to the problem of gaps in the coverage provided by the bill in its original form.

I note that in the revision most, if not all, of these gaps are closed, with the effect that the tort system of reparations is virtually abrogated. But while the print addressed itself to eliminating these gaps,

it may have created other problems with cost and with premium cost distribution. These are questions which will have to be answered, and which I am sure will be answered, today and tomorrow .

Many of the witnesses whose names I see on the witness list testified last spring at the initial hearings on S. 945. At that time many of these witnesses stated basic and philosophical aversions to a no-fault program for a variety of reasons. These witnesses have been cautioned and directed to limit their testimony during these hearings to the specific issues generated by the changes embodied in Committee Print No. 1 of S. 945. It will be understood that their testimony, therefore, is an addendum to their earlier statement and, unless they so state, does not reflect any retreat from, or modification in, their basic position with regard to no-fault insurance.

I think this understanding will obviate the need for reelaboration of these basic positions and will enable us to deal more incisively with the issues which prompted Senators Cotton, Cook, and myself to request these hearings.

(The committee print follows:)

92d Congress
1st Session

COMMITTEE PRINT

TEXT AND STAFF ANALYSIS OF COMMITTEE PRINT ONE OF THE NATIONAL NO-FAULT MOTOR VEHICLE INSURANCE ACT (S. 945)

PREPARED AT THE DIRECTION OF

Honorable WARREN G. MAGNUSON, Chairman

FOR THE USE OF THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

JULY 1971

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
WILLIAM B. SPONG, Jr., Virginia

NORRIS COTTON, New Hampshire
WINSTON PROUTY, Vermont
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan
HOWARD H. BAKER, Jr., Tennessee
MARLOW W. COOK, Kentucky
MARK O. HATFIELD, Oregon
TED STEVENS, Alaska

FREDERICK J. LORDAN, *Staff Director*
MICHAEL PERTSCHUK, *Chief Counsel*
S. LYNN SUTCLIFFE, *Counsel*
ARTHUR PANKOPF, Jr., *Minority Staff Director*

LETTER OF TRANSMITTAL

U.S. SENATE,
COMMITTEE ON COMMERCE,
September 15, 1971.

To Members of the Committee on Commerce, U.S. Senate:

Transmitted herewith is a staff analysis and the text of Committee Print No. 1 of the National No-fault Motor Vehicle Insurance Act, (S. 945).

This analysis will be helpful when the committee commences its consideration of this matter later this month.

WARREN G. MAGNUSON,
Chairman.

STAFF ANALYSIS OF COMMITTEE PRINT 1 OF S. 945, THE NATIONAL NO-FAULT MOTOR VEHICLE INSURANCE ACT

Description

General effect: Tort liability abolished. System of first-party insurance established.

Committee Print 1 would create an essentially restructured automobile insurance reparations system. Tort liability arising out of automobile accidents would be eliminated, and insurance benefits to pay for losses arising out of automobile accidents would be paid without regard to fault. A person injured in an auto accident would seek reparations from his own insurance company (first-party insurance) or the insurance company of the owner of the vehicle in which he was a passenger. An injured pedestrian would seek compensation from an insurance company covering any vehicle which caused injury to him.

Applies to all owners.

The bill would require every owner who operates a motor vehicle on the public roadways of any State to take out a basic insurance policy to cover his own losses when operating his vehicle, losses of any other driver or passenger of his vehicle, and losses of any pedestrian that is injured in an accident involving his vehicle. In addition, such basic insurance policy would cover losses incurred if a vehicle caused damage to any property other than a motor vehicle in use. For example, if a vehicle struck a legally parked car, the policy covering the vehicle would pay for damage to the parked car.

All auto insurers must provide coverage.

To assure the availability of such mandatory insurance policies, the bill would require every insurance company doing business in a particular jurisdiction and writing auto insurance to accept every insurance applicant who has a valid driver's license and who pays a premium based upon an applicant's proper classification. Cancellation of the basic policy would be prohibited unless the policyholder had failed to pay the premium or had had his license revoked.

"Qualifying no-fault policy" defined.

The phrase "qualifying no-fault policy" is used in Committee Print 1 to describe the mandatory insurance policy which every owner of a motor vehicle must have as a precondition to operating his vehicle. The qualifying no-fault policy would provide certain benefits to the policyholder, members of his family, and people injured in an automobile accident in which his vehicle was involved (who were not occupants of another vehicle.)

Mandatory benefits to those injured.

Broad benefits would be paid to auto accident victims by insurers writing qualifying no-fault policies. All medical and rehabilitation costs would be paid by the insurer issuing the qualifying no-fault policy. In addition, all wage loss after income taxes would be paid until such time as the injured person could resume available and appropriate gainful activity. There is, however, a thousand dollar per month limitation on the wage replacement provisions of the qualifying no-fault policy. For those people who earn more than a thousand dollars per month, a provision in the bill would permit them to purchase greater income replacement protection. Benefits under a qualifying no-fault policy would also be paid for loss of future anticipated earnings or for impairment of earning capacity resulting from injuries sustained in an automobile accident.

A qualifying no-fault policy would also provide benefits to pay for any services that an injured person would have performed for his or her own benefit, or the benefit of the family, but for the injury.

For example, a housewife suffering a back injury which prevented her from doing normal housework would receive benefits to pay someone to clean her house on a regular basis until she recovered from her injury.

A qualifying no-fault policy would also pay benefits to any owner of property (other than a motor vehicle in use) which is damaged as a result of an auto accident involving the policyholder's vehicle. For example, if a vehicle struck a picket fence after swerving off the road because of a blow-out, the insurance company covering the vehicle would pay the owner of the picket fence for its repair. Likewise, if that vehicle swerved off the road and struck a parked car, the insurance company would pay for the damage to the parked car. But if vehicles in use were involved in an accident, the owners of such vehicles would have to look to their own insurance companies for recovery of benefits if they had elected to buy such coverage.

Finally, a qualifying no-fault policy would pay for any loss (tangible or intangible) exceeding those described above suffered by an occupant of the insured's motor vehicle, or pedestrian struck by such a vehicle, if such injured person did not own a motor vehicle or was not a spouse or dependent of a motor vehicle owner. In other words, this coverage would provide excess economic loss and pain and suffering protection for those people not given the opportunity to purchase the coverage described below.

Optional coverage.

In addition to the benefits provided under a mandatory qualifying no-fault policy, there are other benefits which the insurers of such policies would have to offer but which the policyholder could choose to take or not as he wished. Committee Print 1 would require insurers of qualifying no-fault policies to offer collision insurance to pay for property damage to the policyholder's automobile. The policyholder could buy such insurance and select whatever deductible level he wished.

Insurers of qualifying no-fault policies would have to offer policyholders two other types of coverage: 1) coverage to pay for tangible loss in excess of that provided by the qualifying no-fault policy, and 2) coverage to pay for intangible loss (pain and suffering, inconvenience, loss of enjoyment of life) measured by the State tort law that would have been applicable to the accident had that law not been preempted by the bill. A qualifying no-fault policyholder could elect to buy either or both coverages to protect himself, his spouse, and any dependents from such loss.

Benefits of existing reparations system retained.

Committee Print No. 1, in effect, makes available to all the motoring public all the benefits that the present automobile reparations system now provides to the accident victim who *is not* found negligent or contributorily negligent and who is injured by someone who *is* found negligent *and* is fully insured up to the extent of the loss suffered by the accident victim. However, because insurance against loss in excess of that provided under the qualifying no-fault policy is not necessary for the economic well-being of an automobile accident victim or the family of such victim, the insurance buyer is given the option to buy such additional coverage if he so chooses. The controversy over whether the public wants to recover for intangible losses would be resolved by free market forces rather than legislative determination.

Relationship of no-fault insurance to other insurance coverages.

Benefits which an insurer is required to pay under a qualifying no-fault policy would be primary—the amount paid would not be reduced by any benefits from other sources paid to cover the same loss—unless collateral benefits were provided by public health insurance or by some private insurance or plan which specifically provided that its benefits were to be primary to the qualifying no-fault policy benefits. If a person had collateral benefits which were primary, the insurer

of the qualifying no-fault policy would be required to give that person a standardized rate reduction reflecting the amount of his primary collateral benefits. This arrangement would accomplish two purposes: 1) it would assure compatibility of auto insurance reform legislation with health insurance reform legislation; and 2) it would allow a person to choose his source of insurance benefits and avoid duplicative payments of premiums.

Role for attorneys.

Any disputes between an insurer and a policyholder which could not be resolved by negotiation could be resolved in a formal court proceeding in which the attorney fees of the policyholder are paid by the insurer and thus the insurance mechanism generally. For example, if the insurer refused to pay a wage replacement claim arguing that the policyholder was able to return to work, the policyholder could retain an attorney to pursue his claim for continued periodic benefits. The policyholder's attorney would be compensated by the insurer whether the court supported the policyholder's claim or not unless the court determined that such compensation was inappropriate or that the claim was fraudulent, frivolous, or excessive. No benefits for economic loss paid under a qualifying no-fault policy could be used to compensate an attorney. However, in disputes concerning policy provisions governing other than economic loss where reasonable attorneys' fees are not provided, an attorney would be permitted to enter into a contractual or contingent fee arrangement with a policyholder. Any contingent fee arrangement would be limited to 25% of the gross recovery of the policyholder, or a lesser amount at the discretion of the court.

State courts jurisdiction preserved.

Litigation arising under the qualifying no-fault policy would be conducted in state courts of competent jurisdiction. Federal court jurisdiction would be limited to cases or controversies meeting the jurisdictional requirements of section 1332 of title 28 of the United States Code, namely diversity of parties and an amount in controversy exceeding $10,000.

Protection against uninsured motorists.

In the event that a person is injured or killed in an automobile accident in a vehicle or by a vehicle which is uninsured (and that person is not responsible for the fact that the vehicle is uninsured) then the victim may seek recovery from an assigned claims plan which would be required to be established in each State. The assigned claims plan would work very much like the present post-insolvency assessment plans. In the event a person with a legitimate claim had no insurance company to turn to (because the vehicle was uninsured or because the insurance company was insolvent) he could file his claim with the assigned claims plan which would be financed by assessing insurance companies doing business in a State on the basis of their premium volume in that State.

State regulatory role preserved.

In order to facilitate the setting of rates under this new auto insurance reparation system, Committee Print No. 1 provides that the Secretary in consultation with state regulatory authorities, would establish a uniform classification system. This new classification system would delineate the various risk exposures relevant to setting rates for qualifying no-fault policies and related provisions. Thus, rates set by state regulatory authorities would have national uniformity as to classifications which reflected factors relevant to a first party no-fault insurance system. In addition, the Federal government, in consultation with the states, would promulgate a uniform statistical plan whereby insurance companies would report their claims and loss experience data and actual rates or premiums of each class of risk in each rating category within each coverage provided under the bill. The Federal government would then analyze this information and make it available to state insurance authorities and to the general public. This information would permit a comparison of the insurers

"indicated rate" based solely upon claims and loss experience data with the actual rate or premium being charged by the insurer. The intent of this provision is to make available to state regulatory authorities information relevant to the rate making activity and to provide the insurance public with information regarding the price and quality of the product which they are required to purchase.

Summary

Committee Print No. 1 of a National No-Fault Motor Insurance Act would create a mandatory auto accident reparations system which would insure all passengers and pedestrians against basic economic loss resulting from automobile accidents. The dependency of the auto insurance system on the tort liability system would be eliminated; benefits would be paid to auto accident victims without regard to fault. Licensing standards and law enforcement efforts would serve as the main force for controlling irresponsible driver behavior; illusory reliance on the insurance mechanism to create a safedriver environment would cease. If policyholders wanted to receive payment for damages (including pain and suffering) in excess of their basic economic loss resulting from injury or death, of if they wanted to protect their vehicles from physical damage, then they could at their option elect such coverages. Reasonable attorneys fees would be paid to the attorney of any policyholder who could not reach agreement with an insurance company concerning the level of economic loss benefits due him. An auto accident victim not covered by a policy of insurance could recover from an assigned claims fund unless he was responsible for the failure of coverage. Finally, the bill would provide for the rationalization of insurance classification systems and provide for the dissemination of price and quality information that would stimulate a competitive price environment in the auto insurance market.

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARING

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

COMMITTEE PRINT NO. 1

OCTOBER 13, AND 14, 1971

PART 5

Serial No. 92–18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE

64-345 O WASHINGTON : 1971

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

HEARING

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 945

COMMITTEE PRINT NO. 1

OCTOBER 13, AND 14, 1971

PART 5

Serial No. 92-18

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE

64-345 O WASHINGTON : 1971

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
WILLIAM B. SPONG, Jr., Virginia

NORRIS COTTON, New Hampshire
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan
HOWARD H. BAKER, Jr., Tennessee
MARLOW W. COOK, Kentucky
MARK O. HATFIELD, Oregon
TED STEVENS, Alaska
J. GLENN BEALL, Jr., Maryland

FREDERICK J. LORDAN, *Staff Director*
MICHAEL PERTSCHUK, *Chief Counsel*
S. LYNN SUTCLIFFE, *Staff Counsel*
ARTHUR PANKOFF, Jr., *Minority Staff Director*
PETER POWELL, *Minority Professional Staff*

CONTENTS

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

WEDNESDAY, OCTOBER 13, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to notice, at 11:10 a.m., in room 5110, New Senate Office Building, Hon. Philip A. Hart presiding.

Present: Senators Hart, Cotton, Baker, Cook, Stevens, and Beall.

Senator HART. The committee will be in order.

Hearings are resuming on legislation designed to correct the present automobile insurance system to the extent there are inefficiencies and inequities in it today.

May I, for the record, read the letter which was submitted by the ranking minority member, Senator Cotton, along with Senator Baker and Senator Cook, which prompted these hearings. It is addressed to Senator Magnuson as chairman of the Commerce Committee.

UNITED STATES SENATE COMMITTEE ON COMMERCE,
September 28, 1971

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: It is our understanding that the Committee will shortly take up in Executive Session Committee Print One of S. 945, the No-Fault Insurance bill, which was prepared by the Staff and has been made available to members of the Committee.

In view of the extensive changes which have been incorporated in Committee Print One, both in the fundamental concept and the cost of coverage, we feel that further hearings would be advisable. We have had correspondence from numerous individuals and companies directly involved expressing a similar concern and a desire to testify at such hearings. We will, of course, be pleased to make copies of this correspondence available to you.

We request, therefore, a continuation of hearings on this bill to fully develop the issues raised by Committee Print One of S. 945.

NORRIS COTTON,
HOWARD H. BAKER,
MARLOW W. COOK,
U.S. Senators.

The chairman of the committee, Senator Magnuson, in response has scheduled these hearings.

I am sure we will have constructive comments on this committee print as a result thereof.

Senator Cotton.

Senator COTTON. Mr. Chairman, I have a letter dated October 6, 1971 from Secretary of Transportation Volpe relative to committee print No. 1 of S. 945. I would like unanimous consent to insert the letter at this point in the record.

Staff member assigned to these hearings: S. Lynn Sutcliffe.

Senator HART. Without objection.

(The letter follows:)

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., October 6, 1971.

Hon. NORRIS COTTON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR COTTON: You have asked for the comments of the Department of Transportation on the Committee Print of S. 945, the National No-Fault Motor Vehicle Insurance Act.

As you know, the Administration, drawing on the results of the Department of Transportation's Auto Insurance and Compensation Study, testified before your Committee last March on the general subject of reform of the auto accident reparations system. In essence, the Administration concluded that the existing system should be changed promptly to predominant reliance on first party, no-fault insurance, but that this change should take place at the State level with the States being free to experiment with various types of no-fault reforms to the ultimate benefit of all.

Our views on the need for reform and the direction that reform should take have not changed since last March. Moreover, the basic desirability of approaching reform through State action seems even clearer today than it did six months ago. At that time, only one State, Massachusetts, had begun the shift towards a first party, no-fault system; since then States have been acting at the rate of one a month, and the prospects for an acceleration of that pace in the months ahead seem far brighter than anyone would have predicted six months ago. In view of this progress and this prospect, we do not believe that enactment of S. 945, which would deprive all States the benefits of experimentation with different no-fault approaches, is either necessary, or wise, or likely to produce the optimum result in the end.

Moreover, the National Conference of Commissioners on Uniform State Laws has joined with the Department to draft legislation embracing the Administration's no-fault reform principles and designed for implementation at the State level. The Nation's Governors, when they met recently in Puerto Rico, strongly endorsed the concept of State by State action in this area and took special notes of the work of the Uniform Law Commissioners. Surely, it would be hard to argue that there is not a strong pro-no-fault reform tide running in the States today. We believe that they should be given a fair opportunity to reform their own reparations system before we resort to Federal pre-emption.

It should also be noted that the proponents of Federal action now have been unable to collect must support. Favoring the Administration's position of State by State action were all of the insurance industry, all of the agents' associations, the bar, the National Association of Insurance Commissioners and, as mentioned earlier, the Governors. At least for the foreseeable future, the Administration's position would seem to be able to commend the support of the overwhelming majority of the interested constituencies of this problem.

We do believe that sound reform would be hastened, however, by Congressional passage of the Concurrent Resolution proposed by the Administration last March. This would assure the States they would be given a chance to accomplish their own reform and at the same time remove any ambiguity about our shared conviction that meaningful change must come soon. We urge your Committee to give favorable consideration to this Resolution as constituting a more desirable course of action at this time than S. 945.

Sincerely,

JOHN A. VOLPE.

Senator COTTON. May I say that the general position of Secretary Volpe, and to that extent perhaps representing the administration's viewpoint, is that since his last communication with this committee, which was last March, States have enacted various forms of so-called "no-fault" insurance at the rate of about one State per month. I believe now there are seven States plus Puerto Rico that have enacted some form of no-fault insurance.

The Nation's Governors when they met took the position that reform is needed, but they want the States to have further opportunity to enact that reform at the State level before the Congress intervenes with Federal legislation.

The concluding paragraph of Secretary Volpe's letter says:

We do believe that sound reform would be hastened, however, by Congressional passage of the Concurrent Resolution proposed by the Administration last March. This would assure the States they would be given a chance to accomplish their own reform and at the same time remove any ambiguity about our shared conviction that meaningful change must come soon. We urge your Committee to give favorable consideration to this Resolution as constituting a more desirable course of action at this time than S. 945.

May I say, Mr. Chairman, that my own feeling, independent of any expression by the Department of Transportation or by the administration is this: Only Massachusetts and perhaps Puerto Rico have had any form of "no-fault" insurance in effect long enough to gain experience from its application. I have a feeling that some reform such as is generally referred to as "no-fault" insurance is probably bound to come.

I feel, however, that when you have States adopting various approaches that the wisest course is to wait long enough so that the Congress can avail itself of the experience and of the testing of this approach to insurance in whatever various forms may be adopted by the States before turning to Federal law.

It is noteworthy that the action taken by the States thus far aims for the same objective but through different modes and moods of approach.

So, not to take up the time of witnesses and the time of the committee, I feel very strongly that legislation may be necessary in the future, and that reform of this type seems to me very desirable, but I don't believe we should act until we get enough time to observe the workings of these various State approaches and other approaches, because many other States have statutes under consideration.

I thank you, Mr. Chairman.

Senator HART. The point made by Senator Cotton just now is one that he has with conviction voiced earlier. Knowing the reach of his voice, I am sure that the committee will hear it again.

Perhaps we can resolve prudentially and wisely the course that the committee should take.

Senator BAKER. Mr. Chairman, I would like to express my appreciation to Chairman Magnuson for scheduling these 2 days of hearings on the committee print of S. 945. I am sure that the testimony we receive today and tomorrow will enable us to analyze the merits and deficiencies of this bill objectively and with careful regard for the impact this legislation would have on the automobile accident reparations system.

The modifications in S. 945 which are made by the committee print are very basic and very broad. At the hearings held last spring, several witnesses addressed themselves to the problem of gaps in the coverage provided by the bill in its original form.

I note that in the revision most, if not all, of these gaps are closed, with the effect that the tort system of reparations is virtually abrogated. But while the print addressed itself to eliminating these gaps,

it may have created other problems with cost and with premium cost distribution. These are questions which will have to be answered, and which I am sure will be answered, today and tomorrow .

Many of the witnesses whose names I see on the witness list testified last spring at the initial hearings on S. 945. At that time many of these witnesses stated basic and philosophical aversions to a no-fault program for a variety of reasons. These witnesses have been cautioned and directed to limit their testimony during these hearings to the specific issues generated by the changes embodied in Committee Print No. 1 of S. 945. It will be understood that their testimony, therefore, is an addendum to their earlier statement and, unless they so state, does not reflect any retreat from, or modification in, their basic position with regard to no-fault insurance.

I think this understanding will obviate the need for reelaboration of these basic positions and will enable us to deal more incisively with the issues which prompted Senators Cotton, Cook, and myself to request these hearings.

(The committee print follows:)

92d Congress
1st Session } COMMITTEE PRINT

TEXT AND STAFF ANALYSIS OF COMMITTEE PRINT ONE OF THE NATIONAL NO-FAULT MOTOR VEHICLE INSURANCE ACT (S. 945)

PREPARED AT THE DIRECTION OF

Honorable WARREN G. MAGNUSON, Chairman

FOR THE USE OF THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

JULY 1971

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
WILLIAM B. SPONG, Jr., Virginia

NORRIS COTTON, New Hampshire
WINSTON PROUTY, Vermont
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan
HOWARD H. BAKER, Jr., Tennessee
MARLOW W. COOK, Kentucky
MARK O. HATFIELD, Oregon
TED STEVENS, Alaska

FREDERICK J. LORDAN, *Staff Director*
MICHAEL PERTSCHUK, *Chief Counsel*
S. LYNN SUTCLIFFE, *Counsel*
ARTHUR PANKOPF, Jr., *Minority Staff Director*

LETTER OF TRANSMITTAL

U.S. SENATE,
COMMITTEE ON COMMERCE,
September 15, 1971.

To Members of the Committee on Commerce, U.S. Senate:

Transmitted herewith is a staff analysis and the text of Committee Print No. 1 of the National No-fault Motor Vehicle Insurance Act, (S. 945).

This analysis will be helpful when the committee commences its consideration of this matter later this month.

WARREN G. MAGNUSON,
Chairman.

STAFF ANALYSIS OF COMMITTEE PRINT 1 OF S. 945, THE NATIONAL NO-FAULT MOTOR VEHICLE INSURANCE ACT

Description

Committee Print 1 would create an essentially restructured automobile insurance reparations system. Tort liability arising out of automobile accidents would be eliminated, and insurance benefits to pay for losses arising out of automobile accidents would be paid without regard to fault. A person injured in an auto accident would seek reparations from his own insurance company (first-party insurance) or the insurance company of the owner of the vehicle in which he was a passenger. An injured pedestrian would seek compensation from an insurance company covering any vehicle which caused injury to him.

General effect: Tort liability abolished. System of first-party insurance established.

The bill would require every owner who operates a motor vehicle on the public roadways of any State to take out a basic insurance policy to cover his own losses when operating his vehicle, losses of any other driver or passenger of his vehicle, and losses of any pedestrian that is injured in an accident involving his vehicle. In addition, such basic insurance policy would cover losses incurred if a vehicle caused damage to any property other than a motor vehicle in use. For example, if a vehicle struck a legally parked car, the policy covering the vehicle would pay for damage to the parked car.

Applies to all owners.

To assure the availability of such mandatory insurance policies, the bill would require every insurance company doing business in a particular jurisdiction and writing auto insurance to accept every insurance applicant who has a valid driver's license and who pays a premium based upon an applicant's proper classification. Cancellation of the basic policy would be prohibited unless the policyholder had failed to pay the premium or had had his license revoked.

All auto insurers must provide coverage.

The phrase "qualifying no-fault policy" is used in Committee Print 1 to describe the mandatory insurance policy which every owner of a motor vehicle must have as a precondition to operating his vehicle. The qualifying no-fault policy would provide certain benefits to the policyholder, members of his family, and people injured in an automobile accident in which his vehicle was involved (who were not occupants of another vehicle.)

"Qualifying no-fault policy" defined.

Broad benefits would be paid to auto accident victims by insurers writing qualifying no-fault policies. All medical and rehabilitation costs would be paid by the insurer issuing the qualifying no-fault policy. In addition, all wage loss after income taxes would be paid until such time as the injured person could resume available and appropriate gainful activity. There is, however, a thousand dollar per month limitation on the wage replacement provisions of the qualifying no-fault policy. For those people who earn more than a thousand dollars per month, a provision in the bill would permit them to purchase greater income replacement protection. Benefits under a qualifying no-fault policy would also be paid for loss of future anticipated earnings or for impairment of earning capacity resulting from injuries sustained in an automobile accident.

Mandatory benefits to those injured.

A qualifying no-fault policy would also provide benefits to pay for any services that an injured person would have performed for his or her own benefit, or the benefit of the family, but for the injury.

For example, a housewife suffering a back injury which prevented her from doing normal housework would receive benefits to pay someone to clean her house on a regular basis until she recovered from her injury.

A qualifying no-fault policy would also pay benefits to any owner of property (other than a motor vehicle in use) which is damaged as a result of an auto accident involving the policyholder's vehicle. For example, if a vehicle struck a picket fence after swerving off the road because of a blow-out, the insurance company covering the vehicle would pay the owner of the picket fence for its repair. Likewise, if that vehicle swerved off the road and struck a parked car, the insurance company would pay for the damage to the parked car. But if vehicles in use were involved in an accident, the owners of such vehicles would have to look to their own insurance companies for recovery of benefits if they had elected to buy such coverage.

Finally, a qualifying no-fault policy would pay for any loss (tangible or intangible) exceeding those described above suffered by an occupant of the insured's motor vehicle, or pedestrian struck by such a vehicle, if such injured person did not own a motor vehicle or was not a spouse or dependent of a motor vehicle owner. In other words, this coverage would provide excess economic loss and pain and suffering protection for those people not given the opportunity to purchase the coverage described below.

Optional coverage.

In addition to the benefits provided under a mandatory qualifying no-fault policy, there are other benefits which the insurers of such policies would have to offer but which the policyholder could choose to take or not as he wished. Committee Print 1 would require insurers of qualifying no-fault policies to offer collision insurance to pay for property damage to the policyholder's automobile. The policyholder could buy such insurance and select whatever deductible level he wished.

Insurers of qualifying no-fault policies would have to offer policyholders two other types of coverage: 1) coverage to pay for tangible loss in excess of that provided by the qualifying no-fault policy, and 2) coverage to pay for intangible loss (pain and suffering, inconvenience, loss of enjoyment of life) measured by the State tort law that would have been applicable to the accident had that law not been preempted by the bill. A qualifying no-fault policyholder could elect to buy either or both coverages to protect himself, his spouse, and any dependents from such loss.

Benefits of existing reparations system retained.

Committee Print No. 1, in effect, makes available to all the motoring public all the benefits that the present automobile reparations system now provides to the accident victim who *is not* found negligent or contributorily negligent and who is injured by someone who *is* found negligent *and* is fully insured up to the extent of the loss suffered by the accident victim. However, because insurance against loss in excess of that provided under the qualifying no-fault policy is not necessary for the economic well-being of an automobile accident victim or the family of such victim, the insurance buyer is given the option to buy such additional coverage if he so chooses. The controversy over whether the public wants to recover for intangible losses would be resolved by free market forces rather than legislative determination.

Relationship of no-fault insurance to other insurance coverages.

Benefits which an insurer is required to pay under a qualifying no-fault policy would be primary—the amount paid would not be reduced by any benefits from other sources paid to cover the same loss—unless collateral benefits were provided by public health insurance or by some private insurance or plan which specifically provided that its benefits were to be primary to the qualifying no-fault policy benefits. If a person had collateral benefits which were primary, the insurer

of the qualifying no-fault policy would be required to give that person a standardized rate reduction reflecting the amount of his primary collateral benefits. This arrangement would accomplish two purposes: 1) it would assure compatibility of auto insurance reform legislation with health insurance reform legislation; and 2) it would allow a person to choose his source of insurance benefits and avoid duplicative payments of premiums.

Role for attorneys.

Any disputes between an insurer and a policyholder which could not be resolved by negotiation could be resolved in a formal court proceeding in which the attorney fees of the policyholder are paid by the insurer and thus the insurance mechanism generally. For example, if the insurer refused to pay a wage replacement claim arguing that the policyholder was able to return to work, the policyholder could retain an attorney to pursue his claim for continued periodic benefits. The policyholder's attorney would be compensated by the insurer whether the court supported the policyholder's claim or not unless the court determined that such compensation was inappropriate or that the claim was fraudulent, frivolous, or excessive. No benefits for economic loss paid under a qualifying no-fault policy could be used to compensate an attorney. However, in disputes concerning policy provisions governing other than economic loss where reasonable attorneys' fees are not provided, an attorney would be permitted to enter into a contractual or contingent fee arrangement with a policyholder. Any contingent fee arrangement would be limited to 25% of the gross recovery of the policyholder, or a lesser amount at the discretion of the court.

State courts jurisdiction preserved.

Litigation arising under the qualifying no-fault policy would be conducted in state courts of competent jurisdiction. Federal court jurisdiction would be limited to cases or controversies meeting the jurisdictional requirements of section 1332 of title 28 of the United States Code, namely diversity of parties and an amount in controversy exceeding $10,000.

Protection against uninsured motorists.

In the event that a person is injured or killed in an automobile accident in a vehicle or by a vehicle which is uninsured (and that person is not responsible for the fact that the vehicle is uninsured) then the victim may seek recovery from an assigned claims plan which would be required to be established in each State. The assigned claims plan would work very much like the present post-insolvency assessment plans. In the event a person with a legitimate claim had no insurance company to turn to (because the vehicle was uninsured or because the insurance company was insolvent) he could file his claim with the assigned claims plan which would be financed by assessing insurance companies doing business in a State on the basis of their premium volume in that State.

State regulatory role preserved.

In order to facilitate the setting of rates under this new auto insurance reparation system, Committee Print No. 1 provides that the Secretary in consultation with state regulatory authorities, would establish a uniform classification system. This new classification system would delineate the various risk exposures relevant to setting rates for qualifying no-fault policies and related provisions. Thus, rates set by state regulatory authorities would have national uniformity as to classifications which reflected factors relevant to a first party no-fault insurance system. In addition, the Federal government, in consultation with the states, would promulgate a uniform statistical plan whereby insurance companies would report their claims and loss experience data and actual rates or premiums of each class of risk in each rating category within each coverage provided under the bill. The Federal government would then analyze this information and make it available to state insurance authorities and to the general public. This information would permit a comparison of the insurers

"indicated rate" based solely upon claims and loss experience data with the actual rate or premium being charged by the insurer. The intent of this provision is to make available to state regulatory authorities information relevant to the rate making activity and to provide the insurance public with information regarding the price and quality of the product which they are required to purchase.

Summary

Committee Print No. 1 of a National No-Fault Motor Insurance Act would create a mandatory auto accident reparations system which would insure all passengers and pedestrians against basic economic loss resulting from automobile accidents. The dependency of the auto insurance system on the tort liability system would be eliminated; benefits would be paid to auto accident victims without regard to fault. Licensing standards and law enforcement efforts would serve as the main force for controlling irresponsible driver behavior; illusory reliance on the insurance mechanism to create a safedriver environment would cease. If policyholders wanted to receive payment for damages (including pain and suffering) in excess of their basic economic loss resulting from injury or death, of if they wanted to protect their vehicles from physical damage, then they could at their option elect such coverages. Reasonable attorneys fees would be paid to the attorney of any policyholder who could not reach agreement with an insurance company concerning the level of economic loss benefits due him. An auto accident victim not covered by a policy of insurance could recover from an assigned claims fund unless he was responsible for the failure of coverage. Finally, the bill would provide for the rationalization of insurance classification systems and provide for the dissemination of price and quality information that would stimulate a competitive price environment in the auto insurance market.

NATIONAL NO-FAULT MOTOR VEHICLE INSURANCE ACT

[COMMITTEE PRINT NO. 1]

JULY 24, 1971

92D CONGRESS
1ST SESSION

S. 945

IN THE SENATE OF THE UNITED STATES

JULY , 1971

Mr. ---------- introduced the following bill; which was read twice and referred to the Committee on ----------

A BILL

To require no-fault motor vehicle insurance as a condition precedent to using the public streets, roads, and highways in order to promote and regulate interstate commerce.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "National No-Fault Motor
4 Vehicle Insurance Act".

5 DEFINITIONS

6 SEC. 2. As used in this Act—

7 (1) The term "motor vehicle" means any vehicle driven
8 or drawn by electrical or mechanical power which is manu-
9 factured primarily for use on the public street. roads, or

1 highways, except any vehicle operated exclusively on a rail
2 or rails.
3 (2) The term "insured motor vehicle" means a motor
4 vehicle (A) which is insured under a qualifying no-fault
5 policy, or (B) the owner of which is a self-insurer with re-
6 spect to such vehicle.
7 (3) The term "uninsured motor vehicle" means a motor
8 vehicle which is not an insured motor vehicle.
9 (4) The term "qualifying no-fault policy" means an
10 insurance policy which meets the requirements of section 5
11 (a) and (b) (but such term does not refer to any provision
12 of such a policy which relates solely to a coverage described
13 in section 5 (c) or an additional coverage or benefit referred
14 to in section 5 (d)).
15 (5) The term "owner" means a person who holds the
16 legal title to a motor vehicle; except that in the case of a
17 motor vehicle which is the subject of a security agreement
18 or lease with option to purchase with the debtor or lessee hav-
19 ing the right to possession, such term means the debtor or
20 lessee.
21 (6) The term "insurer" means any person or govern-
22 mental entity engaged in the business of issuing or delivering
23 motor vehicle insurance policies.
24 (7) The term "self-insurer" with respect to any motor

64-346 O - 72 - pt. 5 - 2

1 vehicle means a person who has satisfied the requirements
2 of section 4 (a) in the manner provided by section 4 (a) (2).
3 (8) The term "operation, maintenance, or use" when
4 used with respect to a motor vehicle includes loading or un-
5 loading the vehicle, but does not include conduct within the
6 course of a business of repairing, servicing, or otherwise main-
7 taining vehicles unless the conduct occurs outside the premises
8 of such business.
9 (9) The term "motor vehicle accident" means an acci-
10 dent arising out of the operation, maintenance, or use of a
11 motor vehicle.
12 (10) The term "accidental harm" means bodily injury,
13 death, sickness, or disease caused by a motor vehicle accident
14 while in or upon or entering into or alighting from, or
15 through being struck by a motor vehicle or object drawn or
16 propelled by a motor vehicle.
17 (11) The term "death" (except as used in this para-
18 graph and paragraphs (10) and (12)) means accidental
19 harm resulting at any time in death.
20 (12) The term "injury" means accidental harm not
21 resulting in death.
22 (13) The term "economic loss" with respect to any in-
23 jury or death means—
24 (A) all appropriate and reasonable expenses neces-

1 sarily incurred for medical, hospital, surgical, professional
2 nursing, dental, ambulance, prosthetic services, and any
3 Federally recognized religious remedial care and treat-
4 ment;
5 (B) all appropriate and reasonable expenses neces-
6 sarily incurred for psychiatric, physical, and occupa-
7 tional therapy and rehabilitation;
8 (C) an amount equal to the lesser of—
9 (i) $1,000 per month, or
10 (ii) the monthly earnings for the period dur-
11 ing which the injury or death results in the inabil-
12 ity to engage in available and appropriate gainful
13 activity, or
14 (D) a monthly amount equal to the amount (if
15 any) by which (i) a person's monthly earnings (as
16 defined in paragraph (14)) or $1,000, whichever is
17 less, exceeds (ii) any lesser monthly earnings of such
18 person at such time as he resumes gainful activity.
19 (E) all appropriate and reasonable expenses neces-
20 sarily incurred as a result of such injury or death, in-
21 cluding, but not limited to, (i) expenses incurred in ob-
22 taining services in substitution of those that the injured
23 or deceased person would have performed for the benefit
24 of himself or his family, (ii) funeral expenses, and (iii)

1 vehicle means a person who has satisfied the requirements
2 of section 4 (a) in the manner provided by section 4 (a) (2).
3 (8) The term "operation, maintenance, or use" when
4 used with respect to a motor vehicle includes loading or un-
5 loading the vehicle, but does not include conduct within the
6 course of a business of repairing, servicing, or otherwise main-
7 taining vehicles unless the conduct occurs outside the premises
8 of such business.
9 (9) The term "motor vehicle accident" means an acci-
10 dent arising out of the operation, maintenance, or use of a
11 motor vehicle.
12 (10) The term "accidental harm" means bodily injury,
13 death, sickness, or disease caused by a motor vehicle accident
14 while in or upon or entering into or alighting from, or
15 through being struck by a motor vehicle or object drawn or
16 propelled by a motor vehicle.
17 (11) The term "death" (except as used in this para-
18 graph and paragraphs (10) and (12)) means accidental
19 harm resulting at any time in death.
20 (12) The term "injury" means accidental harm not
21 resulting in death.
22 (13) The term "economic loss" with respect to any in-
23 jury or death means—
24 (A) all appropriate and reasonable expenses neces-

1 sarily incurred for medical, hospital, surgical, professional
2 nursing, dental, ambulance, prosthetic services, and any
3 Federally recognized religious remedial care and treat-
4 ment;
5 (B) all appropriate and reasonable expenses neces-
6 sarily incurred for psychiatric, physical, and occupa-
7 tional therapy and rehabilitation;
8 (C) an amount equal to the lesser of—
9 (i) $1,000 per month, or
10 (ii) the monthly earnings for the period dur-
11 ing which the injury or death results in the inabil-
12 ity to engage in available and appropriate gainful
13 activity, or
14 (D) a monthly amount equal to the amount (if
15 any) by which (i) a person's monthly earnings (as
16 defined in paragraph (14)) or $1,000, whichever is
17 less, exceeds (ii) any lesser monthly earnings of such
18 person at such time as he resumes gainful activity.
19 (E) all appropriate and reasonable expenses neces-
20 sarily incurred as a result of such injury or death, in-
21 cluding, but not limited to, (i) expenses incurred in ob-
22 taining services in substitution of those that the injured
23 or deceased person would have performed for the benefit
24 of himself or his family, (ii) funeral expenses, and (iii)

1 attorneys' fees and costs to the extent provided in sec-
2 tion 8.
3 (14) The term "monthly earnings" means—
4 (A) in the case of a regularly employed person,
5 one-twelfth of the average annual compensation after in-
6 come taxes at the time of injury or death;
7 (B) in the case of a person regularly self-employed,
8 one-twelfth of the average annual earnings after in-
9 come taxes at the time of injury or death;
10 (C) in the case of an unemployed person or a
11 person not regularly employed or self-employed, one-
12 twelfth of the anticipated annual compensation after
13 income taxes of such person paid from the time such
14 person would reasonably have been expected to be reg-
15 ularly employed:
16 *Provided, however,* That such sums are to be periodically in-
17 creased in a manner corresponding to annual compensation
18 increases that would predictably result but for the injury
19 or death. The Secretary is authorized to promulgate rules
20 consistent with this paragraph defining further the term
21 "monthly earnings".
22 (15) The term "net economic loss" means, in the case
23 of injury or death, economic loss reduced (but not below
24 zero) by the amount of any benefit or payment received

1 (or legally entitled to be received and actually available to
2 the claimant) for losses resulting from such injury or death
3 from any of the following sources—
4 (A) any public health insurance or plan;
5 (B) any private insurance or plan containing ex-
6 plicit provisions making its benefits primary to any bene-
7 fits under a qualifying no-fault policy.
8 (16) The term "loss resulting from damage to the in-
9 sured's motor vehicle" means—
10 (A) an amount equal to the direct damage or loss
11 to an insured motor vehicle as a result of collision or
12 upset, fire, theft, flood, or other hazard incident to the
13 operation, maintenance, or use of an insured motor
14 vehicle; and
15 (B) all appropriate and reasonable expenses neces-
16 sarily incurred as a result of such damage to or loss of
17 an insured motor vehicle, including expenses incurred in
18 renting a vehicle in substitution for the insured motor
19 vehicle for an agreed upon period.
20 (17) The term "damage other than economic loss"
21 means in the case of injury or death—
22 (A) tangible damage in excess of economic loss (as
23 defined in section 3 (13)) ; and
24 (B) intangible damage, characterized also as pain
25 and suffering or general damage,

1 measured by applicable State tort law which would have
2 been applicable but for section 3.

3 (18) The term "motor vehicle in use" means a motor
4 vehicle being operated on any public street or roadway or
5 in any other public place; it does not mean a motor vehicle
6 legally parked to the side of any public street or roadway
7 or in any public place.

8 (19) The term "without regard to fault" means irre-
9 spective of fault as a cause of injury or death, and without
10 application of the principle of liability based on negligence.

11 (20) The term "criminal conduct" means the commis-
12 sion of an offense punishable by imprisonment for one year
13 or more, or operation or use of a motor vehicle with the
14 specific intent of causing injury or damage, or operation or
15 use of a motor vehicle as a converter without a good faith
16 belief that the operator or user is legally entitled to operate
17 or use such vehicle.

18 (21) The term "Secretary" means the Secretary of
19 _____.

20 (22) The term "State" means any State, the District
21 of Columbia, the Commonwealth of Puerto Rico, the Virgin
22 Islands, Guam, American Samoa, or the Canal Zone.

23 TORT EXEMPTION

24 SEC. 3. No person who is—

1 (a) the owner, operator, or user of an insured motor
2 vehicle, or
3 (b) the operator or user of an uninsured motor ve-
4 hicle who operates or uses such vehicle without any rea-
5 son to believe that such vehicle is an uninsured motor
6 vehicle,
7 shall be liable for tort damages of any nature arising out of
8 the ownership, maintenance, operation, or use of such vehi-
9 cle unless that person is engaging in criminal conduct (as
10 defined in section 2(20)) which causes such damage in
11 which case he shall be liable to the extent provided by State
12 law for all damages other than economic loss.

13 CONDITIONS OF OPERATION AND REGISTRATION

14 SEC. 4. (a) (1) No person may register any motor vehi-
15 cle in a State or operate or use a motor vehicle upon any
16 public street, road, or highway of any State at any time un-
17 less such motor vehicle is insured under a qualifying no-fault
18 policy (as defined in section 2(4)), pursuant to such regu-
19 lations (including those determining the manner and term of
20 proof of such insurance) as the Secretary shall prescribe.
21 (2) The requirements of this subsection may be satisfied
22 by any owner of a motor vehicle if—
23 (A) such owner provides a surety bond, proof of
24 qualifications as a self-insurer, or other securities afford-
25 ing security substantially equivalent to that afforded

1 under a qualifying no-fault policy, as determined and
2 approved by the Secretary under regulations, and
3 (B) the Secretary is satisfied that in case of injury
4 or death or property damage, any claimant would have
5 the same rights against such owner under applicable
6 State law as the claimant would have had under such law
7 had a qualifying no-fault policy been applicable to such
8 vehicle.
9 (b) No State may require the purchase or acquisition of
10 insurance or other security as a condition to the ownership,
11 registration, operation, or use of any motor vehicle upon the
12 public streets, road, or highways of such State that is incon-
13 sistent with a qualifying no-fault policy.
14 (c) Any person who knowingly violates the provisions
15 of subsection (a) of this section shall be punished by a fine
16 not to exceed $1,000 or imprisonment for a period of not
17 to exceed six months, or both. Attorneys General of the
18 several States are given concurrent authority to bring actions
19 in their respective State courts of competent jurisdiction
20 seeking a fine not to exceed $1,000 or imprisonment for a
21 period not to exceed six months for any knowing violations
22 of the provisions of subsection (a) of this section.
23 INSURANCE REQUIREMENTS
24 SEC. 5. (a) In order to be a qualifying no-fault policy,
25 an insurance policy covering a motor vehicle shall provide

1 benefits for injury or death (as defined in section 2 para-
2 graphs (11) and (12)) as follows:
3 (1) Except as otherwise provided in paragraph (2)—
4 (A) in the case of injury to any person (including
5 the owner, operator, or user of the insured motor vehi-
6 cle), the insurer shall pay, without regard to fault, to
7 such person an amount equal to the net economic loss
8 (as defined in section 2(15)) sustained by such per-
9 son as a result of such injury; or
10 (B) in the case of death of any person (including
11 the owner, operator, or user of the insured motor ve-
12 hicle), the insurer shall pay, without regard to fault, to
13 the legal representative of such person, for the benefit
14 of the surviving spouse and any dependent (as defined
15 in section 152 of the Internal Revenue Code of 1954)
16 of such person, an amount equal to the net economic
17 loss sustained by such spouse and dependent as a result
18 of the death of such person.
19 (2) No payment may be made for net economic loss
20 sustained by—
21 (A) the occupants of a motor vehicle other than the
22 insured motor vehicle; or
23 (B) the operator or user of a motor vehicle engag-
24 ing in criminal conduct (as defined in section 2(20))
25 which causes any such loss.

1 (3) Payments for net economic loss shall be made as
2 such loss is incurred except that in the case of death, pay-
3 ment for such loss may, at the option of the beneficiary, be
4 made immediately in a lump sum payment appropriately
5 discounted in accordance with regulations of the Secretary.
6 Amounts of net economic loss unpaid thirty days after the
7 insurer has received reasonable proof of the fact and amount
8 of loss realized, and demand for payment thereof shall (after
9 the expiration of such thirty days) bear interest at the rate
10 of 2 per centum per month.

11 (4) A claim for net economic loss based upon injury to
12 or death of a person who is not an occupant of any motor
13 vehicle involved in an accident may be made against the
14 insurer of any involved vehicle. The insurer against whom
15 the claim is asserted shall process and pay the claim as if
16 wholly responsible, but such insurer shall thereafter be en-
17 titled to recover from the insurers of all other involved ve-
18 hicles proportionate contribution for the benefits paid and
19 the costs of processing the claim.

20 (5) No part of loss benefits paid under a qualifying no-
21 fault policy (except those paid by provisions required in
22 section 5(b)(1) shall be applied in any manner as attor-
23 ney's fees in the case of injury or death for which such bene-
24 fits are paid. Any contract in violation of this provision shall
25 be illegal and unenforceable, and it shall constitute an unlaw-

1 ful and unethical act for any attorney to solicit, enter into, or
2 knowingly accept benefits under any such contract.
3 (b) In order to be a qualifying no-fault policy, an in-
4 surance policy covering a motor vehicle shall provide the
5 following benefits in addition to those enumerated in sub-
6 section (a) of this section:
7 (1) in the case of injury or death to any person
8 not an owner of a motor vehicle or a spouse or depend-
9 ent of an owner, the insurer shall pay, without regard to
10 fault, to such person compensation for damage other
11 than economic loss sustained by such person as a result
12 of such injury;
13 (2) in the case of damage to any property other
14 than a motor vehicle in use arising out of a motor vehicle
15 accident, insurers of any motor vehicles involved in the
16 motor vehicle accident shall pay on a proportionate basis
17 to the owner of such property an amount equal to the
18 loss occasioned by the damage.
19 (c) In addition to the coverages described in subsec-
20 tions (a) and (b), the insurer issuing a qualifying no-fault
21 policy shall make available to the insured the following
22 optional insurance under the following conditions:
23 (1) At the option of the insured, the insurer shall offer
24 provisions covering loss resulting from damage to the in-

1 sured's motor vehicle with such deductibles as the insured
2 elects.
3 (2) At the option of the insured, the insurer shall offer
4 to compensate for damage other than economic loss either
5 or both of the following provisions whereby the insurer in
6 the case of injury or death to the insured, his spouse, or any
7 dependents agrees to pay (without regard to fault) to such
8 person compensation for:
9 (A) tangible damage in excess of economic loss
10 (as defined in section 2(13));
11 (B) intangible damage sustained by such person as
12 a result of such injury or death.
13 (3) (A) A person may not submit a claim to his insurer
14 for the recovery of damage other than economic loss sus-
15 tained as a result of an injury until the last periodic payment
16 for net economic loss has been made or until a period of three
17 years from the time of the injury has elapsed, whichever
18 occurs first.
19 (B) Contingent fee arrangements for the prosecution
20 of claims under a policy for compensation for damages other
21 than economic loss shall be made in accordance with section
22 8(b) of this Act.
23 (4) Notwithstanding any provision of State law to the
24 contrary, the statute of limitation for bringing suit under pro-

1 visions providing compensation for damages other than eco-
2 nomic loss shall be:
3 (A) four years from the date of the motor vehicle
4 accident upon which the claim is based, or
5 (B) one year after the last payment for economic
6 loss recoverable under paragraph (1) of this subsection
7 is paid
8 whichever be the lesser length of time.
9 (d) (1) Any policy of insurance described in this section
10 may contain—
11 (A) additional coverages and benefits with respect
12 to any injury, death, or any other loss from motor
13 vehicle accidents or loss from operation of a motor
14 vehicle; and
15 (B) terms, conditions, exclusions, and deductible
16 clauses; consistent with the required provisions of such
17 policy and approved by the Secretary, who shall only
18 approve terms, conditions, exclusions, deductible clauses,
19 coverages, and benefits which are fair and equitable, and
20 which limit the variety of coverage available so as to
21 give buyers of insurance reasonable opportunity to com-
22 pare the cost of insuring with various insurers.
23 (2) Any policy of insurance described in this section
24 shall contain a provision, in accordance with regulations of

1 sured's motor vehicle with such deductibles as the insured
2 elects.
3 (2) At the option of the insured, the insurer shall offer
4 to compensate for damage other than economic loss either
5 or both of the following provisions whereby the insurer in
6 the case of injury or death to the insured, his spouse, or any
7 dependents agrees to pay (without regard to fault) to such
8 person compensation for:
9 (A) tangible damage in excess of economic loss
10 (as defined in section 2(13));
11 (B) intangible damage sustained by such person as
12 a result of such injury or death.
13 (3) (A) A person may not submit a claim to his insurer
14 for the recovery of damage other than economic loss sus-
15 tained as a result of an injury until the last periodic payment
16 for net economic loss has been made or until a period of three
17 years from the time of the injury has elapsed, whichever
18 occurs first.
19 (B) Contingent fee arrangements for the prosecution
20 of claims under a policy for compensation for damages other
21 than economic loss shall be made in accordance with section
22 8(b) of this Act.
23 (4) Notwithstanding any provision of State law to the
24 contrary, the statute of limitation for bringing suit under pro-

1 visions providing compensation for damages other than eco-
2 nomic loss shall be:
3 (A) four years from the date of the motor vehicle
4 accident upon which the claim is based, or
5 (B) one year after the last payment for economic
6 loss recoverable under paragraph (1) of this subsection
7 is paid
8 whichever be the lesser length of time.
9 (d) (1) Any policy of insurance described in this section
10 may contain—
11 (A) additional coverages and benefits with respect
12 to any injury, death, or any other loss from motor
13 vehicle accidents or loss from operation of a motor
14 vehicle; and
15 (B) terms, conditions, exclusions, and deductible
16 clauses; consistent with the required provisions of such
17 policy and approved by the Secretary, who shall only
18 approve terms, conditions, exclusions, deductible clauses,
19 coverages, and benefits which are fair and equitable, and
20 which limit the variety of coverage available so as to
21 give buyers of insurance reasonable opportunity to com-
22 pare the cost of insuring with various insurers.
23 (2) Any policy of insurance described in this section
24 shall contain a provision, in accordance with regulations of

1 the Secretary, specifying the periods within which claims
2 may be filed and actions against the insurer may be brought.
3 (e) Any policy of insurance described in this section
4 must offer different standardized categories of premium re-
5 ductions reflecting benefits available to the policyholder and
6 members of his family as a result of public or private insur-
7 ance or plans or other benefit sources described in section
8 2(15) of this Act, as being primary to benefits under a
9 qualified no-fault policy.
10 (f) (1) No insurer may issue or offer to issue any policy
11 which he represents is a qualifying no-fault policy unless
12 such policy meets the requirements of subsections (a) and
13 (b) (and of subsection (c) if the insured elects the optional
14 coverage under such subsection), is consistent with the re-
15 quirements of subsection (d), and includes all applicable
16 standard uniform policy provisions under section 5 (c) and
17 6 (d).
18 (2) (A) Any insurer who violates paragraph (1) shall
19 be assessed a civil penalty of not to exceed $5,000 for each
20 policy which the insurer issues or offers to issue in violation
21 of such paragraph.
22 (B) Any insurer who willfully violates paragraph (1)
23 shall be fined not more than $5,000, or imprisoned not more
24 than one year, or both.

1 (g) (1) Subject to paragraph (2)—

2 (A) An application for a qualifying no-fault policy
3 covering a motor vehicle in a State may not be rejected
4 by an insurer authorized to issue such a policy in such
5 State unless—

6 (i) the principal operator of such vehicle does
7 not have a license which permits him to operate
8 such vehicle, or

9 (ii) the application is not accompanied by a
10 reasonable portion of the premium (as determined
11 under regulations of the Secretary).

12 (B) A qualifying no-fault policy once issued may
13 not be canceled or refused renewal by an insurer except
14 for—

15 (i) suspension or revocation of the license of
16 the principal operator to operate a motor vehicle, or

17 (ii) failure to pay the premium for such policy
18 after reasonable demand therefor.

19 In any case of cancellation or refusal to renew under clause
20 (ii), written notice shall be given to the insured.

21 (2) An insurer may reject or refuse to accept additional
22 applications for, or refuse to renew qualifying no-fault poli-
23 cies (A) if the domiciliary State insurance supervisory au-
24 thority of such insurer deems in writing that the financial
25 soundness of such insurer would be impaired by the writing

1 of additional policies of such insurance, or (B) such insurer
2 ceases to write any new policies of insurance of any kind in
3 the jurisdiction of the rejected applicant.

4 (3) Whoever knowingly violates, or conspires to vio-
5 late, the provisions of paragraph (1) or (2) of this sub-
6 section shall be assessed a civil penalty of not to exceed
7 $1,000 for each separate violation. Each violation of para-
8 graph (A) of this subsection with respect to any policy-
9 holder or applicant for insurance shall constitute a separate
10 violation.

11 UNIFORM STATISTICAL PLAN AND PRICE INFORMATION

12 SEC. 6. (a) The Secretary shall, after consultation with
13 insurers and State insurance supervisory authorities,
14 promulgate a common, uniform statistical plan for the allo-
15 cation and compilation of claims and loss experience data
16 for each coverage under section 5 of this Act, and upon
17 promulgation, such plan shall be followed by every insurer
18 writing qualifying no-fault policies, and by every rating or
19 advisory organization or statistical agent used by any such
20 insurer to gather, compile, or report claims and loss experi-
21 ence data.

22 (b) Such statistical plan shall contain data pertaining
23 to the claims and loss experience for the classes of risk in
24 each rating territory within each coverage under section 5 of
25 this Act. Such statistical plan shall not contain data pertain-

1 ing to expenses for adjusting losses, underwriting expenses,
2 general administration expenses, or any other expense ex-
3 perience for any class of risk in each rating territory within
4 the coverages under section 5 of this Act. In carrying out
5 the provisions of this section, no insurer, rating, or advisory
6 organization, or statistical agent, or any other association
7 of insurers, may pool, or in any manner combine, any such
8 expenses or expense experience, or otherwise act in concert
9 with respect thereto.

10 (c) Every insurer writing policies of insurance which
11 meet the requirements of section 5 of this Act, and every
12 rating or advisory organization or statistical agent used by
13 such insurer to gather or compile claims and loss experience
14 data, shall report such data in accordance with the provisions
15 of the statistical plan required by this section at such times
16 and in such manner as the Secretary shall by regulations
17 prescribe.

18 (d) The Secretary shall prescribe regulations which
19 shall require a minimal number of standard uniform—

20 (1) policy provisions for each coverage under sec-
21 tion 5 of this Act; and

22 (2) classes of risk and rating territories for each
23 coverage under section 5 of this Act;

24 in order to accomplish the purposes of the statistical plan
25 required by this section.

64-346 O - 72 - pt. 5 - 3

1 (e) Every insurer writing qualifying no-fault policies
2 shall provide the Secretary with the actual rate or premium
3 being charged for each class of risk in each rating territory
4 within each coverage under section 5 of this Act at such
5 times and in such manner as the Secretary shall by rules and
6 regulations prescribe.

7 (f) The Secretary may, after consultation with the in-
8 surers and State insurance supervisory authorities, appoint a
9 statistical agent or agents, to receive, gather, compile, re-
10 port, and analyze the claims and loss experience data, and
11 actual rates or premiums, specified in subsections (c) and
12 (e) of this section.

13 (g) From time to time, but not less often than semi-
14 annually, the Secretary shall analyze and freely and fully
15 make available to the State insurance supervisory authorities
16 and to the general public, with respect to every insurer
17 writing qualifying no-fault policies, a comparison of such
18 insurer's indicated rate based solely upon the claims and
19 loss experience data for each class of risk in each rating
20 territory within each coverage under section 5 with the
21 actual rate or premiums being charged by the insurer for
22 such class of risk in each rating territory within such cover-
23 age. The claims and loss experience data, and actual rates or
24 premiums specified in subsections (c) and (e) of this sec-
25 tion shall be made available to the general public at such

1 times and in such manner as the Secretary shall by regu-
2 lation prescribe.
3 (h) Any insurer writing qualifying no-fault policies, or
4 any rating or advisory organization or statistical agent used
5 by any such insurer to gather, compile, or report claims and
6 loss experience data with respect to policies meeting the
7 requirements of section 5, who fails to:
8 (1) follow the statistical plan promulgated in ac-
9 cordance with subsections (a) and (b) of this section,
10 or
11 (2) observe the prohibition in subsection (b) of
12 this section against pooling, or in any manner combining
13 expense experience, or
14 (3) report to the Secretary, or his statistical agent
15 or agents, the claims and loss experience data as re-
16 quired in subsections (c) and (f) of this section, or
17 (4) follow the standard uniform classes of risk and
18 rating territories prescribed by the Secretary as required
19 in subsection (d) of this section, or
20 (5) provide the Secretary, or his statistical agent
21 or agents, with the actual rate or premium being charged
22 for each class of risk in each rating territory within such
23 coverage as required in subsections (e) and (f) of this
24 section,
25 shall be assessed a civil penalty of not to exceed $5,000
26 for each violation.

1 ASSIGNED CLAIMS PLAN

2 SEC. 7. (a) (1) The Secretary shall, after consultation
3 with insurers and State insurance supervisory authorities,
4 organize an assigned claims bureau and assigned claims plan
5 in each State. Upon orgnization, each such bureau and
6 plan shall be maintained, subject to regulation by the applica-
7 ble State insurance supervisory authority, by the insurers
8 writing qualifying no-fault policies in such State if (and for
9 so long as) the Secretary is satisfied that all such insurers are
10 required under State law to participate and that no such
11 insurer may withdraw without the consent of the State.

12 (2) In any case in which an assigned claims bureau
13 and assigned claims plan in any State is not maintained in
14 a manner considered by the Secretary to be consistent with
15 the provisions of this Act, the Secretary shall maintain
16 such bureau and plan.

17 (3) The Secretary shall prescribe regulations which
18 shall set forth the extent to which, for purposes of this
19 section—

20 (A) a self-insurer shall be treated as an insurer, and

21 (B) benefits which a self-insurer is obligated to pay
22 shall be treated as insurance benefits under a qualifying
23 no-fault policy.

24 (b) The costs incurred in the operation of each assigned
25 claims bureau and assigned claims plan shall be assessed
26 against insurers in each State by the applicable State insur-

1 ance supervisory authority (or by the Secretary during any
2 period during which such bureau and plan are maintained by
3 him under subsection (a) (2)) according to regulations of
4 such State authority (or of the Secretary if the bureau and
5 plan are maintained by him) that assure fair allocations
6 among such insurers writing qualifying policies in the State,
7 on a basis reasonably related to the volume of insurance writ-
8 ten under qualifying no-fault policies.

9 (c) (1) No insurer may write any qualifying no-fault
10 policy unless the insurer participates in the assigned claims
11 bureau and assigned claims plan in each State in which such
12 insurer writes such policies.

13 (2) An insurer who violates paragraph (1) of this sub-
14 section shall be assessed a civil penalty of $5,000 for each
15 policy he issues in violation of such paragraph.

16 (d) Except as provided in subsection (e) of this sec-
17 tion, each person sustaining injury or death (or his legal
18 representative) may obtain the insurance benefits described in
19 sections 5 (a) and (b) of this Act through the assigned
20 claims bureau and assigned claims plan in the State in which
21 such person resides if—

22 (1) no insurance benefits under qualifying no-fault
23 policies are applicable to the injury or death; or

24 (2) no such insurance benefits applicable to the
25 injury or death can be identified; or

1 ASSIGNED CLAIMS PLAN

2 SEC. 7. (a) (1) The Secretary shall, after consultation
3 with insurers and State insurance supervisory authorities,
4 organize an assigned claims bureau and assigned claims plan
5 in each State. Upon orgnization, each such bureau and
6 plan shall be maintained, subject to regulation by the applica-
7 ble State insurance supervisory authority, by the insurers
8 writing qualifying no-fault policies in such State if (and for
9 so long as) the Secretary is satisfied that all such insurers are
10 required under State law to participate and that no such
11 insurer may withdraw without the consent of the State.

12 (2) In any case in which an assigned claims bureau
13 and assigned claims plan in any State is not maintained in
14 a manner considered by the Secretary to be consistent with
15 the provisions of this Act, the Secretary shall maintain
16 such bureau and plan.

17 (3) The Secretary shall prescribe regulations which
18 shall set forth the extent to which, for purposes of this
19 section—

20 (A) a self-insurer shall be treated as an insurer, and

21 (B) benefits which a self-insurer is obligated to pay
22 shall be treated as insurance benefits under a qualifying
23 no-fault policy.

24 (b) The costs incurred in the operation of each assigned
25 claims bureau and assigned claims plan shall be assessed
26 against insurers in each State by the applicable State insur-

1 ance supervisory authority (or by the Secretary during any
2 period during which such bureau and plan are maintained by
3 him under subsection (a) (2)) according to regulations of
4 such State authority (or of the Secretary if the bureau and
5 plan are maintained by him) that assure fair allocations
6 among such insurers writing qualifying policies in the State,
7 on a basis reasonably related to the volume of insurance writ-
8 ten under qualifying no-fault policies.

9 (c) (1) No insurer may write any qualifying no-fault
10 policy unless the insurer participates in the assigned claims
11 bureau and assigned claims plan in each State in which such
12 insurer writes such policies.

13 (2) An insurer who violates paragraph (1) of this sub-
14 section shall be assessed a civil penalty of $5,000 for each
15 policy he issues in violation of such paragraph.

16 (d) Except as provided in subsection (e) of this sec-
17 tion, each person sustaining injury or death (or his legal
18 representative) may obtain the insurance benefits described in
19 sections 5 (a) and (b) of this Act through the assigned
20 claims bureau and assigned claims plan in the State in which
21 such person resides if—

22 (1) no insurance benefits under qualifying no-fault
23 policies are applicable to the injury or death; or

24 (2) no such insurance benefits applicable to the
25 injury or death can be identified; or

1 (3) the only identifiable insurance benefits under
2 qualifiying no-fault policies applicable to the injury or
3 death will not be paid in full because of financial inability
4 of one or more insurers to fulfill their obligations.
5 (e) A person shall be disqualified from receiving bene-
6 fits through any assigned claims bureau and assigned claims
7 plan established pursuant to this section if—
8 (1) such person is disqualified under section 5 (a)
9 (2) (B) of this Act from receiving the insurance bene-
10 fits under section 5 (a) of this Act,
11 (2) such person was—
12 (A) the owner or registrant of an uninsured
13 motor vehicle at the time of its involvement in the
14 accident out of which such person's injury arose, or
15 (B) the operator of such a vehicle at such time
16 with reason to believe that such vehicle was an un-
17 insured motor vehicle.
18 (f) A claim or claims arising from injury or death to
19 one person sustained in one accident and brought through
20 the applicable assigned claims plan shall be assigned to one
21 insurer, or to the applicable assigned claims bureau, which
22 after such assignment shall have the same rights and obliga-
23 tions as it would have had had it issued a qualifying no-fault
24 policy (or such form as the Secretary by regulation pre-
25 scribes) applicable to such injury or death.

1 (g) The assignment of claims shall be made according
2 to regulations of the State supervisory authority (or the
3 Secretary if the bureau and plan are maintained by him
4 under subsection (a) (2)) that assure fair allocation of the
5 burden of assigned claims among insurers doing business in
6 the particular State on a basis reasonably related to the
7 volume of insurance written under sections 5 (a) and (b) of
8 this Act.

9 (h) A person or his legal representative claiming
10 through an assigned claims plan shall notify the applicable
11 bureau of his claim within the period prescribed under sec-
12 tion 5 (d) (2) for filing a claim for insurance benefits un-
13 der section 5 (a) or (b). The bureau shall promptly assign
14 the claim and notify the claimant of the identity and address
15 of the insurer to which the claim is assigned, or of the
16 bureau if the claim is assigned to it. No action by the claim-
17 ant against the insurer to which his claim is assigned, or
18 against the bureau if the claim is assigned to it, shall be
19 commenced later than sixty days after reecipt of notice of
20 the assignment or after the expiration of the period pre-
21 scribed in section 5 (d) (2) for commencing an action against
22 an insurer, whichever is later.

23 (i) All reasonable and necessary costs incurred in the
24 handling and disposition of assigned claims, including amount
25 paid pursuant to assessments under subsection (b) of this

1 section, may be considered in making or regulating rates
2 for the insurance under sections 5 (a) and (b) of this Act,
3 but if such costs are considered in the rates or premiums for
4 such insurance, the pure loss portion of such costs shall be
5 reported separately under the uniform statistical plan pro-
6 vided for by section 6 of this Act, and that portion of the
7 actual rate or premium being charged for such insurance
8 attributable to the entire amount of such costs incurred in the
9 handling and disposition of assigned claims shall be reported
10 separately under subsection (e) of section 6 of this Act.
11 (j) An insurer who makes an assigned claims payment
12 shall be subrogated to any rights the person to whom the
13 payment was made may have had against the owner or op-
14 erator of any uninsured motor vehicle involved in the acci-
15 dent out of which the claim arose.

16 CLAIMANT'S ATTORNEY'S FEES

17 SEC. 8. (a) A person making a claim under a qualify-
18 ing no-fault policy may be allowed an award of a reasonable
19 sum for attorney's fee (based upon actual time expended)
20 and all reasonable costs of suit in any case in which the
21 insurer denies all or part of a claim for benefits under such
22 policy unless the court determines that the claim was fraudu-
23 lent, excessive, or frivolous.
24 (b) A person making claim under policy provisions
25 meeting the requirements of section 5 (b) (1) or 5 (c)

1 may enter into a contingent fee arrangement with an attor-
2 ney but in no event may the fee exceed 25 per centum of
3 any award the claimant receives, and may be further limited
4 at the discretion of the court.

5 FRAUDULENT CLAIMS

6 SEC. 9. Within the discretion of the court, an insurer or
7 self-insurer may be allowed an award of a reasonable sum as
8 attorney's fee (based upon actual time expended) and all
9 reasonable costs of suit for its defense against a person mak-
10 ing claim against such insurer or self-insurer where such
11 claim was fraudulent, and such attorney's fee and all such
12 reasonable costs of suit so awarded may be treated as an off-
13 set against any benefits due or to become due to such
14 person.

15 ADMINISTRATION

16 SEC. 10. In order to carry out the provisions and fulfill
17 the purpose of this Act the Secretary shall—

18 (1) consult with representatives of State agencies
19 charged with the regulation of the business of insurance,
20 representatives of the private insurance business, and
21 such other persons, organizations, and agencies of the
22 Federal, State, or local governments as he deems neces-
23 sary; and

24 (2) make, promulgate, amend, and repeal such reg-
25 ulations as he deems necessary.

1 JURISDICTION

2 SEC. 11. (a) No district court of the United States may
3 entertain an action for breach of any contractual or other
4 obligation assumed by an insurer or self-insurer under a
5 policy of insurance containing mandatory or optional provi-
6 sions in accordance with section 5 of this Act unless a person
7 bringing such action meets the jurisdictional requirements
8 of section 1332 of title 28 of the United States Code.

9 (b) Any person may bring suit for breach of any con-
10 tractual obligation assumed by an insurer under a policy of
11 insurance containing such mandatory or optional provisions
12 in any State court of competent jurisdiction.

13 EFFECTIVE DATE

14 SEC. 12. (a) Except as provided in subsection (b),
15 this Act shall take effect one year after its enactment.

16 (b) Sections 4, 5 (f), and 7 (d) shall take effect on the
17 first day of the eighteenth calendar month which begins after
18 the date of enactment of this Act. Section 3 shall apply with
19 respect to accidents occurring on or after the first day of such
20 eighteenth calendar month.

O

Senator HART. All of us welcome as our first witness our distinguished Senator from Illinois, Mr. Stevenson.

As Mr. Stevenson comes forward, I think it fair—and I hope it doesn't sound too partisan—to suggest that it is unusual as a new member of the Senate that he has managed to master such a sensitive and as important an issue as no-fault automobile insurance for the District of Columbia.

The District of Columbia Committee is at a point where the Senate may soon be asked itself to act affirmatively in that regard.

We welcome the Senator from Illinois this morning.

STATEMENT OF HON. ADLAI E. STEVENSON III, U.S. SENATOR FROM ILLINOIS

Senator STEVENSON. I thank you, Mr. Chairman, and all the members of this distinguished committee for the opportunity to appear here this morning.

I do hope, as you mentioned, Mr. Chairman, to persuade the Senate Committee on the District of Columbia, and later on, the full Senate, to adopt (for the District of Columbia) a comprehensive no-fault insurance plan.

Mr. Chairman, in the interest of conserving time, I would, with your permission, summarize my prepared statement and request that the full statement be entered in the record.

Senator HART. If there is no objection, the statement will be printed in full as though given.

Mr. Chairman, 2 weeks ago I presided over hearings of a subcommittee of the Senate District Committee on a system of first-party automobile accident reparations for the District of Columbia. As a result of work on a bill for one jurisdiction, I have some conclusions about the desirability of national no-fault legislation.

I came away from our hearings in the District with two principal conclusions: first, if a no-fault bill limited to the District were to pass, the people of the District of Columbia would be far better off than they are today; second, if a national no-fault bill were to be enacted, motorists in the District and throughout the Nation will be far better off than if the Federal Government confines its activity to pious, but toothless, pronouncements about the need for reform.

The District of Columbia needs no-fault because the fault system works just as as poorly here as it does everywhere in the Nation. In return for his high premiums, the motorist gets spotty, inefficient benefits. If a motorist is involved in a minor accident, he is encouraged to turn his loss into a lottery ticket. He can expect to collect, with the help of an obliging lawyer, up to four times his economic loss. If on the other hand, he is one of those unfortunate victims with economic loss exceeding $25,000, he will only collect 30 cents on the dollar—with or without a lawyer. Even worse is the staggering number of victims who receive absolutely nothing under the fault system. A DOT study of automobile deaths in metropolitan Washington over a 1-year period showed that in fully half of all the cases the survivors received not 1 cent from automobile insurance.

In order to buy this inadequate coverage, the motorist must pay $7 in premiums for each dollar of compensation for economic loss not

1 JURISDICTION

2 SEC. 11. (a) No district court of the United States may
3 entertain an action for breach of any contractual or other
4 obligation assumed by an insurer or self-insurer under a
5 policy of insurance containing mandatory or optional provi-
6 sions in accordance with section 5 of this Act unless a person
7 bringing such action meets the jurisdictional requirements
8 of section 1332 of title 28 of the United States Code.

9 (b) Any person may bring suit for breach of any con-
10 tractual obligation assumed by an insurer under a policy of
11 insurance containing such mandatory or optional provisions
12 in any State court of competent jurisdiction.

13 EFFECTIVE DATE

14 SEC. 12. (a) Except as provided in subsection (b),
15 this Act shall take effect one year after its enactment.

16 (b) Sections 4, 5 (f), and 7 (d) shall take effect on the
17 first day of the eighteenth calendar month which begins after
18 the date of enactment of this Act. Section 3 shall apply with
19 respect to accidents occurring on or after the first day of such
20 eighteenth calendar month.

O

Senator HART. All of us welcome as our first witness our distinguished Senator from Illinois, Mr. Stevenson.

As Mr. Stevenson comes forward, I think it fair—and I hope it doesn't sound too partisan—to suggest that it is unusual as a new member of the Senate that he has managed to master such a sensitive and as important an issue as no-fault automobile insurance for the District of Columbia.

The District of Columbia Committee is at a point where the Senate may soon be asked itself to act affirmatively in that regard.

We welcome the Senator from Illinois this morning.

STATEMENT OF HON. ADLAI E. STEVENSON III, U.S. SENATOR FROM ILLINOIS

Senator STEVENSON. I thank you, Mr. Chairman, and all the members of this distinguished committee for the opportunity to appear here this morning.

I do hope, as you mentioned, Mr. Chairman, to persuade the Senate Committee on the District of Columbia, and later on, the full Senate, to adopt (for the District of Columbia) a comprehensive no-fault insurance plan.

Mr. Chairman, in the interest of conserving time, I would, with your permission, summarize my prepared statement and request that the full statement be entered in the record.

Senator HART. If there is no objection, the statement will be printed in full as though given.

Mr. Chairman, 2 weeks ago I presided over hearings of a subcommittee of the Senate District Committee on a system of first-party automobile accident reparations for the District of Columbia. As a result of work on a bill for one jurisdiction, I have some conclusions about the desirability of national no-fault legislation.

I came away from our hearings in the District with two principal conclusions: first, if a no-fault bill limited to the District were to pass, the people of the District of Columbia would be far better off than they are today; second, if a national no-fault bill were to be enacted, motorists in the District and throughout the Nation will be far better off than if the Federal Government confines its activity to pious, but toothless, pronouncements about the need for reform.

The District of Columbia needs no-fault because the fault system works just as as poorly here as it does everywhere in the Nation. In return for his high premiums, the motorist gets spotty, inefficient benefits. If a motorist is involved in a minor accident, he is encouraged to turn his loss into a lottery ticket. He can expect to collect, with the help of an obliging lawyer, up to four times his economic loss. If on the other hand, he is one of those unfortunate victims with economic loss exceeding $25,000, he will only collect 30 cents on the dollar—with or without a lawyer. Even worse is the staggering number of victims who receive absolutely nothing under the fault system. A DOT study of automobile deaths in metropolitan Washington over a 1-year period showed that in fully half of all the cases the survivors received not 1 cent from automobile insurance.

In order to buy this inadequate coverage, the motorist must pay $7 in premiums for each dollar of compensation for economic loss not

otherwise compensated. In the District, the situation is aggravated by the 80,000 uninsured vehicles which threaten tourist, commuter, and resident alike.

For all of these reasons, the District needs auto insurance reform now. If a no-fault bill for the District were enacted, the District would be in a better position to meet the requirements of any national bill which might subsequently be enacted. Passage of a District of Columbia no-fault bill would have the added effect of putting the Congress on record in favor of no-fault. Either way, I view a District of Columbia bill as entirely consistent with the national bill which you are considering.

A no-fault bill for the District will be an enormous step forward, but it cannot solve the whole problem. Forty percent of the automobiles involved in accidents within the District are out-of-State vehicles, and only a few of these are covered by no-fault policies If we allow these out-of-State motorists to sue in tort, the District motorists will be forced to assume an extra burden of liability insurance because other States have failed to reform their own systems. If we require out-of-State motorists to carry first-party coverage while driving in the District—as a number of witnesses have suggested—the need for District motorists to carry residual liability coverage would be eliminated in all but a small fraction of the cases. This would result in premium reductions for District motorists and out-of-staters alike, with motorists from surrounding areas of Maryland and Virginia benefiting the most. This solution will work well enough if only a few jurisdictions adopt no-fault systems. But what if, say, 20 or 25 jurisdictions—operating in the absence of any meaningful guidance from the Federal Government—adopt a whole array of reform bills? If the motorist is to comply with a new and different set of complex laws every time he crosses a State line, he may need a Philadelphia lawyer as a traveling companion. The problems posed by out-of-State vehicles were recognized by Assistant DOT Secretary Baker in his testimony on the District of Columbia no-fault bill. Mr. Baker testified that the out-of-State problems could "limit rather significantly the potential benefits" of a District of Columbia no-fault system.

I might add at this point that the administration's position on auto insurance reform is riddled with inconsistencies. The administration has acknowledged that auto liability insurance is far and away the most inefficient compensation system we have, and that the inefficiencies cost the motoring public billions of dollars and incalculable misery each year. It recognizes that further reform is needed in every State of the Union, and that in no State has the fault system been anything but a miserable failure. Yet, its only response to this massive national problem is a proposed concurrent resolution urging the adoption of no fault plans on a State-by-State basis. It tells the Commerce Committee about the wonderful world of State-by-State reform, while it tells the District committee that State-by-State reform will not work unless neighboring States adopt similar or compatible plans.

One does not have to be a political pundit to predict what is going to happen to no fault bills in States whose legislatures are dominated by lawyers and insurance men. In Connecticut, for example, a no fault bill was referred to a committee of the general assembly in which

lawyers outnumbered nonlawyers by a 15-to-1 margin. In Maryland, the deck was stacked almost as badly with lawyers outnumbering nonlawyers 21 to 2. One commentator, who has been following the insurance industry for 40 years, has observed that in such a committee a no-fault bill has about as much chance as a sheep in a packing-house.

Waiting for the lawyers and the legislatures they dominate to come out against the fault system is like waiting for the petroleum industry to come out against the oil depletion allowance. Auto accidents generate over a billion dollars a year in legal fees—fully one-fifth of all the income of the legal profession. Under the fault system, each year 50,000 lawyers receive more in legal fees than 5 million victims receive in benefits for economic loss not otherwise compensated for. The fault system may be inefficient in a number of respects, but it is not inefficient in providing lush incomes for trial lawyers. A study conducted by Forbes magazine last month showed that plaintiffs' negligence lawyers led all solo practitioners with an average income of $71,000 a year. The article quotes one San Jose, Calif., trial lawyer as boasting that he has made $1 million a year for the last 10 years.

It is entirely understandable that the trial lawyers would oppose reforms which will lower premiums and increase benefits at their expense. With billions of dollars on the line, it is clear that the vested interests opposing no fault will continue to fight tooth and nail. The administration proposes that these special interests be countered by a toothless resolution. This course of action may be the politically safe one with an election year approaching. It may enable the administration to have it both ways—so that it can say to the consumer that it is for no-fault, while implicitly assuring the trial lawyers that it will stand by while no-fault bills are killed in the State legislatures.

It took 40 years to achieve nationwide workmen's compensation reform through a State-by-State approach. We will be lucky if we can reform the auto accident reparations system in 40 years on a State-by-State basis. It is true that the present system is so bad that sooner or later public pressure will force even the most recalcitrant legislature to enact some reforms. But the question is whether we must continue to victimize the American motorist and all who must appear in our overburdened courts. I would submit that we have no excuse for perpetuating the excesses and rank injustices of the existing system. And if we want full reform of the system in this century, we have to have a national bill.

The Hart-Magnuson bill was an excellent initiative, and Committee Print No. 1 is even better. I might add that on a number of significant points witnesses at our hearings urged us to adopt the features of Committee Print No. 1, and we are giving very serious consideration to doing so. A nationally administered system such as that proposed by Committee Print No. 1 would be a very great improvement over the existing system.

If the choice were between a nationally administered system and the administration's State-by-State approach, I would unhesitatingly opt for the nationally administered system. But those are not only two possibilities.

There is much to be said for a strong national standards bill, under which the States would be given a reasonable amount of time—say 2

years—to enact a true no-fault system with high thresholds. If the State legislatures failed to adopt such a system within the 2-year period. Federal law would prescribe that the system would automatically come into effect and that it would be federally administered until such time as State action did occur. I am inclined to favor this approach because there are a number of important aspects of a no-fault system on which there is a legitimate difference of opinion about how best to proceed.

First, and perhaps most important, is the question of how to handle pain and suffering. It seems clear that we must do away with the unrestricted right to sue for pain and suffering and other forms of general damages in auto cases, but it is not so easy to decide what we ought to create in its place. The approach taken on Committee Print No. 1—requiring all insurers to offer first-party pain and suffering coverage on an optional basis—has much to be said for it. This approach permits each motorist to decide for himself whether he woud rather have compensation for pain and suffering or lower premiums. But there is no way of telling at this point how much such coverage would cost, how much litigation it would generate, or how much high pressure salesmanship would be brought to bear on uninformed motorists to buy coverage they may not really want.

Another approach might be to require that pain and suffering benefits be awarded to certain classes of seriously injured victims under the mandatory first-party coverage on a scheduled basis. These awards would be for intangible loss and would be over and above the benefits recovered for medical expenses and lost income. Persons who wanted even more compensation for pain and suffering could be afforded the opportunity to take out optional first-party pain and suffering coverage at an extra cost. There are other possibilities as well, foremost among them being the approach taken in the Moss-Eckhardt national bill, which has been introduced in the House. We need practical experience to decide which of these approaches is best.

On the question of whether auto insurance should be primary or secondary with respect to other sources of recovery such as health insurance and wage continuation plans, there is also a significant amount of controversy.

Massachusetts and Florida have made auto primary, but they permit the motorist to elect a relatively high deductible on his auto policy so that he can have the benefit of a much lower auto premium if he also carries some form of private health insurance. This is also the approach which DOT recommended in their testimony before the Senate District Committee last month.

However, such an approach creates major enforcement problems because insurance agents, who receive a commission based on the size of the premium they sell, have no economic incentive to make the motorist aware that he can save money by taking a deductible on his auto policy. The results in Massachusetts indicate that for some reason very few motorists are electing the deductible, and President Jones of the American Insurance Association admitted before our subcommittee that "there is a record in Massachusetts which (does) not look good."

It may be that there are some agents who out of the goodness of their hearts will help the motorist get the right coverage even though

it will mean a lower commission for them, but realism compels me to add that if you establish a system in which proper coverage will be offered only when the agents are willing to act against their economic self-interest, you are going to have major enforcement problems.

The approach taken in Committee Print No. 1 goes far towards making auto primary. There is, of course, a good deal of support for this position, but there are also important countervailing factors which argue for making auto secondary.

The two most important of these factors are premium savings and prevention of duplicate benefits. If auto is secondary, we can expect that the total premium an individual pays for his auto coverage and for his health insurance coverage combined will be less than the cost of that combined coverage would be if auto were primary. The reason for this is that even under a first-party auto system, auto insurance will return less benefits to the motorist per premium dollar than health insurance coverage does.

In addition, by making auto primary, we may well be creating a situation in which the auto accident victim collects twice—once from his auto policy and once from his Blue Cross or other health insurance policy. This will please the insurance companies because under the existing system they have every incentive to sell the individual as much insurance as they can—whether he needs it or not. But we do not do the motorist a favor when we force him to take out more coverage than he needs. Because under any insurance system the individual typically gets back less than a dollar in benefits for each dollar he pays in premiums, the result of overinsurance or duplicate benefits is that the individual is in a real sense less well off economically than he would be if he were covered only to the extent of his actual economic loss.

For those reasons, it may well be that the best way to find out exactly where the balance should be struck is by giving the States some latitude in dealing with the primary-secondary issue.

Finally, there is the question of whether automobile insurance ought to be offered through the private sector or by the Government. Committee Print No. 1 and all the major State no-fault bills have opted for contiuation of the existing system in which all auto coverage is offered by private carriers. Despite the fact that the auto insurance industry is open to serious criticism because of its failure to press for reform, its failure to make insurance readily available to groups such as the elderly and the black, and its reluctance to pass cost savings on to its policyholders, I do not object to the continuation of the private enterprise system of marketing auto insurance.

By the same token, I do not see why a State which wants to adopt a Government-run insurance plan should not be given a reasonable opportunity to do so. The State-run plan in Puerto Rico has been a success. The premiums there are very low—about $35 a year, and the system pays out 90 cents in benefits for each dollar taken in, far more than any private insurance plan can do. By making it clear to the insurance companies that they do not have a monopoly on a captive market, we can provide a powerful new stimulus to bring about reform within the insurance industry.

For all of these reasons, I believe that a national standards bill deserves very serious consideration.

This concludes my prepared testimony. Again, let me commend the committee for addressing itself ably and energetically to a vital and a difficult issue. I will, of course, be happy to answer any questions that members of the committee may have.

As you mentioned, Mr. Chairman, I have presided over hearings of a subcommittee of the Senate District Committee on first party automobile accident reparations for the District of Columbia. I come away from these hearings with two broad conclusions.

First, if a no-fault bill limited to the District were to pass, the people of the District of Columbia would be far better off than they are today.

Second, if a national no-fault bill were to be enacted, motorists in the District and throughout the Nation will be far better off than if the Congress confines its activity to pious, but toothless, pronouncements about the need for reform.

The District of Columbia needs no-fault because the fault system works just as poorly here as it does everywhere in the Nation.

In return for this high premiums, the motorist gets spotty, inefficient benefits, if he gets anything at all.

A Department of Transportation study of automobile deaths in metropolitan Washington over a 1-year period showed that in fully half of all the cases, the survivors received not 1 cent from automobile insurance. In order to buy this inadequate coverage, the motorist must pay $7 in premiums for each dollar of compensation for economic loss not otherwise compensated.

In the District, the situation is aggravated by 80,000 uninsured vehicles which threaten tourist, commuter, and resident alike. For these reasons, the District needs auto insurance reform now.

If the no-fault bill in this District were enacted, the District would be in a better position to meet the requirements of any national bill that might subsequently be enacted.

Passage of a D.C.-no-fault bill would have the added effect of putting the Congress on record in favor of no-fault. Either way, a District of Columbia bill is entirely consistent with the national bill which this committee is now considering.

A no-fault bill for the District would be an enormous step forward, but it will not solve the whole problem. Forty percent of the automobiles involved in accidents within the District are out-of-State vehicles. This creates major problems, as the Assistant Secretary of Transportation Baker recognized in his testimony on the D.C.-no-fault bill. He testified that the out-of-State problems could "limit rather significantly the potential benefits of a District-no-fault system."

In his testimony before our committee, he recognized the difficulties which arise when different laws and different plans are in effect in different jurisdictions.

At that point, Mr. Chairman, the administration's position on automobile insurance reform becomes riddled with inconsistencies. It recognizes the difficulties which will arise from different automobile insurance plans and different jurisdictions. It also acknowledges that automobile liability insurance is far and away the most inefficient compensation system we have, and that the inefficiencies cost the motoring public billions of dollars and incalculable misery every year.

It recognizes that further reform is needed in every State of the Union, and that in no State has the fault system been anything but a miserable failure.

Yet, its own response to this massive national problem is a proposed current resolution urging the adoption of no-fault plans on a State-by-State basis. It tells the Commerce Committee about the wonderful world of State-by-State reform, while it tells the District Committee that State-by-State reform will not work unless neighboring States adopt similar or compatible plans.

One does not have to be a political pundit to predict what is going to happen to no-fault bills in States whose legislatures are dominated by lawyers and insurance men. In Connecticut, for example, the no-fault bill was referred to a committee of the General Assembly in which lawyers outnumbered nonlawyers by a 15 to 1 margin.

In Maryland, the deck was stacked almost as badly with lawyers outnumbering nonlawyers 21 to 2.

One commentator, who has been following the insurance industry for years, has observed that in such a committee a no-fault bill has about as much chance as a sheep in a packinghouse.

Waiting for the lawyers and the legislatures they too often dominate to come out against the fault system is like waiting for the petroleum industry to come out against the oil depletion allowance.

Auto accidents generate over a billion dollars a year in legal fees—fully one-fifth of all the income of the legal profession. Under the fault system, each year 50,000 lawyers receive more in legal fees than 5 million victims receive in benefits for economic loss not otherwise compensated for.

The fault system may be inefficient in a number of respects, but it is not inefficient in providing lush incomes for trial lawyers.

I might add, Mr. Chairman, that I am a former trial lawyer, I am a former lawyer-legislator, and I think in this case can testify from some personal experience. It is understandable that the trial lawyers would oppose reforms which will lower premiums and increase benefits at their expense.

With billions of dollars on the line, it is clear that the vested interests opposing no-fault will continue to fight tooth and nail.

The administration's course of action may be the politically safe one. It may enable the administration to have it both ways, so that it can say to the consumer that it is for no-fault while implicitly assuring the trial lawyers that it will stand by while no-fault bills are killed in the State legislatures. But it is not the right course of action.

It took 40 years to achieve nationwide workmen's compensation reform through a State-by-State approach. We will be lucky if we can reform the auto accident reparation system in 40 years on a State-by-State basis.

In response to some earlier remarks by the very distinguished ranking minority member of this committee, Mr. Chairman, it is my understanding that of the States which have acted recently in this field, there are now in the whole Nation only two which have even partially done away with the fault system; namely, Florida and Massachusetts.

The present system is so bad that sooner or later public pressure will force even the most recalcitrant legislature to enact some reforms. But why we must continue to victimize the American motorist and the injured pedestrians, and all who must appear in our overburdened courts, is the real question.

64-345 O - 72 - pt. 5 - 4

I would submit that we have no excuse for perpetuating the excesses and rank injustices of the existing system. If we want reform of the system in this century, we have to have a national bill.

The Hart-Magnuson bill was an excellent initiative and Committee Print No. 1 is even better. I might add that on a number of significant points witnesses at our hearings urged us to adopt the features of Committee Print No. 1, and we are giving very serious consideration to doing so. A nationally administered system such as that proposed by Committee Print No. 1 would be a very great improvement over the existing system.

If the choice were between a nationally administered system and the administration's State-by-State approach, I would unhesitatingly opt for the nationally administered system. But those are not the only two possibilities.

There is, I believe, much to be said for a strong national standards bill, under which the States would be given a reasonable amount of time, say 2 years, to enact a true no-fault system with high thresholds. If the State legislatures failed to adopt such a system within the 2-year period, Federal law would prescribe that the system would automatically come into effect and that it would be federally administered until such time as State action did occur. I am inclined to favor this approach because there are a number of important aspects of a no-fault system on which there is a legitimate difference of opinion about how best to proceed.

First, and perhaps most important, is the question of how to handle pain and suffering. It seems clear that we must do away with the unrestricted right to sue for pain and suffering and other forms of general damages in auto cases, but it is not so easy to decide what we ought to create in its place. The approach taken on Committee Print No. 1—requiring all insurers to offer first-party pain and suffering coverage on an optional basis—has much to be said for it. This approach permits each motorist to decide for himself whether he would rather have compensation for pain and suffering or lower premiums. But there is no way of telling at this point how much such coverage would cost, how much litigation it would generate, or how much high pressure salesmanship would be brought to bear on uninformed motorists to buy coverage they may not really want.

Another approach might be to require that pain and suffering benefits be awarded to certain classes of serious injured victims under the mandatory first-party coverage on a scheduled basis. These awards would be for intangible loss and would be over and above the benefits recovered for medical expenses and lost income. Persons who wanted even more compensation for pain and suffering could be afforded the opportunity to take out optional first-party pain and suffering coverage at an extra cost. There are other possibilities as well, foremost among them being the approach taken in the Moss-Eckhardt national bill, which has been introducted in the House. We need practical experience to decide which of these approaches is best.

On the question of whether auto insurance should be primary or secondary with respect to other sources of recovery such as health insurance and wage continuation plans, there is also a significant amount of controversy.

The approach taken in Committee Print No. 1 goes far toward making auto primary. There is, of course, a great deal of support for this position, but there are also important countervailing factors which argue for making auto secondary.

The two most important of these factors are premium savings and prevention of duplicate benefits. If auto is secondary, we can expect that the total premium an individual pays for his auto coverage and for his health insurance coverage combined will be less than the cost of that combined coverage would be if auto were primary. The reason for this is that even under a first-party system, auto insurance will return less benefits to the motorist per premium dollar than health insurance coverage does.

In addition, by making auto primary, we may well be creating a situation in which the auto accident victim collects twice, once from his auto policy and once from his Blue Cross or other health insurance policy. We don't do the motorist a favor when we encourage or force him to take out more coverage than he needs. Because under any insurance system the individual typically gets back less than a dollar in benefits for each dollar he pays in premiums, the result of overinsurance or duplicate benefits is that the individual is in a real sense less well off economically than he would be if he were covered only to the extent of his actual economic loss.

For these reasons, it may well be that the best way to find out exactly where the balance should be struck is by giving the States some latitude in dealing with the primary-secondary issue.

There is the question of whether automobile insurance ought to be offered through the private sector or by the government. Committee Print 1 and all the major State no-fault bills have opted for continuation of the existing system in which all auto coverage is offered by private carriers. But I don't see why a State which wants to adopt a government-run insurance plan should not be given a reasonable opportunity to do so. The State-run plan in Puerto Rico has been successful as far as I can tell. The premiums there are very low, about $35 a year, and the system pays out 90 cents in benefits for each dollar taken in, far more than any private insurance plan can. By making it clear to the insurance companies that they do not have a monopoly on a captive market, we can provide a powerful new stimulus to bring about reform within the insurance industry.

For all of these reasons, I believe that a national standards bill deserves very serious consideration.

Senator HART. Thank you, Senator.

I think I will reserve questions, but I suspect I reflect the feeling that you are speaking in a balanced fashion, recognizing that there are competing claims—I am not talking about accident claims—that there are several principles seemingly in conflict here, and you make the suggestion that a desirable way to resolve them is to permit the States, opting on a minimum set of standards that we would prescribe, to experiment.

In the bill that you are urging the District Committee to report out, how do you handle the general damage or pain and suffering?

Senator STEVENSON. Mr. Chairman, I was impressed during our hearings with the complexity and the legitimacy of the various points of view that were brought before our committee.

In the bill as originally introduced, we eliminate the pain and suffering tort altogether, except for certain very serious injuries. I, however, would like to see the subcommittee which I chair very seriously consider changing to a requirement that the insurance companies do offer insurance for pain and suffering on an optional basis to the motorist, leaving it to the motorist to decide whether or not that coverage is worth it to him.

We haven't, in the subcommittee, gone into a markup session yet, and I don't know what form the bill will finally take. I would not be at all surprised, however, to see the present provision changed in the course of our sessions within the subcommittee, and that is one possibility.

Another, of course, would be to schedule the benefits for pain and suffering, but I think the weight of the testimony at least favored a requirement of pain and suffering coverage for District motorists, but leaving it optional, making it possible for the motorist to acquire that coverage or not as he saw fit.

Senator HART. In the District Committee testimony, you didn't find any strong plea that we establish a government-run insurance plan which you suggest any State ought to have reasonable opportunity to establish if it wants to? You didn't get any plea that we do that, did you?

Senator STEVENSON. There wasn't any testimony favoring such a plan for the District. The District of Columbia government, as well as the administration, supports basically the bill that we introduced which contemplates continued use of private insurers. Not being concerned with other jurisdictions or the national approach, we just didn't receive any testimony on that particular question.

Senator HART. Senator Cotton.

Senator COTTON. May I join the chairman in commending you on an excellent statement.

With reference to my remarks, I think you misunderstood what I was saying. I did not assert that seven States had adopted a total "no fault" system. I said seven States, plus Puerto Rico, had adopted some form of the type of insurance commonly called no fault insurance.

May I say this to you, Senator: I am in accord with seven-eighths of what you have advocated in your testimony. I agree with you, and I want to make my position very clear on this. It is not my suggestion that the Congress withhold action in this field and wait to see if State-by-State 50 States finally come into line. I would be inclined to agree with your statement that it would be a good many years.

I also agree with what you stated, at least by implication, that each year we wait a large number of people are suffering from inadequately compensated accidents, and if something should be done it should be done in the reasonably near future. In other words, it is not just a pious expression, as you phrase it, that reform should come.

My own feeling is that reform should come and should come soon. I have had some experience working within the present system. In my years of active trial work, I defended insurance companies and spent a good deal of time trying automobile cases in a small way because I was a country lawyer. I have had the same experience that you have had.

I have a very strong feeling, and I have said this very frankly to lawyers and representatives of insurance companies in my own State, that we are operating under an antiquated system and that reform must come.

I believe a subcommittee of the House Interstate and Foreign Commerce Committee has had hearings, as a practical matter, on a similar bill but has not met to report it to the full committee. It is my further understanding that even if the bill is ordered reported by the full committee, the Rules Committee of the House has indicated it is not granting a rule on any more legislation for the remainder of this session unless it is a matter of appropriation or some dire emergency. Therefore, I want to make it clear that the Senator from New Hampshire isn't saying, "Let's wait and see if the States will on their own volition move in this field." The Senator from New Hampshire is merely saying, "We will probably have to wait until the next Congress anyway, as a practical matter, so during that time we should have the benefit of the experience of the States gained under the various forms that they have adopted. If this is done, we will be able to frame a much more effective and intelligible bill next Congress.

I have a feeling that I will be thoroughly in favor of Federal action by that time, because I think we will know more about the experience of these various States.

I wanted to make that clear, and also that I am not in fundamental disagreement with the distinguished Senator from Illinois.

Senator STEVENSON. That is very encouraging to me, Senator. I thank you for clearing up what I was trying to say about the seven States. There are two that, strictly speaking, have abolished the fault system. In other States, including my own State of Illinois, there are hybrid reforms under which motorists now do receive were first-party coverage, but fault still exists as a means of apportioning losses between the insurance companies. Fault is still a part of the system in Illinois, and the result is you are not going to get appreciable savings in insurance costs in Illinois.

As I say, the Senator's remarks are very encouraging to me, and I should think a national standards law would not only encourage uniformity within the States which the administration recognizes is important, but it might also encourage the action which we all seek in the States which in turn will give the Congress more experience to study.

Senator COTTON. I have just one more question.

It is my understanding that your suggestion is, if and when Federal legslation is adopted, that it might allow States on their own volition to go into State insurance rather than leaving it in the hands of private insurance companies, but it is not your suggestion that Federal legislation should prescribe that.

Senator STEVENSON. Oh, no, sir. I was suggesting minimum standards which would permit the option of a State-run plan such as Puerto Rico has.

Senator COTTON. Thank you.

Senator HART. Senator Cook.

Senator COOK. Thank you very much, Mr. Chairman.

Senator, before I ask questions, there is one correction I would like to make, and I think it is in the record. You said, "Persons who

wanted even more compensation for pain and suffering could be afforded the opportunity to take out optional first party pain and suffering coverage," and I think you said at no extra cost. I think you must have meant at an extra cost.

Senator STEVENSON. I certainly did not mean to say that.

Senator COOK. I think that should go into the record so it is not on that basis.

I like very much the suggestion that States be given a period of time in which to do this. I can foresee if we do not follow this course that we could have a ratemaking agency in the Nation's Capital that would be as big as the Pentagon, and I am afraid they really can't comprehend and understand many of the problem that you and I face with almost every Department of the Federal Government with regard to situations that arise in our States.

I think the State insurance commissioners have put out an exceedingly fine case as to their ability and as to the efficiency of State agencies in the operations that they carry on now.

The one thing that did bother me was your indication that the Puerto Rican system is working well. I think the American people should be aware of conceivably what they will run into, and this is one of the reasons that I thought more hearings on this were necessary.

You are aware of the fact that under the Puerto Rican system tort liability still exists for any amount of recovery over the basic coverage?

Let me give you an example. In Puerto Rico, for example, the loss of one eye in an automobile accident allows a recovery of $5,000. The loss of both eyes allows for a recovery of $7,500.

Now, I am sure that every insurance company in the United States would love to settle their claims as fast as they could settle them either on a $5,000 or a $7,500 basis, but I am quite sure that we would be doing the American people a tremendous disservice.

You indicated in your District of Columbia bill that you were eliminating the tort factor. If you eliminate the tort factor, are you taking into consideration some really responsible schedule, because frankly I don't think I could recommend to anybody that the Puerto Rican schedule at this stage of the game for $35 a year would be responsible? The total recovery, for instance, for death in the State of Puerto Rico system is $15,000.

Now, again I don't believe that you or I could recommend such a schedule to the American driver and to the American economic standards. Do you agree with that?

Senator STEVENSON. Senator, the survivors of half of the people killed in automobile accidents in the District of Columbia recovered nothing for death. I think the citizens of this country want to be assured of a prompt and a fair recovery for the deaths of their loved ones and for their own injuries, and they want to pay as little as is possible for the insurance coverage.

You get into a tradeoff situation: How far do you go to limit the recovery for pain and suffering in exchange for prompt and adequate coverage at a minimum cost? It seems to me one way of striking that balance is to provide the motorist with the option of taking out from an insurance company as much first party pain and suffering coverage as he wants, perhaps according to several schedules of benefits.

I wouldn't deprive him of that coverage. I would give him the option. Many motorists, I don't know how many, none of us know, might very well opt for no such coverage, and save the premiums.

Senator COOK. I agree wholeheartedly with what you say, but the point I wanted you to bring out, and you did, is what we are really talking about is a minimum coverage under no-fault with the opportunity for the insured to carry as much additional coverage as he desires. Secondly, you also recommend that the Federal Government set the standards and allow a period of time by which the States shall act or shall be covered by the Federal program if they fail to act. This would operate in favor of a continuation of the State insurance departments in the operation of this under an edict to reform or be controlled by the Federal Government?

Senator STEVENSON. That is basically what I am suggesting in the national standards approach, leaving it among other things for the States to determine what kind of coverage should be made available within their jurisdictions for pain and suffering.

Senator COOK. Good.

Thank you, Mr. Chairman.

Senator HART. The Senator from Maryland.

Senator BEALL. Thank you, Mr. Chairman.

Senator Stevenson, as one who has spent most of his adult life selling insurance, I find myself in basic agreement with your statement. I think that no-fault insurance is not only bound to come but it should come as soon as possible. I do think, however, that it would probably work out better in the long run if we followed your suggestion and allowed the States sufficient time to put in their own plans with perhaps a pretty heavy Federal hand laying in waiting in the background.

I am wondering, first of all, if you think 2 years is sufficient time to allow the States to come up with plans of their own as a result of your experience.

Senator STEVENSON. Senator, I think so. This debate has been going on for years and years and years. I remember first hearing about the whole issue when I was studying law in law school.

I think to get some action, we ought to have a short deadline, and if real problems do arise at the State level meeting that deadline, the Congress can take another look at the terminal date.

Senator BEALL. Another question which bothers is the fact that I felt that rate reduction comes about generally through accident prevention, and it has been my experience, and I think statistics bear this out, that in a great number of the accidents across the country, alcohol is involved.

Now, if we rely on normal legal procedures or the normal State enforcement when we deal with alcohol, it takes a lot of time before a person is determined to have been using alcohol or not to be using alcohol.

Insurance companies, who have been subjected to some criticism because of this, perhaps rightfully in some instances, have as a result of their own investigative procedures said to some individual, "You have a known record for using alcohol, and we are not going to give you any insurance." In that way they have helped to deal with accidents.

I wonder how much, and maybe you don't want to deal with this question today because it deals with specifics, but I wonder if it wouldn't be wise to give some discretion to whoever writes the insurance, whether it be a State plan or private industry, to establish certain standards which would take into consideration the use of alcohol, because it is such an important factor in accidents across the country.

Senator STEVENSON. We did go into this question in the hearings held before the District subcommittee, the whole question of how you deter careless, negligent driving, and we went into the question of what to do about the alcoholic driver. The bill that I have introduced only requires the issuance of the insurance to licensed motorists.

If an insurance agency or an insurance company has knowledge that a motorist is unfit to drive, I should think it would be entirely possible for the insurance company to make that known to the licensing authorities in the jurisdiction, and perhaps the license should be lifted. The company would then be relieved of its obligation to offer the insurance to the motorist.

But it seems to me, getting back to your question, Senator, that you are touching now upon a problem that best be left to the States to resolve under a national standards approach, the States which license the drivers, the States which regulate the insurance companies, the States which control the traffic on their highways.

Senator BEALL. One final question: Since the District of Columbia hopefully is about to adopt a no-fault insurance plan, do you think that this plan can succeed for any length of time or be successful for any period of time unless Maryland and Virginia also have such plans? I would suspect that the highest proportion of drivers in the District of Columbia, and perhaps the highest proportion of those involved in accidents, come from outside the District.

Senator STEVENSON. I have been looking forward to telling you what a great thing this would be for the State of Maryland.

Senator BEALL. That is the reason I asked you the question.

Senator STEVENSON. I believe it will work more effectively if Maryland and Virginia both adopted no-fault plans. It raises some problems for us. What do you do, for example, about the Maryland motorist in the District? Should he be required to amend his policy to take out no-fault insurance to cover him while driving in the District, or do you require the District motorist to retain some residual tort liability coverage for accidents with out-of-State motorists?

We also have the problem of the District motorist in Maryland, too, and what his rights and obligations are under the law of your State. I don't know which way we are going to come out, but it looks to me as if no matter what way we come out, everybody in the adjoining States is going to benefit from a no-fault law in the District. No-fault insurance is cheaper.

We could have a very quick effect on the premiums for automobile insurance in both Maryland and Virginia. It could be, and we received testimony from representatives of the insurance industry which indicated that there would certainly be no additional insurance cost in Maryland and probably there would be, and quickly, reductions in insurance cost in Maryland when and if the District adopted the no-fault insurance.

But there are these problems which could best be resolved either by the national bill or by State-by-State bills which did follow some standards and were uniform within limits.

Senator BEALL. I thank you.

Senator COTTON. May I ask one more question?

Senator HART. Yes.

Senator COTTON. This is not an argumentative question. It is for information. Have you considered in the case of national legislation the matter of rates?

Parenthetically, I might say that New Hampshire is probably the best and nicest State in the Union to live in; our accident record is pretty good and except for some cold winter mornings, it is a safer and more delightful place to live.

The rates that insurance companies set for New Hampshire motorists are considerably more favorable than insurance rates set for those who live in metropolitan areas. I have been compelled to have—even though I sometimes wish I didn't—two cars.

I insure them both in New Hampshire. But I also am compelled to disclose that one of those cars, at least 10 months of the year, will be in Washington.

Under the rules of the insurance company, approved by the insurance department, I pay a much lower rate on the car that stays in New Hampshire than I pay on the car that is here in Washington 10 or 11 months out of the year, depending on whether we ever adjourn.

What is your suggestion in the face of national legislation which sets up criteria? Would you recognize that differential, and how would you do it?

Senator STEVENSON. First, Senator, let me just suggest to you that if you support this no-fault insurance bill for the District of Columbia, you will soon be paying a lower premium for your District car than for your New Hampshire car.

But I am assuming, and I haven't gone into this particular question under the national standards approach, I had assumed in thinking about it that the determination of rates would remain with the State insurance commissioners and that those rates would reflect the experience under no-fault in the respective jurisdictions, and, therefore, your premiums in New Hampshire under no-fault would remain relatively lower than no-fault premium rates in other parts of the country.

Senator COTTON. In other words, you are suggesting the type of legislation that sets up certain criteria but does not attempt to cross every "t" and dot every "i" in the matter of insurance rates, and how the States shall handle the no-fault system?

Senator STEVENSON. Yes, sir; that is basically what I am suggesting as a positive alternative to the Hart-Magnuson approach.

Senator COTTON. Thank you.

Senator HART. The Senator from Tennessee.

Senator BAKER. Thank you. I apologize to you and the committee and to Senator Stevenson for arriving late, especially since I was, in part at least, instrumental in asking for these additional days of hearings.

I especially wanted to hear Senator Stevenson's testimony because he perhaps has been more intimately involved in the evolution of these concepts and the advantages of no-fault insurance and pitfalls than any other Member of the Senate by virtue of his work on the Senate District Committee.

Senator STEVENSON. I don't think that is true at all. I have had hearings recently on a subcommittee for the District Committee on District insurance.

Senator BAKER. I think the suggestion I am told you made in your statement bears a good deal of thorough examination, and I won't belabor the record now except to say that I appreciate the ideas that you have expressed and I will consider them very carefully.

I thank you for bringing your previous experience on this issue to this committee. I have nothing further, Mr. Chairman.

Senator HART. Again, Senator, thank you.

I think you have introduced a note that may have rather broad appeal to the committee, the concept of Federal standards, and a time certain within which compliance by the States will be required.

Our next scheduled witness is a member of the American Trial Lawyers Association, and it happens to be an old friend of mine from law school days at Ann Arbor. We welcome Mr. Craig Spangenberg.

STATEMENT OF CRAIG SPANGENBERG, AMERICAN TRIAL LAWYERS ASSOCIATION, CLEVELAND, OHIO

Mr. SPANGENBERG. Thank you very much, Senator Hart.

Senator HART. There is some indication——

Mr. SPANGENBERG. Mr. Wolfstone and I were going to testify together. I have to go back to Cleveland, and Leon has allowed me to testify first.

I have a statement that is not different in essentials from matters which have been put before the committee before, and rather than read that statement, let me turn to what I think is the real heart of the problem.

Senator HART. Let me inquire whether there is objection to printing the statement in full in the record.

Mr. SPANGENBERG. I would want the statement printed in full, but let me just expand on parts of the statement, Senator.

I was on the DOT Legal Advisory Committee for 2 years, and I am on the Advisory Committee of the Conference of Commisioners and have been actively studying no-fault proposals for 4 or 5 years for the American Trial Lawyers, and I have also conducted an international seminar for the International Academy of Trial Lawyers to find out how others handle the problem.

Senator COTTON. Will you please put that mike a little nearer.

Mr. SPANGENBERG. The system around the world generally is that there will be no-fault benefits for every victim of every automobile accident in some amount. The amounts vary from country to country. In every other country in the free world the innocent victim who is in the right or who is seriously injured or injured at all by someone in the wrong gets full compensation under a tort system with a right to trial. Seldom a trial by jury but a trial by judge.

The countries that have recently changed their reparations systems have adopted the same kind of plan. Manitoba now is on that kind of

plan as is Ontario. Sweden, West Germany, Norway, France, and England have had the plan for many years.

The hard-core problem and the problem that this committee should deal with is not at all the victim of the small injury or the small claim. I think the DOT studies make it abundantly clear that very little money, regardless of percentage, is paid out to the average claimant. Fifty-six percent of all victims, as you know, receive less than $500 for everything—wages, medical, pain and suffering. And the average payment to this under $500 class is down around $200, $230.

The hard core of the problem is what should be done about a very small number of victims of very serious or fatal accidents. The DOT studies, and I am sure, Senator Hart, you are quite familiar with them, because you have quoted them in one of your articles, show that a small group of 45,000 people altogether, which is about 1 percent of the annual total injured, have enormous loss. Their losses, that small number, average $76,000; that is, the medical and future wage loss. Many of them are fatal, of course, where a high future wage loss counts very heavily.

Under the present tort system, a great many of these people do not recover at all. Now, that is said to be a criticism of the tort system, although I think it is not, if you will bear in mind that about one-third of the fatal cases involve a drive leaving the road and hitting a tree or running into a bridge abutment, many of them very high speed collisions, many of them drunken collisions. Half of all fatalities involve alcohol, not a social drink but very heavy alcohol consumption.

So the question is if a fellow decides he is entitled to risk his own neck and drives at high speed and hits a fixed object and is killed, first, should he be paid? If so, who is going to pay him? Third and most important, do you make the good driver pay for that loss?

Of the two-thirds who are not single car semisuicides, in the normal course of affairs, some of them will be in the right and some will be in the wrong.

One of the DOT studies, the price variability study, looked into a set of cases of very heavy loss. This is in the tort system where there is liability. There was a series of a little over 50 cases. Half of them were drivers who had driven to the wrong side of the road. These usually serious, heavy injury collisions, where you get head-on collision signals or stop signs. Some of those at high speeds, too—100-mile-an-hour crashes; 80-mile-an-hour crashes.

In that kind of crash where one driver is clearly right, driving properly on his side of the road, and the other is clearly wrong, both may receive similar injuries. The question is should the system that you design pay the full amount to everyone who is injured in that way? Your bill does that, the Committee Print No. 1 does that.

But let me point out to you what that will cost. Let us take the whole gamut of seriously injured people as the DOT defined it. That is the 500,000 serious and fatal cases.

DOT studies said personal and family loss was $5.1 billion but with a note that it does not include young people and students about to enter the earning market. If you include those young people, the economic loss is $6 billion a year.

I note that Committee Print No. 1 does pick up the man about to enter the wage earning market. You do not freeze him to last year's earnings as one of the other bills does.

That means for this class of very seriously injured victims, the economic loss total to be compensated is about $6 billion. The present tort system pays only $813 million plus another quarter of a million in medical pay and so forth to this group as a whole.

Two reasons for that: first, a third of the victims killed or injured themselves by very bad driving in which the tort system should not be expected to pay for it. Of the remainder some were clearly wrong, like this series of wrong side of the road, running stop signs, who should not be expected to recover under the tort system.

Of the balance in the right, standard liability loss coverage, they run into $10,000 limits. If they have a $100,000 loss they are not going to get it. That is not because the fault system is wrong; that is because we have too low limits. Germany says 68,000 U.S. dollars minimum limit. We are more likely to say here 10 or 12. England says it does not cost much more for unlimited liability. So if you drive in England, you are insured for $10 million. Again, we have not followed that practice in our liability system, although I see we go into it in the no-fault system under this bill.

What will be the result of that? If under the tort system you are saying there is $6 billion in economic loss for this handful of people, and you are now paying them out of the tort system $1 billion, then obviously you must say it will cost at least $5 billion a year to pay their economic loss in full, which you are trying to do. You are never going to get more than 40 percent efficiency out of the insurance system. You do not get that now out of the collision insurance system which is no-fault-first-party-don't-investigate primary liability, which means that what you are saying is the American motoring public will have to pay $8 billion a year or in that neighborhood additional premiums each year to pick up the economic losses of these people who hit abutments and hit trees and drive on the wrong side of the road.

Now, if the American people want to do that, fine. I do not object to it, but I think they ought to know that that is what you are thinking about.

Perhaps more—not more important, equally important is the shift in costs. The bill puts a great deal more cost into the system and therefore you have to get a lot more premium out of the buyers. Let me point out some other areas in which you are now going to shift cost and make the good driver pay more.

I must disagree with the good Senator from Illinois who says that the District no-fault bill would cost less for the good Senator from New Hampshire. I now assume the good Senator from New Hampshire is a reasonably good driver and is not on a high risk, alcoholic assigned risk plan.

Senator COTTON. I insist that it appear in the record. [Laughter.]

Mr. SPANGENBERG. If that is so, you will have to pay more even if the premiums do not increase at all. The reason for that is quite simple. Again from the price variability study, two rather renowned experts, Brainard and Carbine, say that their investigations indicate that if a man is endowed to any degree with the power to differentiate between right and wrong, if he has any conscious control of conduct, which they

believe, if individual responsibility exists, then the prevalent cause of accidents and especially the serious and high risk accidents lies in a failure to control what must be considered controllable driver hazards.

It is the authors' position that cost variability is attributable to the failure of a relatively small segment of the market to exercise the care which lies within their power to exercise, and this failure which is individual is the fault with which the tort liability system concerns itself.

They then go to point out that a few drivers that are bad risk are charged high premiums, not quite as high a premium as they should in view of their bad risk record.

The vast majority of drivers, however, are charged very low premiums, that is, if you are a good driver, all that is being rated is your risk of hitting someone else and being at fault. I can give you a quick example on that. On property damage, which is third-party liability automobile damage, the difference between a 1–A risk and a 2–C risk is about 4-to-1. Now, if you go into first party, you no longer rate the risk of being a bad driver and hitting somebody; you rate two risks: what are his chances of hitting somebody, and what are his chances as a good driver of being stopped at the light and getting hit?

So you find then in collision insurance the spread in rates is about 2-to-1 instead of 4-to-1. When you change the risk of being hit, even though a good driver, the capacity for loss is substantially higher. Therefore, the rate changes.

The result of this, according to Brainard, is if your premium level remained exactly the same under no-fault, two-thirds of the drivers would have to pay higher premiums than they do now, one-third of the drivers would pay lower premiums than they do now.

There is some confirmation of that in Manitoba, which did shift to a partial no-fault system, and in Manitoba the figures are 64 percent of the drivers have to pay a higher premium, 36 percent pay a lower premium. That is, the no-fault system has to impose higher cost upon the good driver who then has to subsidize the losses of the bad driver.

Again, if that is what the American people want, fine, but I think the American people should realize that at least two-thirds of them are now classified as reasonably good drivers. It will make some difference. I suppose, as to the State in which you live. There is an annual compilation by the IOT of accident rates which is quite interesting.

It shows that the national average of injury accidents on all highways—State, Federal, rural, urban, secondary, primary—is 257 losses per 100 million vehicle miles of driving. Some States run very close to that national average.

If you are interested, Senator Cotton, New Hampshire averages 250 per 100 million miles, a little better than the national. The Senator from Tennessee lives in one of the safest States there is, only 168 accidents per 100 million miles in Tennessee, so the Tennessee driver ought to get a much lower rate.

We hear a great deal of the experience in Massachusetts. I might say that Massachusetts is so far out of line with any other State in the Union that I do not know how you can draw any conclusion from Massachusetts, because at the time they went to no-fault their injuries per 100 million miles were 604 against a national average of 257. My

own analysis of that is if you are interested in why it happened is simple. They went to compulsory bodily injury coverage, 5/10, back in 1927. They have never had compulsory property damage.

Over the course of decades the population has been well trained: if you are hit in the rear end, don't say: "You hurt my fender," rather, "You knocked the stop lights out of my neck." So they are repairing a lot of fenders with neck claims.

I would expect that the Massachusetts injury claim now that they have shifted over to a different system would show lower injury claims, higher property claims. In fact, if you look at what has happened in rates in Massachusetts, you will find that property damage rates went up one-third, personal injury rates went down one-sixth. But the collision rates and property rates are about two-thirds of the premium, which means that the motorist who was promised rate benefits from no-fault gets two-thirds of his premium increased by one-third, he gets one-third of his premium decreased by one-sixth. He winds up paying a higher overall premium.

I do not think you can look at these systems and just take one part of it. It is an overall system.

The other way in which Committee Print No. 1 will impose a far heavier load upon the average good automobile driver is that you have now changed the original approach which said the heavy truck should pay a higher premium, and you are saying now there is to be no consideration to the fact that the truck outweighs the passenger car 20 tons to 2, and the truck imposes much higher injuries when it is at fault than the passenger car does.

As to the incidence of loss—these figures I received from the Alliance—the incidence of loss per million vehicle miles for their insureds for private automobiles was 3.8. The incidence of loss rate for the trucks was 12.4. That is, the truck not only inflicts more loss, the truck has a much higher incidence of loss.

What happens when a car hits a truck? For these figures, if you will forgive me, Senator Hart, I quote your article in *Trial Magazine* in the October/November 1970 issue where you gave statistics that I have not seen in the DOT publications, saying in 1968, in truck and passenger car accidents—this was about half of the truck collisions, that is, about half the incidents in which trucks are involved in accidents involve trucks and passenger cars—in that series, truck-passenger car accidents, truckdrivers were killed in 16 instances, while car passengers were killed in 1,017. That is, the death rate between the car passenger and the truckdriver is in the ratio of 63 to 1.

Now, under the present system, the tort system, the heavy truck, the commercial truck does pay a substantially higher premium. Once you go to a system in which the automobile driver has to pay for his risk of loss, the average motorist now must pick up the tab for these 63 car passengers killed and the trucking company should get a much lower rate, because the truckdriver very seldom is either killed or injured.

That switch from the original version of a surcharge on the heavy vehicle to no surcharge on the heavy vehicle adds necessarily a rather heavy cost rate to your system, and it is a cost rate, again, the private automobile driver is going to have to pick up.

Senator COOK. Mr. Chairman, I have to leave. I am wondering if I might ask one question if no one objects.

Senator HART. Go right ahead.

Senator COOK. Are you saying in effect that today the young unmarried driver, under 25, finds it very difficult to get insurance coverage?

Mr. SPANGEBERG. He pays a higher rate.

Senator COOK. If we go to a system of no-fault with extended coverage over and above this, because this is a limitation on first party coverage, you are saying that it will be very easy for a company to write him since there will be no responsibility as to a wife, children, high income. If we go to this kind of system, the individual who needs extended coverage for the benefit of his family may find it very, very difficult to get that extended coverage. The young driver with no liabilities, with no problems except his automobile, would just be duck soup to be covered. They will be delighted to cover him, because he will be covered under this no-fault and they will pay him what he wants. Let's walk down the street. We go to the young man who has no liabilities. All he has is his automobile. There are no problems. We have got first party coverage and we write it right away. However, if we go down the street to a fellow who has a family with five kids, a wife, a $50,000 a year job, we must be very careful because our liabilities now will become just the reverse of what they are today.

Mr. SPANGENBERG. Exactly right. What you say is completely true. There is another effect to it which you should bear in mind. When you change the system that way—take a 17-year-old, unmarried male, no driver training, today he is the worst hazard on the highway.

All the statistics prove that he has the most enormous risk of loss. But he becomes a pretty good risk under the new system because he has no dependents. If he kills himself, as he is likely to do, the insurer pays nothing. There will be no medical if he is DOA except the ambulance bill, and he will have no dependents.

So he is a great risk if he is killed. But if he doesn't go off the outside of the curve, if he crosses over the inside of the curve, as in this series, 80-mile headon, and kills somebody, under the present system he pays the high premium for that risk, while you pay the low premium.

Now, if you reverse it, the good driver has to subsidize that bad driver. He will get a low premium, but since the loss is still in the system, who picks up the loss? The good driver. You not only change the rates drastically, but then the man who is in the good classification now has to pick up that cost.

Again, the mathematics, why it comes out that way—I am not enough of an actuary to say, but certainly Brainard, is a renowned authority, and he has said in the same magazine in which your article appeared Senator Hart, that he calculated with rates exactly the same, the rate change would be 65 percent. These are the good drivers who will have to pay a much higher premium for the no-fault as contrasted with the 35 percent of high risk drivers. That is, with the rates the same, 65 percent will pay higher rates and 35 percent will pay a lower rate than now. I am sure you will have actuaries who will confirm that has to be so. Under the DOT statistics with the small class of serious injuries, once you put $5 billion more cost into a system for which you pay $8 billion more in premiums necessarily to get the $5 billion out, against the system which is only charging $4.9 billion in premiums now, what is going to happen to your rates is going to be fantastic.

own analysis of that is if you are interested in why it happened is simple. They went to compulsory bodily injury coverage, 5/10, back in 1927. They have never had compulsory property damage.

Over the course of decades the population has been well trained: if you are hit in the rear end, don't say: "You hurt my fender," rather, "You knocked the stop lights out of my neck." So they are repairing a lot of fenders with neck claims.

I would expect that the Massachusetts injury claim now that they have shifted over to a different system would show lower injury claims, higher property claims. In fact, if you look at what has happened in rates in Massachusetts, you will find that property damage rates went up one-third, personal injury rates went down one-sixth. But the collision rates and property rates are about two-thirds of the premium, which means that the motorist who was promised rate benefits from no-fault gets two-thirds of his premium increased by one-third, he gets one-third of his premium decreased by one-sixth. He winds up paying a higher overall premium.

I do not think you can look at these systems and just take one part of it. It is an overall system.

The other way in which Committee Print No. 1 will impose a far heavier load upon the average good automobile driver is that you have now changed the original approach which said the heavy truck should pay a higher premium, and you are saying now there is to be no consideration to the fact that the truck outweighs the passenger car 20 tons to 2, and the truck imposes much higher injuries when it is at fault than the passenger car does.

As to the incidence of loss—these figures I received from the Alliance—the incidence of loss per million vehicle miles for their insureds for private automobiles was 3.8. The incidence of loss rate for the trucks was 12.4. That is, the truck not only inflicts more loss, the truck has a much higher incidence of loss.

What happens when a car hits a truck? For these figures, if you will forgive me, Senator Hart, I quote your article in *Trial Magazine* in the October/November 1970 issue where you gave statistics that I have not seen in the DOT publications, saying in 1968, in truck and passenger car accidents—this was about half of the truck collisions, that is, about half the incidents in which trucks are involved in accidents involve trucks and passenger cars—in that series, truck-passenger car accidents, truckdrivers were killed in 16 instances, while car passengers were killed in 1,017. That is, the death rate between the car passenger and the truckdriver is in the ratio of 63 to 1.

Now, under the present system, the tort system, the heavy truck, the commercial truck does pay a substantially higher premium. Once you go to a system in which the automobile driver has to pay for his risk of loss, the average motorist now must pick up the tab for these 63 car passengers killed and the trucking company should get a much lower rate, because the truckdriver very seldom is either killed or injured.

That switch from the original version of a surcharge on the heavy vehicle to no surcharge on the heavy vehicle adds necessarily a rather heavy cost rate to your system, and it is a cost rate, again, the private automobile driver is going to have to pick up.

Senator COOK. Mr. Chairman, I have to leave. I am wondering if I might ask one question if no one objects.

Senator HART. Go right ahead.

Senator COOK. Are you saying in effect that today the young unmarried driver, under 25, finds it very difficult to get insurance coverage?

Mr. SPANGEBERG. He pays a higher rate.

Senator COOK. If we go to a system of no-fault with extended coverage over and above this, because this is a limitation on first party coverage, you are saying that it will be very easy for a company to write him since there will be no responsibility as to a wife, children, high income. If we go to this kind of system, the individual who needs extended coverage for the benefit of his family may find it very, very difficult to get that extended coverage. The young driver with no liabilities, with no problems except his automobile, would just be duck soup to be covered. They will be delighted to cover him, because he will be covered under this no-fault and they will pay him what he wants. Let's walk down the street. We go to the young man who has no liabilities. All he has is his automobile. There are no problems. We have got first party coverage and we write it right away. However, if we go down the street to a fellow who has a family with five kids, a wife, a $50,000 a year job, we must be very careful because our liabilities now will become just the reverse of what they are today.

Mr. SPANGENBERG. Exactly right. What you say is completely true. There is another effect to it which you should bear in mind. When you change the system that way—take a 17-year-old, unmarried male, no driver training, today he is the worst hazard on the highway.

All the statistics prove that he has the most enormous risk of loss. But he becomes a pretty good risk under the new system because he has no dependents. If he kills himself, as he is likely to do, the insurer pays nothing. There will be no medical if he is DOA except the ambulance bill, and he will have no dependents.

So he is a great risk if he is killed. But if he doesn't go off the outside of the curve, if he crosses over the inside of the curve, as in this series, 80-mile headon, and kills somebody, under the present system he pays the high premium for that risk, while you pay the low premium.

Now, if you reverse it, the good driver has to subsidize that bad driver. He will get a low premium, but since the loss is still in the system, who picks up the loss? The good driver. You not only change the rates drastically, but then the man who is in the good classification now has to pick up that cost.

Again, the mathematics, why it comes out that way—I am not enough of an actuary to say, but certainly Brainard, is a renowned authority, and he has said in the same magazine in which your article appeared Senator Hart, that he calculated with rates exactly the same, the rate change would be 65 percent. These are the good drivers who will have to pay a much higher premium for the no-fault as contrasted with the 35 percent of high risk drivers. That is, with the rates the same, 65 percent will pay higher rates and 35 percent will pay a lower rate than now. I am sure you will have actuaries who will confirm that has to be so. Under the DOT statistics with the small class of serious injuries, once you put $5 billion more cost into a system for which you pay $8 billion more in premiums necessarily to get the $5 billion out, against the system which is only charging $4.9 billion in premiums now, what is going to happen to your rates is going to be fantastic.

I would expect the rates would go up on the order of at least twice, probably 2½ percent, though the actuaries can probably tell you that better than I can. I am just taking gross from the DOT statistics.

Senator COOK. Do you mean 2½ percent?

Mr. SPANGENBERG. Two and one-half times.

Senator COOK. You said 2½ percent.

Mr. SPANGENBERGER. Excuse me. Two and one-half percent, we would not worry about. If you are paying the $40 rate for bodily injury now, which is probably about the median for good drivers across the country, depending on what State in which you live, you can figure you will pay perhaps $100.

In the States with much higher risk, like Massachusetts and New York which is a bad State on accident rates, and the District of Columbia which isn't very good either—you have a very high accident rate in the District of Columbia, close to 400 injuries per 100 million miles—in those cases the rate pickup on losses will increase very greatly.

Senator COOK. Thank you, Mr. Chairman.

Mr. SPANGENBERG. Again, I suppose, Senator, it is a little odd for a trial lawyer to be talking about really acutarial matters, but I think someone in this hearing room ought to speak up once in awhile for the individual consumer, the fellow who is buying the policy now.

On that subject, it might—I would suppose that the Senators would be interested in knowing what their constituents really want. There is sometimes a temptation to do what you think is good for people and you find out that the people really don't want to be "done good to" in that way. The public attitude study of DOT describing not the compensation or insurance problems of cancellations and nonrenewal, but the fault system itself, put this question: "Under most States the system now is if you are in an accident you have to show the other driver alone is at fault; if you do, you get your losses.

Do you think that is a good system or bad system?

Those who said "good" system outweighed "bad" system 2½ to 1, which is pretty strong evidence that people believe in fault.

Then they went on. "Do you think the system should be changed?"

Sixty-eight percent, no. That is about seven out of ten, and of those three out of ten, on the question "how should it be changed," another one out of 10 said go to comparative negligence, that is, weigh the fault and reimburse proportionately, which would mean on those figures that eight out of 10 American people are saying the proper system is a fault system or a comparative negligence fault system.

That doesn't say they like cancellations, but that is a different problem. That is what the insurance industry has been doing. I would like to see closer attention paid to insurance company bad practices. The fault system itself doesn't necessarily have to have bad practices connected with it.

I hope I am not overly sensitive in pointing out that there is a great deal of criticism of the lawyer, but so far as I can find from reading the complaint letters, the criticism of lawyers isn't coming from people. It is coming from the insurance industry, who would certainly like to get rid of every lawyer in the country.

Then they could beat down the claimants even better than they do now.

Who gets the lawyer, and what does he do? It is the individual who goes out and hires him. But 60 percent of the people don't. They can settle on their own. It is only when they get into a tangle with the insurance company where they can't settle that they go to the lawyer.

When they go to the lawyer, the result of that is that about 5 percent of all injured people ever get a lawsuit filed—those are the DOT statistics, too—and about one-third of 1 percent ever go to verdict.

So, the verdicts are setting a standard for the cases filed that are settled without verdict which set the standard for the cases the lawyer has because someone hired him, but are settled without even filing a lawsuit, and those, in turn, set the standard for the 60 percent of the people who are able to settle without a lawyer at all.

I would hope you don't pass S. 945, Committee Print No. 1, on the argument it will avoid court congestion. The argument I am now making it, I hope you appreciate it, you are only using 17 percent of court time for automobile cases now for setting the standard. You are using about three times as much to protect the individual rights of the Manson gang and revolutionaries, and a whole class of muggers and rapists and car thieves, that is, the real congestion is on the criminal side, as I am sure you know.

It is perfectly proper to spend the time for the individual constitutional rights of those people, I don't quarrel with that. But I say they are a very small class. To say that you will use a third as much time to determine the right of 100 million American people who drive about 100 million licensed vehicles a trillion miles a year, by using 17 percent of court time isn't saying you are abusing the system or wasting your assets.

In fact, the professor who did the litigation study told us in the final meeting of the advisory committee that he viewed the litigation system as very efficient rather than inefficient, because he viewed it as a standard setter. He is the one who told us how few cases ever use the court system for verdict. But the effect of that, then, is to determine the rights of everybody else, including property damage rights as well as the injury rights.

I think in view of the time, Senators, that I would rather like to know what is on your minds. I have covered some other points in my prepared statement. One I would emphasize is that I do take some exception to the staff analysis of Committee Print No. 1 which said that if you take away the rights of the man who was right, who was innocent and who is disabled, which the bill does just to make it cheaper, if you take those rights away, we will let him go out and voluntarily buy a policy so that he can purchase those rights he now has as a birthright as an American citizen. In that way, the staff analysis says, we will let free market forces determine whether he really wants it. I must disagree with that analysis.

If you say here is something you now have because you are an American, we are going to take it away, and then let you buy it to see whether you really want it, I think you are saying the same thing that I would say if I said, "Let's see if American people want to vote. Take away the right of the ballot, but let every voter buy one for $50."

Then we will let free market forces determine whether he really wants the right to vote.

Secondly, if you are dealing with this kind of system in which you have a compulsory high cost base and then say you may buy the other coverage on top of the base, certainly, you disadvantage all the poor, don't you?

They have to pay more as good drivers than they do now. They simply will not be able to find in their budget room for the voluntary coverage. The man of considerable means can. I don't think you are going to find out whether people want it, you are going to find out whether people can afford to buy the extra coverage, which is a different question.

In that sense, the provision I think is quite discriminatory.

Senator HART. Remember Senator Stevenson said he heard about this basic problem when he was in law school?

Mr. SPANGENBERG. I didn't. We didn't. I didn't hear about no-fault plans seriously until Professor Keeton's tract came out, and then the great push in 1968 from AIA.

But that was the year in which AIA had heavy underwriting losses, the stock companies, and they felt they knew how to compete with health and accident insurance, they obviously were not competitive with casualty insurance, so we had the great drive by AIA on that subject.

You know, the AIA plan was presented with an analysis that its plan with limited benefits would cost 25 percent less than present casualty coverage.

The Alliance Actuaries then took the same data and said: "You have made some mistakes. It would cost 29 percent more than the present coverage." Your bill contains substantially more benefits than the AIA bill, and if these actuaries are right about the extra cost of the original AIA bill, I think you will find that the bill, S. 945, is going to be a double premium cost type of bill.

Senator HART. In addition to disagreeing with Professor Keeton, do you to the same extent disagree with the Department of Transportation?

Mr. SPANGENBERG. Which one of their recommendations? Some of their statistics I think are on an adequate basis.

Senator HART. Their recommendation is, let's have no-fault and soon but let the States do it. Do you agree or disagree?

Mr. SPANGENBERG. The final recommendation of DOT is that the situation is far more complex than anyone thought when we started the study. I agree with that, that we ought to try no-fault, that probably will do some good, but we don't know whether it will or not.

Senator HART. Do you agree with that?

Mr. SPANGENBERG. I think we ought to try it. No-fault is already here. Medical pay is no-fault insurance.

Remember, DOT said if you implement it, stage 1, probably just try taking care of medical with it, see how that works. Well, we have some experience now with first party medical pay. It seems to work quite well, and it is fairly inexpensive.

Stage 2, pick up some of the wage loss.

Stage 3, limit general damages, but they say throughout you probably should keep the tort system for the seriously injured man, though their definition of serious injury is far milder than the 70 percent permanent and partial disability—the 70 percent figure of the Stevenson

bill means if you lose one leg, you don't get paid, you have to lose two.

Indeed you have to lose two above the knee to get up to 70 percent. The DOT serious injury is a much lower classification than that. They say that is for stage 3.

Stage 4, put in property damage. They warn you may find along the way the costs too much, it is too inequitable, and people don't like it. But they say save your present method while you experiment, so you can get back to it if this doesn't work.

Do I agree with that?

Indeed I do. I have closed my statement to you by saying there may be some fairly useful no-fault systems. I would like to see it tried with a compulsory rider on every liability policy that would pay in full the total economic loss of 90 percent of all accident victims, and start with that and see if it works.

I think it will take a lot of junk cases out of the system. Then, you might want to expand it, and say if we can pay for 90 percent and it doesn't increase rates, suppose we adopt a level where we pay for the total economic loss of 96 percent of all the victims.

If you pay in full the total economic loss of 90 percent of all victims of automobile accident injuries in the United States today, you only need a $1,000 rider. I think you can start with that without disrupting anything. The actuarial figures I have seen say you can buy that for about $8. This is not going to impose any great obligation upon the poor driver.

If you go up to covering 96 percent of the total loss of all victims, you only go to $2,500. I think at stage No. 2, try that.

I have written that, I welome your study of it. But to me that is far different from saying that we are on the top of the cliff and the water looks nice, let's dive in, with total payment of all loss for everybody under a system in which nobody is liable for anything he does in an automobile, but everyone gets substantially full economic loss.

That is a total revolution. It is a total destruction of rights that American people think are dear, and it is an act that may involve you in inability to get back to a system that does work in part at least. It may be so costly that the cries of outrage will be overwhelming. If you are going to dive off from the cliff into that water, the good swimmer goes down and wades around first, and swims and sees whether it is 3 feet or 50 feet deep, and whether there are any rocks there.

That is what DOT is recommending to you, and that is what I am urging on you, too, to stage it piece by piece to see if it does work, because I am quite convinced that the kind of plan that you have in S. 945 is not within the bounds of economic possibility for most drivers.

If you say on the other hand: "What do you do about the fellow who does drive off the road and hits the tree" He does what he did before. He buys life insurance. In all the studies of what they didn't get from the tort system, you will find they got fairly substantial recovery from social systems, from medicare, from Blue Cross, from Blue Shield, from employment wage continuation plans, from pension plans, and from life insurance. Those are all available no-fault systems that are there today, available on a voluntary basis. People want it and buy it.

You can expand that market, but that is quite different from saying for their own good we will compel people to buy it and at the same

time we compel people to buy it, we will not undertake to control the rates that the industry charges. In fact, we will allow the industry, completely exempt from the antitrust laws, to fix prices, for a compulsorily purchased product.

I don't like that approach.

Senator HART. The Senator from New Hampshire?

Senator COTTON. Just one quick question.

Do I gather that you are inclined to believe that the no-fault system can and perhaps should prevail in the case of comparatively minor accidents, but that when you get into the type of accident in which damages run very high, you are liable to run into grave difficulty in trying the no-fault system out?

Mr. SPANGENBERG. Yes, when I said I thought the limit of benefits that would pay 90 percent of the victims can be very economically provided under a no-fault plan, you must understand the other 10 percent would get that same limit of benefits, that is, throughout the world and here I think no-fault and fault can coexist. They do today.

In other words, you can have a level of no-fault for which you get back something for your insurance dollar, and you can combine it with the system that says if you risk not just your neck, somebody else's neck, then you are responsible and liable for what you do. The two systems coexist. They do all over the world, and they can here.

Does that answer your question?

Senator COTTON. Yes, that answers the question.

Mr. SPANGENBERG. I want a coexisting system. I think no-fault will take all of the small cases out of the system.

Senator COTTON. Are you talking about both personal injury and property damage?

Mr. SPANGENBERG. I have serious questions about property damage from the standpoint of selling that to the public. Can I elaborate for just a second on that as to what you are likely to run into as a Senator?

Senator COTTON. Yes.

Mr. SPANGENBERG. To the American today, I am sure the automobile is an extension of his personality. When he gets hit in the rear end, he says, "You hit me," even though he wasn't hurt at all, it is just a dent in his car; but his car is himself in a very real sense. You hit me. He wants the fellow who hit him to pay his damages.

The response is, "Don't worry about it, my insurance company will pay for it." That satisfies the social problem. You hit me. I am to blame. But my insurance company will now pay for it. Fine.

So, there isn't much social warfare left after that has happened.

Now, you are saying if the fellow is at the light and he gets crunched from the rear; he says "You hit me." The other driver says, "It is not my fault. The Senator says I am not responsible for what I do. This is a statistical incident. So, I am not going to pay you at all." That leaves the fellow very angry. What can he do? What he must do is go buy his own collision coverage. The amounts involved are not large, but the principle is very important and I think when the American motorist finds out that under your bill he is——

Senator COTTON. It is not my bill.

Mr. SPANGENBERG. Excuse me, under Committee Print No. 1 he can't collect one dime from the fellow who creams him from the rear, that the screams of outrage are going to be heard in Washington without need of long-distance telephone amplification.

I don't think that is psychologically workable.

Senator COTTON. So you are inclined to believe that the no-fault system can be applied to personal injury accidents up to a certain amount?

Mr. SPANGENBERG. It can be applied to all of them. The benefits should be limited as to all of them. The level should take care of almost all of them, completely. Beyond that, let the man buy voluntary coverage to increase his recovery if he is completely in the wrong. That is, I want the wrongdoer to pay the extra premium and to be rated by the insurance companies. What are the chances of wrapping your car around the bridge abutment? I want him to pay the high premium for this. I don't want to pay for it.

For too many years I have never wrapped a car around the tree or injured anyone else. I enjoy a good premium rate because of that, as I am sure most of you do. I want to be rated as a good driver. I don't want to subsidize all the bad drivers on the road.

Senator COTTON. Assuming what you just said, that no-fault can coexist with the fault system, you draw the line first that no-fault would only apply to personal injury; and second, it would compensate for personal injury only up to a certain amount, after which the person injured would have his usual right to seek more through the tort liability system.

Mr. SPANGENBERG. Yes, if he were in the right and suffered real injury, yes.

Senator COTTON. He would have his usual right to proceed to obtain more under the present system, which presently supposes he was not guilty of contributory negligence and he was in the right?

Mr. SPANGENBERG. Yes.

Senator COTTON. To that extent they can coexist?

Mr. SPANGENBERG. Yes.

Senator COTTON. And to that extent they can save both for the insurer and the insured the cost of investigation and other expenses in comparatively minor cases?

Mr. SPANGENBERG. It would not cost any more than the present system, and there are reasons it should cost less. I hope you appreciate my point that the system we have just described in our conversation back and forth is the system that works, and works well; so their people tell me, in Manitoba, in Ontario, in Sweden, in Norway, in West Germany, and in France and in England—and in Puerto Rico; that is a dual system in Puerto Rico.

You still retain the tort suit. You do get first-party benefits.

Senator COTTON. And where do they draw the line in some of these places on the amounts?

Mr. SPANGENBERG. Manitoba, Sweden, France, Germany, England—no line, no threshold.

They find that small cases just don't come into the system. If you just don't have much injury, it isn't worth arguing about it, if you get your bills paid. I think a great many small claims are made now

like the "Massachusetts fender"—if you want to get your bills paid; they don't pay you. And you say if they don't, I'll sue you for my backache. You really have a backache, but you would be willing to forget it if you just got your bills paid.

That has certainly been the experience with the other systems. If you do pay the full losses to the small claim, he walks away and forgets it. That happens. You don't mandate that it be so. You don't need to. But I think—forgive me if I tell you this, I don't think you have enough medical knowledge to draw a threshold plan. I have seen some of them. "Loss of limb." Now what do you mean by loss? Does it have to be off? Loss of limb means disarticulation at the shoulder or hip, really.

How about the fellow who cannot turn his arm because he has a shoulder joint injury? He doesn't lose the limb. It might be paralyzed, without "loss" of limb. Brain injury is worse. All your limbs are there, they are just not any good to you.

Permanent disability. This high-speed man comes out from the other side of the road, hits you, and you have a lacerated liver, a lacerated spleen. I want to tell you you are going to be sick if you survive. If you get to the hospital on time and they can remove the spleen, which you won't miss too much if you are over 15—it is an organ that the young need more—you may survive. A lacerated liver, you may survive. The liver will regenerate, but you will be sick and in great pain. But if you survive and your liver regenerates after 2 or 3 months, you will not have permanent disability.

Are you going to say to that fellow that he wasn't entitled to anything because he did not lose an eye, lose a limb?

I think you overemphasize loss of a piece of the body instead of looking at what happened to the individual. Was he really terribly hurt? Was part of his life taken away from him?

Senator COTTON. I regret to say that in my trial days I lost some rather substantial verdicts on our old friend sacroiliac. One doctor would come in and say he had it and another would say he didn't have it, and the fellow would dance a jig.

Mr. SPANGENBERG. Did he? Did he dance a jig?

I have had some of these where 2 years later he went into surgery and they found he had a disc. It is now found to be a cartilage injury of the intervertebral joint that affects the sciatic nerve by putting pressure on it, and the surgical results are not very good.

I have an advantage over you, Senator, I have a ruptured disc. I know it is painful.

Senator COTTON. A ruptured disc can be ascertained pretty definitely, can't it?

Mr. SPANGENBERG. It is ascertained clinically. You do a myelogram only if you have decided you are going to operate, because the myelogram itself is dangerous. There is some death and disability rate from the myelogram. That tells whether you should operate at L-4 or L-5 or L-3, but the diagnosing of disc is done by most skilled orthopedic men today by symptoms.

Senator COTTON. I know a doctor who can determine whether you have a ruptured disc——

Mr. SPANGENBERG. Under "no fault," the fellow says my back hurts too much to work today. So you pay him. "My back hurts" is the only standard. If he wants surgery, he can get it. You pay for it.

I hear the statements, "we can pay out this money in 30 days." The things we are litigating now are, was he really hurt? Was he hurt in this accident? Did he have an old ruptured disc that he got back or an old back sprain? Is he laying it on too much and goldbricking? Does he hurt so much that he cannot go back to work as he claims? Or is he pretty well recovered but just wants the vacation paid for by the insurance company, in which case the insurance doctor usually is very optimistic and says, he is well and he can go back to work today.

Senator COTTON. Under the "No-fault" system, you have the same problem that you have now.

Mr. SPANGENBERG. You sure do. Those questions about the extent of injury, the necessity of medical, how much medical each should have, how long you stay off work; don't think you avoid those with No-fault. You have that same problem of determining the injury under either system, and it will be costly——

Senator COTTON. You avoid some under no-fault since you have limited damages.

Mr. SPANGENBERG. That depends on your system. Committee Print No. 1 is unlimited medical, wage loss unlimited for life up to $1,000 a month, which is a pretty high proportion of the working population, surely, of the whole population of the United States.

Senator COTTON. So, as Senator Cook brought out, in Puerto Rico, if you lose the sight of both eyes under that system you would get $7,500.

Mr. SPANGENBERG. Right.

Senator COTTON. You would certainly have the right, if you lost the sight of both eyes, to go back and seek more somewhere.

Mr. SPANGENBERG. I think you do under Puerto Rican law, if the other driver is in the wrong. You get that anyway, but you still retain the tort suit. That is a coexisting system.

Senator BAKER. Mr. Chairman, I have to leave to keep an important commitment at 1 o'clock. It is a little after 1 now. I apologize to the witness for having to go.

Senator HART. Mr. Sutcliffe?

Mr. SUTCLIFFE. I understand from your testimony that your main concern is the victim of a large loss. That was the first point in your testimony.

Mr. SPANGENBERG. No.

Mr. SUTCLIFFE. That is not your concern.

Mr. SPANGENBERG. You said my "main concern." That is a concern.

Mr. SUTCLIFFE. I wonder if you could pick up the DOT report there and turn to page 37 and read the sentence at the top of that page, please, for the record.

Mr. SPANGENBERG. "Furthermore, while tort theory says that qualified innocent victims are entitled to compensation for all their losses, both tangible and intangible, even successful tort claimants with serious injuries, who presumably also suffered serious intangible losses, do not on the average recover even their economic loss."

I explained that to you, I think, by saying you have said the average loss for the seriously injured class was $76,000, but your mandatory liability limits are only 10, and the answer is to increase those limits.

Mr. SUTCLIFFE. That would be one answer, to try to take care of the low recovery. But nonetheless, what we are trying to ascertain

here is the difference between the present system and a proposed change in that system.

The proposed change in the system would bring you to the level of economic loss recovery for all accident victims; is that correct?

Mr. SPANGENBERG. It depends on the plan. Committee Print No. 1 does; yes.

Mr. SUTCLIFFE. That is what we were considering today. Would you read what the ratio of net recovery with a tort claim is on the opposite page?

Mr. SPANGENBERG. I don't think I have to. I think that was 30 percent if the loss were $25,000 and over.

Mr. SUTCLIFFE. Thirty percent?

Mr. SPANGENBERG. Point 3.

Mr. SUTCLIFFE. The ratio is 0.3, so the percentage would be 30 percent.

What would it be if you didn't have a tort recovery? If you suffered over $25,000 of loss, were seriously injured; how much would you recover if you didn't have the tort claim?

Mr. SPANGENBERG. Under what plan?

Mr. SUTCLIFFE. This is the existing situation today.

Mr. SPANGENBERG. Well, under the present system that says in the very large loss, he recovers 30 percent of his loss from his other first-party benefits and he recovers 30 percent from his tort benefits on average. He is recovering 60 percent.

Mr. SUTCLIFFE. I think the figures show if you have a tort claim or if you don't have a tort claim and you are seriously injured, over $25,000, the average recovery is 30 percent of your net economic loss.

Mr. SPANGENBERG. Sir, I think you are completely misreading that chart. This chart shows what percent of recovery comes from tort and what percent of recovery comes from sources not tort.

For example, the $1,500 claim, you get twice the recovery—the economic loss with tort because you are getting general damages, but you also get 100 percent without tort.

Mr. SUTCLIFFE. Perhaps we are arguing over semantics at this point.

Mr. SPANGENBERG. You can't say that a $25,000 man gets nothing from tort, can you?

Mr. SUTCLIFFE. No, he gets an average of 30 percent of his economic loss.

Mr. SPANGENBERG. From tort.

Mr. SUTCLIFFE. What would Print No. 1 give him for his economic loss?

Mr. SPANGENBERG. I suppose that the number of those injured who will have wage loss in excess of $1,000 a month is very small, maybe 5 percent. I would guess you are saying in Committee Print No. 1 that you propose to pay 95 percent of the total economic loss to this whole class of seriously injured victims.

Mr. SUTCLIFFE. You had one other point.

Mr. SPANGENBERG. That is why I say I think you are saying that the motorist will now have to pay $8 billion a year more in premiums in order to do it.

Mr. SUTCLIFFE. Let me ask you, you say by making an option for intangible loss under the committee print that you are denying the person rights that he has as an American citizen?

Mr. SPANGENBERG. I say you are taking away rights that he now enjoys freely.

Mr. SUTCLIFFE. How can you say that in light of the fact that under the present system for seriously injured accident victims he recovers only an average 30 percent for economic loss and nothing for intangible loss?

Mr. SPANGENBERG. Sir, you say this as though a statistic were a person. Let me tell you, I have represented many poor people whose only protection in life is to drive carefully, who have gotten smashed by heavy trucks or by high-speed drivers, who have recovered 100 percent of their economic loss.

Those people exist. I can give you case and book on many of them. If you are fortunate when you get hit, you will be hit by a big truck. Then you have no problem about a collectible defendant. If you are hit by someone who has only $10,000 in insurance, then you are in serious trouble.

All these statistics are saying is that many drivers are under-insured for liability.

Mr. SUTCLIFFE. Aren't the statistics also saying in terms of the dollars available to compensate people for losses resulting from tragic automobile accidents, that not very many dollars are getting to the seriously injured accident victim?

Mr. SPANGENBERG. You say that the liability dollar is there to pay compensation to the victim. I don't think the present system was ever designed or intended to pay compensation to the 80-mile-an-hour drunk who goes off the road, travels 120 feet in the air, rolls over three times and winds up dead. That is a very high proportion of your seriously injured and fatality cases.

Mr. SUTCLIFFE. But of those people who are eligible for tort recovery, 42 percent, according to the Department of Transportation's statistics, the average recovery is 30 percent of the economic loss.

Mr. SPANGENBERG. That is right. But the man who is liable is under-insured.

Mr. SUTCLIFFE. But nonetheless, that is the situation today. To increase that 30 percent to 95 percent does not seem to me to be taking away a right of an individual in this society.

Mr. SPANGENBERG. Well, I would suppose, sir, that you could just put out that everyone in the United States has to buy $150,000 worth of life insurance at whatever premium the life insurance cost him, and in that way you would get $150,000 for everyone who is fatally injured.

If you say you must go out and buy first-party coverage to cover your own risk-taking whether you want to or not, instead of being protected as the poor man is now by saying if I drive carefully and don't hurt somebody else and somebody hits me, I have got a good chance of being paid, at least I will get something.

Under your voluntary coverage, if the poor man can't buy it, he don't get anything for his lifetime disability or disfigurement. He has to pay that coverage under your system. The first party coverage—you are not giving him anything, you are compelling him to buy it. No insurance company gives away benefits. They sell it to him. Mutual of Omaha doesn't give you health and accident benefits. They sell it.

I just don't follow you when you say this system gives you benefits. This system gives you nothing. This system says you go buy it.

Mr. SUTCLIFFE. And the liability system does not?

Mr. SPANGENBERG. No, no, no, it does not. The liability system says you have a right to life, liberty, and the pursuit of happiness. Everyone must use due care not to take that right away, and you must take care not to take your neighbor's right away, and if you do—if you do take that right away, you must pay full compensation for it.

That is all the liability system says. That is the tort system. Take care not to take away your neighbor's rights, which you are liable for.

Mr. SUTCLIFFE. How is that right reflected in the purchase of liability insurance?

Mr. SPANGENBERG. It isn't. You may want to spread the risk of being liable by buying liability insurance. There are many vehicles on the road who are called politely self-insurers, who never buy insurance at all; but are insured by their companies who are fully collectable. They find it cheaper without paying 40 or 45 percent over to the insurance company. Liability has nothing to do with insurance.

Mr. SUTCLIFFE. Liability has nothing to do with insurance, did I hear you say?

Mr. SPANGENBERG. Yes; you are talking about two different systems.

Mr. SUTCLIFFE. Haven't they been married under our present automobile reparations system?

Mr. SPANGENBERG. Well, they are at least very good friends. They are going together.

Mr. SUTCLIFFE. Your concern is for the innocent victim?

Mr. SPANGENBERG. My concern is for the innocent American who drives right and follows the rules of the road and stops at stop signs and at red lights and stays on his side of the yellow line, and gets clobbered by someone who breaks the rules.

Mr. SUTCLIFFE. You are not willing to accept the average of 30 percent of that particular person's economic loss if he is seriously injured?

Mr. SPANGENBERG. Mr. Sutcliffe, I would very much like to see you increase the mandatory liability insurance coverage limits to something like they have in Ontario or Germany. I think our citizens are entitled to that much protection. I think it is shameful that we tolerate just a 10–20 coverage as being enough if you buy liability insurance.

Statistically, on liability insurance, where you are not paying everybody but only those who are innocent, the cost of increasing coverage to those levels is really quite small.

Mr. SUTCLIFFE. What recommendation would you make for a limitation on contingent fees if that liability coverage were increased?

Mr. SPANGENBERG. I have long advocated that there should be judicial control of contingent fees.

Mr. SUTCLIFFE. At what level?

Mr. SPANGENBERG. Well, this will depend on whether a case, if it is very difficult, if it is small chance of recovery requiring a large investment in time, I think a contingent fee of 40 percent would not be unreasonable. If it is a case that is easy, simple, you can't lose, the contingent fee should be low.

I don't charge an average contingent fee. I charge a contingent fee that relates to the case. It may be 20 percent in one case.

Mr. SUTCLIFFE. In these other countries, are there contingent fees?

Mr. SPANGENBERG. They say not. If you go check what happens in Ontario, you will find that although the lawyer is supposed to charge cash in advance, he doesn't. When the case is over, he goes to court and says I think I should be paid ratably for my work and result, and he comes out of there with a 25- or 30-percent contingent fee which he doesn't try to collect if he loses. The idea that they don't have a contingent fee in Ontario is just a paper idea.

In fact, it is contingent. In fact, the poor man can't get good counsel unless there is that kind of a fee.

I note your limitation of 25 percent on the voluntary coverage. That doesn't bother me a bit. That is a case you can't lose. If he has the coverage, you have got to win. So, you are saying 25 percent with no chance of loss for determining how badly he is injured and what it is worth. That doesn't trouble me. I think it is a little different if there is a good chance of losing. If you think a contingent fee is abused, provide for court control by judges in the system.

There are places where it is not abused, as I am sure you know, and perhaps somewhere it is. If it is abused, control it.

Senator HART. If there isn't any objection, and because of our obligation to attempt to proceed to as many witnesses in as orderly fashion as we can today, I wonder if there would be objection to reserving further questions, and those questions would be submitted in writing for reply to the record.

Mr. SPANGENBERG. I would be happy to answer in writing any questions that are submitted.

I have overstayed my leave.

Senator HART. There were many other things we would like to develop.

Mr. SPANGENBERG. Thank you very much for your time and attention, Senator Hart and Senator Cotton.

(The statement, and questions and answers follow:)

STATEMENT OF CRAIG SPANGENBERG, AMERICAN TRIAL LAWYERS ASSOCIATION

Thank you for allowing me to come before you again today.

The proper function of the legal system, in any government, is to define and protect the rights of the individual citizen. The proper function of the insurance industry is to evaluate the risks the legal system imposes, and offer risk-spreading insurance at reasonable rates to individual citizens who want protection against major loss. It is not in character for the writer, as a lawyer, to give advice on how insurance companies are to be run—but is equally out of character for the American Insurance Association to demand that fundamental rights of individual American citizens must be obliterated in order to assure a comfortable, profitable life for the stock insurance companies. We used to believe in this country that government and business should serve the rights of the individual, rather than *redesign* the rights of the individual to serve the needs of the private insurance industry.

Americans have long believed in the self-evident truth that every individual "is endowed by his Creator with certain unalienable rights, and among these are the rights to life, liberty and the pursuit of happiness." The intangible values of life, including freedom from crippling disability, freedom to enjoy normal activities and pleasure, and freedom from agonizing pain, are nearly as valuable as life itself. Tort law is founded on the natural principle that the unalienable rights to life, liberty, and the pursuit of happiness cannot exist unless every member of society exercises some care to protect his neighbor's rights. The fault system rests on the bedrock concept that there is a difference between right and wrong, and if one man carelessly injures his fellow man by wrongful conduct, the innocent victim ought to be compensated for *all* his losses, and the wrongdoer

should be liable for the losses he has caused by violating the rule of careful conduct.

Private insurance, on the other hand, is totally unconcerned with concepts of right and wrong. It charges premiums to spread the risk of loss, and is supposed to pay the loss when it occurs. "No-Fault Insurance" is just a Madison Avenue selling term for an old, familiar kind of insurance that has long been on the market. It does not "give" any benefits. It simply sells benefits, for a price the insurance industry calculates is enough to pay for its expenses, its profits, and the benefits or "losses" it contracts to pay. "No-Fault" insurance is either expensive or cheap only in a relative sense. It is expensive if it contracts to pay heavy benefits, and cheap if it pays few benefits. If a particular No-Fault Plan is set up to pay full compensation to all drivers, right or wrong, it has to cost about twice as much as a plan set up to compensate only those drivers who were right. The typical No-Fault Plan is set up with a No-Pay Plan, in order to keep costs down. Senate Bill 945 is no exception to the general rule. It is a No-Fault, No-Pay combination.

The essential feature of S. 945 is that it totally abolishes every natural right and every legal right of the American motorist. It abolishes the duty to drive with any care. It abolishes all responsibility and all liability of the reckless drivers who violate the rules of the road.

In simple terms, if a driver properly stops at a red light and is then smashed from the rear by a driver who ignores the light and the traffic (over 40% of all accidents according to D.O.T. studies) the driver in the wrong is not responsible. The driver who crosses the yellow line and hits another car head-on is not liable. The cab driver who runs a stop sign and injures his passenger in the resulting collision is not liable. (There is a small exception. If the driver who hits you is committing a felony at the time he is liable for the damage to your car and for general damages, but not for your medical bills and wage loss.)

What does S. 945 give back in return for the inalienable rights, the birthrights of American citizens, which it takes away? It requires full compensation for *all* losses for a very small group of citizens. It sets up a special class of those who do not own a motor vehicle and are not wife, husband, or dependent of a vehicle owner. This group will include some persons of considerable wealth who live in New York City apartments and have given up trying to drive or park a car in that metropolis. It will also include the very poor, who cannot afford even the oldest used car, and doubtless some elderly widows who never learned to drive. Inasmuch as there are about 100 million registered motor vehicles and about 100 million licensed drivers in the United States, the class of non-owner and non-dependent or non-spouse of an owner is necessarily small. This limited class is highly favored. If a member of this group is injured by an automobile, regardless of the circumstances, the insurer of the automobile must pay all wage loss, all medical, and full tort damages for disability, disfigurement, and pain. These benefits are "free". No member of this small class ever pays a nickel in premiums. The full compensation benefits will have to be paid for in higher premiums charged to the owners of vehicles. It is difficult to understand why those who pay nothing in premiums are treated so much more generously than those who pay the full bill for the benefits they get.

What rights do the other citizens get, who are owners or dependents or spouses of the owner of a vehicle? They get what they buy. The philosophy of the Bill, S. 945, is that a citizen who is made an outlaw on the highway, is subjected to a terrible risk of loss, and therefore if he is prudent he ought to buy health and accident insurance to protect himself. In order to make sure that he is prudent, he will be *compelled* to buy health and accident insurance, at whatever rate the private insurance industry sets. If he cannot afford to pay the price, he will not be allowed to drive.

The Bill does not set up a "free market", nor a regulated market. The consumer is compelled to buy, on pain of criminal penalty. The insurance industry is regulated as to the kind of benefits it must offer, but is free to combine and fix prices under a continuing exemption from Anti-Trust laws. There will be federal regulation of *classes* of risk, but no regulation of the rates within those classes by any federal agency.

The level of first party benefits contemplated by the Bill is substantial. The plan calls for payment of all hospital, medical and dental expense, and all rehabilitation expense "necessarily" incurred. The insurer and insured will wrangle over how much physiotherapy is "necessary."

A limited amount of wage loss will be paid, restricted by a ceiling of $1,000.00 per month. An individual who earns more than this can buy more coverage, if he is willing to pay the premium.

The person who suffers disability or disfigurement or agonizing pain at the hands of a reckless driver, even though completely in the right, gets nothing. This is a change from the original version of S. 945, where the tort suit was preserved for a small percentage of victims suffering "catastrophic harm", defined as being more than 70% permanent partial disability. Under the original bill, the innocent victim who lost one leg could not recover for general damages, but if he lost both legs he could. This kind of discrimination is hard to justify, and has been changed in Committee Print 1 to provide for absolute injustice to everyone on a non-discriminatory basis.

Insurance companies are required to offer special policies providing benefits for either excess economic loss, or intangible damages, or both. Many companies now write accident policies for monthly disability benefits, so that a policy providing for wage loss over $1,000.00 per month is not new. The "intangible damage" policy will be new. It will apparently provide that the insured can recover damages for disability and suffering of the amount that would have been available under tort law if tort liability had not been abolished, and the insurance company will be liable in a direct suit as though it were a negligent tort-feasor, even though the injuries were entirely the fault of the insured.

The innocent victim today enjoys this right of recovery, as part of his birthright as a free American citizen. S. 945 alienates this right, but allows everyone to buy the right that the good driver now owns without cost. The philosophy for this approach, as expressed in the staff analysis of Committee Print 1., is that "free market forces" will determine whether the public wants to recover for intangible losses. This is like saying we will charge every citizen $50.00 for the right to vote and then let free market forces decide whether Americans really want to exercise their right to a ballot.

THE COST OF S. 945

What will the benefit program of S. 945 cost the American motoring public? Actuaries are the people to predict this, but actuaries cannot predict the cost without knowing how many people will be injured and what losses they will sustain—and nobody knows those numbers. The only certainty is that the proposed system has to cost more than present liability insurance.

Compare the cost analysis of the original A.I.A. Plan. This proposed to pay all victims all medical expense unlimited in time; net wage loss limited to $750.00 per month maximum; no recovery for disability or suffering; with all benefits reduced by making them secondary so the Plan would pay only the excess over other first party coverages of the victim. The new version of S. 945 calls for higher benefits, with a wage ceiling of $1,000.00 per month and with substantially all payments primary, unreduced by collateral sources. The actuaries for A.I.A. said their original plan would cost less than existing liability insurance by as much as 25 per cent. Actuaries for A.M.I.A., the American Mutual Insurance Alliance, reviewed the *identical* data used by the A.I.A. actuaries and concluded the plan would cost 29 per cent *more*. That is a difference of 54 per cent when based upon the same data. The essential data for a true cost projection of S. 945 simply does not exist.

How many people are injured in automobile accidents each year? The D.O.T. study. Automobile Accident Litigation, says 4.4 million are injured each year, citing the Statistical Abstract of the United States, but the table cited in the Abstract is only a guess published by Travelers Insurance Company in a booklet called "Street and Highway Accident Facts", as the footnote shows.

In the same Abstract is published a National Safety Council Estimate, which says only 2 million are injured. In the D.O.T. study, Economic Consequences of Auto Accident Injuries, the research team published its estimate of 2.1 million, based on its sampling techniques. For the same year, the National Center for Health Statistics estimated 3.1 million persons were injured in automobile accidents seriously enough to require medical attention and lose one day's activities. A group called the "Insurance Information Council" has published in Ohio newspapers, to the writer's knowledge, a statement that 5.5 million are injured annually. Meanwhile, another regular department of the Department of Transportation publishes an annual compilation of "Fatal and Injury Accident Rates" which said, for the same year as the above statistics, that the total rate on all

state and federal highways, rural and urban, was 13.6 million accidents producing 2.6 million injuries. In its final report, D.O.T. said there were 4.2 million injuries, based apparently on a mis-reading of its earlier statement of 4.4 million.

With that vast range of estimates, how can any actuary tell how many total victims have to be compensated for medical payments and wage loss? How can anyone predict what the wage loss will be? Under the present system, a driver clearly to blame for the loss will limp back to work despite his pain, if he possibly can, to avoid loss of his paycheck. Under no-fault recovery, everyone can stay off work until fully recovered and free of all discomfort with no threat of wage loss. That may be a good thing, for the comfort of our citizens, but it has to be more costly.

In addition, S. 945 opens up a whole new class of claimants. Under the present system, only collisions are reported as accidents. Under Committee Print 1, payments are made for "injury" defined as meaning "accidental harm" defined as meaning "bodily injury caused by a motor vehicle accident while, in, or upon, or entering into, or alighting from a motor vehicle" among other things. People who trip and fall over the curb while getting out of a car are not now reported as "automobile accident" victims. People who fall off a stool while waxing the car are not now reported but will come with the payment provisions of S. 945 since the injury arises from the "maintenance" of the car. Maintenance or "use" also including unloading, so as we can expect some claims of sprained back while unloading luggage from the trunk under this proposal.

The number of additional claims may not seriously increase the cost. The great cost increase will come from the payment of all serious injury and fatality cases, where the major portion of insurance pay-out goes now and will continue to go under no-fault plans.

D.O.T.'s study of "Economic Consequences" showed that the relatively small number of fatality cases suffered extremely high losses, on the order of $89,000.00. The detailed study of accidents in the Metropolitan Area of Washington, D.C., showed that 49 per cent of the fatal accidents were single car collisions. In one third of them the car hit a bridge abutment or other fixed object at high speed or left the road completely with off-highway impact or roll-over producing death. These cases do not enter the tort system, since the death is not the fault of the bridge support or telephone pole. They will all come in, with heavy demand for payment under no-fault. In the class of "Serious Injuries" studied by D.O.T. at least one-third were single car cases outside the tort system, but now to be classified as fully compensable under S. 945. The cost will be high.

A fair idea of the cost increase can be generated from the D.O.T. final report, Motor Vehicle Crash Losses and Their Compensation in the United States, where it said in Table 2, page 6, that after making all appropriate deductions, the estimated compensable economic loss resulting from 1967 automobile accidents (sustained chiefly by seriously injured and fatality victims) was a total of $10,549,000,000.00, of which $4,860,000,000.00 was property damage. This means that compensable economic loss for medical, wage loss, and incidental related expense was $5,689,000,000.00.

If we assume the maximum achievable pay-out efficiency of a no-fault system is 65 per cent pay-out and 35 per cent administrative expense, as its proponents claim, then it would have required total bodily injury premiums at 1967 expense levels of $8,750,000,000.00 to make those payments. The total premiums for all bodily injury coverage written by all insurers in the United States for that same year, 1967, according to a Hart Committee publication (attributed to "The Spectator") was $4,991,133,000.00. If these figures are valid at least 75 per cent more premiums would have been required in 1967 (assuming that a 65 per cent efficiency in pay-out was possible).

The extra cost cannot be made up on the property damage side. In that same year, 1967, 2.09 billion dollars in property damage insurance was written, and 3.72 billion in first party physical damage was written, for a combined total of 5.79 in automobile damage premium covering both third party and first party coverage. Under S. 945, all liability is abolished so that total automobile damage (unless the victim swallows it) will have to come out of the first party collision coverage. Total damage premiums of 5.79 billion in 1967 could not have paid the 4.86 billion total property damage loss in that year as stated by the D.O.T. final report.

Up to this point the discussion has centered only on total cost. The distribution of cost among drivers is likely to be even more critical. Under the present system

the premium rate reflects the risk that the particular driver will *cause* the loss, that is, that he will be at fault in hitting someone else. Statistically it can be shown that most drivers pay a relatively low rate, as "good risks; and a relatively small group of "bad risk" drivers pay a high rate.

Under a no-fault system, the rate will have to reflect the risk of *sustaining* loss, of being struck. The good driver may have little risk of smashing into the rear-end of another car stopped at the light, but he has a necessarily higher combined risk of both being hit in the rear while blameless and hitting someone else when blameworthy. Present rate structures reflect the difference in fault and no-fault coverage. Property damage liability is third party, fault insurance. Collision damage is first party, no fault insurance. From a rate book for Minnesota (the only one the writer has) it can be seen that the rate for Rochester, Minnesota, for 10/20 bodily injury coverage, for a standard six-month period, is $17.42 for the best risk driver, class 1A, and $62.00 for the poorest risk, class 2C. The ratio is 3.5+ to 1 as between poor risk and good risk. For property damage insurance, $5,000.00 limit, the six-month rate for the 1A driver is $13.76, and for the 2C driver it is $49.50. This is ratio of 3.6 to 1, almost identical with the spread for bodily injury coverage. Now compare the difference in the spread for first-party, no-fault, collision coverage where the risk is both the risk of hitting someone else and getting hit. For $50.00 deductible collision on identical cars, the good driver 1A rate is $24.16 and the poor risk 2C rate is $54.36. This is a ratio of only 2.25 to 1.

Under the present fault system the worst risk of all possible risks is the 17 year old male, with no driver training, possessing his own car. He had an inordinately high risk of being to blame for a high speed collision, often with serious and fatal result. Under the plan of S. 945 he becomes a fairly good risk. If he becomes a fatality case, he has no dependents to claim lost support. If injured, he will lose no wages. The chief risk is medical expense, and youth tends to heal fast without the lingering complication suffered by the older driver with arthritic joints.

The middle-aged, hard-working, average family man is likely to be a good risk under present classifications. Under no-fault, he is not as good a risk. His recovery rate from injury is slower. If injured he is likely to demand the best medical attention, at high cost, and sustain near maximum monthly wage loss. Even if total rate income remains the same, the low risk driver will have to pay a higher rate and the present high risk driver will pay a lower rate. One authority in the field, Professor Brainard of the University of Rhode Island has calculated that about two-thirds of the drivers will pay more for no-fault coverage and one-third will pay less. In addition, the elimination of general damages will change the cost benefit ratio for the majority group of good drivers so that a dollar of benefit expectation would, in the average case, cost two-thirds more than it does even if over-all premium income was reduced by the Massachusetts rate of 15 per cent. (Trial Magazine for October-November 1970.)

In summary, under the proposed no-fault system of S. 945, rating classifications reflecting the total change in risk should result in a majority of drivers paying higher premium if over-all premium income were to remain the same as it is under present rates; but over-all premium income will have to be greatly increased to pay all the compensable loss to all victims under no-fault.

THE ILLUSION OF COST-SAVING

It has become popular for propenents of no-fault to claim that under the present system only 45¢ of the premium dollar is paid out in total benefits, and that the victim gets only a small percentage of fact. This figure derives from a chart presented to the Hart Committee by Professor Keeton, which hypothesized Administrative Costs of $125.00 for each $100.00 in benefits paid, based upon some partial data gathered by Professor Conard in a one-state study in 1961. The figure of 55¢ cost and 45¢ benefit, now widely circulated, is completely false. If any state insurance Commissioner permits the insurance industry to charge rates so high that only 45¢ of the premium dollar is paid out in claims then that Commissioner is incompetent to hold office. The Hart Committee, at the same time it published the Keeton chart, published its own 10 year study called "Where Your Auto Insurance Premiums Went—159 to 1968." This study reported total benefits paid as being 58 and ½ per cent of the premium dollar, total expense as 40 and ½ per cent, with underwriting profit of 1 per cent. The same publication showed that in 1968 the loss-expense ratio, comparing all claims paid and outstanding

with all insurance company expense, was in close accord with the 10 year average. For all stock companies, national totals, for bodily injury coverage. the expense ratio was 40 per cent and the claim ratio was 60 per cent. How does that compare with "No-Fault" ratios? Collision coverage is exclusively first-party, no-fault, automobile coverage with relative ease of determining the value of the loss. In the same year, 1968, the stock company national total for collision coverage showed a ratio of 38 per cent expense, 62 per cent claims. The slight difference, 2 per cent, is a far cry from the fictitious 20 per cent improvement Professor Keeton claims would occur on a change from his imaginary 45 per cent pay-out under tort to his hopefully optimistic 65 per cent pay-out under no-fault.

It should be noted that in the same Hart Committee study of past decade performance the total loss paid ratio under property damage liability (third-party fault coverage) was 57.8 per cent for all companies, while automobile physical damage pay-out (first-party, no-fault) was only 54.9 per cent.

There is no reason to believe that first-party, no-fault injury coverage can magically produce a substantial expense ratio reduction.

Injuries will still have to be investigated, and haggled over. Was there really an accident? Was the claimant really a victim? Was he hurt as much as he claims, or is that merely a recurrence of an old injury? Did he really have to lay off work at all? Did he lose as much pay as he claims? Is he still disabled, or just gold-bricking? Was all that diathermy really given? If so, was it "necessary"? Are the medical bills "reasonable" or inflated? Whose doctor is right, the insurance company optimist who says he can do heavy work right now or the claimant's pessimist who says he can't do even light work for a month?

The dismal record of Workmen's Compensation litigation in those states where the private insurance industry writes the coverage should be convincing proof that no-fault health and accident benefits are not always paid promptly, generously, and amicably by the friendly insurance company. There is not only inordinate litigation in Workmen's Compensation cases over extent of injury and extent of disability, but the administration expense is high. The chart published by The Hart Committee shows administrative expense of 35¢ on the dollar, even though payments are on a scheduled basis and even though the industrial employer does almost all the work of investigating and reporting the accident.

No-fault Plans have no magic in themselves to produce a substantial cost saving. They promise real rate reductions only when combined with No-Pay provisions. A boy who buys a four ounce chocolate bar for ten cents, and then is told he has to buy a "cheaper" one ounce bar for a nickel, will figure out in time that he is being cheated.

WHAT DOES THE PUBLIC WANT?

We suppose that a Senator has considerable interest in listening to his constituents to find out what they want. All the polls taken so far show that the great majority believe in the fault system and want it retained. They also would like some first party benefits, if it does not cost too much, and they would like insurance company practices on cancellations and non-renewals and assigned risk plans straightened out.

In the State Farm Insurance Company survey of its policy holders the vote was 94% that "the driver who causes an accident, or his insurance company, should pay for the loss."

A major consumer research organization, Market Facts, Inc. did an extensive poll for Allstate, Kemper, Liberty Mutual and State Farm Insurance Companies, which proved that the public generally wants the fault system retained and wants general damages retained. One of the subjects tested was whether the public wants automobile property damage liability abolished, as S. 945 does, with the motorist allowed to buy only the deductible collision coverage. A majority disapproved. "Strong Disapproval" outranked "Strong Approval" more than 2 to 1.

"Pain and suffering damages" was explained, since 4 out of 5 people did not know what that insurance company trade jargon really meant. When people knew it included the disabilities iincluded in general damages, they voted to keep compensation for general damages, for the driver in the right, by a solid 2.4 to 1 ratio. (The ratio was 3.3 to 1 against eliminating "pain and suffering" payments for people who had filed claims, and over 2 to 1 among people who had never filed a claim.) The D.O.T. "Public Attitudes" study confirmed the earlier polls.

The question was put. "In most states, this is how automobile liability insurance is set up now. If you are involved in an accident, you have a claim against another person or his insurance company only if you can prove that the other person *alone* is at fault. Would you say this is a good system, a bad system, or what?"

The public response was that it was satisfied, 2 to 1. The follow-up question is even more significant. It was: "In your opinion, is there a need to change this system?" A strong majority, 7 out of 10, said "*No*". Another 1 out of 10 said the proper change was to make recovery proportional (inversely) to fault. That is, 8 out of 10 citizens would approve, and would not wish to change, a fault system based on sole negligence or on comparative negligence.

The public opinion study clearly established that the public dissatisfaction with the present automobile reparations system had to do with unfair insurance company practices—cancellations, non-renewals, arbitrary classification and rating systems, and premium surcharges. High cost was, of course, a major complaint. It must be obvious that reform of insurance company practices, without abolition of present legal rights, would satisfy the public.

Apparently the A.I.A. knows that it has to "condition" the public to change its mind. A national advertising campaign has started to persuade people that the insurance companies will really treat them better. The ads being published are false, when compared to the true A.I.A. Plan and the Plan of S. 945. The ad by Firemen's Fund in "Time" for October 11, 1971, says "Your company pays your medical costs, your lost wages, and other out-of-pocket expenses." Both the A.I.A. Plan and S. 945 Plan pay out only a percentage of lost wages with strict upper limits. The ad also says: "And, if you're seriously injured, you can still sue the other driver." Not under S. 945 can you sue the oher driver, and not under the A.I.A. Plan.

Travelers Insurance Company is running ads asking people to call, Toll-free, 800-243-0191, so they can explain. The writer did and asked the Traveler's voice if he could still sue the other driver if he came across the center line, collided head-on, and inflicted a crippled leg. "Of course," was the reply, "you can still sue the other driver if you're really hurt. It's just that we'll pay you $2,000 in expenses without your having to go to a lawyer and sue anybody." That sounds like a very good plan. It is too bad that Traveler's has not proposed it to the Congress.

The most violent outrage against S. 945 will come on the elimination of property damage liability, because that feature will give bad treatment to millions of people every year. D.O.T. estimates, in its final report (p. 5), that 24 million vehicles are damaged each year, with a direct loss averaging $200 for a total of 4.86 *billion* dollars. Using other D.O.T. figures, out of 13.6 million accidents 42% are rear-end collisions which means at least 5.7 million cars are involved in this type of accident and half will be smashed into from the rear. Just imagine the uproar when 2.65 million Americans find out that Congress has decreed they have no right to demand that the driver who hit them, or his insurance company, should pay the repair bill on that crumpled automobile—the pride of the owner, the extension of his personality, his most treasured and essential personal possession.

Surely the public wants to be treated fairly, and has a right to expect that government will provide justice regardless of wealth and regardless of class. S. 945 discriminates openly against the poor. The good driver, at a low economic level of income, can now rely on his good driving practices to assure him that if he is hit the other driver will be at fault and will have to pay both for his car damage and for his disability. Under S. 945, Committee Print I., the poor man will have to buy collision insurance which he can't afford, or suffer alone the whole damage loss to his car, which he can't afford either.

The man on a tight budget will have to abandon hope of obtaining full compensation for disability and suffering. He won't recover unless he has bought his own optional extra coverage. The well-to-do can buy full protection, provided it is not priced out of the market.

There is no doubt that this proposed Bill changes from an individual-rights oriented system to an individual wealth oriented system.

DO LAWYERS TAKE TOO MUCH

The propaganda line by no-fault proponents is that fee-crazy lawyers are to blame for all the ills of the insurance industry. "If only we could get rid of lawyers" say some insurance men, "we could deliver benefits more cheaply".

The true translation of that argument is that if only the insurance industry could get rid of lawyers, it could beat down the claimants with impunity. The only protection the consumer has is the lawyer and the only way most hard-pressed injury victims can afford to have a good lawyer is through the contingent fee system. The first man to reach the injury victim is the insurance adjuster in the vast majority of cases. The insurance company has every opportunity to settle directly. It does so, with no intervention by a lawyer, in six out of ten cases. (See D.O.T. "Public Attitudes" study, where only 39 per cent of all paid claimants had used a lawyer.) Only when the insurance company and the claimant disagree does the claimant hire a lawyer. In the 40 per cent of cases where a lawyer is retained, the vast majority are settled by agreement with no litigation. Using the D.O.T.'s own figures from its "Auto Accident Litigation" study, of its own estimate of 4.4 million injured, only 220 thousand ever filed a lawsuit, and of those few lawsuits, only 7 per cent went to verdict. That is, only 5 per cent of all injured victims ever file a lawsuit in court and only one-third of 1 per cent of all injury victims ever take the case to final verdict. This litigation takes only 17 per cent of all court time, which is a small proportion of time to spend adjudicating the rights of 100,000,000 licensed drivers who drive 100,000,000 licensed vehicles, driving a *trillion* miles a year on our highways in the greatest common activity of our people. Our courts spend about three times as much effort handling the criminal cases of muggers, rapists, dope peddlers, car thieves, murderers, and high class swindlers, embezzlers and financial thieves—which is a type of activity indulged in by a very small proportion of the population.

The injured man who can't get satisfaction from the insurance company, the ordinary citizen who needs the help of a lawyer, and gets a recovery only because he has a lawyer, is not complaining about lawyers. The complaint comes from the insurance industry, who would rather have the claimant defenseless, and from a few professors who never had to fight for a client's rights. The total payment out of the present system, to all lawyers for both plaintiff and defendant, is still *less* than the agent's commissions for selling the policy.

If lawyers should not be heard in defense of the fault system, then the private insurance industry should not be heard in support of first party health and accident systems. The financial stake of the insurance industry is vastly greater than the lawyer's stake, and their expense and profit ratio is a far greater percentage of the premium dollar. If the criterion for justice is solely the percentage cost of delivering benefits, then let us be fully consistent with economy and abolish the private insurance industry. The cry will be raised that government is wasteful, inefficient, and extravagant compared to private industry, but the undeniable fact remains that in those states where state funds pay workmen's compensation benefits, whether as sole insurer (as in Ohio) or in competition with private insurers (as in California) the state operated and managed fund pays out a far higher percentage of the premium dollar than any insurer ever has.

If the decision is made that the private insurance industry will retain the sole right to sell coverage for automobile reparations, then the public is entitled to retain the private lawyer for its own protection against that economic power.

IS THERE A GOOD NO-FAULT SYSTEM?

Every other major nation in the free world has studied its automobile reparations system and has evolved almost identical solutions. Society as a whole has some interest in patching up the victims of all accidents, and in easing the burden of lost wages. In Canada, Sweden, West Germany, France and England the present system is that everyone will get some first party benefits, and every *innocent* victim will get full compensation under a tort system; and for those relatively innocent, negligence will be compared and a fair proportion of general damages will be recovered from the other driver. Liability insurance must be carried with high limits—$68,000 in U.S. dollar equivalent in West Germany, and in truly unlimited amounts in Great Britain. The driver has a right to private counsel and to trial. First party benefits are subject to a lien and repayment out of the liability insuranuce proceeds, generally speaking.

An argument can be made that a driver enjoys some kind of suicidal privilege to drive his own automobile any way he wants to so long as he is risking only his own neck. On the other hand no driver has any right to drive so heedlessly he risks the necks of other people. If a driver tries to take a curve at 90 and

winds up in the woods, there is no compelling moral reason why the good drivers of the country should help pay for all his losses. If, on the other hand, the same driver winds up across the median and ploughs into another car, there is every moral reason to demand that he make good the loss his conduct causes.

We have a partial no-fault system now, in that at least 8 out of 10 drivers carry Blue Cross, Blue Shield, Medical Pay, or similar first party protection. Many drivers also carry wage continuation or disability protection. It should be acceptable to put a rider on every liability policy requiring a combined economic loss payment. There is no real relationship between medical expense and wage loss. Either one may be high with the other one low. Allow each driver to treat his "economic loss" protection as primary, so that he can use it to offset either medical loss or wage loss and fill in the gaps on whatever first-party benefits he already pays for. The critical question is how big that first-pay economic loss rider should be. If it were just $1,000, it would pay *in full* the total economic loss of every single accident victim. At that level, the cost should not exceed $10.00 a year according to actuarial estimates reported to the writer, although here we must yield to detailed analysis from the insurance industry.

At a slightly higher level all the minor injury cases would be fully paid. Reference should be had to the D.O.T. final report "Motor Vehicle Crash Losses, etc.", pp. 4 & 5, where it is said that the estimated 3,750,000 personal injuries neither fatal nor "serious" (as defined) can be assumed to be "relatively minor in economic impact." D.O.T. estimated that the non-"serious" injuries had economic losses of a maximum of $1,500. The *average* loss for this class of 3,750,000 injured motorists was only $81.00 in wage loss, $131.00 in medical loss, and other expenses of $12.00. The numbers are said to be "based on unpublished data from the D.O.T.'s personal injury study."

To step up first party coverage to a level as high as $2,500 would pay in full all the economic loss of 96% of all injury victims, and would of course pay that same amount to the other 4% to be added to whatever other coverage they carried. This kind of full protection for all but 4% of all victims would be far less costly to good drivers than the full payment to everyone, including the single car fatality cases, now envisioned by S. 945.

No restriction on the tort suit is required. There is no "threshhold" anywhere else in the world—Manitoba, Saskatchewan, Ontario, Sweden, West Germany, France or England. The individual rights of our citizens to freedom from disability and suffering is just as precious as the right of those nationals.

A host of claims would drop out of the system by natural processes. Every lawyer and adujster knows that many people with small losses would be happy to collect those losses and forget a claim for a few days of discomfort, but are compelled to threaten an injury suit in order to get their bills paid. If there were a lien on first party benefits so that they had to be repaid out of any tort proceeds (as is now done under the Florida Plan) there would be even greater deterrence to pressing the small claim.

Any "threshhold" plan will necessarily work gross injustice in many individual cases. If any valid cost projection can prove that a "threshhold" is essential—which we have excellent reason to doubt—then at most the threshhold should be designed only to take truly minor, small claims out of the system. Some plans propose to preserve the tort remedy for full damages only for "permanent total disability". If the American citizen is compelled wrongfully to suffer *any* permanent disability, any loss of function of body or mind, he has sustained a real injury that ought to be compensated. (D.O.T. estmates: only 4% of all cases). The same is true of *any* degree of permanent disfigurement. (D.O.T. estimates: 2.5% of all cases.)

The injury victim who has to spend even 3 days and nights in the discomfort, the odor and the dehumanizing routine of a modern hospital has suffered real loss that ought to be paid, and the same is true if he has lost a week from work, or two weeks from normal activity, or $200 in medical expenses. These modest levels of threshold would knock out over half of the claims now processed by the system.

The fact is the present level of bodily injury premium, which today takes a lower percentage of the average American's income than it did ten years ago, can pay all the tort claims without any threshold and still produce such a profit that rates will have to be cut.

The safety designs for automobiles, and for highway design, mandated by federal government in successive stages in 1966 and 1968 are beginning to take

effect as more old cars leave for the junkpile and more new roads are built and used. Accidents are down. Deaths are down, in total and percentage. All injury claims are down. Payouts are down, and casualty company profits on bodily injury coverage are riding high in 1971. State Farm, for example, announced an *underwriting* profit of $112,000,000 for the first six months of 1971, part of which it will refund to policyholders. The sure way to reduce cost is to reduce injury.

Meanwhile the D.O.T. has purchased two specially engineered automobiles so designed that the driver can walk away from a fifty mile an hour head-on collision, survive a roll-over at seventy miles an hour, and sustain no damage at a front or rear impact of ten m.p.h. The D.O.T. has announced that it has ordered two more similar cars from other builders and will mandate the use of the best safety features of all four cars in future production automobiles. That will eliminate bodily injury premium cost problems and will eliminate most automobile litigation in a way that still preserves individual rights and individual justice.

In the intervening years there is no need to sacrifice individual justice on the altar of group security. No-fault Plans of the scope of S.945 are uncharted waters. Before we dive off the cliff into that shimmering pool, we ought to first climb down, wade out, and see how deep the water is. No one now knows what No-fault Plans will cost, what injustice they will produce, nor whether the public will find the actual working of the plans an outrage or a delight.

As the D.O.T. itself concluded in its final report, warning legislatures to move slowly and cautiously with incremental steps:

"Mere speculation without observation of the actual operation of a new system is an inadequate basis for immediate and fundamental changes of a national scope in an important area."

In short, let's test the new engine for bugs before we throw away the old one. A tune-up job may be all that's needed.

The questions and the answers thereto follow:

Question No. 1: In your testimony you state that it will cost about $8 billion more per year to pay people for their "net economic losses". Would you present a detailed analysis of how you arrived at that figure? For example, what is the present premium level for bodily injury coverage? How much of that premium is available to auto accident victims for compensation of loss? What is the present deficiency of the tort liability system? What efficiency do you project for the insurance mechanism under Committee Print One? On what basis do you make that projection?

Answer to Question No. 1: In my testimony I estimated that it would take about 5 billion dollars a year more than the tort system now provides to pay in full the economic losses of the serious and fatal injury cases, and estimated that this would take about 8 billion dollars in premiums. Your question is phrased in terms of "net economic losses", which I do not understand inasmuch as the transcript at page 52, which you reference, does not contain any statement about "net economic losses."

The analysis I made is based on the assumption that the Department of Transportation study entitled "Economic Consequences of Automobile Accident Injuries" is a reasonably valid and honest statistical survey, based on accurate sampling methods.

The study states that of the whole class of persons defined as sustaining "serious" or "fatal" injury only 47.7% made any recovery in tort; and those with tort recovery recovered 60% of their loss; and the tort portion of that recovery was in turn 60% of the funds received from all sources. The portion of loss paid by tort, for the whole class, is thus derived by the equation 47.7% times 60% × 60%, which equals 17.2% (Reference, Table 3.17, page 47, "Economic Consequences").

The text of the same study says that aggregate economic losses for the whole class were 9.1 billion dollars on a "societal" basis, and 5.1 billion dollars if the personal and family loss basis is used. This latter figure is said to exclude about one billion dollars in future lost earnings of young adults who are potential wage earners. (Reference, "Economic Consequences" text, page 40). It seems to me that S. 945 is designed to pick up the future loss of the young adult, so that the total economic loss figure to be used in calculating the cost of S. 945 should be 6.1 billion dollars.

Cross reference should be made to Table 2, page 6, of the D.O.T. final report "Motor Vehicle Crash Losses and their Compensation in the United States".

which says that compensable economic loss from the 1967 accidents was $10.5 billion for *all* victims; which would make the basic loss of $5.1 billion for the serious and fatal cases seem to be a reasonable proportion. A further cross reference may be made to an article by Senator Hart in "Trial" magazine for October/November 1970, in which he said, page 27, that the one-half million serious injury and fatality victims of auto accidents in 1967 suffered $5.1 billion of personal and family loss and recovered only $813 million from the auto insurance fault system.

If the $5.1 billion figure is correct, as the D.O.T. study says and as Senator Hart says, and if the recovery is 17.2% as the formula stated earlier predicts, then tort recovery should account for $877 million. I do not know the source of Senator Hart's lower figure of $813 million. In the same article, referenced above, he stated there was additional recovery of $248 million from medical payments and collision coverage, which are non-fault coverages. The billion dollar additional future wage of the young adult about to enter the employment market should be added to the differential produced.

All the figures discussed above are economic loss figures, and they clearly state an uncompensated economic loss, in 1967, of at least $5 billion. The substantial increase in medical expenses and in wage levels since 1967 would mean the present loss is substantially greater, but I have no way of knowing whether the percentage of tort recovery is higher in 1971 so I have used the 1967 figures throughout for consistency in the base for all comparisons.

In order to determine how many premium dollars it would take to pay (or properly reserve) $5 billion, it is necessary to make an assumption as to the efficiency of the insurance paying system. I assumed a maximum efficiency under "No-Fault" of 40% expense and 60% payout. I do appreciate that there are optimistic predictions of a higher percentage of pay-out, but all insurance company experience denies the probability of a higher payout. I have pointed out the Hart Committee 10 year study which showed payout in *Collision* Insurance, which is first party no-fault insurance, of only 54%. I note also that the private insurance industry has a general payout of 65% in Workmen's Compensation insurance. However, this is group insurance where the sale is made to the employer, where the employer pays the premium with minimum handling cost, and where the employer does most of the work in investigating and reporting claims. If the Workmen's Compensation system required every employee to purchase his *own* health and accident policy before he could be allowed to go to work, the selling and administrative cost would be much greater. If the insurer had to do all the investigating and paper work on claims, the expense would be substantially increased. An additional 5% for sales expense and administrative expense seems conservative.

If insurance company payout is 60%, then it will take $8.34 billion to pay out $5 in additional, presently uncompensated losses.

You may well say that the present level of tort recovery is stated in "net" figures after guessed-at attorney fees. On this point, the "Economic Consequences" study said at page 48 that legal costs amounted to 25% under the tort system, on the average. If total recovery was $877 million net, as my calculation shows, which is higher than the $813 million stated by Senator Hart, then the gross recovery was $1.17 billion and fees were only $293 million. There will certainly be many disputes over extent of loss, extent of injury, extent of continuing disability, extent of survivor's loss, and similar disputes over a $5 billion payout. Fees of $293 million would be only about 6% of that payout.

In any event, this level of fees would not change the result. Assume loss of $6.1 billion, less payment of $1.17 billion gross or $877 million net, and it would still take well over $8 billion to pay the uncompensated loss at 1967 levels. It would take more than that with intervening inflation in medical costs and wages, even if the industry reaches that 60% payout level they have not yet attained on their first party automobile coverages.

You ask what the present premium level is for bodily injury coverage, but I respectfully suggest that you must compare the *1967* premium level to the 1967 loss level. The total net premiums written for bodily injury coverage in 1967 were, according to "Best's Aggregates and Averages", $4.6 billion. Note that even with a 60% efficiency in 1967 that would only pay $2.76 billion gross in losses, and the D.O.T. final report "Motor Vehicle Crash Losses" says at Table 2, Page 6, that compensable economic loss for all victims, in 1967, for medical expense, wage loss alone, excluding other expense and property damage, was $5.48 billion.

Unless those D.O.T. figures have been deliberately exaggerated—which I cannot believe—then clearly it will take twice the bodily injury premium level to pay full benefits for economic loss excluding property damage even if attorney fees are reduced to zero and no compensation whatever is paid for economic loss.

You ask: "What is the present deficiency in the tort liability system?" In the context of your questions I must assume this is a typing error and you meant to ask about the present efficiency of the tort system. There is no information available to me which would permit an answer if by "present" performance you mean 1970 or 1971. The last figures I have were from the Hart Committee hearings which showed a ratio of "claims paid and outstanding" of 60% and expense of 40% for the stock companies, national totals, and a ratio close to that for the mutuals. However, the stock companies claimed substantial underwriting losses occurred in that year. I would suppose that in years in which an underwriting profit is earned at the levels the industry wants (5% on premiums in addition to the investment profit) then the payout efficiency drops.

You ask about "present" premium levels for bodily injury coverage. The "Insurance Information Institute" says that bodily injury premiums written increased from $4.6 billion in 1967 to $4.9 billion in 1968 to $5.4 billion in 1969 and to $6.1 billion in 1970. However, the 1970 figure is said to be an estimate; and I do not know whether the Bodily Injury number includes Medical Pay and Uninsured Motorist. Economic losses have increased at a similar rate, according to the Institute.

Question No. 2: In your testimony you said that the collision insurance system is "no-fault-first-party-don't-investigate-primary-liability." Is the collision insurer under the present system subrogated to any liability action that the policyholder might have? If so, how is this coverage analagous to the coverage provided in the "qualified no-fault policy" specified in Committee Print One of S.945?

Answer to Question No. 2: Collision insurance is no-fault first party insurance. The collision insurer today is subrogated. I would hope that with intercompany arbitration the amounts the company recovers on subrogation claims from other insurers at least equals the cost of processing the subrogation claim. If so, I stand on my statement that collision insurance payout efficiency does not promise great payout efficiency under S. 945, where as presently written none of the claims payment losses can be recaptured by subrogation.

Question No. 3: In your testimony you say that "the truck imposes much higher injuries when it is at fault". Are the injuries resulting from a collision between a truck and a car necessarily any less severe when the truck driver is not at fault?

Answer to Question No. 3: You are quite right in questioning my statement about the truck imposing "much higher injuries when it is at fault". The statement is an elision. I meant to say that the truck imposes much higher injuries when it is at fault than the private passenger car does. I have corrected the transcript accordingly, so that it will make the meaning clear. You will note that I was comparing premium costs. The devastating injuries that at-fault heavy trucks impose, compared with an at-fault private automobile, accounts for the much higher premium charged against heavy trucks. The injury and fatality rate in car-trunk collisions is, I would suppose, the same regardless which is at fault. However, under No-Fault, S. 945 will make the trucking company responsible only for the truck driver's injuries, which gives a windfall to the trucker and means higher premiums for the private automobile driver.

Question No. 4: In your testimony, you state categorically that the youthful driver will pay the low rate. Why is this so, if as you say, he has a high risk of loss and under Committee Print One he has a high loss potential because future anticipated wages are paid?

Answer to Question No. 4. In the transcript I discussed the shifting of classes under No-Fault. The unmarried 17 year old male, without driver training, will of course pay a low rate under No-Fault plans since he is presumably a student unemployed, with no dependents. He presents no risk in a fatality case. He presents no risk of wage loss unless he suffers permanent disability, and permanent disability cases are very rare, as you know. He will not have the debilitating diseases of the older driver—coronary artery disease, arthritis, bone embrittlement and impaired blood supply—which may make moderate impact seriously disabling. The young driver should, under S. 945 get "a low rate," as I said in comparing the two systems. You seem to suggest that I believe the young driver

will get the lowest rate of all. I am not sure of that, and did not so testify, but he certainly will get "a low rate" compared to the present system, as I testified. The testimony offered on behalf of the American Mutual Insurance Alliance supports this view, as I read it.

Question No. 5: In your prepared testimony you state: "it is difficult to understand why those who pay nothing in premiums are treated so much more generously than those who pay the full bill for the benefits they get." Suppose the following situation under the present system. Suppose uninsured motorist A is hit by negligent motorist B who carries liability insurance. Uninsured motorist A can recover from motorist B for the loss which motorist B caused motorist A. Conversly, suppose insured motorist B is hit by motorist A. Unless A has sufficient resources, B gets nothing from A because he is not insured. Under recent Supreme Court decision, A can not even be denied his driving privileges if he obtains a discharge in bankruptcy for any unsatisfied judgment which B obtains against A. B's only recourse is to look to his own insurer if he has uninsured motorist protection. Under the present system, then aren't drivers who pay nothing for premiums treated more generously than those who pay the full bill for the benefits they get? Doesn't Committee Print No. 1 treat non-car owners the same way the present insurance/liability system treats them?

Answer to Question No. 5: Under the present system, uninsured motorist A can recover in full for his losses if he is injured by *negligent* and well insured motorist B. In this case, he is treated to full benefits without paying premiums. However, if the accident is the fault of uninsured motorist A under your example, then he recovers nothing at all, and is not treated "more generously" than premium payers. Under Committee Print No. 1, the pedestrian who walks out from between automobiles in midblock at night, and is killed when completely at fault, is nevertheless treated to full compensation for all loss without limit and for all general damages if he is a non-payer of premiums or a dependent of a non-payer. This is entirely different from the way the present insurance/liability system treats him.

Under the present liability and insurance system, the negligent driver even though uninsured is liable to the full extent of his assets and will have to be wiped out in bankruptcy to escape liability. He does bear a risk of loss. The non-owner class under Committee Print No. 1 bears no risk at all. When you substitute a health and accident, first-party, insurance system it seems odd that the first party beneficiary who draws the highest benefits of all pays nothing and recovers regardless of personal fault in causing the injury.

Question No. 6: In your testimony you asked the question: "Do lawyers take too much?" But you never told the Committee how much in fact lawyers take? How much of the current premium dollar finds its way into the pockets of lawyers? How much of that money is paid to the plaintiff's attorney? How much is paid to the defendant's attorney? What percentage of its total income does the legal profession derive from auto insurance dispute settlement?

Answer to Question No. 6: I don't think lawyers take "too much," because the people who need the lawyer's help to fight the insurance industry are not generally complaining about the cost of the lawyer—and about 60% of claimants don't hire a lawyer anyway.

I do not know of any valid statistical study which can state how much of the total premium dollar lawyers earn. The D.O.T. study on Auto Accident Litigation said that in litigated cases the fee for the claimant averaged 35.2% of the recovery, but it was assumed that only 220,000 cases were filed out of 4,400,000 accident victims, and the questionnaire for the fee study was sent to a very small sample. The estimate of fees was based on only 389 questionnaires, which you must agree is a mighty small sample on which to predict fees for over 4 million injured persons, most of whom never hire a lawyer.

The Hart Committee Chart on "Where The Premium Went" in a past decade said that claimants' lawyers earned $5 billion in the 10 year period, but that number is itself just a guess at it. (The same chart does state that lawyers for the claimants receive less than half as much in total as agent's sales commissions).

The American Bar Foundation did a study called "Contingent Fees for Legal Services" which would support a conclusion that lawyers might derive 15% of their income from contingent fee injury cases, depending on where they practice. However, I assume your question refers to automobile cases, and any estimate of large incomes from trial practice generally must recognize that air

crash cases, railroad cases, admiralty cases, product liability cases, malpractice cases, and condemnation work are all productive of contingent income. If only 17% of all court time is devoted to automobile cases, then 83% of trial practice time must be going to other types of civil litigation, and to criminal and divorce litigation. If you know how much the *total* income of the entire legal profession is, and can tell me that number, then I could hazard a guess as to the percentage derived from automobile accident disputes, and the percentage derived on business and corporate counseling, and estate work, but the estimates would have to be based on old and possibly outmoded studies.

Senator HART. The witness we shall now hear from, already referred to by Mr. Spangenberg, is Mr. Leon Wolfstone.

STATEMENT OF LEON WOLFSTONE, WASHINGTON BAR ASSOCIATION, SEATTLE, WASH.

Mr. WOLFSTONE. Preliminarily, let me state that I endorse the views expressed by Mr. Spangenberg and his written testimony as well, which I have had an opportunity to read. It is not surprising that I endorse his views since we in large part have a somewhat similar background, at least at the present time, though historically my background was preponderantly representing insurance companies in the defense of cases rather than the plaintiff side as is more often the case today.

I agree wholeheartedly that there must be major reforms—major reforms. It is my thought, however, that the reforms should be within the tort system rather than the wholesale turning upside down of the system and the institution of a no-fault concept. I should explain preliminarily as I have in my written testimony, which I trust will be in the record, that I appear here in a dual capacity. I am a member of the Auto Reparations Committee of the Washington State Bar Association, and on their behalf I speak only to the subject of the proposed Senate bill and the question of the timeliness of proceeding on it at this time.

My views as to the merits and as to other phases are not on behalf of the Washington State Bar Association, but are the personal views of myself.

I will abbreviate as much as I can insofar as the material appears in the written testimony. Some years ago, in 1956, I addressed myself to the problem of increasing the availability of the insurance premium funds to the injured victim and bringing about improvements and reforms so that the insurance system as well as the tort system would work better.

At that time I pointed out that the liability carriers would be well advised to recognize that which they generally speaking refuse to recognize, namely, that they are a quasi-public utility, that they are vested with a public obligation.

In appearances on this subject before other legislative groups, I have heard the statement made by Mr. Victor Slevin of the AIA that the insurance system as it presently exists is not designed to compensate the innocent victim, it is designed solely and exclusively for the purpose of protecting the assets of the wrongdoer.

With that statement I disagree and with that statement I will always disagree. It is my concept that the justification of the insurance industry carries with it the concept that the industry receives the public's

funds in the sense of a trust, a fiduciary, that the industry has an obligation, promptly and with dispatch and with fairness, to investigate cases and arrive as speedily as liability and damages can be determined on a prompt, fair, and just settlement of the claims.

I disavow the concept that the sole concern is to protect the assets of the insured if he is found to be at fault. I lean heavily on the concept that there is this duty to the public, and I lean heavily on the fact that the carriers do not discharge that duty as they should.

In 1956 I urged that time before the claims managers' meeting that carriers undertake voluntary pay in the clear liability or probable liability cases, the voluntary method that we see today, the voluntary economic loss that we see today. I encouraged that be done both in the discharge of their public duty as well as in the benefit of the industry, pointing out in many instances people's conditions worsened on a psychological overlay basis because of the protracted delay, the drawn-out time, the pressure of bills to be paid, and indeed their conditions worsened and ultimately there was a requirement that a greater amount be paid.

At that time I also urged that the companies indulge in what is called open end settlements. If any are not familiar with the term, it is a settlement made on the basis of a portion of the claim but leaving other items in limbo for the future.

This is done in variability. For instance, one can provide that the matter of a back surgery is left open. Should it occur, an additional amount will be negotiated and paid. It can be spelled out, paid up to a certain amount and within time limitations. The suggestions I made were found to be unacceptable to the liability insurance carriers as proven by the fact that within a matter of some 60 days, about three-fourths of the carriers I represented advised me that there would no longer be the need of my services.

However, today the same carriers are making advance payments and are making open-end set limits. I speak today of advance pay and open-end limits from the standpoint of being a means of reducing cost to the system and making more funds available.

It is my information that the companies that are indulging in these voluntary pay programs and open-end set limits are finding a sharp drop, a marked reduction in the frequency of litigated cases, that the body public feels that they have been dealt with promptly and fairly and justly and in many instances they totally waive on a voluntary basis the right to recover for pain and suffering or the intangibles.

The suggestion has been made to eliminate the lawyers from the system, and much will be accomplished. I suggest to you that the best way to eliminate the lawyers from the system is to deal with the innocent victim promptly, fairly and justly, so he does not need a lawyer.

It is only when they feel they are not being so treated that they feel the need of a lawyer. I would say to you, gentlemen, and I have said before that if the no-fault concept is, in fact, good for the public, the lawyers of the Nation should stand up and urge its adoption without regard to whether it is good or bad for the lawyers.

Conversely, I say that the fact that it may be good for the lawyers does not justify a change. The fact that it is bad for the lawyers should not enter into the consideration. The objective is what is in the public's welfare.

crash cases, railroad cases, admiralty cases, product liability cases, malpractice cases, and condemnation work are all productive of contingent income. If only 17% of all court time is devoted to automobile cases, then 83% of trial practice time must be going to other types of civil litigation, and to criminal and divorce litigation. If you know how much the *total* income of the entire legal profession is, and can tell me that number, then I could hazard a guess as to the percentage derived from automobile accident disputes, and the percentage derived on business and corporate counseling, and estate work, but the estimates would have to be based on old and possibly outmoded studies.

Senator HART. The witness we shall now hear from, already referred to by Mr. Spangenberg, is Mr. Leon Wolfstone.

STATEMENT OF LEON WOLFSTONE, WASHINGTON BAR ASSOCIATION, SEATTLE, WASH.

Mr. WOLFSTONE. Preliminarily, let me state that I endorse the views expressed by Mr. Spangenberg and his written testimony as well, which I have had an opportunity to read. It is not surprising that I endorse his views since we in large part have a somewhat similar background, at least at the present time, though historically my background was preponderantly representing insurance companies in the defense of cases rather than the plaintiff side as is more often the case today.

I agree wholeheartedly that there must be major reforms—major reforms. It is my thought, however, that the reforms should be within the tort system rather than the wholesale turning upside down of the system and the institution of a no-fault concept. I should explain preliminarily as I have in my written testimony, which I trust will be in the record, that I appear here in a dual capacity. I am a member of the Auto Reparations Committee of the Washington State Bar Association, and on their behalf I speak only to the subject of the proposed Senate bill and the question of the timeliness of proceeding on it at this time.

My views as to the merits and as to other phases are not on behalf of the Washington State Bar Association, but are the personal views of myself.

I will abbreviate as much as I can insofar as the material appears in the written testimony. Some years ago, in 1956, I addressed myself to the problem of increasing the availability of the insurance premium funds to the injured victim and bringing about improvements and reforms so that the insurance system as well as the tort system would work better.

At that time I pointed out that the liability carriers would be well advised to recognize that which they generally speaking refuse to recognize, namely, that they are a quasi-public utility, that they are vested with a public obligation.

In appearances on this subject before other legislative groups, I have heard the statement made by Mr. Victor Slevin of the AIA that the insurance system as it presently exists is not designed to compensate the innocent victim, it is designed solely and exclusively for the purpose of protecting the assets of the wrongdoer.

With that statement I disagree and with that statement I will always disagree. It is my concept that the justification of the insurance industry carries with it the concept that the industry receives the public's

funds in the sense of a trust, a fiduciary, that the industry has an obligation, promptly and with dispatch and with fairness, to investigate cases and arrive as speedily as liability and damages can be determined on a prompt, fair, and just settlement of the claims.

I disavow the concept that the sole concern is to protect the assets of the insured if he is found to be at fault. I lean heavily on the concept that there is this duty to the public, and I lean heavily on the fact that the carriers do not discharge that duty as they should.

In 1956 I urged that time before the claims managers' meeting that carriers undertake voluntary pay in the clear liability or probable liability cases, the voluntary method that we see today, the voluntary economic loss that we see today. I encouraged that be done both in the discharge of their public duty as well as in the benefit of the industry, pointing out in many instances people's conditions worsened on a psychological overlay basis because of the protracted delay, the drawn-out time, the pressure of bills to be paid, and indeed their conditions worsened and ultimately there was a requirement that a greater amount be paid.

At that time I also urged that the companies indulge in what is called open end settlements. If any are not familiar with the term, it is a settlement made on the basis of a portion of the claim but leaving other items in limbo for the future.

This is done in variability. For instance, one can provide that the matter of a back surgery is left open. Should it occur, an additional amount will be negotiated and paid. It can be spelled out, paid up to a certain amount and within time limitations. The suggestions I made were found to be unacceptable to the liability insurance carriers as proven by the fact that within a matter of some 60 days, about three-fourths of the carriers I represented advised me that there would no longer be the need of my services.

However, today the same carriers are making advance payments and are making open-end set limits. I speak today of advance pay and open-end limits from the standpoint of being a means of reducing cost to the system and making more funds available.

It is my information that the companies that are indulging in these voluntary pay programs and open-end set limits are finding a sharp drop, a marked reduction in the frequency of litigated cases, that the body public feels that they have been dealt with promptly and fairly and justly and in many instances they totally waive on a voluntary basis the right to recover for pain and suffering or the intangibles.

The suggestion has been made to eliminate the lawyers from the system, and much will be accomplished. I suggest to you that the best way to eliminate the lawyers from the system is to deal with the innocent victim promptly, fairly and justly, so he does not need a lawyer.

It is only when they feel they are not being so treated that they feel the need of a lawyer. I would say to you, gentlemen, and I have said before that if the no-fault concept is, in fact, good for the public, the lawyers of the Nation should stand up and urge its adoption without regard to whether it is good or bad for the lawyers.

Conversely, I say that the fact that it may be good for the lawyers does not justify a change. The fact that it is bad for the lawyers should not enter into the consideration. The objective is what is in the public's welfare.

On the other hand, if it is not in the public's best interest, then, the lawyers of this country should rise up and speak opposed to the no-fault concept. Most of the reputable bar associations of the country at the national level have studied this matter in depth, and to my knowledge they have all come out uniformly opposed to the no-fault concept. This includes bar groups that are not engaged in personal injury litigation at all.

It is the responsibility of the lawyers to speak up and to speak their views even though they be accused of self-interest in so doing. I will direct myeslf to areas of reform within the present system that in my judgment will accomplish most of the proper goals and objectives of those who seek no-fault.

Obviously, it would be desirable if insurance premiums could be reduced. In some areas, reforms can be made that will tend to reduce the premiums. Some reforms, however, will necessitate compensating in part at least increases in premium, because if it does entail a greater payout, obviously the funds must come from the premium dollar or from other sources.

If it is decided on a sociological basis that there should be a system of payment of economic losses without regard to fault, this should be approached as a sociological and economic problem and not as a tort liability or necessarily as an insurance problem. It has been suggested that the Congress of the United States adopt a plan whereby a limited amount of economic benefits would be paid without regard to fault for a maximum period of 1 year.

The maximum amount could be $1,000 or $3,000 or any other given figure, preserving intact the tort system, and to prevent dual recovery requiring that if the innocent victim accomplishes a tort recovery, he reimburse to this fund for the economic benefits that he has enjoyed by drawing down at the early stages.

It has been suggested that there could be an insurance-operated plan or it could be a governmentally operated plan, whether by social security or whatnot. It has been suggested it could be funded by a very modest gasoline tax. That would take care of the sociological problem of making economic compensation available to the tort victim.

Within the framework of the present system, there is a great deal of emphasis on the statistics poduced by the DOT and others. We live in a statistic-minded binge era, and there is a great risk of relying too heavily upon statistics without recognizing that there may be various interpretations and conclusions drawn. I am reminded some years ago of attending a program on accident prevention, a highly statistically oriented group, to the point of ad nauseam. I informed the chairman of the meeting that I was aware of a statistic to the effect that in motor vehicle accidents, some 98.72 percent of the vehicles involved had a spare tire in the trunk.

The dean of the college of the university conducting the program was very much impressed. He said, "Visualize that, this demonstrates my point, people have a spare tire, they are careless, they are inattentive, they are overly bold, it is a great statistic of overimportance."

I then confided to him and those in attendance that the statistic I quoted was dreamed up at the spur of the moment and it was not on a sound statistical basis or any research. The dean said that is of

no matter, it is the principle behind it. People are too cocky when they have a spare tire. "We must devote our time to searching statistics relating to the frequency of accidents and the presence of spare tires," he said.

Many of the conclusions drawn from the DOT statistics are equally absurd. Dual contradictory interpretations can be developed, as pointed out by Mr. Spangenberg in his testimony.

And area that can achieve great savings and improved efficiency deals with that of standards of safety in automobiles. We have heard mention this morning of the drunk driver, and I deplore him and I criticize him. Certainly, our licensing laws should be more strictly enforced and suspensions and revocations mandated in cases of a serious and repeater defendant.

I think that should be done. However, it is distressing to me that the statistic-minded rely on the fact that someone had been drinking, ergo, the drinking caused the accident, when in truth and in fact in many instances, it caused, was caused by built-in obsolescence of the tailpipe, exhaust, manifold system of the car, producing carbon monoxide in the car and disabling the driver.

No statistics are found on that. I have heard Secretary Volpe of the DOT was making a study in that field. The cost for your leak-free exhaust manifold system would be about $9 per car and would last forever rather than the built-in obsolescence necessitating the replacement of one or the other or all three of the systems within a matter of months with no warning whatsoever to the driving public.

This would be meaningful reduction of the accident toll. I need not go into the bumper safety approaches. That has been touched upon in written testimony, and you are fully familiar with that. There are many reforms within the present system that can make it work, and throwing it out because it does not work as well as it should is not a proper approach.

I will touch upon a number of these. Certainly, I would encourage the institution of a system of comparative fault for contributory negligence as has been recommended by every major bar association. Which plan?

The ABA has recommended the Wisconsin plan which has since been amended. Others have urged the Mississippi or FELA plan of true comparative fault. Still others have urged the Maine-New Hampshire plan where you may recover if your negligence is not greater than that of the other party.

This will bring about a greater measure of equity in the handling of the tort victim.

As an aside and not in continuity, I call to your attention the rement publication by Prof. Jeffrey O'Connell, a book to be published, called "The Injury Industry."

The advance sales pamphlets are entitled, "No-Fault—Boon or Bane?" Though I would not agree with Professor O'Connell's conclusions, I think the title is prophetic, and I think too often we have overlooked the fact that the no-fault approach may be a bane; I think we have overlooked the fact that the public has been misled into thinking that the no-fault approach is a panacea, and thereby they have been defrauded and members of the press have been defrauded into en-

dorsing an ill-informed or an inadequately informed basis the no-fault concepts.

I am compelled to tell you that when Mr. Victor Slevin, spokesman of the American Insurance Association, in a recent appearance in Seattle some 2 or 3 weeks ago in hearings conducted by the Insurance Commissioner of Washington on the study of no-fault approaches was asked by the legal counsel for the Legislative Interim Study Committee, "Mr. Slevin, where will the additional funds be obtained that obviously will be necessary if you are going to pay out more money on a no-fault basis to everybody?" in a Freudian slip, Mr. Slevin said, "By underpaying the innocent victims." Therein lies the proof.

It has been pointed out time and again that the no-fault concept imposes a victim tax on the innocent victim in order to provide funds for those who are indeed at fault. Many of the no-fault concepts, and note they are usually referred to as plans, are indeed a fraud upon the public beacuse they are oversold, with representations as to how they will function that are untrue, in fact, and are incomplete. In one meeting that I attended was where there was a discussion of the elimination of pain and suffering, this meeting of some 300 ladies, I asked for a show of hands as to how many were in favor of eliminating the pain and suffering claim of the person they hit, and there was a goodly show of hands.

I then asked, how many were in favor of eliminating their right to pain and suffering if they were the innocent victim and wrongfully hit by the other? Total absence of hands.

I must concede to you that some of the changes that I shall propose to you may result in an increase in premium. I have the feeling, however, that if the American public is told truthfully, frankly, and fully that they will have a better program of compensation and that it will cost them slightly more, that they would be willing to pay this increase as long as it is a justified increase.

I think in terms of the Oregon plan, with which I am sure the distinguished Senators are familiar, in the State of Oregon they adopted legislation in the last session requiring on a State level that all liability policies have a provision for first party medical coverage on a no-fault basis and limited first-party economic loss from wages on a no-fault basis. The legislative package also provided for the substitution of comparative negligence and a full continuation of the tort system as it now exists.

Copy of the Oregon package is attached as an exhibit.

Keeping in mind the charge of the DOT that we should observe carefully what the results are of the diverse systems adopted in the various States, I am most anxious to observe the effect of the Oregon system. I am most anxious to observe whether there is a sharp decrease in the tort claims because people are paid their economic losses for wage loss and medical expense on a limited basis. I think there will be a great drop in the number of claims. My opinion is there will be some increase in premium on a temporary basis, but hopefully enough of a drop in the claims so that that increase will be on a temporary basis only.

There are no presently solid statistics from which we can compute realistically in my judgment the increased premium cost of a total switch to no-fault, whether it be under your Print No. 1 or under any

one of the other—I understand there are now 153 varieties of no-fault concepts that have been offered, most of which I candidly call frauds and hoaxes. But there is no statistical basis for which we can determine sensibly at this time what the impact will be upon the premium, and the public is misled into believing that there will be a reduction of premium.

It would appear obvious that if we have safety in automobiles that lessens the severity and frequency of injury and death, the payout will be less; and there are many phases of safety. If you feel you drive a safe automobile, I invite you, as you leave this afternoon, to put your hand over your head, whether you are in the front seat or the back seat of anything but a convertible, and you will find a channel bar strategically placed above your head which, if perchance by reason of an accident, you bounce upward, is conveniently placed to insure the cleavage of your head. The cost for padding that is nine cents per car, padding both the back and front seats. There is carbon monoxide, the safety harnesses, the air bags—we are all familiar with these. These should reduce the frequency and severity of injury, and accordingly, reduce the amount of claims to be taken.

Other savings that I would urge upon you: The use of a less than 12-man jury on an optional basis—a 6-person jury. Cut down the time of the trial, the voir dire and the deliberation time. Cut down the economic cost whether it is paid by the premium dollar or the tax dollar as the case may be. It will permit a greater service by the public and greater quantities to serve, because you will have twice the number of people roughly available to serve, and they can serve lesser periods of time.

Make available insurance limit information now available routinely in the Federal courts. It is felt and urged strongly by many and certainly in the Federal writings that this increases the probability of settlement, lessens the legal expense to the plaintiff and the defense alike. It has been suggested that interest be allowed to the tort victim from the date of the injury or from the date of the filing to sue. Why? It would appear at first blush this would increase the payout. But I submit to you if the interest is paid and required to be paid, it would eliminate the dilatoriness on the part of the perennial defendants and the increasing of the severity of the injury on a psychological basis during this period of protracted delay.

I would commend to you the reappraisal of the collateral source rule to prevent duplication and and multiple benefits except when a premium has been paid either in money, services, or the relinquishment of rights. As to that, I call your attention to the fact that if you carry five policies of life insurance with five companies and pay five premiums, you do collect from all five. If you paid for what is called collateral sources, you should be entitled to them.

I join with Mr. Spangenberg's remark that the public outcry with regard to liability insurance system functioning deals largely with arbitrary cancellations, outrageous delays, and outrageous rating practices. These can be corrected within the framework of the present system. These are areas of proper legislative concern to the Congress. Clarification and uniformity of policy provisions would lessen litigation. The multitude of conflicting and contradictory provisions dealing

with excess coverage, primary, concurrent, duplicative, and overlapping coverages, we can eliminate a lot of that litigation by a proper requirement of uniform provisions.

Strict enforcement of license suspension and revocation is a must, and certainly there may be a revocation for the repeat offenders and the serious offenders.

Uniformity of adequate licensing standards will assure a better quality driver.

Mandatory liability insurance in adequate limits, not the 5-and-10, should be required. In some States taxicabs are required to have 5-and-10, whereas the body public are required to have 15-and-30. The body public is entitled to uninsured motorist coverage. Taxicabs were not required to carry uninsured motorist coverage. Many passengers ride cabs exclusively and have no cars of their own. These people are entitled to and should be protected.

When we speak of mandatory insurance, we are faced with the argument it is too expensive to police. I would commend to you the thought that the mandatory liability insurance be geared to the license plates rather than to the operator's license.

I would commend to you a study of a system whereby the liability insurance carrier would be provided color-coded stickers to put on the license plates at intervals, whether it be 60 days or quarterly, and if the premium is paid, those stickers are mailed, and if the coverage is canceled, they are returned to the licensing department of the State. Much easier to enforce at lower cost than geared to the motor vehicle operator's license and much easier to detect the violator.

Some reference has been made here to the contingent fees. I suggest that all fees now are and properly are subject to court review, plaintiff fees, and defense fees alike are subject to court review and prohibition of abuse. I think many of these reforms that I have touched on here today and others that are in my formal paper are matters of proper congressional legislative action.

Obviously, it is desirable that there be uniformity of the laws of the States, but uniformity at the price of bad laws is not desirable. When I spoke on this subject before the Alaskan legislative study group, composed of eight committees, at the end of the session the chairman of the committee announced to everyone there, the participants and the persons testifying:

> It appears obvious to us that the various no-fault concepts are uniformly bad in variable degree, but the public is desirous of no-fault. They don't understand it, but they want it. So let's give it to them even though we know its is no good.

That is not a sound legislative approach. I would hope that they do not do that in Alaska.

I would hope that on a State-by-State basis a very careful evaluation will be made of the needs of the individual States, and the needs do differ from State to State. In my State, we have no big court delay. In most of the counties of our State, you can have a trial within 3 months. Usually it is too soon, because the facts as to the injury have not been established to determine intelligently the severity of the injury and the problems to be encountered.

The beneficiaries of these no-fault concepts in large part, if not entirely—well, I should only say in large part—will be increased

profits to the insurance industry, a shifting of which companies write the business, and lowered premiums for the bad driver at the expense of higher premiums for the good driver. I would hope as an outgrowth of your studies, efforts will be made to see that the public is more adequately informed and correctly informed as to the consequences of these various no-fault plans, programs, schemes, hoaxes, or whatever they may be.

I favor very much the DOT's suggestion that we try the no-fault approach in medical expense. I am sympathetic to the Oregon approach of having that available on a mandatory basis as well for a limited income loss from wages. I think that makes sense, and it may be a matter of proper congressional legislation as well. I have suggested earlier the substitution of the doctrine of comparative negligence or comparative fault. I am assured by spokesmen within the insurance industry that in the States that switched from contributory negligence to comparative negligence, there was no increase in the amount paid out by the industry. True, some were paid who otherwise would not have been paid, but the fact of the matter was that most were paid less than they would have been paid if they were completely innocent under comparative negligence, because of the threat, the always possibility that a jury would assess a minimal amount—5 percent, 10 percent—and reduce the award accordingly.

It has been pointed out the insurance industry is not a charity. I think the gentleman with the St. Paul Mercury Insurance Co. said it right, "You know, we are not really the St. Vincent de Paul." He is right. The insurance industry serves and can serve a valuable function. Its justification for existence is their asserted expertise in evaluating risk and providing an actuarially computed basis to spread the risk on a sound basis.

The insurance spokesmen who now espouse no-fault are saying simply, we oversold. We are not all that expert. Let's try a different system at the expense of the innocent victim to assure us greater profitability in the operation of the insurance system.

The reforms I have mentioned and many others can bring about reduction in costs. Some will bring about an increase in cost. But properly explained, I feel that the American public is in the mood and position that if they are told you are now going to get a 22 ounce loaf of bread instead of a 16-ounce loaf, and it is going to cost you X cents more per loaf, that they will pay it. Their outcry is not against the tort system, but of the inadequacies and abuses of the insurance system as it is presently constituted and operated.

The insurance system has opposed these reforms historically whether it be the comparative negligence or any of the others, and there are many others. They have opposed them, and I think now is the time for them to join in the public outcry and bring about these reforms so there will indeed be a system to provide prompt, fair, and just compensation to the innocent victim and a program of fair evaluation of fault where the fault is on the part of the plaintiff as well as one or more of the defendants.

I think that will conclude my oral remarks.

Senator HART. Thank you for your highlighting of the prepared testimony. I shall order the prepared testimony be printed in the record in full.

Mr. WOLFSTONE. It has been a pleasure to be here.

Senator HART. The chairman of the committee, Senator Magnuson, wanted very much to be here when you testified.

Mr. WOLFSTONE. He had to get down to Florida. He had top-priority business. I discussed it with him.

(The statement follows:)

STATEMENT OF LEON L. WOLFSTONE

Preliminarily it should be stated clearly that my appearance before this Committee is in a dual role.

Dealing solely with the question of whether or not action should be taken at this time on Senate Bill 945 or similar legislation I appear upon behalf of the Washington State Bar Association Committee on Automobile Reparations, of which I am a member.

Remarks dealing with other phases and subjects are not to be deemed made upon behalf of the Automobile Reparations Committee of the Washington State Bar Association but rather shall be deemed to be made in a personal capacity.

By way of background I have been engaged in the private practice of law since 1939. Until about fifteen years ago my practice in the personal injury field was in large part on behalf of liability insurance carriers as distinct from representing persons asserting claims by reason of injury or death of the auto accident victim. During that period of time I was designated counsel for dozens of insurance companies, stock companies and mutuals alike.

In subsequent years the practice has shifted so that I now in very large extent represent those asserting claims by reason of injuries to or death of auto accident victims so far as concerns the personal injury practice. An additional activity in recent years would include representing the insured in matters of conflict of interest or questions involving coverage. This would include the panorama of protecting the insured from needless risk of judgment in excess of coverage by way of taking effective steps to assure the prompt and fair settlement of claims within liability limits in order to eliminate the personal risk to the insured. Similarly where a liability insurance company has issued a notice of reservation of rights of disclaimer of coverage I have been engaged extensively upon behalf of the insured, both in dealing with third party claims against him and in his relationship to and with the liability insurance carrier.

Additional relevant background information would include the fact that I am a former President of: Americal Trial Lawyers Association, Western Trial Lawyers Association, and Washington State Trial Lawyers Association. I am an active member of the Washington State Bar Association's Committee on Auto Reparations, and the counterpart committee of the Seattle-King County Bar Association, as well as a member of the American Bar Association Committee to Achieve Justice through the Adversary System. I serve on divers committees of the Insurance, Negligence and Compensation Section of the American Bar Association and have served on many committees on behalf of the Washington State Bar Association and the Seattle-King County Bar Association.

Let me deal first with the initial assignment, namely that of the issue as to whether or not the Congress should at this time proceed with the adoption of Senate Bill 945 or similar legislation that in full or in part eliminates or limits the tort system of recovery of full, fair and just damages based upon fault and the substitution of one or another of the dozens of first party no fault coverage approaches. It is imperative to recognize and recall that the Department of Transportation and other officials of the United States government in urging the no fault approach have emphasized that this should be done on a state by state basis rather than on the basis of national legislation. Indeed, the Commissioners on Uniform Legislation have been commissioned to draft a recommended "Uniform Bill" to be in turn recommended for consideration by the fifty states. It should be clearly understood that the assignment undertaken by the Commissioners excludes consideration as to the desirability and need of substitution of a no fault approach for the traditional fault approach, or a combination of the fault approach with substantial reformations within the existing tort system. Be that as it may the Commissioners have undertaken the assignment, have met from time to time, and will before long, be reporting their recommendations within the limitations of the assignment made and assumed.

Certainly the legislatures of the various states will need time to critically examine and evaluate the recommended bill of the Commissioners as well as to consider the underying aspects as to what changes, if any, are desirable and should be made. It is to that end that various legislatures have been holding hearings and conducting studies for the past several years. It is to that additionally that many more legislative committees are presently conducting such studies on an interim basis and have assigned committees to make appropriate study, evaluation and report as has the Washington State Bar Association and the Seattle-King County Bar Association. It would seem to be premature, on the one hand, to urge and encourage such studies to be made on a state by state basis, and to then nonetheless preempt the field by federal legislation that would supersede state legislation and policy decisions.

There can be no doubt but what the existing tort system and liability insurance system have not functioned as fully, fairly and justly as they should have. Necessarily, however, the approach should be a balanced approach of determining the urgency of the total change to no fault as compared to a careful analysis of changes that may be made within the existing tort system. It is strongly and sincerely urged by many that there are a number of changes that should be carefully considered and fully evaluated which will tend to bring about a system that preserves the fault concept and nonetheless brings about a more efficient and fairer disposition of such claims within the framework of the existing third party liability insurance.

It is strongly urged that hasty action abolishing the fault concept and substituting the no fault concept is ill-advised and certainly unwarranted so far as concerns depriving the states of the opportunity to proceed on a state by state basis.

Admittedly concern is felt with some justification that some measure of unhappiness or inadequacy would result from the state by state approach because of the variability of plans adopted and decisions made. It is urged, however, that uniformity at the expense of full, fair deliberation and opportunity to act on a state by state basis is not at this time called for nor desirable. It is accordingly urged that the Senate and the House of Representatives delay taking any action that would preempt the field and preclude an opportunity for state by state examination of the problems and appropriate action.

The one thing that does appear certain from the extended studies and controversies regarding the no fault proposals is the fact that the "systems" work better in some states than in others, and that many reforms of the traditional system are needed everywhere, whereas some different ones may be needed from state to state, or not at all.

I will deal next on a limited basis with the question of the desirability or lack of desirability of substituting the no fault approach for the traditional fault approach.

In the interest of brevity I incorporate by reference the testimony of Craig Spangenberg given before this Committee on a prior occasion, as well as that to be given or given in connection with these immediate hearings. In other words, recognizing the fact that I agree with and concur with the views of Mr. Spangenberg I deem it so far as his views are concerned, sufficient to say this rather than repeat his views.

However, going somewhat beyond it in somewhat different directions from the testimony of Mr. Spangenberg, I believe that those spokesmen of the insurance industry that state that liability insurers have only a responsibility to protect the assets of their insured from claims of auto victims are inaccurate and speak in a mid-Victorian frame of reference. One need consider only recent decisions dealing with the liability of such insurers to make prompt evaluation and good faith settlements within limits to realize that the courts of America quite uniformly now hold that the liability insurers owe a duty to the body public and in particular the tort victim as well as a duty to the wrong-doer to protect his assets. Similarly the recent cases dealing with efforts to invoke by way of reservation of rights or disclaimer of coverage, positions that would permit the carrier to escape responsibility for the payment of a claim or judgment because of conduct of the insured recognize that there is a strong public interest and public obligation involved. It is for that reason that time and again courts have ruled firmly, clearly and almost uniformly that the companies cannot assert such rights to disclaim coverage or invoke reservation of rights if such conduct serves to deprive the victim of access to the insurance proceeds for the payment of a just claim.

Many, if not most, of the Insurance Codes of the various states in one form or another refer to the insurance industry as being one that involves a public interest. The very fact that systems exist that permit rate adjustments, when fully justified, in order to recoup prior losses and to permit profitable operation, demonstrate the quasi-public utility nature of the industry.

To demonstrate the consistency of my views, see attached Exhibit A, published in May of 1956. The speech from which the exhibit is excerpted also dealt with the wisdom from the company's standpoint and the desirability from the public's standpoint of advance payments and open-ended settlements.

Without conceding in the slightest the validity of the views and conclusions of Professor Jeffrey O'Connell, in his announced book entitled "The Injury Industry", I am nonetheless very much intrigued with the question posed by the advance sale promotional material entitled "NO FAULT—BOON OR BANE?"

There is little doubt but what Professor O'Connell would consider no fault insurance to be a boon. There is equally no doubt that many other equally well-informed persons consider it to be a bane. Some of the reasons for that view have been and will be expressed by Mr. Spangenberg in his testimony, and by others as well as myself.

In considering the boon or bane question, I am reminded of the Freudian slip of one of the articulate spokesmen of the American Insurance Association, W. Victor Slevin, in his recent appearance at the hearings conducted by the Insurance Commissioner of the State of Washington at the University of Washington in Seattle. When asked by the counsel of the Legislative Interim Study Committee (substantial numbers of whom were present) as to what would be the source by providing the obviously necessary greater funds to pay all auto accident victims on a no fault basis, Mr. Slevin spontaneously answered in substance, "By underpaying other victims." In that Freudian slip, it is respectfully suggested that an issue of truth came to the light of day.

Numerous persons in speaking in opposition to the no fault approach have pointed out that it amounts to an auto accident victim tax.

It is to be noted that I have refrained in my testimony from referring to these no fault approaches as being no fault plans. By way of explanation it is my feeling and my assertion that the public has been deluded and defrauded into believing that the no fault approach is a boon by attaching the word "plan".

There is very little that can be accomplished by the no fault approach but what can equally well and more fairly and justly be accomplished by preservation of the fault concept and the adoption of various reforms of the tort system—provided that the insurance carriers are willing to recognize their obligation to make a fair, just settlement of claims as soon as liability and damages can be reasonably determined.

The proponents of no fault assert that there will be speedier payment of economic losses as well as a sharp reduction in the number of liability claims asserted. The experiments conducted with making of advance payments of economic losses in the clear liability and probable liability cases have confirmed that a great many of the lesser injured persons will indeed be satisfied and not assert a claim for the "intangibles" to which they are nonetheless legally and morally entitled. This strongly persuades that a further and fairer extension of voluntary advance payments will be productive of reducing the economic burden of the liability insurance company in at least these classes of claims. Similarly, persons who have been offered the availability of "open end" settlements in one or another form have been inclined to feel that they have been dealt with fairly and often do not assert their claim for the intangibles and/or make mutually agreeable settlements.

The proponents of no fault who violently asserted the desirability and need of eliminating the use of attorneys by injured clients totally overlook the fact that if the carriers will in fact and in good faith make prompt and fair settlements in keeping with liability and damages, there would be less occasion and far less need of the public to obtain the services of an attorney.

It goes without saying and should be recognized by all that if the no fault approach is in truth and in fact in the best interest of the public it should be adopted whether on a state by state or federal level without regard to the question of whether it would be harmful and detrimental to the legal profession. Conversely, if the no fault approach is not in the best interest of the public it should be vigorously opposed regardless of whether or not that opposition

is of benefit to or detriment to the legal profession. The legal profession should be called upon to make appropriate studies and research, and after careful analysis to render its opinion and report as to where the public interest lies, and as to where and to what extent there exists in the zealousness of the proponents of no fault, fraud, exaggeration and distortion.

One of the areas that is most productive of fraud, exaggeration and distortion is utilization of so-called statistical studies which—no matter how accurate or how broad or how limited—are no better than the validity of the conclusions drawn from the studies. Illustratively, some years ago when I had occasion to work with a group studying accident prevention that was extremely statistic oriented, I stated with tongue in cheeck that statistics disclosed that in 98.71% of the motor vehicle accidents, one or all of the cars involved had a spare tire in its trunk. The distinguished academician who was conducting the study glommed onto the statistic with all the zealousness of some of the no fault proponents, expounding that this obviously demonstrated the fact that drivers of motor vehicles equipped with spare tires were less attentive, bolder, and more inclined to be transgressors because of the confidence they felt by the presence of the spare tire. When I publically admitted that the statistic I had offered as a figment of imagination and was offered solely to point out the irrational enthusiasm for statistical approach without regard to the soundness of the conclusions drawn, to my amazement "the Dean" said the statistics didn't matter, rather it was the philosophy behind the conclusion and that in truth and in fact it should be assumed that persons driving cars equipped with spare tires would be inclined to be careless!

As pointed out by Mr. Spangenberg, contradictory statistics exist and differing conclusions may be drawn from even the same statistics.

The Department of Transportation statistics do not deal adequately with the effect of inadequate insurance limits or on the inadequacy of payments in the major and horrendous automobile oriented tragedies.

It would appear obvious that the more severe the injury, the more likely the need of a protracted time to determine the nature, extent, severity and duration of the injury and to fairly arrive at an appraisal of the justly due damages.

The insurance industry is to be praised for some of the reforms they have brought about, however belatedly, such as voluntary med pay, accident and health provisions (death and dismemberment) and on a variable basis, uninsured motorist coverage. Perhaps a part of the inadequacy of payment in major cases may be explained by the inexplicable reluctance of the bulk of the industry to write uninsured coverage for larger than mandatory financial responsibility limits. The peculiarity is even greater when one acknowledges that such coverage, just as all coverage, should be written on a sound, actuarially computed fair premium basis. With that thought in mind, however, one is compelled to ask why a driver is permitted to obtain what is, for all practical purposes, unlimited coverage to protect himself from the claims of the stranger he may tortiously hurt and to thereby assure the availability of a fund for the payment of such justly due claims, but on the other hand, is precluded from obtaining a sensible and adequate limit for himself and family and his passengers should they unfortunately be injured through the wrongdoing of an uninsured motorist.

Many reforms exist within the confines of the traditional tort system that will and should increase the amount of funds derived from insurance premiums for the payment of the auto accident victim. Admittedly some may increase premiums somewhat, and others will substantially reduce them. Illustratively, the reduction of the frequency of contested claims under the voluntary payment of economic losses to the innocent victim and the open end settlement have reduced the frequency of claims for the "intangibles" (payment of which is deplored by the proponents of no fault), thus reducing the ultimate sums to be paid out through the insurance industry. Further economies can be had by resorting to arbitration of the lesser claims, preferably upon a voluntary but strongly encouraged basis. Non-unanimous jury verdicts will shorten the length of jury trials, and the use of less than twelve-man juries on a non-unanimous basis, preserving a fair number of preemptive challenges, will reduce the cost of the judicial system, shorten time necessary for voir dire and jury deliberation. Making available to the auto victim the right to submit an offer of judgment in the same manner as the insurance carrier defendant may now do will promote settlements and lessen the outlay. Most who consider the matter adequately agree that the availability by discovery means of information as to insurance limits, now uniformly available in federal courts, will promote settle-

ments and lessen the likelihood of trials. Allowing interest at a realistic rate from the time of the auto accident or the date of commencement of suit will discourage dilatory tactics on the part of the insurers and lessen the likelihood of trials.

A reappraisal of the collateral source rule to preclude duplicate or multiple recovery of funds provided collaterally without any cost or contribution by the insured or his family will lessen the required expenditure to tort victims.

The American Bar Association in its study of automobile reparations recommended against the no fault approach but recommended substitution of the doctrine of contributory fault or comparative negligence for the long outmoded and outrageous doctrine of contributory negligence. Although the Bar Association Committee recommended the Wisconsin plan, many urged as far preferable either the Mississippi (F.E.L.A.) plan of true comparative negligence. Others urge equally strongly either the now current Wisconsin plan permitting recovery if the victim's negligence is no greater than that of the defendant, or the plans adopted in New Hampshire and Maine. The substitution of comparative negligence or contributory fault along with the abolition of the vestiges of governmental immunity, family immunity and guest statutes all will tend to minimize some of the gross inequities of the present system.

The public outcry with regard to the liability insurance function in the auto reparations system deals largely with matters of arbitrary cancellations, and outrageous delays and rating practices. These can be corrected within the confines of the traditional tort system.

Where conflict and contradictions exist in provisions dealing with excess coverage, primary coverage, concurrent coverage, duplicate and overlapping coverages, the same can be clarified and litigation minimized or avoided.

Strict enforcing of motor vehicle operators' license laws, bumper protection, and safety equipment statutes should decrease the frequency and the severity of injuries and deaths resulting from auto oriented accidents.

Stricter enforcement of license suspension and revocation statutes or operation of vehicles while under the influence of drugs and perhaps alcohol, or repeated offenses, should reduce highway accident tolls.

Uniformity of adequate licensing standards for all motor vehicle operators is to be encouraged.

A more effective system of requiring mandatory liability insurance coverages, realistic and adequate limits will certainly go a long ways towards correcting some of the shortcomings and abuses pointed out in the Department of Transportation's study.

Thoughts should be given to tieing the mandatory liability insurance requirements to the vehicle rather than simply to the operator's license. It is suggested that the mandatory insurance provisions can be more strictly enforced geared to the license plates than to the operator's license. Illustratively, worthy of study would be a program whereby color coded bi-monthly license plate stickers could be provided the insurance company, to be mailed out bi-monthly or quarterly as the case may be, thereby confirming the continued existence of the required liability insurance. Should the coverage cease to exist for whatever valid reason, the unused stickers could be returned to the state licensing entity. It would appear obvious that a motor vehicle lacking the color coded time-oriented sticker would be much more readily observed and the operator apprehended and inquiry made as to his insurance than relying upon detecting the driver without the operator's license.

If from a broad sociological standpoint there should be an expansion of disability benefits and health and welfare benefits without regard to fault, such plan can be devised and supplemented. One such plan proposes that a federally operated government corporation be created to be funded by a very modest gasoline tax to provide emergency economic loss payments up to $1000 for losses incurred within six months without regard to fault. To assure that there would be no duplication of recovery, the amount of any tort system judgment or settlement or award is either reduced by the amount received from the "fund" or "reimbursement paid on a net basis after pro rata share of attorneys' fees and costs.

Similarly if it is truly felt as it was in the State of Oregon that there should be even larger first party benefits, mandatorily provided without regard to fault, this can be done legislatively as was done in Oregon, mandating that all liability policies contain provisions for first party med coverage and first party economic loss coverage without regard to fault, preserving meanwhile the traditional tort remedy.

CONCLUSIONS

It is respectfully submitted that all things considered, the Senate and the House of Representatives of the United States should not at this time proceed with federal legislation dealing with no fault automobile liability concepts that would preclude a state by state evaluation and approach. It is further suggested that additional study is needed as to the reforms available within the traditional tort system that preserve to the public its very valuable right of recovery of damages for pain and suffering, that is to say, the right to recover full, fair and just compensation from the wrongdoer when one is the innocent victim.

[From the Pacific Northwest Underwriter, May 1956]

THE TRUST FUND THEORY AS APPLIED TO SETTLEMENT OF CLAIMS

(By B. J. Curran)

(This is a portion of a talk presented by Wolfstone at a meeting of the Seattle Casualty Adjusters Association on April 20. Wolfstone is defense attorney for several insurance companies in the Seattle area.)

In the evaluation of claims we know of course that the plaintiff always views the facts optimistically in terms of maximum possible recovery. We also know that all too often the persons associated with the defense of the case—that is to say the claims personnel and the attorneys for the defense—view things skeptically and cynically, and sometimes even scoffingly.

There is all too commonly found an attitude that claims are for the most part fraudulent or exaggerated, which feeling when present, sometimes tends to prevent a fair evaluation of the claim by those having the defense responsibility for the claim evaluation.

It is seriously suggested that those having this responsibility of evaluating and settling claims upon the behalf of the defense should consider the fact that the insurance company stands in a trust relationship.

The public deposits its money with the insurance company in the form of premiums. One of the purposes of so doing is, of course, to protect against the shock and expense of personal verdicts or judgments.

Another and equally proper consideration for such payment is that a fund is thereby established by the public for the purpose of justly paying the fair value of just claims.

As certainly as it may be said that a company would be derelict in its duty to its policyholders to pay needlessly or excessively unwarranted claims, by the same token, it can be urged that the company owes an equal duty to the public to fairly evaluate claims and to pay justly such claims.

As above indicated the company stands in a fiduciary or trustee capacity. It is true that the company has a selfish motive in settling claims at the lowest possible figure in that any excess or residue of premium over and above cost of procuring of the business, administrative expense, cost of servicing claims and payment of claims, is left to the company as an operating profit.

On the other hand, the nature of the organization of the insurance industry and of insurance codes is such that if in a given year or periods, the insurance industry suffers excessive losses—that is to say losses disproportionate to premium and funds on hand—a rate increase inevitably follows so that the companies can recapture their losses in the subsequent years.

Such being the case, the company owes a strict duty to fairly evaluate claims and to pay a just amount in settlement of proper claims rather than attempting to "buy" a release at a figure which the company and its personnel know to be a shockingly inadequate one.

All too often an effort is made to "buy" a release for a nominal sum even though it is known that the claims are far more serious than the amount of the settlement indicates, and that the liability is far more clear than the amount of the settlement indicates.

It is respectfully submitted that this does not represent an honest approach to the duty and function of an insurer and that it is contrary to sound public policy as well as sound business management.

Not always, of course, but very frequently, the payment or the offer of a ridiculously low settlement figure results in the claimant consulting attorneys

who are more competent to evaluate such claims. The net result is that more claims go into suit and ultimately far greater amounts are paid.

The very fact that claims practically inevitably increase in value as soon as an attorney comes into the picture is some indication that the evaluation of the claim prior to the attorney being in the picture was probably on too low a scale.

It should further be kept in mind that the offer of a ridiculously low settlement figure increases the expense to the company not only by the ultimate paying of a larger settlement award, which is adequate for not only the claimant but also to compensate for the attorney's fees, but it further entails absorbing the cost of multiple medical examinations and of defense investigation and defense counsel as well.

If the companies would in some instances increase their settlement sights by paying more liberally on legitimate claims, the companies would save this considerable increase in operating expense, and increased size of settlements and awards ultimately paid. The net result would be that the public would be spared the necessity of commencing and prosecuting needless litigation and the insurance industry as such would certainly have a higher standing with the public.

It is not suggested that the insurance industries should play Santa Claus, but on the other hand, it is suggested that the insurance company might minimize the defense outlook filled with skepticism, cynicism and an attitude of "what can we get out for" and that the insurance company could and properly should instead approach the claims from the standpoint of "what is the true, sound, fair settlement value of this claim?"

Senator HART. Next we will hear from Mr. Arthur C. Mertz who comes to us as a witness for the National Association of Independent Insurers.

STATEMENT OF ARTHUR C. MERTZ, VICE PRESIDENT AND GENERAL COUNSEL, NATIONAL ASSOCIATION OF INDEPENDENT INSURERS, WASHINGTON, D.C.; ACCOMPANIED BY CHARLES HEWETT, ACTUARY, ALLSTATE INSURANCE CO. AND CHAIRMAN, SPECIAL COMMITTEE, ACTUARIAL COMMITTEE ON COSTING

Mr. MERTZ. Thank you, Mr. Chairman.

I would like to point out and also extend a note of apology on this point that the notice of these hearings came to me on vacation. I came back from vacation, and in the short time that I had to make a prepared statement several errors occurred in the original statement which was supplied to the committee members, I believe, yesterday.

I want to supply the committee now with a clean copy of our statement which should replace the other.

Senator HART. Let us make sure of that and order that the corrected statement be printed in the record.

Mr. MERTZ. My name is Arthur C. Mertz. I am vice president and general counsel of the National Association of Independent Insurers.

With me today is Mr. Charles Hewett, actuary of Allstate Insurance Co., who is the chairman of our special committee, actuarial committee on costing.

NAII is a voluntary national trade association of some 533 insurers of all types, both stock and nonstock, whose membership provides a representative cross section of the casualty and fire insurance business in America.

Our companies range in size from the smallest one-State entrepreneurs to the very largest national writers and they reflect all forms of merchandising. These companies wrote over 50 percent of the insured automobiles in the United States.

The position of our association can be summed up as follows:

(1) We fully recognize that the existing damage reparations system for automobile accidents is beset by certain problems and shortcomings which need correction, but we believe it likewise possesses basic features and concepts which should be preserved.

(2) We are committed to prompt reform of the system, through modified no-fault measures that broaden protection and expedite payments while retaining vital rights. We are actively working in the various State legislatures to accomplish that end, and we are encouraged.

(3) There is no need for a Federal law governing automobile accident reparations, in view of the strong reform trend now underway and gathering momentum at the State level, as evidenced by the modified no-fault programs recently enacted in five States and the programs shaping up in many other States.

(4) Adoption of a Federal no-fault law as manifested in S. 945, Committee Print No. 1, would be a grievous and very costly mistake, whose unfortunate consequences the American public neither desires nor deserves. Costwise, as I shall point out, actuarial projections indicate that this measure will bring about insurance premium hikes of 10 percent to 45 percent and the optional coverages many motorists will feel impelled to buy to replace existing rights of recovery abolished by the act will raise their premiums at least 25 percent to 100 percent.

I am talking there about average premiums. More about that in a moment.

Congressional action of some type regarding the auto accident reparations problem might be justified if the States lacked the ability or capacity adequately to deal with the problem. Such is not the case.

The States certainly possess and have demonstrated that ability and capacity.

Indeed, because the formulation and administration of laws governing the rights and responsibilities of motorists and auto accident victims, as well as the regulation of automobile insurance, have long been carried out by the States; State legislators and officials are in an ideal position to develop, test, and perfect appropriate reform measures.

During the no-fault hearings by your committee in May of this year a pivotal issue seemed to be whether the States would be willing and able to act expeditiously in this regard. We would hope that the excellent record of the States in enacting insolvency fund laws, uninsured motorist coverage statutes, and other key insurance legislation, and particularly the adoption of modified no-fault programs in five States—or depending how you count it, seven States—within a little over a year's time, will serve to lay that question to rest.

Our association and its members are actively promoting State legislation very similarly to the newly enacted Illinois plan. Our program, the dual protection plan, mandates the broadening of all private passenger auto insurance policies and reforms the tort system so as to:

(1) Provide immediate compensation of the auto accident victim's basic medical expenses and disability losses regardless of fault.

Referring to the discussion with Mr. Spangenberg, our plan would take care of total medical expenses and most disability losses of 90 to

95 percent of the accident victims, and it would also pay the basic economic losses of the remaining more seriously injured victims. So it would be a great step forward.

(2) Require the offering of high-limits supplemental catastrophe no-fault coverage with all policies.

(3) Preserve but delimit in less serious cases the right to general tort damages for pain and suffering.

(4) Encourage rehabilitation.

(5) Greatly increase the speed and cost efficiency of the system.

(6) Alleviate court congestion.

(7) Stabilize or reduce rates.

More details on its provisions are set forth at pages in our May 7, 1971, statement on the original S. 945.

As indicated by Secretary Volpe in his report and testimony to the Congress, the DOT study itself has pointed up the wisdom of exercising caution in deciding exactly what steps should be taken in the way of reform measures.

Even the massive data and findings piled up by DOT do not lead automatically to "easy solutions" of the auto accident compensation problem, according to Mr. Volpe.

"Much legitimate uncertainty" exists as to "how far and how fast the public wants or is willing to go in changing the reparations system."

The complexity of the problem, and the existence of honest disagreement among informed people as to what remedial measures are best, point to the wisdom of healthy experimentation and change at the State level, rather than Federal action abruptly overturning the whole auto reparations system nationally.

We strongly concur with Secretary Volpe's admonitions on these points. It is hard to find a phenomenon in today's society that is more complicated, abstruse and difficult to analyze scientifically than the phenomenon of the automobile accident, its causes, and its consequences.

It is especially difficult to accurately measure deeply inbedded public attitudes and motivations relative to auto accidents or to predict the ultimate impact on public attitudes and behavior if the rules for compensating accident victims were drastically changed.

The DOT opinion surveys, like some others before them, display a confusing patchwork of viewpoints and reactions, with inconsistent and conflicting answers by some of the same interviewees to complementary but conversely phrased questions.

Accordingly, we do not believe that satisfactory answers to the demands of various segments of the public for reform—some of them mutually conflicting—can be produced in one fell swoop by enactment of a Federal law.

This is particularly true of an extreme measure as S. 945, Committee Print No. 1, which we fear will create more problems than it solves.

The only promising avenue for accommodating and reconciling those diverse complaints and demands, and achieving realistic, durable solutions lies in healthy experimentation by the States with "middle-of-the-road" programs—programs which strike a reasonable balance between the fault and no-fault concepts. In developing and offering to

the State legislatures our dual protection plan we are seeking to aid in that process.

In our May 7 statement we set forth a number of fundamental objections to S. 945 as originally introduced. Committee Print No. 1 reflects no improvements over the original bill in these regards.

On the contrary, its drafters have moved from an extreme form of no-fault program to a total no-fault program which will be even more costly, unjust, and inimical to the long-range public interest than the original.

In the interests of time, I shall touch only briefly on each of the more serious evils and defects we see in this legislation.

In our previous testimony we expressed grave concern over the public policy and safety implications of adoption by Congress of legislation freeing motorists of personal accountability to persons they wrongfully kill or injure. Original S. 945 would have taken a dangerous step in that direction.

Committee Print No. 1 goes all the way and completely abolishes personal accountability. Our previous arguments therefore apply even more unequivocally.

We recognize that considerable controversy exists over the question of the exact extent to which driver behavior is influenced consciously or subconsciously by awareness that one is accountable for injuries or damage he negligently inflicts. In our considered judgment, supported by experience and a number of academic studies, a statute embodying the concept that the Government no longer cares who is responsible for auto accidents cannot fail to cause some significant deterioration of public attitudes toward driving, and to undermine to some significant extent the motivation for enforcement of safety laws.

Admittedly, this cannot be proved with finality, in advance. But, on the other hand, the doubters cannot provide any guarantee, either, that it will not happen.

Accordingly, we would simply ask whether it is worth the gamble to abolish personal accountability when what is at stake is the possibility of thousands of additional deaths and hundreds of thousands of additional injuries?

Is it worth risking this eventuality under a total no-fault plan such as S. 945, Committee Print No. 1, when less drastic alternatives such as the Illinois plan and dual protection are available, which preserve personal accountability for negligent misconduct?

We respectfully submit that it is not worth the gamble.

Motorists are already chafing under the very size of some auto insurance premiums necessitated by today's heavy toll of accidents and losses. NAII and others in our industry are striving hard to reduce or stabilize premiums through many avenues, including sponsorship of our dual protection plan.

Any statutory program mandating sizable rate increases for a large segment of the public is in our opinion unthinkable. Yet this is precisely what Committee Print No. 1 of S. 945 would do.

Actuarial projections supplied to us by the chairman of our Special Actuarial Committee on Costing indicate that, conservatively speaking, adoption of Committee Print No. 1 of S. 945 would have the following impact on insurance premium levels—I am talking about average payments now.

For those motorists who now carry a full package of auto insurance coverage (BI and PD liability, collision and comprehensive, and uninsured motorist and medical payments coverage), and who under S. 945, Committee Print No. 1 purchase the required basic injury coverages plus collision and comprehensive as they are now purchasing them, it will mean a 10 percent to 30 percent increase in average premiums, depending on the State.

If those motorists decide also to buy the optional "noneconomic loss" coverage (since S. 945 abolishes their tort right of recovery for pain, suffering, et cetera) it will mean a 25- to 60-percent increase over existing premiums.

Motorists who currently carry just the minimum auto insurance coverages will fare even worse, percentagewise.

Even if they continue under S. 945, Committee Print No. 1, to buy only the basic coverages it requires, their average premiums will rise between 10 percent and 45 percent.

If they decide to buy the optional "noneconomic loss" coverage, it will add 40- to 100-percent increase over their existing premiums.

In the footnote we have indicated that if those same motorists, now that they have no right to recover property damage coverages from a negligent third party, decide they had better buy collision coverage, it will add another 30 to 100 percent on top of those increases.

As alarming as these rate projections are, they don't even tell the whole story, for they represent only the increases in the average premiums for motorists with various typical packages of coverage.

The increases will be even more sizable for some categories of motorists; some of those who will be hit reltively the hardest will be those car owners who present the least hazard to others—such as the head of a large family who is a careful driver and the farmer with comparatively low usage of congested highways and streets.

I might add to the prepared statement here, that the additional amount by which the rate for motorists in some of these categories might go up could be another doubling of their basic rates. If the committee is interested, we will be glad to explore that in more detail at a later period.

The present system not only keeps the onus of responsibility on the guilty party, but, generally speaking, operates to place most of the burden of accident losses and insurance premium costs on the shoulders of those vehicle owners and operators who create the greatest hazard. The Illinois plan and our dual protection plan preserve this sound and equitable principle. S. 945 in original form would have gone a long way toward abrogating it. Committee Print No. 1 utterly destroys the principle. It in effect decrees that the less hazardous motorists shall bear the cost of totally insuring themselves against all the extraordinary injuries and damages to which they are exposed at the hands of those who present a greater than ordinary hazard—either by reason of their youth, their driving habits, or their greater usage of the highways.

A prime example of the arbitrary and unjust way that Committee Print No. 1 of S. 945 reverses responsibilities and shifts burdens is its treatment of pain and suffering and other "noneconomic" damages of

defined in the bill, which has been discussed already at some length. Whereas the original draft of S. 945 would have left at least the catastrophic harm situations under the fault system, the Print No. 1 abolished that. The system erected in its place deals with two extreme situations:

1. A "car owner" and his spouse and dependents will go completely uncompensated for pain and suffering and other "noneconomic" losses as defined by the bill, unless the car owner has affirmatively elected to insure himself and his family against such losses, by purchasing the optional no-fault coverage for that purpose.

2. Anyone who is not a car owner or the spouse or dependent of a car owner will on the other hand be compensated not only for economic losses, but also for pain and suffering (as measured by tort law of the State in question) and other "noneconomic" losses, even where he is at fault.

The inclusion of these provisions in Committee Print No. 1 of S. 945 evidences an awareness by the drafters that, as we have long maintained, the public values highly its right to sue for intangible as well as tangible damages, and will not react kindly to having it abolished. But the supposed answer proffered by Committee Print No. 1 is really no answer at all. It not only won't satisfy the problem, but it will create vexing new problems and inequities.

For one thing, the optional noneconomic loss coverage will be so costly that many motorists in the lower income brackets simply cannot afford it or will not buy it. As I have indicated, merely to buy Committee Print No. 1's minimum compulsory coverages alone, many motorists today paying $100 for basic coverage will have to pay $145. Many will refuse to pay a total of $200—using that as an example—or even more in some cases, for a package including optional "noneconomic loss" coverage.

Committee Print No. 1 of S. 945 has thereby destroyed a vitally important right of recovery and tried to replace it with a substitute that is, practically speaking, either beyond the reach of or unsalable to a large segment of the public.

By footnote we have indicated a number of other inequities and incongruities which are created by the treatment of pain-and-suffering coverage under the draft of Committee Print No. 1. I will not stop on those at this point.

In our testimony on the original S. 945 (May 7 statement) we objected to the fact that the bill abrogated the vitally important principle that motoring should pay its own way in our society. By making the mandatory no-fault economic loss coverage excess over virtually all other private or public insurance systems and benefit sources (except where those systems and sources explicitly elect to be secondary), the original S. 945 would have thrust on systems outside the auto reparations system most of the accident loss costs that motoring should itself bear.

Committee Print No. 1 effects some restructuring of the provisions relating to this issue, in which the situation under original S. 945 is in one regard slightly improved but in other regards worsened. On balance, our original objections are still unanswered, and we reassert them.

S. 945 both in its original and present form constitutes a direct, clear-cut move for Federal entry into the regulation of the auto insurance business, which is now and should remain the province of the States. In the course of this move, the Federal Government under the bill's provision would also usurp fundamental company management prerogatives, destroy competition, initiative, and innovation in the pricing and marketing of automobile insurance, and imperil the growth and even the soundness of companies.

In my prepared statement, I have referred to a number of particulars in which Committee Print No. 1 does provide for de facto Federal regulation, and I have noted that what Committee Print No. 1 adds up to is dual regulation, with the Federal Government duplicating a complicated and extremely expensive regulatory process, already being performed adequately by the State. The countless additional millions of dollars this would cost the taxpayers annually cannot be justified. Worse than that is the destruction Committee Print No. 1's straightjacketing restrictions wreak on competition, innovation, and the healthy growth and soundness of our business. If the property and casualty insurance industry is to continue to attract risk capital and develop additional surplus to meet the market needs of an ever-expanding motoring population, it needs not more, but fewer, shackles and fetters on the pricing and marketing of its products.

In this regulatory context, the most dangerous single provision in the bill is subsection 5(g). With but two very tenuous exceptions, this subsection would require every insurer, large or small, to accept every applicant who has a license and tenders a premium, and to insure him for life if he desires.

What makes this provision all the more insidious is that it carriers the false front of a "consumer-oriented" measure, since it purports to guarantee the availability of auto insurance at all times in a company of an individual's choice. In actuality, such a measure won't add one penny to our industry's market capacity. To the contrary, it will probably serve to constrict that overall capacity.

It should be noted that the automobile insurance industry today is already guaranteeing the availability of essential automobile insurance coverage to every licensed motorist who from a safety standpoint deserves to be on the highway. It is doing so collectively, through auto insurance plans (assigned risk) in every State, which are undergoing constant broadening and streamlining.

We know of no other comparable industry, incidentally, that affords such a service: Banks, for example, do not provide "assigned borrower's" plans where a poor credit risk can go and get a loan without collateral.

As though our industry's collective guarantees of insurance availability were not enough, Committee Print No. 1 seeks to force every automobile insurance company in America to individually guarantee, in effect, that it will accept and insure perpetually every customer who walks in, to the point where it reaches the brink of insolvency. This utterly unreasonable (and possibly unconstitutional) requirement is unprecedented in the annals of American business.

By footnote, I note that it goes considerably beyond what is demanded of public utilities and at the same time does not recognize

the fact that public utilities do not undertake the risks and the hazards that our business faces.

This provision, even though it is labeled or it is intended, I am sure, as a consumer-oriented provision, will destroy competition, forestall entry of new risk capital into our industry, force scores of smaller companies out of business, and force many who remain to seek higher rates. In practice, this would be an antismall business measure.

In conclusion, for these and other reasons, our association is strongly opposed to S. 845, both as originally introduced and as revised in Committee Print No. 1. It is our position that no congressional legislation of any kind relating to the no-fault issue is needed or warranted, either creating a federal system as these bills would do or seeking to superimpose a single, preconceived pattern on all the States. Federal legislation will stifle the needed experimentation that is so vital to sound auto insurance reform. The States are on the move in the consideration and adoption of modified no-fault programs that constitute a great step forward, but do not involve added costs or risks, or the sacrifice of accident victims' basic rights.

As I indicated, our association is certainly in the forefront, urging on those States that they move in that direction. We are convinced that the State avenue is the only avenue which affords the flexibility and adaptability essential for testing and perfecting a modernized reparation system that will best satisfy the long-range, diverse demands of the motoring public.

Senator BAKER. Mr. Mertz, I thank you very much. I apologize for my inability to be here for the entire length of your statement, and I apologize on behalf of the chairman of the subcommittee, Senator Hart, that he had to leave to attend a session of another committee for the markup of a bill in which he is involved.

With that in view, I suppose it would be best to assure you that I will carefully read and consider your statement in its entirety. Would you be willing to answer questions that might later be submitted by this subcommittee for inclusion in the record?

Mr. MERTZ. We would be very happy for that information to be furnished.

Senator BAKER. I want to thank you very much for your testimony and, once again, to apologize for being unable to be present.

(The statement and questions and answers follow:)

STATEMENT OF ARTHUR C. MERTZ, VICE PRESIDENT AND GENERAL COUNSEL, NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

NAII is a voluntary national trade association of some 533 insurers of all types, both stock and non-stock, whose membership provides a representative cross-section of the casualty and fire insurance business in America. Our companies range in size from the smallest one-state entrepreneurs to the very largest national writers and they reflect all forms of merchandising. These companies write over 50% of the insured automobiles in the United States.

The position of our Association can be summed up as follows:

1. We fully recognize that the existing damage reparations system for automobile accidents is beset by certain problems and shortcomings which need correction, we we believe it likewise possesses basic features and concepts which should be preserved.

2. We are committed to prompt reform of the system, through modified no-fault measures that broaden protection and expedite payments while retaining vital rights. We are actively working in the various state legislatures to accomplish that end, and we are encouraged.

3. There is no need for a federal law governing automobile accident reparations, in view of the strong reform trend now under way and gathering momen-

tum at the state level, as evidenced by the modified no-fault programs recently enacted in five states and the programs shaping up in many other states.

4. Adoption of a federal no-fault law as manifested in S-945, Committee Print No. 1, would be a grievous and very costly mistake, whose unfortunate consequences the American public neither desires nor deserves. Costwise, as I shall point out, actuarial projections indicate that this measure will bring about insurance premium hikes of 10% to 45% and the optional coverages many motorists will feel impelled to buy to replace existing rights of recovery abolished by the Act will raise their premiums at least 25% to 100%.

NO NEED FOR FEDERAL LEGISLATION

Congressional action of some type regarding the auto accident reparations problem might be justified *if* the states lacked the ability or capacity adequately to deal with the problem. Such is *not* the case. The states certainly possess and have demonstrated that ability and capacity. Indeed, because the formulation and administration of laws governing the rgihts and responsibilities of motorists and auto accident victims, as well as the regulation of automobile insurance, have long been carried out by the states, state legislators and officials are in an ideal position to develop, test, and perfect appropriate reform measures.

During the no-fault hearings by your Committee in May of this year, a pivotal issue seemed to be whether the states would be willing and able to act expeditiously in this regard.[1] We would hope that the excellent record of the states in enacting insolvency fund laws, uninsured motorist covering statutes, and other key insurance legislation, and particularly the adoption of modified no-fault programs in five states[2] within a little over a year's time, will serve to lay that question to rest.

Our Association and its members are actively promoting state legislation very similar to the newly-enacted Illinois Plan. Our program, the Dual Protection Plan, mandates the broadening of all private passenger auto insurance policies and reforms the tort system so as to:

Provide immediate compensation of the auto accident victim's basic medical expenses and disability losses regardless of fault.

Require the offering of high-limits supplemental catastrophe no-fault coverage with all policies.

Preserve but delimit in less serious cases the right to general tort damages for pain and suffering.

Encourage rehabilitation.

Greatly increase the speed and cost efficiency of the system.

Alleviate court congestion.

Stabilize or reduce rates.

More details on its provisions are set forth a pp. 3–4 of our May 7, 1971. statement.

ATTEMPTED CONGRESSIONAL IMPOSITION OF A SINGLE, NATIONAL "SOLUTION" WOULD BE UNWISE

As indicated by Secretary Volpe in his report and testimony to the Congress, the DOT study itself has pointed up the wisdom of exercising caution in deciding exactly what steps should be taken in the way of reform measures.

Even the massive data and findings piled up by DOT do not lead automatically to "easy solutions" of the auto accident compensation problem, according to Mr. Volpe.

"Much legitimate uncertainty" exists as to "how far and how fast the public wants or is willing to go in changing the reparations system."

The complexity of the problem, and the existence of honest disagreement among informed people as to what remedial measures are best, point to the wisdom of healthy experimentation and change at the state level, rather than federal action abruptly overturning the whole auto reparations system nationally.

---

[1] As we then pointed out, in view of the extreme complexity and controversiality of this subject, and the fact that the federal studies had stretched over three years and were just then completed, it would hardly be fair to expect precipitate action by 50 states overturning their carefully-developed accident reparation systems without reasonable opportunity for evaluation of the DOT report and other pertinent facts and considerations.

[2] Massachusetts, Florida, Delaware, Oregon, and Illinois.

We strongly concur with Secretary Volpe's admonitions on these points. It is hard to find a phenomenon in today's society that is more complicated, abstruse, and difficult to analyze scientifically than the phenomenon of the automobile accident, its causes, and its consequences. It is especially difficult to accurately measure deeply-imbedded public attitudes and motivations relative to auto accidents, or to predict the ultimate impact on public attitudes and behavior if the rules for compensating accident victims were drastically changed. The DOT opinion surveys, like some others before them, display a confusing patchwork of viewpoints and reactions, with inconsistent and conflicting answers by some of the same interviewees to complementary but conversely-phrased questions.

Accordingly, we do not believe that satisfactory answers to the demands of various segments of the public for reform—some of them mutually conflicting—can be produced in one fell swoop by enactment of a federal law. This is particularly true of an extreme measure such as S–945, Committee Print No. 1, which we fear will create more problems than it solves. The only promising avenue for accommodating and reconciling those diverse complaints and demands, and achieving realistic, durable solutions lies in healthy experimentation by the states with "middle-of-the-road" programs—programs which strike a reasonable balance between the fault and no-fault concepts. In developing and offering to the state legislatures our Dual Protection Plan, we are seeking to aid in that process.

COMMENTARY ON S–945, COMMITTEE PRINT NO. 1

In our May 7 statement we set forth a number of fundamental objections to S–945 as originally introduced. Committee Print No. 1 reflects no improvements over the original in these regards. On the contrary, its drafters have moved from an extreme form of no-fault program to a total no-fault program which will be even more costly, unjust, and inimical to the long-range public interest than the original.

In the interests of time, I shall touch only briefly on each of the more serious evils and defects we see in this legislation.

PERSONAL ACCOUNTABILITY FOR MISCONDUCT

In our previous testimmoy, we expressed grave concern over the public policy and safety implications of adoption by Congress of legislation freeing motorists of personal accountability to persons they wrongfully kill or injure. Original S–945 would have taken a dangerous step in that dirction. Committee Print No. 1 goes all the way and completely abolishes personal accountability. Our previous arguments therefore apply even more unequivocally.

We recognize that considerable controversy exists over the question of the exact extent to which driver behavior is influenced consciously or subconsciously by awareness that one is accountable for injuries or damage he negligently inflicts. In our considered judgment, supported by experience and a number of academic studies, a statute embodying the concept that the government *no longer cares who is responsible for auto accidents* cannot fail to cause some significant deterioration of public attitudes toward driving, and to undermine to some significant extent the motivation for enforcement of safety laws.

Admittedly, this cannot be proved with finally, in advance. But on the other hand, the doubters cannot provide any guarantee, either, that it will *not* happen.

Accordingly, we would simply ask whether it is *worth the gamble* to abolish personal accountability, when what is at stake is the possibility of thousands of additional deaths and hundreds of thousands of additional injuries? Is it worth risking this eventuality under a total no-fault plan such as S–945, Committee Print No. 1, when less drastic alternatives such as the Illinois Plan and Dual Protection are available, which preserve personal accountability for negligent misconduct? We respectfully submit that it is not worth the gamble.

THE TREMENDOUS ADDED PREMIUM COSTS INHERENT IN THIS PROGRAM

Motorists are already chafing under the very size of some auto insurance premiums necessitated by today's heavy toll of accidents and losses. NAII and others in our industry are striving hard to reduce or stabilize premiums through many avenues, including sponsorship of our Dual Protection Plan.

Any statutory program mandating sizable rate increases for a large segment of the public is in our opinion unthinkable. Yet this is precisely what Committee Print No. 1 of S–945 would do.

Actuarial projections supplied to us by the Chairman of our Special Actuarial Committee on Costing indicate that, conservatively speaking, adoption of Committee Print No. 1 of S–945 would have the following impact on insurance premium levels:

For those motorists who now carry a full package of auto insurance coverage (BI and PD liability, collision and comprehensive, and uninsured motorist and medical payments coverage), and who under S–945, Committee Print No. 1, purchase the required basic injury coverages plus collision and comprehensive, it will mean a 10% or 30% increase in average premiums, depending on the state.

If those motorists decide also to buy the optional "non-economic loss" coverage (since S–945 abolishes their tort right of recovery for pain, suffering, etc.) it will mean a *25% to 60% increase* over existing premiums.

Motorists who currently carry just the minimum auto insurance coverages[3] will fare even worse, percentagewise.

Even if they continue under S–945, Committee Print No. 1, to buy only the basic coverages it requires, their average premiums will rise *between 10% and 45%*.

If they decide to buy the optional "non-economic loss" coverage it will *add 40% to 100% increase* over their existing premiums.[3a]

INEQUITABLE SHIFT IN THE ACCIDENT LOSS BURDEN

As alarming as these rate projections are, they don't even tell the whole story, for they represent only the increases in the *average* premiums for motorists with various typical packages of coverage. The increases will be even more sizeable for some categories of motorists; those who will be hit relatively the hardest will be those car owners who present the least hazard to others—such as the head of a large family who is a careful driver and the farmer with comparatively low usage of congested highways and streets.

The present system not only keeps the onus of responsibility on the guilty party, but generally speaking, operates to place most of the burden of accident losses and insurance premium costs on the shoulders of those vehicle owners and operators who create the greatest hazard. The Illinois Plan and our Dual Protection Plan preserve this sound and equitable principle. S–945 in original form would have gone a long way toward abrogating it. Committee Print No. 1 utterly destroys the principle. It in effect decrees that the less hazardous motorists shall bear the cost of totally insuring themselves agains all the extraordinary injuries and damages to which they are exposed at the hands of those who present a greater than ordinary hazard—either by reason of their youth, their driving habits, or their greater usage of the highways.

TREATMENT OF PAIN AND SUFFERING AND OTHER "NON-ECONOMIC" DAMAGES

A prime example of the arbitrary and unjust way that Committee Print No. 1 of S–945 reverses responsibilities and shifts burdens is its treatment of pain and suffering and other "non-economic" damages[4] as defined in the bill. All right of recovery in tort (even in "catastrophic harm" situations which original S–945 would have left under the fault system) is abolished. The system erected in its place deals as follows with non-economic losses:

1. A "car owner" and his spouse and dependents will go completely uncompensated for pain and suffering and other "non-economic" losses as defined by the bill, unless the car owner has affirmatively elected to insure himself and his family against such losses, by purchasing the optional no-fault coverage for that purpose.

2. Anyone who is not a car owner or the spouse or dependent of a car owner will on the other hand be compensated[5] not only for economic losses, but also for pain and suffering (as measured by tort law of the state in question) and other "non-economic" losses, even where he is at fault.

---

[3] That is, the minimum bodily injury and property damage liability coverages and uninsured motorist coverage specified in the state financial responsibility or compulsory insurance laws.

[3a] If such motorists also decide they now need collision coverage, since S–945, Committee Print No. 1 abolished their right to recover from a negligent third party who damages their car, it will add another 30% to 120% to their premium bill.

[4] The term "damage other than economic loss" under Sec. 2(17) includes not only intangible damages, but also tangible damage in excess of "economic loss" as defined in Sec. 2(13). Wage loss above $1,000 a month is one example of the latter.

[5] By the insurer or insurers of the car or cars involved, or in the case of uninsured vehicles, by the assigned case plan created under the bill.

The inclusion of these provisions in Committee Print No. 1 of S–945 evidences an awareness by the drafters that, as we have long maintained, the public values highly its right to sue for intangible as well as tangible damages, and will not react kindly to having it abolished. But the supposed answer proffered by Committee Print No. 1 is really no answer at all. It not only won't satisfy the problem, but it will create vexing new problems and inequities.

For one thing, the optional non-economic loss coverage will be so costly that many motorists in the lower income brackets simply cannot afford it or will not buy it. As I have indicated, merely to buy Committee Print 1's minimum compulsory coverages alone, many motorists today paying $100 for basic coverage will have to pay $145. Many will refuse to pay a total of $200, or even more in some cases, for a package including optional "non-economic loss" coverage.

Committee Print No. 1 of S–945 has thereby destroyed a vitally important right of recovery and tried to replace it with a substitute that is, practically speaking, either beyond the reach of or unsaleable to a large segment of the public.[6]

A host of other problems and imponderables too numerous to mention here are presented by the treatment given by Committee Print No. 1 to pain and suffering and other "non-economic" losses.[7] We believe that after the right of tort recovery for intangible damages is once destroyed, as Committee Print No. 1 does, there is no sound, saleable, and equitable way it can be rejuvenated in the form of a contract no-fault coverage.

PRIMACY OF AUTOMOBILE COVERAGE

In our testimony on the original S–945 (May 7 Statement, pp. 8–9), we objected to the fact that the bill abrogated the vitally important principle that *motoring should pay its own way* in our society. By making the mandatory no-fault economic loss coverage excess over virtually all other private or public insurance systems and benefit sources (except where those systems and sources explicitly *elect* to be secondary), the original S–945 would have thrust on systems outside the auto reparations system most of the accident loss costs that motoring should itself bear.

Committee Print No. 1 effects some restructuring of the provisions relating to this issue, in which the situation under original S–945 is in one regard slightly improved but in other regards worsened.[8] On balance, our original objections are still unanswered, and we reassert them.

---

[6] A somewhat analogous dilemma is presented with regard to automobile property damage. Many motorists who now do not carry first party collision coverage on their car (or one of their cars) will be faced with either (1) shouldering the full additional exposure to loss that S–945, Committee Print No. 1, creates by abolishing their right of tort recovery against one who negligently damages their car, or (2) paying the added premium to buy collision coverage. Even if the latter route is followed, when damage occurs, the car owner will still have to dig into his own pocket to pay the amount of loss represented by the deductible.

[7] For example, by giving *free* to non-car owners and their spouses and dependents, the no-fault "non-economic" loss protection for which car owners must pay dearly under the same program, Committee Print No. 1 not only hands a substantial windfall to those who legitimately fall in the non-car owner class, but readily lends itself to all sorts of devices which could undermine (and perhaps destroy) the whole purpose of the bill in this regard. A highly-paid business executive could, by simply leasing a car or carrying title to his car in his company name, completely avoid buying "non-economic" loss coverage; yet, if injured, he and his family, even if at fault, could collect from the insurer of any other vehicle in the accident all the extra benefits provided in that coverage. Thus, they would be assured of collecting unlimited damages for pain and suffering, plus *all* their income losses (including income above the $1,000 limit set in the basic coverage under S–945) without paying a penny for that costly protection. They would in effect thereby be subsidized by their white-collar and blue-collar neighbors who aren't in a position to employ company car, leased car, or kindred arrangements and avoid personally "owning" a car and paying for the optional coverage.

[8] Original S–945, in defining "net economic loss" compensale under the required auto insurance coverage, called for deduction of all benefits, etc., received under any private or public insurance or plan or benefit source, except (1) life insurance, gratuities, familial support, etc., (2) where such private or public insurance or plan or benefit source explicitly makes itself *excess* to auto insurance benefits. Subsection 2(15) of Committee Print No. 1 redefines "net economic loss" to mean economic loss reduced only by the amount of any benefits or payments received from (A) any public health insurance or plan, and (B) any private insurance or plan explicitly making its benefits *primary* over benefits under a "qualifying no-fault policy" of auto insurance. The new provision as to private benefit sources represents some improvement over the original, but still an inadequate answer. The new provision as to public benefit sources is a further step in the wrong direction. Automobile insurance coverage should be primary in all situations, except that it should not apply to cases covered by workmen's compensation. (The same sort of public policy considerations dictating that motoring pay *its* way likewise dictate that a business enterprise bear the full social costs of accidents occurring in the course of its operations.)

Actuarial projections supplied to us by the Chairman of our Special Actuarial Committee on Costing indicate that, conservatively speaking, adoption of Committee Print No. 1 of S–945 would have the following impact on insurance premium levels:

For those motorists who now carry a full package of auto insurance coverage (BI and PD liability, collision and comprehensive, and uninsured motorist and medical payments coverage), and who under S–945, Committee Print No. 1, purchase the required basic injury coverages plus collision and comprehensive, it will mean a 10% or 30% increase in average premiums, depending on the state.

If those motorists decide also to buy the optional "non-economic loss" coverage (since S–945 abolishes their tort right of recovery for pain, suffering, etc.) it will mean a *25% to 60% increase* over existing premiums.

Motorists who currently carry just the minimum auto insurance coverages[3] will fare even worse, percentagewise.

Even if they continue under S–945, Committee Print No. 1, to buy only the basic coverages it requires, their average premiums will rise *between 10% and 45%*.

If they decide to buy the optional "non-economic loss" coverage it will *add 40% to 100% increase* over their existing premiums.[3a]

INEQUITABLE SHIFT IN THE ACCIDENT LOSS BURDEN

As alarming as these rate projections are, they don't even tell the whole story, for they represent only the increases in the *average* premiums for motorists with various typical packages of coverage. The increases will be even more sizeable for some categories of motorists; those who will be hit relatively the hardest will be those car owners who present the least hazard to others—such as the head of a large family who is a careful driver and the farmer with comparatively low usage of congested highways and streets.

The present system not only keeps the onus of responsibility on the guilty party, but generally speaking, operates to place most of the burden of accident losses and insurance premium costs on the shoulders of those vehicle owners and operators who create the greatest hazard. The Illinois Plan and our Dual Protection Plan preserve this sound and equitable principle. S–945 in original form would have gone a long way toward abrogating it. Committee Print No. 1 utterly destroys the principle. It in effect decrees that the less hazardous motorists shall bear the cost of totally insuring themselves agains all the extraordinary injuries and damages to which they are exposed at the hands of those who present a greater than ordinary hazard—either by reason of their youth, their driving habits, or their greater usage of the highways.

TREATMENT OF PAIN AND SUFFERING AND OTHER "NON-ECONOMIC" DAMAGES

A prime example of the arbitrary and unjust way that Committee Print No. 1 of S–945 reverses responsibilities and shifts burdens is its treatment of pain and suffering and other "non-economic" damages[4] as defined in the bill. All right of recovery in tort (even in "catastrophic harm" situations which original S–945 would have left under the fault system) is abolished. The system erected in its place deals as follows with non-economic losses:

1. A "car owner" and his spouse and dependents will go completely uncompensated for pain and suffering and other "non-economic" losses as defined by the bill, unless the car owner has affirmatively elected to insure himself and his family against such losses, by purchasing the optional no-fault coverage for that purpose.

2. Anyone who is not a car owner or the spouse or dependent of a car owner will on the other hand be compensated[5] not only for economic losses, but also for pain and suffering (as measured by tort law of the state in question) and other "non-economic" losses, even where he is at fault.

---

[3] That is, the minimum bodily injury and property damage liability coverages and uninsured motorist coverage specified in the state financial responsibility or compulsory insurance laws.

[3a] If such motorists also decide they now need collision coverage, since S–945, Committee Print No. 1 abolished their right to recover from a negligent third party who damages their car, it will add another 30% to 120% to their premium bill.

[4] The term "damage other than economic loss" under Sec. 2(17) includes not only intangible damages, but also tangible damage in excess of "economic loss" as defined in Sec. 2(15). Wage loss above $1,000 a month is one example of the latter.

[5] By the insurer or insurers of the car or cars involved, or in the case of uninsured vehicles, by the assigned case plan created under the bill.

The inclusion of these provisions in Committee Print No. 1 of S–945 evidences an awareness by the drafters that, as we have long maintained, the public values highly its right to sue for intangible as well as tangible damages, and will not react kindly to having it abolished. But the supposed answer proffered by Committee Print No. 1 is really no answer at all. It not only won't satisfy the problem, but it will create vexing new problems and inequities.

For one thing, the optional non-economic loss coverage will be so costly that many motorists in the lower income brackets simply cannot afford it or will not buy it. As I have indicated, merely to buy Committee Print 1's minimum compulsory coverages alone, many motorists today paying $100 for basic coverage will have to pay $145. Many will refuse to pay a total of $200, or even more in some cases, for a package including optional "non-economic loss" coverage.

Committee Print No. 1 of S–945 has thereby destroyed a vitally important right of recovery and tried to replace it with a substitute that is, practically speaking, either beyond the reach of or unsaleable to a large segment of the public.[6]

A host of other problems and imponderables too numerous to mention here are presented by the treatment given by Committee Print No. 1 to pain and suffering and other "non-economic" losses.[7] We believe that after the right of tort recovery for intangible damages is once destroyed, as Committee Print No. 1 does, there is no sound, saleable, and equitable way it can be rejuvenated in the form of a contract no-fault coverage.

PRIMACY OF AUTOMOBILE COVERAGE

In our testimony on the original S–945 (May 7 Statement, pp. 8–9), we objected to the fact that the bill abrogated the vitally important principle that *motoring should pay its own way* in our society. By making the mandatory no-fault economic loss coverage excess over virtually all other private or public insurance systems and benefit sources (except where those systems and sources explicitly *elect* to be secondary), the original S–945 would have thrust on systems outside the auto reparations system most of the accident loss costs that motoring should itself bear.

Committee Print No. 1 effects some restructuring of the provisions relating to this issue, in which the situation under original S–945 is in one regard slightly improved but in other regards worsened.[8] On balance, our original objections are still unanswered, and we reassert them.

---

[6] A somewhat analogous dilemma is presented with regard to automobile property damage. Many motorists who now do not carry first party collision coverage on their car (or one of their cars) will be faced with either (1) shouldering the full additional exposure to loss that S–945, Committee Print No. 1, creates by abolishing their right of tort recovery against one who negligently damages their car, or (2) paying the added premium to buy collision coverage. Even if the latter route is followed, when damage occurs, the car owner will still have to dig into his own pocket to pay the amount of loss represented by the deductible.

[7] For example, by giving *free* to non-car owners and their spouses and dependents, the no-fault "non-economic" loss protection for which car owners must pay dearly under the same program, Committee Print No. 1 not only hands a substantial windfall to those who legitimately fall in the non-car owner class, but readily lends itself to all sorts of devices which could undermine (and perhaps destroy) the whole purpose of the bill in this regard. A highly-paid business executive could, by simply leasing a car or carrying title to his car in his company name, completely avoid buying "non-economic" loss coverage; yet, if injured, he and his family, even if at fault, could collect from the insurer of any other vehicle in the accident all the extra benefits provided in that coverage. Thus, they would be assured of collecting unlimited damages for pain and suffering, plus *all* their income losses (including income above the $1,000 limit set in the basic coverage under S–945) without paying a penny for that costly protection. They would in effect thereby be subsidized by their white-collar and blue-collar neighbors who aren't in a position to employ company car, leased car, or kindred arrangements and avoid personally "owning" a car and paying for the optional coverage.

[8] Original S–945, in defining "net economic loss" compensale under the required auto insurance coverage, called for deduction of all benefits, etc., received under any private or public insurance or plan or benefit source, except (1) life insurance, gratuities, familial support, etc., (2) where such private or public insurance or plan or benefit source explicitly makes itself *excess* to auto insurance benefits. Subsection 2(15) of Committee Print No. 1 redefines "net economic loss" to mean economic loss reduced only by the amount of any benefits or payments received from (A) any public health insurance or plan, and (B) any private insurance or plan explicitly making its benefits *primary* over benefits under a "qualifying no-fault policy" of auto insurance. The new provision as to private benefit sources represents some improvement over the original, but still an inadequate answer. The new provision as to public benefit sources is a further step in the wrong direction. Automobile insurance coverage should be primary in all situations, except that it should not apply to cases covered by workmen's compensation. (The same sort of public policy considerations dictating that motoring pay *its* way likewise dictate that a business enterprise bear the full social costs of accidents occurring in the course of its operations.)

S-945 both in its original and present form constitutes a direct, clear-cut move for Federal entry into the regulation of the auto insurance business, which is now and *should remain* the province of the states. In the course of this move, the Federal Government under the bill's provision would also usurp fundamental company management prerogatives, destroy competition, initiative, and innovation in the pricing and marketing of automobile insurance, and imperil the growth and even the soundness of companies.

The printed Staff Analysis of Committee Print No. 1 contains a paragraph (p. 3) captioned "State regulatory role preserved", but upon a reading of that paragraph and inspection of the bill, it is apparent that that role is intended to be subordinate, although expensively duplicative. This bill prescribes or its administrator will dictate:

1. The scope, contents, and terms of all policies, coverages, and benefits required or permitted to be sold;
2. The grounds (lack of a license, failure to pay premiums, or impending insolvency) on which an application for basic insurance under the bill may be rejected, or a policy cancelled or non-renewed;
3. Uniform risk classes;
4. Uniform rating territories;
5. A uniform statistical plan for compiling and reporting claims and loss experience;
6. Structure and operation of the assigned claims plan in each state.

The federal insurance administrator must also be furnished with every insurer's rates for all classes and territories. He is required at least semi-annually to prepare, and make available to the state insurance commissioners and the public, comparisons of each insurer's "actual rates" with its "indicated rates" as determined by the federal administrator, for each class of risk in each rating territory.

The role intended for the state insurance commissioners under this plan is therefore clear—it is one of seeing to it that each insurer's actual rates conform to the "indicated rates" handed down from Washington. What Committee Print No. 1 adds up to is dual regulation, with the federal government duplicating complicated and extremely expensive regulatory processes already being performed adequately by the state. The countless additional millions of dollars this would cost the taxpayers annually cannot be justified. Worse than that is the destruction Committee Print No. 1's straightjacketing restrictions wreak on competition, innovation, and the healthy growth and soundness of our business. If the property and casualty insurance industry is to continue to attract risk capital and develop additional surplus to meet the market needs of an ever-expanding motoring population, it needs not more, but fewer, shackles and fetters on the pricing and marketing of its products.

In this regulatory context, the most dangerous single provision in the bill is Subsection 5(g). With but two very tenuous exceptions, this subsection would require every insurer, large or small, to accept every applicant who has a license and tenders a premium, and to insure him for life if he desires.[9]

What makes this provision all the more insidious is that it carries the false front of a "consumer-oriented" measure, since it purports to guarantee the availability of auto insurance at all times in a company of an individual's choice. In actuality, such a measure won't add one penny to our industry's market capacity. To the contrary, it will probably serve to constrict that overall capacity.

It should be noted that the automobile insurance industry today is *already* guaranteeing the availability of essential automobile insurance coverage to every

---

[9] The only exceptions are (1) where the domiciliary state insurance commissioner "deems in writing that the financial soundness of each insurer would be impaired by the writing of additional policies of such insurance", or (2) where the insurer ceases to write new policies of insurance *of any kind* in the jurisdiction of the rejected applicant.

The latter avenue, of course, means going out of business entirely in the states involved. In other words, it means committing economic suicide, especially for scores of small or medium sized companies, many of which operate in only one or a few states.

As to the first avenue, its basic flaw lies in the fact that it may prove very difficult for a company management to affirmatively prove to a regulatory official (be he state or federal) that accepting one or more additional policies will impair its financial soundness, and to obtain a timely order from such an official to such effect. The analysis of a company's overall financial soundness (in which all its assets, reserves, liabilities, etc., for all lines and areas must be examined and evaluated) is a very time-consuming process, and no insurance department has adequate staff to be examining more than a few companies at any one time.

licensed motorist who from a safety standpoint deserves to be on the highway. It is doing so collectively, through Auto Insurance Plans (assigntd risk) in every state, which are undergoing constant broadening and streamlining.

We know of no other comparable industry, incidentally, that affords such a service: Banks, for example, do not provide "assigned borrower's" plans where a poor credit risk can go and get a loan without collateral.

As though our industry's collective guarantees of insurance availability were not enough, Committee Print No. 1 seeks to force every automobile insurance company in America to *individually* guarantee, in effect, that it will accept and insure *perpetually* every customer who walks in, to the point where it reaches the brink of insolvency. This utterly unreasonable (and possibly unconstitutional) requirement is unprecedented in the annals of American business.[10] It will destroy competition, forestall entry of new risk capital into our industry, force scores of smaller companies out of business, and force many who remain to seek higher rates. In practice, this would be an anti-small business measure.

CONCLUSION

For these and other reasons, our Association is strongly opposed to S. 945, *both* as originally introduced and as revised in Committee Print No. 1. It is our position that no Congressional legislation of any kind relating to the no-fault issue is needed or warranted, either creating a federal system as these bills would do or seeking to superimpose a single, preconceived pattern on all the states. Federal legislation will stifle the needed experimentation that is so vital to sound auto insurance reform. The states are on the move in the consideration and adoption of modified no-fault programs that constitute a great step forward, but do not involve added costs or risks, or the sacrifice of accident victims' basic rights.

We are doing everything possible to aid in that effort. We are convinced that the state avenue is the only avenue which affords the flexibility and adaptability essential for testing and perfecting a modernized reparation system that will best satisfy the long-range, diverse demands of the motoring public.

OCTOBER 19, 1971.

MR. ARTHUR C. MERTZ,
Vice President and General Counsel, National Association of Independent Insurers, Washington, D.C.

DEAR MR. MERTZ: When you appeared before the Senate Commerce Commtitee on October 13th, you were asked if you would provide for the record answers to any written questions submitted to you. You kindly consented to this request, and I am, therefore, submitting the following question to you:

> Would you please provide the Committee with a detailed actuarial analysis of the costs of Committee Print One for an average person (average age, territory, driving record, and so forth) and state the benefits resulting from such qualifying no-fault policy? Would you then compare the costs and benefits of the qualifying no-fault policy with costs and benefits of bodily injury liability coverage (10-20) for the same person? When presenting such information, please disclose the assumptions upon which your actuarial projections are based and indicate the pure loss, the loss adjustment expense, acquisition, and other costs of the "qualifying no-fault policy" premium dollar.

Thank you very much for your cooperation. The Committee will close its hearing record on Octobed 28, 1971.

Sincerely yours,

WARREN G. MAGNUSON, *Chairman.*

---

[10] Even the example of a public utility is in no way analogous. The business risks and hazards faced by a utility cannot even approach those of a casualty insurer, because (1) the utility has a monopoly while an insurer faces widespread competition; (2) the utility sells a product whose cost is known at time of sale while an insurer never knows the true cost of its product (or the full scope of its exposure to loss); (3) the utility can fairly readily ascertain when it has used up its capacity so as to exclude it from accepting additional customers, while it is difficult for an insurer (or regulator) to define the exact point when acceptance of additional insureds will exceed a safe limit; and (4) most important, a utility is assured a fixed profit on its assets, while insurers are not assured any profits nor is there any way a profit could be assured to the members of an industry made up of hundreds of competing entrepreneurs. Yet Committee Print No. 1 would saddle automobile insurers with obligations of acceptance and retention of customers which exceed in severity those imposed on utilities.

ALLSTATE,
Northbrook, Ill., October 29, 1971.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce, New Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: This is in reply to your letter of October 19 addressed to Mr. Arthur C. Mertz of the National Association of Independent Insurers. Since your question deals with a matter of costing no-fault insurance, Mr. Mertz has referred the inquiry to me for reply. To identify myself, I was the gentleman introduced by Mr. Mertz as seated at his elbow at the hearing on October 13. I am an Actuary with the Allstate Insurance Company and have been for some time Chairman of an Actuarial Sub-Committee of the National Association of Independent Insurers on the costing of no-fault auto insurance plans.

In order to give a direct reply to the question contained in the second paragraph of your letter, I must explain that our costing estimates are given on the basis of three principal combinations of coverage which the purchaser of automobile insurance normally buys. This method of making comparisons in costs was established some time ago and is based on our knowledge that the consumer makes his cost comparisons between the total premiums paid this year and the total premiums paid last year. Seldom does he analyze the combinations of coverage into their respective elements.

Minimum coverage is defined as Bodily Injury, Property Damage, and Uninsured Motorists Coverage. Medium coverage is minimum coverage plus first party medical coverage. Full coverage is medium coverage plus collision and comprehensive.

The recent Department of Transportation study reveals that something in excess of 20% of American motorists do not carry insurance at all. With respect to these individuals it is obvious that any plan (such as the proposed National No-Fault Motor Vehicle Act) which is compulsory, will increase the cost of these uninsured motorists by a ratio equivalent to infinity.

It is fair to assume for purposes of your comparisons, that the remaining motorists—those who do purchase insurance—may be distributed in roughly the following proportions:

	Percent
Full coverage	70
Medium coverage	10
Minimum coverage	20

With this explanation we can now reply to your question as follows: an average Allstate policyholder (on a country-wide basis) pays approximately $96 a year if he buys minimum coverage, $107 a year if he buys medium coverage, and $181 a year if he purchases full coverage (as most people do).

A person purchasing minimum coverage might expect an increase in his total cost of 29.7% if he elected not to buy the optional Personal Injury coverage, and an increase of 88.6% if he did elect the optional Personal Injury coverage (where such coverage was applicable only to accidents involving the insured vehicle).*

A person purchasing medium coverage might expect an increase in his total cost of 15.8% if he elected not to buy the optional Personal Injury coverage, and an increase of 68.4% if he did elect the optional Personal Injury coverage (where such coverage was applicable only to accidents involving the insured vehicle).*

A person purchasing full coverage might expect an increase in his total cost of 18.0% if he elected not to buy the optional Personal Injury coverage, and an increase of 49.2% if he did elect the optional Personal Injury coverage (where such coverage was applicable only to accidents involving the insured vehicle).*

The above actuarial estimates are based upon a computer program which has been applied extensively in the costing of many types of no-fault plans across the entire country. The method has been reviewed by many actuaries including those employed by members of all three of the major trade associations as well as actuaries employed by State Insurance Departments. It has been regarded consistently as a valid method for measuring the many alternate compensation plans proposed.

---

*Of course there are considerable state by state variations, as explained by Mr. Mertz in his testimony on October 13.

It is virtually impossible to detail all of the assumptions and statistics which underlie the final result. The computer program itself would be one starting point, but even this rather sophisticated program relies upon tables of underlying statistical information which occupy shelves of space in our company files.

As an indication of the type of work we have done, we enclose a description of that portion of our costing approach which deals with the question of frequency of occurrence of claims under the present tort system and again under the no-fault approach. You may or may not desire to include this enclosure as part of the record of testimony.

The balance of our analysis dealing with the relative severity (average cost) of individual claims is available in numerous compilations of tables which are available for discussion with you or your staff, but which are so bulky that they can hardly be made a part of this reply.

The analysis relies upon many sources:

1. Statistics from the United States Public Health Survey.
2. The Department of Transportation "Closed Claim" survey, also identified as "Automobile Personal Injury Claims."
3. Motor vehicle statistics from various State Motor Vehicle Departments, including particularly those of Illinois, New York, and California.
4. Research done at Allstate's Judson Branch Research Center in Menlo Park, California.
5. An individual "Closed Claim" survey done by Allstate in August of 1969.
6. Results of the Guaranteed Benefits Experiment conducted by the American Mutual Insurance Alliance with the help of several nonmember companies participating voluntarily.
7. Remarks contained in the publication "Crisis in Car Insurance," University of Illinois Press (1968).
8. A number of technical articles in the Proceedings of the Casualty Actuarial Society.

And many other sources available to the writer such as the Statistical Bulletin of the Metropolitan Life Insurance Company. In addition, the writer benefitted from a beginning to end participation in the Department of Transportation Closed Claim Survey.

The writer of this letter is available for consultation with you and/or members of your staff and/or any actuarial help you might retain to go into each and every detail of the collection of data, and calculations therefrom, including assumptions used to arrive at the final estimate.

To the best of our knowledge this is the most complete and up to date information available anywhere for costing no-fault insurance proposals. It contrasts markedly with the 1968 Study of the American Insurance Association which is generally regarded by most actuaries as being out of data and seriously flawed in a number of respects:

1. Since the 1968 AIA Study, a vast amount of additional information has become available, notably the two statistical studies by the DOT—Automobile Personal Injury Claims, and Economic Corporation of Automobile Accident Injuries.
2. The method of sampling used as a basis for the AIA Study would not have been acceptable to those who administered the DOT's two Studies referred to above.
3. The Closed Claim Study produced 27,500 Bodily Injury claims from 16 company groups in 19 key states, whereas the AIA Study produced only 4,000 Bodily Injury claims from 12 company groups in 7 states. Whereas the AIA Study was done only by stock member companies of the AIA and did not include the experience of the two major automobile insurers, the DOT Closed Claim Survey included all of the ten largest automobile insurers representing stocks, mutuals, and reciprocal exchanges, both bureau and independent.
4. It is impossible to reconcile the conclusion from the AIA Study that 79% of all injured persons recover under the present tort system with the conclusion from the DOT Seriously Injured Study that less than 45% of all seriously injured persons recover through the operation of the tort system. The effect of this disparity in arriving at cost estimates when going from a tort liability system to a no-fault system should be apparent even to an individual who has not studied this matter at great length.
5. It has been pointed out in a published report by the American Mutual Insurance Alliance that the AIA Study fails to recognize the cost implication of death benefits to dependents after the time that the injured person dies.

In contrast with the AIA testimony given on October 14, it should be pointed out that the costing analysis underlying the estimates given above results from a careful and detailed study of Committee Reprint No. 1, and not on the general assumption that Committee Reprint No. 1 is just another version of the AIA plan which was costed four years ago.

The costing estimates given here are based on the assumptions that the reletionship between pure lost cost and all other items of expenses remains the same. It is probable that any change in the system for compensating persons injured in automobile accidents will affect this relationship, but such change, whether upward or downward, is not expected to change the premium to the consumer markedly.

We hope the above is of help to you and your Committee, and hold ourselves available to you and your staff for further testimony, inquiry, or discussion.

Yours very truly,

CHARLES C. HEWITT, JR.

STATEMENT OF ANDRE MAISONPIERRE, VICE PRESIDENT AND MANAGER, AMERICAN MUTUAL INSURANCE ALLIANCE, WASHINGTON, D.C.

Mr. MAISONPIERRE. Thank you, Mr. Chairman. We appreciate very much the opportunity of presenting our views this afternoon on Committee Print No. 1 of S. 945. We would very much appreciate if our statement and appendixes could be made part of the record. Because of its length we will summarize it at this time.

Senator BAKER. Thank you very much. It will be received without objection and incorporated in the record appropriately.

I. INTRODUCTION

Mr. MAISONPIERRE. My name is Andre Maisonpierre and I am vice president of the American Mutual Insurance Alliance, a national association of mutual property and casualty insurance companies. Our member companies provide automobile and other property-casualty coverage in all 50 States and the District of Columbia.

We would appreciate if our statement and appendixes could be made part of the record. Because of its length, we will summarize it at this time.

It has been suggested that our testimony today be restricted to a technical analysis of Committee Print No. 1. We want it clearly understood, however, that the Alliance continues to be unalterably opposed to a national no-fault solution. Our prior testimony before this committee detailed the reasons for this opposition and nothing has happened in the interim which would make us change our views. In fact, we are more convinced than ever that the States are demonstrating their willingness to come to grips with automobile accident compensation reform.

Any piece of legislation, be it auto reform, tax reform, State or Federal, must be measured against well set-out objectives. In our complicated world, it is seldom sufficient to meet one or two limited objectives for reform. All must be met in order to structure the balanced approached which insures fair and equitable treatment of all.

The Alliance believes that any responsible auto insurance reform must achieve a reasonable balance among five different and often contradictory goals:

1. To provide crash victims with prompt and fair compensation
2. To encourage driver accountability.

3. To keep overall costs at a reasonable level.
4. To equitably allocate the cost burden.
5. To relieve court congestion.

Let us see now how the committee print meets these objectives of responsible reform.

II. To Provide Crash Victims With Prompt and Fair Compensation

Our prior testimony stressed the reasons why we believe it is imperative to retain some element of general damages within a reparations system. The public opinion surveys which have been made demonstrate without a doubt that innocent automobile accident victims expect to get paid for their permanent impairments in addition to their economic losses.

Print No. 1 does, in fact, recognize the merits of this point. It provides that policyholders would be offered on a no-fault basis, reimbursement for such losses. The committee staff analysis advises us that "the controversy over whether the public wants to recover for intangible losses would be resolved by free market forces rather than by legislative determination."

What the committee print does not tell us is that because of the way it is structured, the cost of this coverage is likely to be so prohibitive that only those with large disposable incomes will be able to afford the protection. This doesn't mean, of course, that the people who cannot afford that protection do not suffer when involved in accidents and do not care to be compensated for permanent, disabling injuries. It just means that they are not able to afford to be compensated for such losses. We believe that this discriminatory approach in the treatment of auto accident victims fails to meet the objective of "fair compensation."

Let's take a closer look at some of the implications that flow from the decision to pay auto accident victims only for their net economic loss.

Envision, if you will, an accident in which a speeding motorist crosses a center line and involves another car in a serious crash. The car that was hit contains a retired couple living on social security and a pension from his former employer. They are also covered by medicare. They had planned to spend their years of retirement visiting their grandchildren and pursuing such interests as gardening, fishing, and the usual things retired people look forward to. Both suffer crippling injuries which would make it impossible for them to do any of these things.

Under the kind of reparation system envisioned in Print No. 1, this elderly couple would receive no compensation at all from the negligent driver, and would receive little if any compensation from their own compulsory automobile insurance policy. They have no income loss, and their medical expenses are largely covered by medicare. They would be able to pay the rent and put food on the table from their own resources. But there will be little money available for the amenities which might replace the enjoyment they have been forced to forego. They wouldn't even be able to collect for the damage which the negligent driver had done to their car, unless they had purchased their own

collision insurance, at a price higher than the present cost. Even then they would have to pay the first $50 or $100 deductible.

The negligent driver himself is a self-employed professional person who earns $20,000 a year. He also has considerable assets in the form of real estate and stock investments which produce a net income of about $5,000 a year. What benefit would he receive under the reparation system proposed under Committee Print No. 1? All of his medical expenses would be paid and, since he is not able to pursue his career for the period of 1 year, he would receive $12,000 in benefits. There is no deduction for the income he receives from other sources.

What equitable principle was used in determining that a man who earns $20,000 a year should have a substantial portion of his income replaced, while the retired couple receives nothing at all for the damage to their automobile—a serious economic loss to this couple—and nothing at all for their physical impairments which have deprived them of their retirement years? To put the question another way, what are you really replacing when you replace discretionary income beyond the amount required for basic necessities and a decent living? In essence, you are restoring the victim's ability to enjoy a style of life which such discretionary income makes possible. But isn't this also what you are doing when you make payment for general damages under the present liability system for injuries which deprive a person of mobility or in some other manner interfere with his enjoyment of life?

Those who would eliminate payment for general damages have attempted to imply that the inequities which would result are confined to rare instances. But the inequity of eliminating payment for general damages is by no means confined to the rare or bizarre case. More than 55 percent of the persons injured in automobile accidents are nonwage earners—housewives, minor children, retired persons, the unemployed, et cetera. Another substantial proportion of those injured are persons earning only a subsistence level of income or not far above it. If the system fails to provide anything other than net economic loss, is it not discriminating against this large group of auto accident victims? And are they not the group least likely to have purchased any optional benefits which would provide amenities to replace the enjoyment destroyed by the injury? People who have been injured by a negligent driver expect to get paid for their trouble, pain, and inconvenience. Those who have suffered a permanent impairment are even less likely to be satisfied with being paid nothing more than their net economic losses.

III. Accountability

As I read through the committee print and its report and tried to visualize how the new system would work in practice, I had an uneasy sensation that the world envisioned in this proposal is an unreal world. It is a neat, logical world where the decisions how to treat people are going to be based on economic values alone. It is a world in which people presumably would look upon an injury inflicted by a negligent driver as strictly a random event, devoid of emotion and personal significance beyond the dollars involved. It is a mechanized, dehumanized world which recognizes neither the moral responsibilities of drivers nor the psychological needs of crash victims. Most of all, it

is a world in which human values have been sacrificed to cost efficiency concepts.

Somewhere along the line, the proposal loses sight of the fact that man is not entirely rational, not entirely economic, but is a creature with emotional and psychological needs as well. These needs cannot always be logically articulated. But these are nevertheless real and must be dealt with in designing any future reparation system.

What we have been offered is a system which attempts to meet the accident victim's economic needs but which ignores his sense of justice.

It seems odd that at a time when government is pressing the theme of accountability—and this committee particularly, having specifically addressed itself to the field of accountability in its warranty legislation, class action legislation, product safety legislation, et cetera—would back away from accountability when it relates to automobile crashes.

Committee Print No. 1 would impose a reparation philosophy on our society which runs counter to the expectations of accident victims. In a democratic society, such an imposition cannot be a lasting one.

IV. Costs

In evaluating any important change in a social or economic structure which involves most of us, it is not only highly desirable but well nigh essential that we have a fix on the cost of the new procedure as compared to the program it will replace.

The Alliance Actuarial staff, assisted by the Alliance Actuarial Committee, has attempted to project the bodily injury coverage cost of Committee Print No. 1.

It must be understood that costing of a proposed program which is radically different than anything now in operation poses many problems, that it involves any number of assumptions, and that the answer is at best only an approximation.

A. COMPULSORY ECONOMIC LOSS COVERAGE

Using a number of assumptions necessitated by the vagueness of the bill with respect to benefits, and making conservative estimates of increased frequency, we estimate that the average premium cost of the compulsory bodily injury coverages will be at least 37 percent greater than current bodily injury liability premiums. In other words, for every $100 paid today by an automobile policyholder for bodily injury and uninsured motorist coverage ($10,000 per person and $20,000 per accident), that same policyholder will pay $137 for the compulsory economic loss coverage under Committee Print No. 1.

B. OPTIONAL INTANGIBLE DAMAGE BENEFIT

The Department of Transportation's Economic Consequence of Accidents Study revealed that 53 percent of auto accident victims are not paid by today's tort system. This large group is composed of individuals injured in single-car crashes as well as those whose injuries arise out of their own negligence.

Committee Print No. 1 would pay all covered injured their full intangible losses. Hence, as related to covered policyholders, one should expect the cost of this coverage to be double that which such policyholders presently pay for intangible loss protection under the present insurance system.

Today, for every $100 of bodily injury premium cost, $60 is allocated for intangible loss. Hence, for every $100 of today's total bodily injury premium cost, this new insurance protection will cost policyholders 20 percent more than what they pay today for bodily injury insurance coverage.

C. PROPERTY DAMAGE

It has been claimed that eliminating fault as a basis for recovery of damages to automobiles, one can dispense with property damage liability and thus achieve substantial cost savings. This just is not so.

In considering the cost to an individual motorist, one must consider not only the price he pays for purchasing insurance coverage, but also the out-of-pocket costs which he must absorb.

Eliminating fault as a basis for recovery does not eliminate the losses incurred in accidents. Committee Print No. 1 would merely require that each car owner bear his own losses, regardless of how his car was damaged.

Those who now feel comfortable doing without collision coverage because of the control they exercise over accidents, are forced by Committee Print No. 1 to make an agonizing reappraisal and a cruel choice: either elect against purchasing the coverage and leave themselves open to a very substantial loss or to purchase the proposed coverage. This serves to reduce the potential exposure to loss—although the insured will still have to absorb the deductible when involved in an accident.

Hence, what Committee Print No. 1 accomplishes by eliminating fault as a basis for recovery to damaged automobiles is forcing automobile owners to either self-insure their own losses or to purchase collision insurance at a substantially higher cost than today's coverage.

D. CONCLUSION

In conclusion, we project that for every $100 spent under today's system for bodily injury coverage, a policyholder will spend $257 for Committee Print No. 1's full bodily injury protection.

V. Equitable Allocation of Cost Burden

A major impact of Committee Print No. 1 on our society will be a redistribution of who will bear what losses. Committee Print would require that accident *victims* pay the greater share of the total incurred automobile accident losses. The present system, on the other hand, bears down hardest on those who have *caused the losses*, on the theory that as a matter of equity, good drivers should not subsidize those who abuse the privilege of driving.

More specifically, Committee Print No. 1 would bring about a windfall to two large groups of vehicle users—truck owners and owners of muscle cars. Let us see how each of these groups would fare under the proposal.

Truck owners would have no responsibility whatsoever for injuries arising on the highway except to their own employees riding in their trucks. The fact is that today they already have this responsibility. Full medical benefits and most wage losses are covered and have been covered for many many years by workmen's compensation laws. Thus, Committee Print No. 1 does not impose any new liability or responsibility or cost on the truck owners, while removing much of the responsibility and liability and cost which the present auto reparation system imposes on them. Passenger cars are being asked to subsidize the truckers' use of the road.

The owners of high-powered automobiles also would benefit substantially from Committee Print No. 1. As we testified earlier, there is sound statistical evidence indicating that muscle cars cause more accidents and more serious injuries than other private passenger automobiles. The existing compensation mechanism allows this to be reflected in the price which the owners of such cars must pay for insurance. In fact, it is the high cost of insurance which is being blamed by automobile manufacturer executives for the drastic drop in the sale of these cars.

Committee Print No. 1 would force a dramatic change. Most of these cars are owned by young people with little if any family responsibilities. When involved in accidents, these young people have little if any wage losses and, their medical expenses are below average because of the ability of their young bodies to heal quickly. Hence, an insurance system which is predicated on the amount of benefits *paid* to a victim and not on the *losses caused* would greatly benefit these people. There would be a two-fold result. On the one hand, the reduced accident and severtity rate brought about by the sharp decrease in the number of muscle cars on the road will be reversed. Second, the increased accident costs resulting from the reckless operation of muscle cars would not be paid by the muscle-car owners themselves but, again, by the large body of passenger-car owners. We believe that this shift in cost is not only inequitable but clearly against public interest.

Again, let me stress that Committee Print would restructure the cost burden of automobile accidents by requiring the accident victims to subsidize the reckless driver. It would be difficult, if not impossible, to devise an acceptable merit rating plan under a system based on categorical rejection of the fault concept.

Committee Print No. 1 would restrict the payment of benefits to the extent that the loss exceed, among others, recovery from any "public health insurance plan." Hence, again, although we agree with the need to prevent duplication, we see little justification for switching the cost of automobile accidents from the users of the highway to the general tax base.

Not only is it undesirable, from a standpoint of public policy, to hide the cost of automobile accidents within the general tax structure—as Committee Print No. 1 would do—but a major advantage of first-party automobile insurance would be diminished. It should be remembered that an important reason given by no-fault automobile insurance supporters in the early days of the debate was the need to bring to bear the rehabilitation expertise to assist in accident victims as had been done for the worker's compensation beneficiaries. We agree with this point and it is for this reason that we are recommending

ing a minimum of $50,000, first-party automobile coverage in our guaranteed protection plan. We are convinced that the rehabilitation of the traumatically injured can best be undertaken at the direction of those institutions that specialize in managing traumatic medicine. We do not believe that if the care and responsibility for the treatment of automobile accident victims is left in the hands of those who have responsibility for the total medical care of our citizens, that the type of rehabilitative techniques best suited to traumatic case specialities will be applied.

In conclusion, it is obvious that Committee Print No. 1 falls far short of equitably allocating the cost burden of automobile accidents.

VI. Court Congestion

Committee Print No. 1 raises many questions about the extent of coverage to be provided which will need to be answered by the courts, in some instances, on a case by case basis. For instance:

a. What is the term "accidental harm" intended to cover?

b. Does the term "operation, maintenance, or use" intend to include injuries received while washing a car, working on it, and so forth? If someone suffers a slipped disc while unloading a bag of fertilizer from the trunk of his car, is this intended to be covered?

c. If the policyholder backs over his son's bicycle, is it intended that the proposed new policy pay for it?

Our claims people forsee major difficulties and legal controversy in determining what to pay large numbers of auto accident victims for their income loss. The bill proposes to pay actual earning loss as well as expected future earning loss. Many of the 55 percent of the non-wage-earner accident victims expect to enter or reenter the work force at some future date, or to earn supplementary income in some way. How is their claim going to be handled under a system which provides no yardstick for measuring the amount of a loss, and which does not provide for any payment until the loss has already occurred? These problems are present today from the claim viewpoint but they would be greatly exacerbated under a system with no policy limits and no apparent means of reaching a settlement other by obtaining a court order.

The reopening of old cases could be a very troublesome problem. The open-ended nature of unlimited liability imposed on the insurer would require the company to keep open its claims files indefinitely. This also would raise questions about the adequacy of loss reserves.

The system as proposed in Committee Print No. 1 would provide many opportunities and incentives for overutilization of benefits and even outright fraud.

All these uncertainties and complications will develop substantial friction between policyholders and their insurers and will need to be resolved by the courts. Rather than lessening the burden on the courts it is suggested that Committee Print No. 1 will increase it.

In fact, it is apparent that it is contemplated that policyholders will avail themselves frequently of professional, legal expertise. The bill encourages victims to seek legal representation by requiring the insured to pay additional attorney fees in all claims other than those found by the courts to have been frivolous. Thus, even though a claim

may be denied by the courts, unless the court, also found the claim to have been frivolous, an attorney fee would have to be paid by the company.

All in all, Committee Print No. 1 will encourage rather than discourage auto victims, their attorneys, and insurance companies to seek the help of the court to resolve disputes under the system.

VII. Conclusion

The following points up some of the basic weaknesses in the structure of Committee Print No. 1:

1. The bill would be expensive and discriminatory for the consumer.
2. It would needlessly and expensively complicate underwriting and claim administration.
3. The bill unfairly shifts the cost burden of automobile accidents from truckers and irresponsible drivers to careful passenger car owners.
4. The bill is inconsistent and ambiguous.
5. The bill eliminates all elements of personal accountability.
6. Like its predecessor, S. 945, the bill would permit Federal preemption of automobile insurance regulations.

Finally, and more precisely, Federal reform of the automobile compensation insurance system just is not needed. There is overwhelming evidence that reform is underway at the State level, and the State legislatures should be given the opportunity to take such action which they believe is in the best interest of their constituencies.

Senator Baker. I will put to you the same question that I believe we put to each of the previous witnesses.

Would you be agreeable to answering additional questions for the record as they may be submitted?

Mr. Maisonpierre. Yes; of course, I will, Senator.

Senator Baker. With that, I will reserve anything further I may have at this time and use that format.

Thank you for your statement. It is a very meaningful one.

(The statement together with questions and answers follow:)

2207

Auto Insurance Reform

Committee Print Number One

of the

National No-Fault Motor Vehicle Insurance Act

(S.945)

Statement of the

American Mutual Insurance Alliance

before the

Senate Commerce Committee

October 13, 1971

AMIA

AMERICAN MUTUAL INSURANCE ALLIANCE

TABLE OF CONTENTS

I. INTRODUCTION

My name is Andre Maisonpierre and I am Vice President of the American Mutual Insurance Alliance, a national association of mutual property and casualty insurance companies. Our member companies provide automobile and other property-casualty coverages in all fifty states and the District of Columbia.

We welcome this opportunity to discuss Committee Print Number One -- S.945. For the sake of clarity, whenever S.945 is mentioned, it will refer to the original National No-Fault Motor Vehicle Insurance Act and, whenever Print One is mentioned, it will refer to Committee Print Number One, S.945.

It has been suggested that our testimony today be restricted to a technical analysis of Committee Print Number One. We want it clearly understood, however, that the Alliance continues to be unalterably opposed to a national no-fault solution. Our prior testimony before this Committee detailed the reasons for this opposition and nothing has happened in the interval which would make us change our views. In fact, we are more convinced than ever that the states are demonstrating their willingness to come to grips with automobile accident compensation reform. The Alliance is proud of the role it is privileged to play

64-345 O - 72 - pt. 5 - 9

TABLE OF CONTENTS

I. INTRODUCTION

My name is Andre Maisonpierre and I am Vice President of the American Mutual Insurance Alliance, a national association of mutual property and casualty insurance companies. Our member companies provide automobile and other property-casualty coverages in all fifty states and the District of Columbia.

We welcome this opportunity to discuss Committee Print Number One -- S.945. For the sake of clarity, whenever S.945 is mentioned, it will refer to the original National No-Fault Motor Vehicle Insurance Act and, whenever Print One is mentioned, it will refer to Committee Print Number One, S.945.

It has been suggested that our testimony today be restricted to a technical analysis of Committee Print Number One. We want it clearly understood, however, that the Alliance continues to be unalterably opposed to a national no-fault solution. Our prior testimony before this Committee detailed the reasons for this opposition and nothing has happened in the interval which would make us change our views. In fact, we are more convinced than ever that the states are demonstrating their willingness to come to grips with automobile accident compensation reform. The Alliance is proud of the role it is privileged to play

64-346 O - 72 - pt. 5 - 9

TABLE OF CONTENTS

I. INTRODUCTION

My name is Andre Maisonpierre and I am Vice President of the American Mutual Insurance Alliance, a national association of mutual property and casualty insurance companies. Our member companies provide automobile and other property-casualty coverages in all fifty states and the District of Columbia.

We welcome this opportunity to discuss Committee Print Number One -- S.945. For the sake of clarity, whenever S.945 is mentioned, it will refer to the original National No-Fault Motor Vehicle Insurance Act and, whenever Print One is mentioned, it will refer to Committee Print Number One, S.945.

It has been suggested that our testimony today be restricted to a technical analysis of Committee Print Number One. We want it clearly understood, however, that the Alliance continues to be unalterably opposed to a national no-fault solution. Our prior testimony before this Committee detailed the reasons for this opposition and nothing has happened in the interval which would make us change our views. In fact, we are more convinced than ever that the states are demonstrating their willingness to come to grips with automobile accident compensation reform. The Alliance is proud of the role it is privileged to play

64-346 O - 72 - pt. 5 - 9

in assisting state legislatures in structuring reform. We are continuing to press for state enactment of our Guaranteed Protection Plan which was carefully detailed in our prior testimony. Its outlines are again attached to this statement (Appendix A).

If we appear negative today, it is for two reasons: In the first place, we have been asked to limit our comments to Committee Print Number One. Hence, we will refrain from describing to the Committee the positive steps we have taken along the road to reforms in the different states. Secondly, we believe that although Committee Print One substantially differs from S.945, it does not solve the philosophical and practical shortcomings we described in our early testimony before this Committee. On the contrary, Committee Print One has added inequities which, if enacted, would prove to be expensive and discriminatory for consumers. Hence, we look upon Committee Print Number One as a step backwards and certainly not an improvement over S.945.

Any piece of legislation, be it auto reform, tax reform, state or federal, must be measured against well set out objectives. In our complicated world, it is seldom sufficient to meet one or two limited objectives for reform. All must be met in order to structure the balanced approach which ensures fair and equitable treatment of all.

The Alliance believes that any responsible auto insurance reform must achieve a reasonable balance among five different and often contradictory goals:

1. To provide crash victims with prompt and fair compensation.

2. To encourage driver accountability.

3. To keep overall costs at a reasonable level.

4. To equitably allocate the cost burden.

5. To relieve court congestion.

Let us see now how the Committee Print meets these objectives of responsible reform.

II. TO PROVIDE CRASH VICTIMS WITH PROMPT AND FAIR COMPENSATION

For all practical purposes, the bill restricts the benefits to be paid to an automobile accident victim to his medical losses, a portion of his wage losses, and, for those who have purchased collision insurance, a portion of the expenses a policyholder has incurred as a result of his automobile being damaged.

The bill specifically prohibits benefit payments for general damages, permanent disability, amputation, disfigurement, etc., unless the policyholder himself purchases separate insurance protecting him against such losses.

Our prior testimony stressed the reasons why we believe it is imperative to retain some element of general damages within a reparation system. The public opinion surveys which have been made demonstrate without a doubt that innocent automobile accident victims expect to get paid for their permanent impairments in addition to their economic losses.

Print Number One does, in fact, recognize the merits of this point. It provides that policyholders would be offered, on a no-fault basis, reimbursement for such losses. The Committee Staff Analysis advises us that "the controversy over whether the public wants to recover for intangible losses would be resolved by free market forces rather than by legislative determination."

What the Committee Print does not tell us is that because of the way it is structured, the cost of this coverage is likely to be so prohibitive that only those with large, disposable incomes will be able to afford the protection. This doesn't mean, of course, that people who can not afford that protection do not suffer when involved in accidents and do not care to be compensated for permanent, disabling injuries. It just means that they are not able to afford to be compensated for such losses. We believe that this discriminatory approach in the treatment of auto accident victims fails to meet the objective of "fair compensation."

Let's take a closer look at some of the implications that flow from the decision to pay auto accident victims only for their net economic loss.

Envision, if you will, an accident in which a speeding motorist crosses a center line and involves another car in a serious crash. The car that was hit contains a retired couple living on social security and a pension from his former employer. They are also covered by Medicare. They had planned to spend their years of retirement visiting their grandchildren and pursuing such interests as gardening, fishing, and the usual things retired people look forward to. Both suffer crippling injuries which would make it impossible for them to do any of these things.

Under the kind of reparation system envisioned in Print One, this elderly couple would receive no compensation at all from the negligent driver, and would receive little if any compensation from their own compulsory automobile insurance policy. They have no income loss, and their medical expenses are largely covered by Medicare. They would be able to pay the rent and put food on the table from their own resources. But there will be little money available for the amenities which might replace the enjoyment they have been forced to forego. They wouldn't even be able to collect for the damage which the negligent driver had done to their car, unless they had purchased their own collision insurance, at a price higher than the present cost. Even then they would have to pay the first $50 or $100 deductible.

The negligent driver himself is a self-employed professional person who earns $20,000 a year. He has a hospitalization policy, but no income coverage. However, he does have considerable assets in the form of real estate and stock investments which produce a net income of about $5,000 a year. What benefit would he receive under the reparation system proposed under Committee Print One? All of his medical expenses would be paid and, since he is not able to pursue his career for the period of one year he would

receive $12,000 in benefits. There is no deduction for the income he receives from other sources.

What equitable principle was used in determining that a man who earns $20,000 a year should have a substantial portion of his income replaced, while the retired couple receives nothing at all for the damage to their automobile -- a serious economic loss to this couple -- and nothing at all for their physical impairments which have deprived them of the enjoyment of their retirement years? To put the question another way, what are you really replacing when you replace discretionary income beyond the amount required for basic necessities and a decent living? In essence, you are restoring the victim's ability to enjoy a style of life which such discretionary income makes possible. But isn't this also what you are doing when you make payment for general damages under the present liability system for injuries which deprive a person of mobility or in some other manner interfere with his enjoyment of life?

Those who would eliminate payment for general damages have attempted to imply that the inequities which would result are confined to rare instances. It is possible, of course, to find bizarre cases under any system which could be devised. But the inequity of eliminating payment for general damages is by no means confined to the rare or

bizarre case. More than 55% of the persons injured in automobile accidents are non-wage earners -- housewives, minor children, retired persons, the unemployed, etc. Another substantial proportion of those injured are persons earning only a subsistence level of income or not far above it. If the system fails to provide anything other than net economic loss, is it not discriminating against this large group of auto accident victims? And are they not the group least likely to have purchased any optional benefits which would provide amenities to replace the enjoyment destroyed by the injury?

It is argued that general damages should be excluded from compensation because they are subjective in nature and are not susceptible of objective measurements in dollars. As we have already pointed out to the Committee, this is true of a great many things in this world. How much, for instance, is a man's time worth and how is its value determined? Why do we pay a higher wage for overtime, night work and holidays and how is a differential arrived at?

How do we determine the value of a piece of real estate condemned for a highway?

All of these things are subjective in nature. Yet we manage to translate them into dollar amounts by a process of bargaining and compromise. Our society not only is capable

of translating subjective values into dollars -- it insists upon it, and considers it one of the distinguishing features of a democratic society.

Auto accident victims insist upon it also. People who have been injured by a negligent driver expect to get paid for their trouble, pain and inconvenience. Those who have suffered a permanent impairment are even less likely to be satisfied with being paid nothing more than their net economic losses.

III. ACCOUNTABILITY

As I read through the Committee Print and its report and tried to visualize how the new system would work in practice, I had an uneasy sensation that the world envisioned in this proposal is an unreal world. It is a neat, logical world where the decisions how to treat people are going to be based on economic values alone. It is a world in which people presumably would look upon an injury inflicted by a negligent driver as strictly a random event, devoid of emotion and personal significance beyond the dollars involved. It is a mechanized, dehumanized world which recognizes neither the moral responsibilities of drivers nor the psychological needs of crash victims. Most of all, it is a world in which human values have been sacrificed to cost efficiency concepts.

Somewhere along the line, the proposal loses sight of the fact that man is not entirely rational, not entirely economic, but is a creature with emotional and psychological needs as well. These needs can not always be logically articulated. But these are nevertheless real and must be dealt with in designing any future reparation system.

What we have been offered is a system which attempts to meet the accident victim's economic needs but which ignores his sense of justice.

Whatever shortcomings the present auto reparations system has -- and we agree that there are some -- it is based on some fundamental concepts which are not as outmoded as its critics think. One of them is the concept that a driver who negligently inflicts injury and monetary loss should be held accountable for the damage that he has caused. Committee Print Number One totally eliminates this concept.

Let us see how the decision to abolish driver responsibility would operate in practice.

A car is stopped at a red light, at an intersection, waiting for the control signals to turn green before proceeding. Another car careening down the road is unable to negotiate a timely stop and rams into the rear of the stopped automobile, which sustains $550 damage. The negligent driver, if he has any social grace at all, may tell the driver of the damaged car — "sorry, social error." But, he doesn't legally have to do anything. Under Committee Print Number One he could just as well back up his car a few feet, and be on his merry way. The fact is that this negligent driver has no responsibility whatsoever to the person whose car he has damaged. Under the Committee Print, the owner of the damaged car, if he has not purchased collision insurance, will have to pay for the total repair of his car himself and, even if

III. ACCOUNTABILITY

As I read through the Committee Print and its report and tried to visualize how the new system would work in practice, I had an uneasy sensation that the world envisioned in this proposal is an unreal world. It is a neat, logical world where the decisions how to treat people are going to be based on economic values alone. It is a world in which people presumably would look upon an injury inflicted by a negligent driver as strictly a random event, devoid of emotion and personal significance beyond the dollars involved. It is a mechanized, dehumanized world which recognizes neither the moral responsibilities of drivers nor the psychological needs of crash victims. Most of all, it is a world in which human values have been sacrificed to cost efficiency concepts.

Somewhere along the line, the proposal loses sight of the fact that man is not entirely rational, not entirely economic, but is a creature with emotional and psychological needs as well. These needs can not always be logically articulated. But these are nevertheless real and must be dealt with in designing any future reparation system.

What we have been offered is a system which attempts to meet the accident victim's economic needs but which ignores his sense of justice.

Whatever shortcomings the present auto reparations system has -- and we agree that there are some -- it is based on some fundamental concepts which are not as outmoded as its critics think. One of them is the concept that a driver who negligently inflicts injury and monetary loss should be held accountable for the damage that he has caused. Committee Print Number One totally eliminates this concept.

Let us see how the decision to abolish driver responsibility would operate in practice.

A car is stopped at a red light, at an intersection, waiting for the control signals to turn green before proceeding. Another car careening down the road is unable to negotiate a timely stop and rams into the rear of the stopped automobile, which sustains $550 damage. The negligent driver, if he has any social grace at all, may tell the driver of the damaged car -- "sorry, social error." But, he doesn't legally have to do anything. Under Committee Print Number One he could just as well back up his car a few feet, and be on his merry way. The fact is that this negligent driver has no responsibility whatsoever to the person whose car he has damaged. Under the Committee Print, the owner of the damaged car, if he has not purchased collision insurance, will have to pay for the total repair of the car himself and, even if

III. ACCOUNTABILITY

As I read through the Committee Print and its report and tried to visualize how the new system would work in practice, I had an uneasy sensation that the world envisioned in this proposal is an unreal world. It is a neat, logical world where the decisions how to treat people are going to be based on economic values alone. It is a world in which people presumably would look upon an injury inflicted by a negligent driver as strictly a random event, devoid of emotion and personal significance beyond the dollars involved. It is a mechanized, dehumanized world which recognizes neither the moral responsibilities of drivers nor the psychological needs of crash victims. Most of all, it is a world in which human values have been sacrificed to cost efficiency concepts.

Somewhere along the line, the proposal loses sight of the fact that man is not entirely rational, not entirely economic, but is a creature with emotional and psychological needs as well. These needs can not always be logically articulated. But these are nevertheless real and must be dealt with in designing any future reparation system.

What we have been offered is a system which attempts to meet the accident victim's economic needs but which ignores his sense of justice.

Whatever shortcomings the present auto reparations system has -- and we agree that there are some -- it is based on some fundamental concepts which are not as outmoded as its critics think. One of them is the concept that a driver who negligently inflicts injury and monetary loss should be held accountable for the damage that he has caused. Committee Print Number One totally eliminates this concept.

Let us see how the decision to abolish driver responsibility would operate in practice.

A car is stopped at a red light, at an intersection, waiting for the control signals to turn green before proceeding. Another car careening down the road is unable to negotiate a timely stop and rams into the rear of the stopped automobile, which sustains $550 damage. The negligent driver, if he has any social grace at all, may tell the driver of the damaged car -- "sorry, social error." But, he doesn't legally have to do anything. Under Committee Print Number One he could just as well back up his car a few feet, and be on his merry way. The fact is that this negligent driver has no responsibility whatsoever to the person whose car he has damaged. Under the Committee Print, the owner of the damaged car, if he has not purchased collision insurance, will have to pay for the total repair of the car himself and, even if

he has purchased insurance, he will have to absorb the $50 to $100 no-fault deductible.

It seems odd that at a time when government is pressing the theme of accountability -- and this Committee particularly, having specifically addressed itself to the field of accountability in its warranty legislation, class action legislation, product safety legislation, etc. -- would back away from accountability when it relates to automobile crashes. Yet, we are told by the Department of Transportation that half of our traffic deaths are caused by drinking drivers.

Committee Print Number One would impose a reparation philosophy on our society which runs counter to the expectations of accident victims. In a democratic society, such an imposition can not be a lasting one.

IV. COSTS

In evaluating any important change in a social or economic structure which involves most of us, it is not only highly desirable but well nigh essential that we have a fix on the cost of the new procedure as compared to the program it will replace.

The Alliance Actuarial staff, assisted by the Alliance Actuarial Committee, has attempted to project the bodily injury coverage cost of Committee Print One. Its report is attached (Appendix B).

It must be understood that costing of a proposed program which is radically different than anything now in operation poses many problems, that it involves any number of assumptions, and that the answer is at best only an approximation. Frequency and value of new claims under no-fault system, for instance, can not be determined from claim files developed under the tort liability system. It is widely recognized that injuries arising from single-car accidents are frequently not reported to the insurance company under the present system. Therefore, in considering a program such as the one being proposed, a substantial loading must be included which is at best an estimate.

Particular problems are encountered in costing an insurance program which provides that future wage loss payments

are to be subject to periodic increases. Furthermore, average claims amounts can not be determined where there are vague limitations or no limitations of total benefits payable.

Differences in utilization can not be disregarded. For instance, what we are really talking about when we provide the type of medical benefits suggested in Committee Print One is the broadest possible form of health insurance benefits. Health insurance plans generally rely on a number of control mechanisms to discourage over utilization. Among these, the most widely used are co-insurance, specification of services and inside limits. Yet, these have been waived in Committee Print One.

We know that these factors will play a major role in the cost of Committee Print Number One. Yet, because we have had no experience with programs of this nature, we can not provide for their impact in our costs projection. Hence, even though we evaluate the cost of bodily injury coverages under Committee Print Number One to be greatly in excess of today's bodily injury insurance coverages, we fear that we are grossly underrating the cost potentials of Committee Print Number One.

A. Compulsory Economic Loss Coverage

Using a number of assumptions necessitated by the vagueness of the bill with respect to benefits, and

making conservative estimates of increased frequency, we estimate that the average premium cost of the compulsory bodily injury coverages will be at least 37% greater than current bodily injury liability premiums. In other words, for every $100 paid today by an automobile policyholder for bodily injury and uninsured motorist coverage ($10,000 per person and $20,000 per accident), that same policyholder will pay $137 for the compulsory economic loss coverage under Committee Print Number One.

B. Optional Intangible Damage Benefit

This optional coverage, described in Section 5(c)(2)(B) of Committee Print One would pay a covered policyholder, on a no-fault, first-party basis, for all intangible damages he and his family may have sustained as a result of injury or death in an automobile accident.

The Department of Transportation's Economic Consequence of Accidents Study revealed that 53% of auto accident victims are not paid by today's tort system. This large group is composed of individuals injured in single-car crashes as well as those whose injuries arise out of their own negligence.

Committee Print Number One would pay all covered injured their full intangible losses. Hence, as related to covered policyholders, one should expect the cost of this coverage to be double that which such policyholders presently pay for intangible loss protection under the present insurance system.

Today, for every $100 of bodily injury premium cost, $60 is allocated for intangible loss. Hence, as Exhibit 3 of Appendix B clearly demonstrates, for every $100 of today's total bodily injury premium cost, this new insurance protection will cost $120. Put another way, this new limited coverage will cost policyholders 20% more than what they pay today for bodily injury insurance coverage.

C. Property Damage

It has been claimed that eliminating fault as a basis for recovery of damages to automobiles, one can dispense with property damage liability and thus achieve substantial cost savings. This just is not so.

In considering the cost to an individual motorist, one must consider not only the price he pays for purchasing insurance coverage, but also the out-of-pocket costs which he must absorb.

Eliminating fault as a basis for recovery does not eliminate the losses incurred in accidents. Committee Print One would merely require that each car owner bears his own losses, regardless of how his car was damaged.

Today, approximately one-half of all automobile owners do not carry collision insurance coverage. Yet, about one-fourth of all drivers are involved in auto accidents each year. Those not carrying collision insurance today decided against purchasing the coverage partly because they believe that they control the likelihood of their damaging their own cars. However, under the proposed system, these motorists would have very little control over the likelihood of any damage for which they would have to pay to their cars.

Under such circumstances, are many more people likely to feel they have to purchase collision insurance to avoid the potential serious loss over which they have no control? After all, this is the framework on which insurance is founded -- to substitute a small but certain payment for a potentially large and uncertain loss.

72 - pt. 5 - 10

Committee Print Number One would pay all covered injured their full intangible losses. Hence, as related to covered policyholders, one should expect the cost of this coverage to be double that which such policyholders presently pay for intangible loss protection under the present insurance system.

Today, for every $100 of bodily injury premium cost, $60 is allocated for intangible loss. Hence, as Exhibit 3 of Appendix B clearly demonstrates, for every $100 of today's total bodily injury premium cost, this new insurance protection will cost $120. Put another way, this new limited coverage will cost policyholders 20% more than what they pay today for bodily injury insurance coverage.

C. Property Damage

It has been claimed that eliminating fault as a basis for recovery of damages to automobiles, one can dispense with property damage liability and thus achieve substantial cost savings. This just is not so.

In considering the cost to an individual motorist, one must consider not only the price he pays for purchasing insurance coverage, but also the out-of-pocket costs which he must absorb.

Eliminating fault as a basis for recovery does not eliminate the losses incurred in accidents. Committee Print One would merely require that each car owner bears his own losses, regardless of how his car was damaged.

Today, approximately one-half of all automobile owners do not carry collision insurance coverage. Yet, about one-fourth of all drivers are involved in auto accidents each year. Those not carrying collision insurance today decided against purchasing the coverage partly because they believe that they control the likelihood of their damaging their own cars. However, under the proposed system, these motorists would have very little control over the likelihood of any damage for which they would have to pay to their cars.

Under such circumstances, are many more people likely to feel they have to purchase collision insurance to avoid the potential serious loss over which they have no control? After all, this is the framework on which insurance is founded -- to substitute a small but certain payment for a potentially large and uncertain loss.

84-348 O - 72 - pt. 5 - 10

he has purchased insurance, he will have to absorb the $50 to $100 no-fault deductible.

It seems odd that at a time when government is pressing the theme of accountability -- and this Committee particularly, having specifically addressed itself to the field of accountability in its warranty legislation, class action legislation, product safety legislation, etc. -- would back away from accountability when it relates to automobile crashes. Yet, we are told by the Department of Transportation that half of our traffic deaths are caused by drinking drivers.

Committee Print Number One would impose a reparation philosophy on our society which runs counter to the expectations of accident victims. In a democratic society, such an imposition can not be a lasting one.

IV. COSTS

In evaluating any important change in a social or economic structure which involves most of us, it is not only highly desirable but well nigh essential that we have a fix on the cost of the new procedure as compared to the program it will replace.

The Alliance Actuarial staff, assisted by the Alliance Actuarial Committee, has attempted to project the bodily injury coverage cost of Committee Print One. Its report is attached (Appendix B).

It must be understood that costing of a proposed program which is radically different than anything now in operation poses many problems, that it involves any number of assumptions, and that the answer is at best only an approximation. Frequency and value of new claims under no-fault system, for instance, can not be determined from claim files developed under the tort liability system. It is widely recognized that injuries arising from single-car accidents are frequently not reported to the insurance company under the present system. Therefore, in considering a program such as the one being proposed, a substantial loading must be included which is at best an estimate.

Particular problems are encountered in costing an insurance program which provides that future wage loss payments

are to be subject to periodic increases. Furthermore, average claims amounts can not be determined where there are vague limitations or no limitations of total benefits payable.

Differences in utilization can not be disregarded. For instance, what we are really talking about when we provide the type of medical benefits suggested in Committee Print One is the broadest possible form of health insurance benefits. Health insurance plans generally rely on a number of control mechanisms to discourage over utilization. Among these, the most widely used are co-insurance, specification of services and inside limits. Yet, these have been waived in Committee Print One.

We know that these factors will play a major role in the cost of Committee Print Number One. Yet, because we have had no experience with programs of this nature, we can not provide for their impact in our costs projection. Hence, even though we evaluate the cost of bodily injury coverages under Committee Print Number One to be greatly in excess of today's bodily injury insurance coverages, we fear that we are grossly underrating the cost potentials of Committee Print Number One.

A. Compulsory Economic Loss Coverage

Using a number of assumptions necessitated by the vagueness of the bill with respect to benefits, and

making conservative estimates of increased frequency, we estimate that the average premium cost of the compulsory bodily injury coverages will be at least 37% greater than current bodily injury liability premiums. In other words, for every $100 paid today by an automobile policyholder for bodily injury and uninsured motorist coverage ($10,000 per person and $20,000 per accident), that same policyholder will pay $137 for the compulsory economic loss coverage under Committee Print Number One.

B. Optional Intangible Damage Benefit

This optional coverage, described in Section 5(c)(2)(B) of Committee Print One would pay a covered policyholder, on a no-fault, first-party basis, for all intangible damages he and his family may have sustained as a result of injury or death in an automobile accident.

The Department of Transportation's Economic Consequence of Accidents Study revealed that 53% of auto accident victims are not paid by today's tort system. This large group is composed of individuals injured in single-car crashes as well as those whose injuries arise out of their own negligence.

Committee Print Number One would pay all covered injured their full intangible losses. Hence, as related to covered policyholders, one should expect the cost of this coverage to be double that which such policyholders presently pay for intangible loss protection under the present insurance system.

Today, for every $100 of bodily injury premium cost, $60 is allocated for intangible loss. Hence, as Exhibit 3 of Appendix B clearly demonstrates, for every $100 of today's total bodily injury premium cost, this new insurance protection will cost $120. Put another way, this new limited coverage will cost policyholders 20% more than what they pay today for bodily injury insurance coverage.

C. Property Damage

It has been claimed that eliminating fault as a basis for recovery of damages to automobiles, one can dispense with property damage liability and thus achieve substantial cost savings. This just is not so.

In considering the cost to an individual motorist, one must consider not only the price he pays for purchasing insurance coverage, but also the out-of-pocket costs which he must absorb.

Eliminating fault as a basis for recovery does not eliminate the losses incurred in accidents. Committee Print One would merely require that each car owner bears his own losses, regardless of how his car was damaged.

Today, approximately one-half of all automobile owners do not carry collision insurance coverage. Yet, about one-fourth of all drivers are involved in auto accidents each year. Those not carrying collision insurance today decided against purchasing the coverage partly because they believe that they control the likelihood of their damaging their own cars. However, under the proposed system, these motorists would have very little control over the likelihood of any damage for which they would have to pay to their cars.

Under such circumstances, we may have people likely to feel they have no [illegible] ance to avoid the [illegible] they have no control [illegible] work on which [illegible] a small but certain [illegible] and uncertain [illegible]

Rather than risk a severe loss over which they have no control, about every fourth year, many of those not now buying collision insurance will elect to purchase the coverage.

Those who now feel comfortable doing without collision coverage because of the control they exercise over accidents, are forced by Committee Print Number One to make an agonizing reappraisal and a cold choice: Either elect against purchasing the coverage and leave themselves open to a very substantial loss. An out-of-pocket loss of even a few hundred dollars is painful to most people and devastating to the great majority who are operating on a thin margin of discretionary income -- or to purchase the proposed coverage. This serves to reduce the potential exposure to loss -- although the insured will still have to absorb the deductible when involved in an accident.

Furthermore, we project the cost of collision insurance under Committee Print One to be higher than today's equivalent collision premium. Collision insurance costs today are reduced substantially through subrogation. Committee Print One, by denying the right of subrogation would spread the total automobile

damage cost over collision insurance and self-insurance, whereas today, these costs are spread over collision insurance, self-insurance, and property-damage liability insurance.

Hence, what Committee Print Number One accomplishes by eliminating fault as a basis for recovery to damaged automobiles is forcing automobile owners to either self-insure their own losses or to purchase collision insurance at a substantially higher cost than today's coverage.

D. Conclusion

In conclusion, we project that for every $100 spent under today's system for bodily injury coverage, a policyholder will spend $257 for Committee Print One's full bodily injury protection. This breaks down as follows:

	Present System Cost (Bodily Injury)	Committee Print One (Bodily Injury)
Economic Loss	$ 40	$137
Intangible Loss	$ 60	$120
Total	$100	$257

V. EQUITABLE ALLOCATION OF COST BURDEN

A major impact of Committee Print Number One on our society will be a redistribution of who will bear what losses. Committee Print would require that accident victims pay the greater share of the total incurred automobile accident losses. The present system, on the other hand, bears down hardest on those who have caused the losses, on the theory that as a matter of equity, good drivers should not subsidize those who abuse the privilege of driving.

More specifically, Committee Print Number One would bring about a windfall to two large groups of vehicle users--truck owners and owners of muscle cars. Let us see how each of these groups would fare under the proposal.

Truck owners would have no responsibility whatsoever for injuries arising on the highway except to their own employees riding in their trucks. The fact is that today they already have this responsibility. Full medical benefits and most wage losses are covered and have been covered for many, many years by state workmen's compensation laws. Thus, Committee Print Number One does not impose any new liability or responsibility or cost on the truck owners while removing much of the responsibility and liability and cost which the present auto reparations system imposes on them.

Passenger cars are being asked to subsidize the truckers' use of the road.

This is particularly unfortunate since recent studies and investigations have demonstrated that accidents involving trucks are often due to inadequate maintenance of the trucks or carelessness of drivers arising from long hours on the road and insufficient rest periods. Recent hearings before the Senate Subcommittee on Alcoholism and Narcotics have highlighted the unfortunate working practices in the trucking industry and the Department of Transportation has published reports which clearly show that many trucks on the road today have a great many mechanical defects which cause serious numbers of accidents and deaths.

I want to make it clear that I am not attacking the trucking industry generally--simply pointing out that this industry, like all others, has its irresponsible elements and that Committee Print One would remove one of the strong incentives for encouraging responsible conduct on the part of both owners and drivers.

Committee Print Number One would absolve truck owners from their negligence and would unfairly shift the cost of accidents which they cause on to those who use their cars mainly for pleasure.

collision insurance, at a price higher than the present cost. Even then they would have to pay the first $50 or $100 deductible.

The negligent driver himself is a self-employed professional person who earns $20,000 a year. He also has considerable assets in the form of real estate and stock investments which produce a net income of about $5,000 a year. What benefit would he receive under the reparation system proposed under Committee Print No. 1? All of his medical expenses would be paid and, since he is not able to pursue his career for the period of 1 year, he would receive $12,000 in benefits. There is no deduction for the income he receives from other sources.

What equitable principle was used in determining that a man who earns $20,000 a year should have a substantial portion of his income replaced, while the retired couple receives nothing at all for the damage to their automobile—a serious economic loss to this couple—and nothing at all for their physical impairments which have deprived them of their retirement years? To put the question another way, what are you really replacing when you replace discretionary income beyond the amount required for basic necessities and a decent living? In essence, you are restoring the victim's ability to enjoy a style of life which such discretionary income makes possible. But isn't this also what you are doing when you make payment for general damages under the present liability system for injuries which deprive a person of mobility or in some other manner interfere with his enjoyment of life?

Those who would eliminate payment for general damages have attempted to imply that the inequities which would result are confined to rare instances. But the inequity of eliminating payment for general damages is by no means confined to the rare or bizarre case. More than 55 percent of the persons injured in automobile accidents are nonwage earners—housewives, minor children, retired persons, the unemployed, et cetera. Another substantial proportion of those injured are persons earning only a subsistence level of income or not far above it. If the system fails to provide anything other than net economic loss, is it not discriminating against this large group of auto accident victims? And are they not the group least likely to have purchased any optional benefits which would provide amenities to replace the enjoyment destroyed by the injury? People who have been injured by a negligent driver expect to get paid for their trouble, pain, and inconvenience. Those who have suffered a permanent impairment are even less likely to be satisfied with being paid nothing more than their net economic losses.

III. Accountability

As I read through the committee print and its report and tried to visualize how the new system would work in practice, I had an uneasy sensation that the world envisioned in this proposal is an unreal world. It is a neat, logical world where the decisions how to treat people are going to be based on economic values alone. It is a world in which people presumably would look upon an injury inflicted by a negligent driver as strictly a random event, devoid of emotion and personal significance beyond the dollars involved. It is a mechanized, dehumanized world which recognizes neither the moral responsibilities of drivers nor the psychological needs of crash victims. Most of all, it

is a world in which human values have been sacrificed to cost efficiency concepts.

Somewhere along the line, the proposal loses sight of the fact that man is not entirely rational, not entirely economic, but is a creature with emotional and psychological needs as well. These needs cannot always be logically articulated. But these are nevertheless real and must be dealt with in designing any future reparation system.

What we have been offered is a system which attempts to meet the accident victim's economic needs but which ignores his sense of justice.

It seems odd that at a time when government is pressing the theme of accountability—and this committee particularly, having specifically addressed itself to the field of accountability in its warranty legislation, class action legislation, product safety legislation, et cetera—would back away from accountability when it relates to automobile crashes.

Committee Print No. 1 would impose a reparation philosophy on our society which runs counter to the expectations of accident victims. In a democratic society, such an imposition cannot be a lasting one.

IV. Costs

In evaluating any important change in a social or economic structure which involves most of us, it is not only highly desirable but well nigh essential that we have a fix on the cost of the new procedure as compared to the program it will replace.

The Alliance Actuarial staff, assisted by the Alliance Actuarial Committee, has attempted to project the bodily injury coverage cost of Committee Print No. 1.

It must be understood that costing of a proposed program which is radically different than anything now in operation poses many problems, that it involves any number of assumptions, and that the answer is at best only an approximation.

A. COMPULSORY ECONOMIC LOSS COVERAGE

Using a number of assumptions necessitated by the vagueness of the bill with respect to benefits, and making conservative estimates of increased frequency, we estimate that the average premium cost of the compulsory bodily injury coverages will be at least 37 percent greater than current bodily injury liability premiums. In other words, for every $100 paid today by an automobile policyholder for bodily injury and uninsured motorist coverage ($10,000 per person and $20,000 per accident), that same policyholder will pay $137 for the compulsory economic loss coverage under Committee Print No. 1.

B. OPTIONAL INTANGIBLE DAMAGE BENEFIT

The Department of Transportation's Economic Consequence of Accidents Study revealed that 53 percent of auto accident victims are not paid by today's tort system. This large group is composed of individuals injured in single-car crashes as well as those whose injuries arise out of their own negligence.

Committee Print No. 1 would pay all covered injured their full intangible losses. Hence, as related to covered policyholders, one should expect the cost of this coverage to be double that which such policyholders presently pay for intangible loss protection under the present insurance system.

Today, for every $100 of bodily injury premium cost, $60 is allocated for intangible loss. Hence, for every $100 of today's total bodily injury premium cost, this new insurance protection will cost policyholders 20 percent more than what they pay today for bodily injury insurance coverage.

C. PROPERTY DAMAGE

It has been claimed that eliminating fault as a basis for recovery of damages to automobiles, one can dispense with property damage liability and thus achieve substantial cost savings. This just is not so.

In considering the cost to an individual motorist, one must consider not only the price he pays for purchasing insurance coverage, but also the out-of-pocket costs which he must absorb.

Eliminating fault as a basis for recovery does not eliminate the losses incurred in accidents. Committee Print No. 1 would merely require that each car owner bear his own losses, regardless of how his car was damaged.

Those who now feel comfortable doing without collision coverage because of the control they exercise over accidents, are forced by Committee Print No. 1 to make an agonizing reappraisal and a cruel choice: either elect against purchasing the coverage and leave themselves open to a very substantial loss or to purchase the proposed coverage. This serves to reduce the potential exposure to loss—although the insured will still have to absorb the deductible when involved in an accident.

Hence, what Committee Print No. 1 accomplishes by eliminating fault as a basis for recovery to damaged automobiles is forcing automobile owners to either self-insure their own losses or to purchase collision insurance at a substantially higher cost than today's coverage.

D. CONCLUSION

In conclusion, we project that for every $100 spent under today's system for bodily injury coverage, a policyholder will spend $257 for Committee Print No. 1's full bodily injury protection.

V. Equitable Allocation of Cost Burden

A major impact of Committee Print No. 1 on our society will be a redistribution of who will bear what losses. Committee Print would require that accident *victims* pay the greater share of the total incurred automobile accident losses. The present system, on the other hand, bears down hardest on those who have *caused the losses*, on the theory that as a matter of equity, good drivers should not subsidize those who abuse the privilege of driving.

More specifically, Committee Print No. 1 would bring about [illegible] fall to two large groups of vehicle users—truck owners [illegible] of muscle cars. Let us see how each of these groups [illegible] the proposal.

Truck owners would have no responsibility whatsoever for injuries arising on the highway except to their own employees riding in their trucks. The fact is that today they already have this responsibility. Full medical benefits and most wage losses are covered and have been covered for many many years by workmen's compensation laws. Thus, Committee Print No. 1 does not impose any new liability or responsibility or cost on the truck owners, while removing much of the responsibility and liability and cost which the present auto reparation system imposes on them. Passenger cars are being asked to subsidize the truckers' use of the road.

The owners of high-powered automobiles also would benefit substantially from Committee Print No. 1. As we testified earlier, there is sound statistical evidence indicating that muscle cars cause more accidents and more serious injuries than other private passenger automobiles. The existing compensation mechanism allows this to be reflected in the price which the owners of such cars must pay for insurance. In fact, it is the high cost of insurance which is being blamed by automobile manufacturer executives for the drastic drop in the sale of these cars.

Committee Print No. 1 would force a dramatic change. Most of these cars are owned by young people with little if any family responsibilities. When involved in accidents, these young people have little if any wage losses and, their medical expenses are below average because of the ability of their young bodies to heal quickly. Hence, an insurance system which is predicated on the amount of benefits *paid* to a victim and not on the *losses caused* would greatly benefit these people. There would be a two-fold result. On the one hand, the reduced accident and severtity rate brought about by the sharp decrease in the number of muscle cars on the road will be reversed. Second, the increased accident costs resulting from the reckless operation of muscle cars would not be paid by the muscle-car owners themselves but, again, by the large body of passenger-car owners. We believe that this shift in cost is not only inequitable but clearly against public interest.

Again, let me stress that Committee Print would restructure the cost burden of automobile accidents by requiring the accident victims to subsidize the reckless driver. It would be difficult, if not impossible, to devise an acceptable merit rating plan under a system based on categorical rejection of the fault concept.

Committee Print No. 1 would restrict the payment of benefits to the extent that the loss exceed, among others, recovery from any "public health insurance plan." Hence, again, although we agree with the need to prevent duplication, we see little justification for switching the cost of automobile accidents from the users of the highway to the general tax base.

Not only is it undesirable, from a standpoint [illegible] policy, hide the cost of automobile accidents within [illegible] tax structure—as Committee Print No. 1 would do—[illegible] advan[illegible] of first-party automobile insurance would be [illegible] show[illegible] remembered that an important reason given [illegible] auto[illegible] insurance supporters in the early days of t[illegible] the [illegible] bring to bear the rehabilitation expertise t[illegible] ent [illegible] had been done for the workmen's comp[illegible] efic[illegible] agree with this point and it is for this rea[illegible] are [illegible]

Committee Print No. 1 would pay all covered injured their full intangible losses. Hence, as related to covered policyholders, one should expect the cost of this coverage to be double that which such policyholders presently pay for intangible loss protection under the present insurance system.

Today, for every $100 of bodily injury premium cost, $60 is allocated for intangible loss. Hence, for every $100 of today's total bodily injury premium cost, this new insurance protection will cost policyholders 20 percent more than what they pay today for bodily injury insurance coverage.

C. PROPERTY DAMAGE

It has been claimed that eliminating fault as a basis for recovery of damages to automobiles, one can dispense with property damage liability and thus achieve substantial cost savings. This just is not so.

In considering the cost to an individual motorist, one must consider not only the price he pays for purchasing insurance coverage, but also the out-of-pocket costs which he must absorb.

Eliminating fault as a basis for recovery does not eliminate the losses incurred in accidents. Committee Print No. 1 would merely require that each car owner bear his own losses, regardless of how his car was damaged.

Those who now feel comfortable doing without collision coverage because of the control they exercise over accidents, are forced by Committee Print No. 1 to make an agonizing reappraisal and a cruel choice: either elect against purchasing the coverage and leave themselves open to a very substantial loss or to purchase the proposed coverage. This serves to reduce the potential exposure to loss—although the insured will still have to absorb the deductible when involved in an accident.

Hence, what Committee Print No. 1 accomplishes by eliminating fault as a basis for recovery to damaged automobiles is forcing automobile owners to either self-insure their own losses or to purchase collision insurance at a substantially higher cost than today's coverage.

D. CONCLUSION

In conclusion, we project that for every $100 spent under today's system for bodily injury coverage, a policyholder will spend $257 for Committee Print No. 1's full bodily injury protection.

V. Equitable Allocation of Cost Burden

A major impact of Committee Print No. 1 on our society will be a redistribution of who will bear what losses. Committee Print would require that accident *victims* pay the greater share of the total incurred automobile accident losses. The present system, on the other hand, bears down hardest on those who have *caused the losses*, on the theory that as a matter of equity, good drivers should not subsidize those who abuse the privilege of driving.

More specifically, Committee Print No. 1 would bring about a windfall to two large groups of vehicle users—truck owners and owners of muscle cars. Let us see how each of these groups would fare under the proposal.

Truck owners would have no responsibility whatsoever for injuries arising on the highway except to their own employees riding in their trucks. The fact is that today they already have this responsibility. Full medical benefits and most wage losses are covered and have been covered for many many years by workmen's compensation laws. Thus, Committee Print No. 1 does not impose any new liability or responsibility or cost on the truck owners, while removing much of the responsibility and liability and cost which the present auto reparation system imposes on them. Passenger cars are being asked to subsidize the truckers' use of the road.

The owners of high-powered automobiles also would benefit substantially from Committee Print No. 1. As we testified earlier, there is sound statistical evidence indicating that muscle cars cause more accidents and more serious injuries than other private passenger automobiles. The existing compensation mechanism allows this to be reflected in the price which the owners of such cars must pay for insurance. In fact, it is the high cost of insurance which is being blamed by automobile manufacturer executives for the drastic drop in the sale of these cars.

Committee Print No. 1 would force a dramatic change. Most of these cars are owned by young people with little if any family responsibilities. When involved in accidents, these young people have little if any wage losses and, their medical expenses are below average because of the ability of their young bodies to heal quickly. Hence, an insurance system which is predicated on the amount of benefits *paid* to a victim and not on the *losses caused* would greatly benefit these people. There would be a two-fold result. On the one hand, the reduced accident and severtity rate brought about by the sharp decrease in the number of muscle cars on the road will be reversed. Second, the increased accident costs resulting from the reckless operation of muscle cars would not be paid by the muscle-car owners themselves but, again, by the large body of passenger-car owners. We believe that this shift in cost is not only inequitable but clearly against public interest.

Again, let me stress that Committee Print would restructure the cost burden of automobile accidents by requiring the accident victims to subsidize the reckless driver. It would be difficult, if not impossible, to devise an acceptable merit rating plan under a system based on categorical rejection of the fault concept.

Committee Print No. 1 would restrict the payment of benefits to the extent that the loss exceed, among others, recovery from any "public health insurance plan." Hence, again, although we agree with the need to prevent duplication, we see little justification for switching the cost of automobile accidents from the users of the highway to the general tax base.

Not only is it undesirable, from a standpoint of public policy, to hide the cost of automobile accidents within the general tax structure—as Committee Print No. 1 would do—but a major advantage of first-party automobile insurance would be dissipated. It should be remembered that an important reason given by no-fault automobile insurance supporters in the early days of the debate was the need to bring to bear the rehabilitation expertise to auto accident victims as had been done for the workmen's compensation beneficiaries. We agree with this point and it is for this reason that we are recommend-

Committee Print No. 1 would pay all covered injured their full intangible losses. Hence, as related to covered policyholders, one should expect the cost of this coverage to be double that which such policyholders presently pay for intangible loss protection under the present insurance system.

Today, for every $100 of bodily injury premium cost, $60 is allocated for intangible loss. Hence, for every $100 of today's total bodily injury premium cost, this new insurance protection will cost policyholders 20 percent more than what they pay today for bodily injury insurance coverage.

C. PROPERTY DAMAGE

It has been claimed that eliminating fault as a basis for recovery of damages to automobiles, one can dispense with property damage liability and thus achieve substantial cost savings. This just is not so.

In considering the cost to an individual motorist, one must consider not only the price he pays for purchasing insurance coverage, but also the out-of-pocket costs which he must absorb.

Eliminating fault as a basis for recovery does not eliminate the losses incurred in accidents. Committee Print No. 1 would merely require that each car owner bear his own losses, regardless of how his car was damaged.

Those who now feel comfortable doing without collision coverage because of the control they exercise over accidents, are forced by Committee Print No. 1 to make an agonizing reappraisal and a cruel choice: either elect against purchasing the coverage and leave themselves open to a very substantial loss or to purchase the proposed coverage. This serves to reduce the potential exposure to loss—although the insured will still have to absorb the deductible when involved in an accident.

Hence, what Committee Print No. 1 accomplishes by eliminating fault as a basis for recovery to damaged automobiles is forcing automobile owners to either self-insure their own losses or to purchase collision insurance at a substantially higher cost than today's coverage.

D. CONCLUSION

In conclusion, we project that for every $100 spent under today's system for bodily injury coverage, a policyholder will spend $257 for Committee Print No. 1's full bodily injury protection.

V. Equitable Allocation of Cost Burden

A major impact of Committee Print No. 1 on our society will be a redistribution of who will bear what losses. Committee Print would require that accident *victims* pay the greater share of the total incurred automobile accident losses. The present system, on the other hand, bears down hardest on those who have *caused the losses*, on the theory that as a matter of equity, good drivers should not subsidize those who abuse the privilege of driving.

More specifically, Committee Print No. 1 would bring about a windfall to two large groups of vehicle users—truck owners and owners of muscle cars. Let us see how each of these groups would fare under the proposal.

Truck owners would have no responsibility whatsoever for injuries arising on the highway except to their own employees riding in their trucks. The fact is that today they already have this responsibility. Full medical benefits and most wage losses are covered and have been covered for many many years by workmen's compensation laws. Thus, Committee Print No. 1 does not impose any new liability or responsibility or cost on the truck owners, while removing much of the responsibility and liability and cost which the present auto reparation system imposes on them. Passenger cars are being asked to subsidize the truckers' use of the road.

The owners of high-powered automobiles also would benefit substantially from Committee Print No. 1. As we testified earlier, there is sound statistical evidence indicating that muscle cars cause more accidents and more serious injuries than other private passenger automobiles. The existing compensation mechanism allows this to be reflected in the price which the owners of such cars must pay for insurance. In fact, it is the high cost of insurance which is being blamed by automobile manufacturer executives for the drastic drop in the sale of these cars.

Committee Print No. 1 would force a dramatic change. Most of these cars are owned by young people with little if any family responsibilities. When involved in accidents, these young people have little if any wage losses and, their medical expenses are below average because of the ability of their young bodies to heal quickly. Hence, an insurance system which is predicated on the amount of benefits *paid* to a victim and not on the *losses caused* would greatly benefit these people. There would be a two-fold result. On the one hand, the reduced accident and severtity rate brought about by the sharp decrease in the number of muscle cars on the road will be reversed. Second, the increased accident costs resulting from the reckless operation of muscle cars would not be paid by the muscle-car owners themselves but, again, by the large body of passenger-car owners. We believe that this shift in cost is not only inequitable but clearly against public interest.

Again, let me stress that Committee Print would restructure the cost burden of automobile accidents by requiring the accident victims to subsidize the reckless driver. It would be difficult, if not impossible, to devise an acceptable merit rating plan under a system based on categorical rejection of the fault concept.

Committee Print No. 1 would restrict the payment of benefits to the extent that the loss exceed, among others, recovery from any "public health insurance plan." Hence, again, although we agree with the need to prevent duplication, we see little justification for switching the cost of automobile accidents from the users of the highway to the general tax base.

Not only is it undesirable, from a standpoint of public policy, to hide the cost of automobile accidents within the general tax structure—as Committee Print No. 1 would do—but a major advantage of first-party automobile insurance would be dissipated. It should be remembered that an important reason given by no-fault automobile insurance supporters in the early days of the debate was the need to bring to bear the rehabilitation expertise to auto accident victims as had been done for the workmen's compensation beneficiaries. We agree with this point and it is for this reason that we are recommend-

ing a minimum of $50,000, first-party automobile coverage in our guaranteed protection plan. We are convinced that the rehabilitation of the traumatically injured can best be undertaken at the direction of those institutions that specialize in managing traumatic medicine. We do not believe that if the care and responsibility for the treatment of automobile accident victims is left in the hands of those who have responsibility for the total medical care of our citizens, that the type of rehabilitative techniques best suited to traumatic case specialities will be applied.

In conclusion, it is obvious that Committee Print No. 1 falls far short of equitably allocating the cost burden of automobile accidents.

VI. Court Congestion

Committee Print No. 1 raises many questions about the extent of coverage to be provided which will need to be answered by the courts, in some instances, on a case by case basis. For instance:

a. What is the term "accidental harm" intended to cover?

b. Does the term "operation, maintenance, or use" intend to include injuries received while washing a car, working on it, and so forth? If someone suffers a slipped disc while unloading a bag of fertilizer from the trunk of his car, is this intended to be covered?

c. If the policyholder backs over his son's bicycle, is it intended that the proposed new policy pay for it?

Our claims people forsee major difficulties and legal controversy in determining what to pay large numbers of auto accident victims for their income loss. The bill proposes to pay actual earning loss as well as expected future earning loss. Many of the 55 percent of the non-wage-earner accident victims expect to enter or reenter the work force at some future date, or to earn supplementary income in some way. How is their claim going to be handled under a system which provides no yardstick for measuring the amount of a loss, and which does not provide for any payment until the loss has already occurred? These problems are present today from the claim viewpoint but they would be greatly exacerbated under a system with no policy limits and no apparent means of reaching a settlement other by obtaining a court order.

The reopening of old cases could be a very troublesome problem. The open-ended nature of unlimited liability imposed on the insurer would require the company to keep open its claims files indefinitely. This also would raise questions about the adequacy of loss reserves.

The system as proposed in Committee Print No. 1 would provide many opportunities and incentives for overutilization of benefits and even outright fraud.

All these uncertainties and complications will develop substantial friction between policyholders and their insurers and will need to be resolved by the courts. Rather than lessening the burden on the courts it is suggested that Committee Print No. 1 will increase it.

In fact, it is apparent that it is contemplated that policyholders will avail themselves frequently of professional, legal expertise. The bill encourages victims to seek legal representation by requiring the insured to pay additional attorney fees in all claims other than those found by the courts to have been frivolous. Thus, even though a claim

may be denied by the courts, unless the court, also found the claim to have been frivolous, an attorney fee would have to be paid by the company.

All in all, Committee Print No. 1 will encourage rather than discourage auto victims, their attorneys, and insurance companies to seek the help of the court to resolve disputes under the system.

VII. Conclusion

The following points up some of the basic weaknesses in the structure of Committee Print No. 1:

1. The bill would be expensive and discriminatory for the consumer.
2. It would needlessly and expensively complicate underwriting and claim administration.
3. The bill unfairly shifts the cost burden of automobile accidents from truckers and irresponsible drivers to careful passenger car owners.
4. The bill is inconsistent and ambiguous.
5. The bill eliminates all elements of personal accountability.
6. Like its predecessor, S. 945, the bill would permit Federal preemption of automobile insurance regulations.

Finally, and more precisely, Federal reform of the automobile compensation insurance system just is not needed. There is overwhelming evidence that reform is underway at the State level, and the State legislatures should be given the opportunity to take such action which they believe is in the best interest of their constituencies.

Senator Baker. I will put to you the same question that I believe we put to each of the previous witnesses.

Would you be agreeable to answering additional questions for the record as they may be submitted?

Mr. Maisonpierre. Yes; of course, I will, Senator.

Senator Baker. With that, I will reserve anything further I may have at this time and use that format.

Thank you for your statement. It is a very meaningful one.

(The statement together with questions and answers follow:)

Auto Insurance Reform

Committee Print Number One

of the

National No-Fault Motor Vehicle Insurance Act

(S.945)

Statement of the

American Mutual Insurance Alliance

before the

Senate Commerce Committee

October 13, 1971

AMIA

AMERICAN MUTUAL INSURANCE ALLIANCE

TABLE OF CONTENTS

I. INTRODUCTION

My name is Andre Maisonpierre and I am Vice President of the American Mutual Insurance Alliance, a national association of mutual property and casualty insurance companies. Our member companies provide automobile and other property-casualty coverages in all fifty states and the District of Columbia.

We welcome this opportunity to discuss Committee Print Number One -- S.945. For the sake of clarity, whenever S.945 is mentioned, it will refer to the original National No-Fault Motor Vehicle Insurance Act and, whenever Print One is mentioned, it will refer to Committee Print Number One, S.945.

It has been suggested that our testimony today be restricted to a technical analysis of Committee Print Number One. We want it clearly understood, however, that the Alliance continues to be unalterably opposed to a national no-fault solution. Our prior testimony before this Committee detailed the reasons for this opposition and nothing has happened in the interval which would make us change our views. In fact, we are more convinced than ever that the states are demonstrating their willingness to come to grips with automobile accident compensation reform. The Alliance is proud of the role it is privileged to play

64-346 O - 72 - pt. 5 - 9

in assisting state legislatures in structuring reform. We are continuing to press for state enactment of our Guaranteed Protection Plan which was carefully detailed in our prior testimony. Its outlines are again attached to this statement (Appendix A).

If we appear negative today, it is for two reasons: In the first place, we have been asked to limit our comments to Committee Print Number One. Hence, we will refrain from describing to the Committee the positive steps we have taken along the road to reforms in the different states. Secondly, we believe that although Committee Print One substantially differs from S.945, it does not solve the philosophical and practical shortcomings we described in our early testimony before this Committee. On the contrary, Committee Print One has added inequities which, if enacted, would prove to be expensive and discriminatory for consumers. Hence, we look upon Committee Print Number One as a step backwards and certainly not an improvement over S.945.

Any piece of legislation, be it auto reform, tax reform, state or federal, must be measured against well set out objectives. In our complicated world, it is seldom sufficient to meet one or two limited objectives for reform. All must be met in order to structure the balanced approach which ensures fair and equitable treatment of all.

The Alliance believes that any responsible auto insurance reform must achieve a reasonable balance among five different and often contradictory goals:

1. To provide crash victims with prompt and fair compensation.

2. To encourage driver accountability.

3. To keep overall costs at a reasonable level.

4. To equitably allocate the cost burden.

5. To relieve court congestion.

Let us see now how the Committee Print meets these objectives of responsible reform.

II. TO PROVIDE CRASH VICTIMS WITH PROMPT AND FAIR COMPENSATION

For all practical purposes, the bill restricts the benefits to be paid to an automobile accident victim to his medical losses, a portion of his wage losses, and, for those who have purchased collision insurance, a portion of the expenses a policyholder has incurred as a result of his automobile being damaged.

The bill specifically prohibits benefit payments for general damages, permanent disability, amputation, disfigurement, etc., unless the policyholder himself purchases separate insurance protecting him against such losses.

Our prior testimony stressed the reasons why we believe it is imperative to retain some element of general damages within a reparation system. The public opinion surveys which have been made demonstrate without a doubt that innocent automobile accident victims expect to get paid for their permanent impairments in addition to their economic losses.

Print Number One does, in fact, recognize the merits of this point. It provides that policyholders would be offered, on a no-fault basis, reimbursement for such losses. The Committee Staff Analysis advises us that "the controversy over whether the public wants to recover for intangible losses would be resolved by free market forces rather than by legislative determination."

What the Committee Print does not tell us is that because of the way it is structured, the cost of this coverage is likely to be so prohibitive that only those with large, disposable incomes will be able to afford the protection. This doesn't mean, of course, that people who can not afford that protection do not suffer when involved in accidents and do not care to be compensated for permanent, disabling injuries. It just means that they are not able to afford to be compensated for such losses. We believe that this discriminatory approach in the treatment of auto accident victims fails to meet the objective of "fair compensation."

Let's take a closer look at some of the implications that flow from the decision to pay auto accident victims only for their net economic loss.

Envision, if you will, an accident in which a speeding motorist crosses a center line and involves another car in a serious crash. The car that was hit contains a retired couple living on social security and a pension from his former employer. They are also covered by Medicare. They had planned to spend their years of retirement visiting their grandchildren and pursuing such interests as gardening, fishing, and the usual things retired people look forward to. Both suffer crippling injuries which would make it impossible for them to do any of these things.

Under the kind of reparation system envisioned in Print One, this elderly couple would receive no compensation at all from the negligent driver, and would receive little if any compensation from their own compulsory automobile insurance policy. They have no income loss, and their medical expenses are largely covered by Medicare. They would be able to pay the rent and put food on the table from their own resources. But there will be little money available for the amenities which might replace the enjoyment they have been forced to forego. They wouldn't even be able to collect for the damage which the negligent driver had done to their car, unless they had purchased their own collision insurance, at a price higher than the present cost. Even then they would have to pay the first $50 or $100 deductible.

The negligent driver himself is a self-employed professional person who earns $20,000 a year. He has a hospitalization policy, but no income coverage. However, he does have considerable assets in the form of real estate and stock investments which produce a net income of about $5,000 a year. What benefit would he receive under the reparation system proposed under Committee Print One? All of his medical expenses would be paid and, since he is not able to pursue his career for the period of one year he would

receive $12,000 in benefits. There is no deduction for the income he receives from other sources.

What equitable principle was used in determining that a man who earns $20,000 a year should have a substantial portion of his income replaced, while the retired couple receives nothing at all for the damage to their automobile -- a serious economic loss to this couple -- and nothing at all for their physical impairments which have deprived them of the enjoyment of their retirement years? To put the question another way, what are you really replacing when you replace discretionary income beyond the amount required for basic necessities and a decent living? In essence, you are restoring the victim's ability to enjoy a style of life which such discretionary income makes possible. But isn't this also what you are doing when you make payment for general damages under the present liability system for injuries which deprive a person of mobility or in some other manner interfere with his enjoyment of life?

Those who would eliminate payment for general damages have attempted to imply that the inequities which would result are confined to rare instances. It is possible, of course, to find bizarre cases under any system which could be devised. But the inequity of eliminating payment for general damages is by no means confined to the rare or

bizarre case. More than 55% of the persons injured in automobile accidents are non-wage earners -- housewives, minor children, retired persons, the unemployed, etc. Another substantial proportion of those injured are persons earning only a subsistence level of income or not far above it. If the system fails to provide anything other than net economic loss, is it not discriminating against this large group of auto accident victims? And are they not the group least likely to have purchased any optional benefits which would provide amenities to replace the enjoyment destroyed by the injury?

It is argued that general damages should be excluded from compensation because they are subjective in nature and are not susceptible of objective measurements in dollars. As we have already pointed out to the Committee, this is true of a great many things in this world. How much, for instance, is a man's time worth and how is its value determined? Why do we pay a higher wage for overtime, night work and holidays and how is a differential arrived at?

How do we determine the value of a piece of real estate condemned for a highway?

All of these things are subjective in nature. Yet we manage to translate them into dollar amounts by a process of bargaining and compromise. Our society not only is capable

of translating subjective values into dollars -- it insists upon it, and considers it one of the distinguishing features of a democratic society.

Auto accident victims insist upon it also. People who have been injured by a negligent driver expect to get paid for their trouble, pain and inconvenience. Those who have suffered a permanent impairment are even less likely to be satisfied with being paid nothing more than their net economic losses.

III. ACCOUNTABILITY

As I read through the Committee Print and its report and tried to visualize how the new system would work in practice, I had an uneasy sensation that the world envisioned in this proposal is an unreal world. It is a neat, logical world where the decisions how to treat people are going to be based on economic values alone. It is a world in which people presumably would look upon an injury inflicted by a negligent driver as strictly a random event, devoid of emotion and personal significance beyond the dollars involved. It is a mechanized, dehumanized world which recognizes neither the moral responsibilities of drivers nor the psychological needs of crash victims. Most of all, it is a world in which human values have been sacrificed to cost efficiency concepts.

Somewhere along the line, the proposal loses sight of the fact that man is not entirely rational, not entirely economic, but is a creature with emotional and psychological needs as well. These needs can not always be logically articulated. But these are nevertheless real and must be dealt with in designing any future reparation system.

What we have been offered is a system which attempts to meet the accident victim's economic needs but which ignores his sense of justice.

Whatever shortcomings the present auto reparations system has -- and we agree that there are some -- it is based on some fundamental concepts which are not as outmoded as its critics think. One of them is the concept that a driver who negligently inflicts injury and monetary loss should be held accountable for the damage that he has caused. Committee Print Number One totally eliminates this concept.

Let us see how the decision to abolish driver responsibility would operate in practice.

A car is stopped at a red light, at an intersection, waiting for the control signals to turn green before proceeding. Another car careening down the road is unable to negotiate a timely stop and rams into the rear of the stopped automobile, which sustains $550 damage. The negligent driver, if he has any social grace at all, may tell the driver of the damaged car -- "sorry, social error." But, he doesn't legally have to do anything. Under Committee Print Number One he could just as well back up his car a few feet, and be on his merry way. The fact is that this negligent driver has no responsibility whatsoever to the person whose car he has damaged. Under the Committee Print, the owner of the damaged car, if he has not purchased collision insurance, will have to pay for the total repair of the car himself and, even if

he has purchased insurance, he will have to absorb the $50 to $100 no-fault deductible.

It seems odd that at a time when government is pressing the theme of accountability -- and this Committee particularly, having specifically addressed itself to the field of accountability in its warranty legislation, class action legislation, product safety legislation, etc. -- would back away from accountability when it relates to automobile crashes. Yet, we are told by the Department of Transportation that half of our traffic deaths are caused by drinking drivers.

Committee Print Number One would impose a reparation philosophy on our society which runs counter to the expectations of accident victims. In a democratic society, such an imposition can not be a lasting one.

IV. COSTS

In evaluating any important change in a social or economic structure which involves most of us, it is not only highly desirable but well nigh essential that we have a fix on the cost of the new procedure as compared to the program it will replace.

The Alliance Actuarial staff, assisted by the Alliance Actuarial Committee, has attempted to project the bodily injury coverage cost of Committee Print One. Its report is attached (Appendix B).

It must be understood that costing of a proposed program which is radically different than anything now in operation poses many problems, that it involves any number of assumptions, and that the answer is at best only an approximation. Frequency and value of new claims under no-fault system, for instance, can not be determined from claim files developed under the tort liability system. It is widely recognized that injuries arising from single-car accidents are frequently not reported to the insurance company under the present system. Therefore, in considering a program such as the one being proposed, a substantial loading must be included which is at best an estimate.

Particular problems are encountered in costing an insurance program which provides that future wage loss payments

are to be subject to periodic increases. Furthermore, average claims amounts can not be determined where there are vague limitations or no limitations of total benefits payable.

Differences in utilization can not be disregarded. For instance, what we are really talking about when we provide the type of medical benefits suggested in Committee Print One is the broadest possible form of health insurance benefits. Health insurance plans generally rely on a number of control mechanisms to discourage over utilization. Among these, the most widely used are co-insurance, specification of services and inside limits. Yet, these have been waived in Committee Print One.

We know that these factors will play a major role in the cost of Committee Print Number One. Yet, because we have had no experience with programs of this nature, we can not provide for their impact in our costs projection. Hence, even though we evaluate the cost of bodily injury coverages under Committee Print Number One to be greatly in excess of today's bodily injury insurance coverages, we fear that we are grossly underrating the cost potentials of Committee Print Number One.

A. Compulsory Economic Loss Coverage

Using a number of assumptions necessitated by the vagueness of the bill with respect to benefits, and

making conservative estimates of increased frequency, we estimate that the average premium cost of the compulsory bodily injury coverages will be at least 37% greater than current bodily injury liability premiums. In other words, for every $100 paid today by an automobile policyholder for bodily injury and uninsured motorist coverage ($10,000 per person and $20,000 per accident), that same policyholder will pay $137 for the compulsory economic loss coverage under Committee Print Number One.

B. Optional Intangible Damage Benefit

This optional coverage, described in Section 5(c)(2)(B) of Committee Print One would pay a covered policyholder, on a no-fault, first-party basis, for all intangible damages he and his family may have sustained as a result of injury or death in an automobile accident.

The Department of Transportation's Economic Consequence of Accidents Study revealed that 53% of auto accident victims are not paid by today's tort system. This large group is composed of individuals injured in single-car crashes as well as those whose injuries arise out of their own negligence.

Committee Print Number One would pay all covered injured their full intangible losses. Hence, as related to covered policyholders, one should expect the cost of this coverage to be double that which such policyholders presently pay for intangible loss protection under the present insurance system.

Today, for every $100 of bodily injury premium cost, $60 is allocated for intangible loss. Hence, as Exhibit 3 of Appendix B clearly demonstrates, for every $100 of today's total bodily injury premium cost, this new insurance protection will cost $120. Put another way, this new limited coverage will cost policyholders 20% more than what they pay today for bodily injury insurance coverage.

C. Property Damage

It has been claimed that eliminating fault as a basis for recovery of damages to automobiles, one can dispense with property damage liability and thus achieve substantial cost savings. This just is not so.

In considering the cost to an individual motorist, one must consider not only the price he pays for purchasing insurance coverage, but also the out-of-pocket costs which he must absorb.

Eliminating fault as a basis for recovery does not eliminate the losses incurred in accidents. Committee Print One would merely require that each car owner bears his own losses, regardless of how his car was damaged.

Today, approximately one-half of all automobile owners do not carry collision insurance coverage. Yet, about one-fourth of all drivers are involved in auto accidents each year. Those not carrying collision insurance today decided against purchasing the coverage partly because they believe that they control the likelihood of their damaging their own cars. However, under the proposed system, these motorists would have very little control over the likelihood of any damage for which they would have to pay to their cars.

Under such circumstances, are many more people likely to feel they have to purchase collision insurance to avoid the potential serious loss over which they have no control? After all, this is the framework on which insurance is founded -- to substitute a small but certain payment for a potentially large and uncertain loss.

64-348 O - 72 - pt. 5 - 10

Rather than risk a severe loss over which they have no control, about every fourth year, many of those not now buying collision insurance will elect to purchase the coverage.

Those who now feel comfortable doing without collision coverage because of the control they exercise over accidents, are forced by Committee Print Number One to make an agonizing reappraisal and a cold choice: Either elect against purchasing the coverage and leave themselves open to a very substantial loss. An out-of-pocket loss of even a few hundred dollars is painful to most people and devastating to the great majority who are operating on a thin margin of discretionary income -- or to purchase the proposed coverage. This serves to reduce the potential exposure to loss -- although the insured will still have to absorb the deductible when involved in an accident.

Furthermore, we project the cost of collision insurance under Committee Print One to be higher than today's equivalent collision premium. Collision insurance costs today are reduced substantially through subrogation. Committee Print One, by denying the right of subrogation would spread the total automobile

damage cost over collision insurance and self-insurance, whereas today, these costs are spread over collision insurance, self-insurance, and property-damage liability insurance.

Hence, what Committee Print Number One accomplishes by eliminating fault as a basis for recovery to damaged automobiles is forcing automobile owners to either self-insure their own losses or to purchase collision insurance at a substantially higher cost than today's coverage.

D. Conclusion

In conclusion, we project that for every $100 spent under today's system for bodily injury coverage, a policyholder will spend $257 for Committee Print One's full bodily injury protection. This breaks down as follows:

	Present System Cost (Bodily Injury)	Committee Print One (Bodily Injury)
Economic Loss	$ 40	$137
Intangible Loss	$ 60	$120
Total	$100	$257

V. EQUITABLE ALLOCATION OF COST BURDEN

A major impact of Committee Print Number One on our society will be a redistribution of who will bear what losses. Committee Print would require that accident victims pay the greater share of the total incurred automobile accident losses. The present system, on the other hand, bears down hardest on those who have caused the losses, on the theory that as a matter of equity, good drivers should not subsidize those who abuse the privilege of driving.

More specifically, Committee Print Number One would bring about a windfall to two large groups of vehicle users--truck owners and owners of muscle cars. Let us see how each of these groups would fare under the proposal.

Truck owners would have no responsibility whatsoever for injuries arising on the highway except to their own employees riding in their trucks. The fact is that today they already have this responsibility. Full medical benefits and most wage losses are covered and have been covered for many, many years by state workmen's compensation laws. Thus, Committee Print Number One does not impose any new liability or responsibility or cost on the truck owners while removing much of the responsibility and liability and cost which the present auto reparations system imposes on them.

Passenger cars are being asked to subsidize the truckers' use of the road.

This is particularly unfortunate since recent studies and investigations have demonstrated that accidents involving trucks are often due to inadequate maintenance of the trucks or carelessness of drivers arising from long hours on the road and insufficient rest periods. Recent hearings before the Senate Subcommittee on Alcoholism and Narcotics have highlighted the unfortunate working practices in the trucking industry and the Department of Transportation has published reports which clearly show that many trucks on the road today have a great many mechanical defects which cause serious numbers of accidents and deaths.

I want to make it clear that I am not attacking the trucking industry generally--simply pointing out that this industry, like all others, has its irresponsible elements and that Committee Print One would remove one of the strong incentives for encouraging responsible conduct on the part of both owners and drivers.

Committee Print Number One would absolve truck owners from their negligence and would unfairly shift the cost of accidents which they cause on to those who use their cars mainly for pleasure.

The owners of high-powered automobiles also would benefit substantially from Committee Print Number One. As we testified earlier, there is sound statistical evidence indicating that muscle cars cause more accidents and more serious injuries than other private passenger automobiles. The existing compensation mechanism allows this to be reflected in the price which the owners of such cars must pay for insurance. In fact, it is the high cost of insurance which is being blamed by automobile manufacturer executives for the drastic drop in the sale of these cars.

Committee Print Number One would force a dramatic change. Most of these cars are owned by young people with little if any family responsibilities. When involved in accidents, these young people have little if any wage losses and, their medical expenses are below average because of the ability of their young bodies to heal quickly. Hence, an insurance system which is predicated on the amount of <u>benefits paid</u> to a victim and not on <u>the losses caused</u> would greatly benefit these people. There would be a two-fold result. On the one hand, the reduced accident and severity rate brought about by the sharp decrease in the number of muscle cars on the road will be reversed. Secondly, the increased accident costs resulting from the reckless operation of muscle cars would not be paid by the muscle-car owners

themselves but, again, by the large body of passenger-car owners. We believe that this shift in cost is not only inequitable but clearly against public interest.

One of the major considerations involved in assessing the feasibility of any new auto reparations system is how it would work out in practice. How would the proposed new system effect the underwriting and claims handling functions? Which groups of drivers would be regarded as more desirable or less desirable customers, from the standpoint of loss exposure? What new considerations would become pertinent in raising or lowering auto insurance prices for particular groups of individuals?

The Alliance staff asked a group of underwriters to assess Committee Print One. I would like to report on the questions that were raised and the observations that they offered.

1. One of the findings is that the proposed new system would lend itself to many more rating distinctions among drivers than the present classification system in use. This results primarily from the fact that people who apply for insurance would be judged on the basis of the amount of damage they are likely to sustain rather than on the damage they are likely to inflict on someone else. This means that the potential beneficiaries

The owners of high-powered automobiles also would benefit substantially from Committee Print Number One. As we testified earlier, there is sound statistical evidence indicating that muscle cars cause more accidents and more serious injuries than other private passenger automobiles. The existing compensation mechanism allows this to be reflected in the price which the owners of such cars must pay for insurance. In fact, it is the high cost of insurance which is being blamed by automobile manufacturer executives for the drastic drop in the sale of these cars.

Committee Print Number One would force a dramatic change. Most of these cars are owned by young people with little if any family responsibilities. When involved in accidents, these young people have little if any wage losses and, their medical expenses are below average because of the ability of their young bodies to heal quickly. Hence, an insurance system which is predicated on the amount of <u>benefits paid</u> to a victim and not on <u>the losses caused</u> would greatly benefit these people. There would be a two-fold result. On the one hand, the reduced accident and severity rate brought about by the sharp decrease in the number of muscle cars on the road will be reversed. Secondly, the increased accident costs resulting from the reckless operation of muscle cars would not be paid by the muscle-car owners

themselves but, again, by the large body of passenger-car owners. We believe that this shift in cost is not only inequitable but clearly against public interest.

One of the major considerations involved in assessing the feasibility of any new auto reparations system is how it would work out in practice. How would the proposed new system effect the underwriting and claims handling functions? Which groups of drivers would be regarded as more desirable or less desirable customers, from the standpoint of loss exposure? What new considerations would become pertinent in raising or lowering auto insurance prices for particular groups of individuals?

The Alliance staff asked a group of underwriters to assess Committee Print One. I would like to report on the questions that were raised and the observations that they offered.

1. One of the findings is that the proposed new system would lend itself to many more rating distinctions among drivers than the present classification system in use. This results primarily from the fact that people who apply for insurance would be judged on the basis of the amount of damage they are likely to sustain rather than on the damage they are likely to inflict on someone else. This means that the potential beneficiaries

are known to the underwriter and can be examined in more detail with regard to their loss potential. Thus, the present rate classification plans probably would be modified and new plans would evolve as loss experience accumulated. The variables now used in setting rates would continue to be pertinent, plus many new ones such as family income, existence of other insurance, etc. The additions of just the major new variables would produce more than 2.5-million possible rate classifications for New York vehicle owners alone.

2. The system in which the claimants are indentifiable in advance would likewise tend to produce rating cateories and/or underwriting decisions based on personal factors which have little or no relevance under the liability system, where the claimants are mostly randomly selected persons who get involved in accidents with the policyholder. In general, our underwriters said higher rates would be required for the following categories of people under Committee Print One:

a. Persons with large families.

b. Persons with stationwagons and other vehicles with large capacity.

c. Persons who use their cars in carpools or take part in other activities likely to fill their cars with wage earners.

d. Persons who have pre-existing injuries or other health conditions which would make them prone to long and costly medical treatment and disability in case of further injury.

e. Persons who, because of their marginal skills or age, would be likely to be out of work for protracted periods (perhaps permanently) in the event of even a moderately disabling injury.

f. Persons living in areas subject to a high accident frequency, because of traffice congestions, poor weather conditions, mediocre law enforcement or other environmental factors. This includes congested older sections of major cities.

g. Persons likely to incur most expensive medical treatment in the event of a disabling injury--our senior citizens.

h. Persons exhibiting more "claims consciousness" than the general population.

i. Motorcycle owners.

On the other hand, lower rates should be charged the following categories of policyholders, other things being equal:

a. Single persons and those with small families.

b. Owners of vehicles with limited seating capacity.

c. Healthy persons.

d. Persons who have lower wage losses, either because their earnings are low or because their income is from sources which would not be effected by a disabling injury.

e. Persons who could continue to earn a livelihood despite a disabling injury.

f. Persons who live in areas of low accident frequency and severity.

g. Muscle-car owners.

In some instances, these factors would tend to pull in opposite directions. In other instances, however, the various factors would reinforce each other and create even greater extremes in pricing than is now the case. This assumes that auto insurers would be allowed to establish rate categories that reflect the actual differences in loss potential among various motoring groups and individuals under the proposed type of system. To the extent that the classifications were not permitted to reflect these actual differences, whether for sound public policy reasons, political expendiency or for whatever reason, the proposed new system would simply create new groups of unprofitable "substandard risks".

3. Underwriting applications for insurance under the proposed system would become more complex, time consuming and costly. All of the data presently needed would be needed under the new system, including information on geographical location and usage of the vehicle, type of vehicle, the age, sex, and marital status of the owner. In addition, either the agent or a company

representative would have to gather and verify a number of other pieces of information. These include the policyholder's health, number of persons in the family, education and job skills, occupation, existence of other insurance and other sources of reimbursement, the income levels of all members of the family, the taxes they pay, the family's environmental exposure to accidents caused by others. Similar information would be needed in order to determine the benefits payable at the time of loss. This raises a number of troublesome questions:

a. How would people react to being asked to divulge their income, the taxes they pay, their health problems, personal habits and other similar details?

b. How would the insurance company verify such personal information without being accused of snooping?

c. What safeguards would be available to prevent concealment of collateral sources which can be deducted from the benefits paid, tax deductions, second jobs and other information which would have to be taken into account in settling claims?

d. What penalties would be provided for misstatements and omission of pertinent information on the insurance application?

e. What would be the degree of cooperation given by employers, doctors, the Internal Revenue Service, hospitals, law enforcement agencies, and other groups when asked to provide and verify the necessary information? How much would they charge for handling the additional paperwork?

Again, let me stress that Committee Print One would restructure the cost burden of automobile accidents by requiring the accident victims to subsidize the reckless driver. It would be difficult, if not impossible, to devise an acceptable merit rating plan under a system based on categorical rejection of the fault concept. Actuarially, a driver's past accident record is a good indicator of his probable future accident frequency. And there is strong public support for the idea of charging higher rates for accident-prone drivers and lower rates for those who are safe drivers.

However, it is also clear that most people are adamantly opposed to being surcharged because of their involvement in an accident which was not their fault. How is fault to be determined under a system which rejects the whole idea of fault? If proponents of Committee Print One remain true to their convictions and ignore fault entirely, will the majority of safe drivers be content to pay surcharges when they are involved in accidents caused by negligent drivers? And if the fault concept is smuggled back into the pricing of insurance, why is it not also a valid concept to use in the settlement of claims?

Committee Print One would restrict the payment of benefits to the extent that the loss exceed, among others,

recovery from any "public health insurance plan." Here again, we see little justification for switching the cost of automobile accidents from the users of the highway to the general tax bases. This also runs counter to Congressional policy adopted in 1967, when Medicaid was amended by requiring that wherever a third party was liable, Medicaid should seek to subrograte the amounts which it paid. In fact, this provision is the only one enacted by Congress since Medicaid came into being, which has brought any relief to the tax bases. What Committee Print One does is reverse this public policy by charging taxpayers with the cost of automobile accidents.

Committee Print One would also make automobile benefits excess to whatever national health insurance plan might be enacted by Congress. Although we concur with the need to prevent duplication between national health benefits and automobile insurance benefits, we believe that the general tax base should not be used to subsidize automobile accidents. National health benefits should only be paid to the extent automobile benefits fail to meet the victims' total medical expenses. Not only is it undesirable, from a standpoint of public policy, to hide the cost of automobile accidents within the general tax structure--as Committee Print One would do--but a major advantage of first-party automobile

insurance would be dissipated. It should be remembered that an important reason given by no-fault automobile insurance supporters in the early days of the debate was the need to bring to bear the rehabilitation expertise to auto accident victims as had been done for the workmen's compensation beneficiaries. We agree with this point and it is for this reason that we are recommending a minimum of $50,000, first-party automobile coverage in our Guaranteed Protection Plan. We are convinced that the rehabilitation of the traumatically injured can best be undertaken at the direction of those institutions that specialize in managing traumatic medicine. We do not believe that if the care and responsibility for the treatment of automobile accident victim is left in the hands of those that have responsibility for the total medical care of our citizens, that the type of rehabilitative techniques best suited to traumatic case specialities will be applied.

In conclusion, it is obvious that Committee Print One falls far short of equitably allocating the cost burden of automobile accidents.

VI. COURT CONGESTION

There is a great deal of dispute today related to the responsibility of the present system for congesting our courts. We believe that much of the discussion which has related to automobile insurance reparation and "congestion" has been irrelevant. Our courts would be congested even if they did not have to handle a single auto accident case. The objective should be to facilitate the handling of claim disputes so as to minimize the recourse to the courts. Again, this we have done in our Guaranteed Protection Plan.

However, Committee Print One raises a number of questions about the extent of coverage to be provided which will need to be answered by the courts, in some instances on a case-by-case basis. For instance:

A. What is the term "accidental harm" intended to cover? Is the proposed new form of auto insurance intended to pay for all events occurring in automobiles which might be held to constitute "accidental harm," such as kidnapping, rape, robbery, assault, psychic injury attributed to witnessing a gory accident, etc.?

B. The term "operation, maintenance, or use" is said to include "unloading the vehicle" and includes the repair, servicing and maintenance of the car if not done within the course of a business. Is it the inten-

insurance would be dissipated. It should be remembered that an important reason given by no-fault automobile insurance supporters in the early days of the debate was the need to bring to bear the rehabilitation expertise to auto accident victims as had been done for the workmen's compensation beneficiaries. We agree with this point and it is for this reason that we are recommending a minimum of $50,000, first-party automobile coverage in our Guaranteed Protection Plan. We are convinced that the rehabilitation of the traumatically injured can best be undertaken at the direction of those institutions that specialize in managing traumatic medicine. We do not believe that if the care and responsibility for the treatment of automobile accident victim is left in the hands of those that have responsibility for the total medical care of our citizens, that the type of rehabilitative techniques best suited to traumatic case specialities will be applied.

In conclusion, it is obvious that Committee Print One falls far short of equitably allocating the cost burden of automobile accidents.

VI. COURT CONGESTION

There is a great deal of dispute today related to the responsibility of the present system for congesting our courts. We believe that much of the discussion which has related to automobile insurance reparation and "congestion" has been irrelevant. Our courts would be congested even if they did not have to handle a single auto accident case. The objective should be to facilitate the handling of claim disputes so as to minimize the recourse to the courts. Again, this we have done in our Guaranteed Protection Plan.

However, Committee Print One raises a number of questions about the extent of coverage to be provided which will need to be answered by the courts, in some instances on a case-by-case basis. For instance:

A. What is the term "accidental harm" intended to cover? Is the proposed new form of auto insurance intended to pay for all events occurring in automobiles which might be held to constitute "accidental harm," such as kidnapping, rape, robbery, assault, psychic injury attributed to witnessing a gory accident, etc.?

B. The term "operation, maintenance, or use" is said to include "unloading the vehicle" and includes the repair, servicing and maintenance of the car if not done within the course of a business. Is it the inten-

tion to include injuries received while washing a car, working on it, etc.? If someone suffers a slipped disc while unloading a bag of fertilizer from the trunk of his car, is this intended to be covered?

C. Does the bill contemplate that the proposed property damage coverage would pay for damage to the policyholder's own property and that of his family? For example, if the policyholder backs over his son's bicycle, is it intended that the proposed new policy pay for it? If someone loses a valuable gem out of a ring while riding in an automobile, would that be covered under the proposed broad terms of the bill?

No allowance has been made for such claims in cost figures which we have presented today and one can say with certainty how much the "blue sky" coverages and lack of cost controls would increase the cost of the proposed new system. However, such grandiose new social programs have a way of greatly exceeding the cost estimates offered by their proponents in advance of their enactment. The recent sad cost experience with Medicaid and Medicare should be instructive in this regard.

Our claims people forsee major difficulties and legal controversy in determining what to pay large numbers of auto accident victims for their income loss. The bill proposes

to pay actual earning losses as well as expected future earning loss. Several aspects of this issue are troublesome. One is that 55% of the persons injured in auto accidents are not wage earners at the time of the accident. These include minor children, housewives, students, the unemployed and retired persons. Many of these persons expect to enter or reenter the work force at some future date, or to earn supplementary income in some way. How is the claim going to be handled under a system which provides no yardstick for measuring the amount of a loss, and which does not provide for any payment until the loss has already occurred? What assumptions are to be made about the future earning potential of an infant child? A student? A young person just starting out in a business or profession? What assumptions are to be made about the effect of a partial disability on future earning potentials? Is it contemplated that compensation for persons with long-term disabilities or partial disabilities is to be readjusted periodically for inflation? And for the presumed promotions they would have received? Persons whose income is irregular or seasonal in nature would face different kinds of problems. What assumptions are to be made about the future "sub-marginal" [illegible] by a salesman on commission? A self employed [illegible]? A person whose work is seasonal, [illegible] the [illegible]

performer who was auditioning for a major assignment at the time of the accident? An athlete who had hopes of a professional career? These problems are present today from the claim viewpoint but they would be greatly exacerbated under a system with no policy limits and no apparent means of reaching a settlement other than by obtaining a court order. Because of these problems, it is likely that persons with irregular or speculative income would have more difficulty obtaining insurance under such a system than would a salaried person with a steady job.

The reopening of old cases could be a very troublesome problem. The open-ended nature of unlimited liability imposed on the insurer would require the company to keep open its claims files indefinitely. This also would raise questions about the adequacy of loss reserves.

The system as proposed in Committee Print One would provide many opportunities and incentives for over utilization of benefits and even outright fraud. Please note that:

A. There is no requirement that an accident occur--not even a recognizable "event" or "occurrence." The bill is completely silent on this.

B. The term "accidental harm" is extremely broad and undefined.

C. The burden of proof is shifted onto the insurance company, which would be heavily penalized if it failed to pay up within 30 days after the policyholder had made his claim.

All these uncertainties and complications will develop substantial friction between policyholders and their insurers and will need to be resolved by the courts. Rather than lessening the burden on the courts it is suggested that Committee Print One will increase it.

In fact, it is apparent that it is contemplated that policyholders will avail themselves frequently of professional, legal expertise. The bill provides that "a person making a claim under a qualifying no-fault policy may be allowed an award for attorney fees (based upon actual time expended) and too reasonable costs of suit in any case in which the insurer denies all or part of the claim for benefits under such policy unless the court determines that the claim was fraudulent excessive or frivolous." It is clear that whether the insurer acts reasonably or not makes no difference as to the awarding of attorney fees. If, for instance, the first notice of a claim to the insurance company is a letter from an attorney, whether the insurance company had the best intention in the world to pay the claim in full or not would make no difference and unless the filing

of the claim was found to be frivolous, an attorney fee would have to be paid in addition to the economic loss. Only a court would be able to find the filing to be frivolous --hence many cases would gravitate to the courts for a decision on the need for an attorney to become involved on the one hand and the extent of attorney fees on the other.

All in all, Committee Print One will encourage, rather than discourage auto victims, their attorneys and insurance companies to seek the help of the courts to resolve disputes under the system.

VII. CONCLUSION

The following points up some of the basic weaknesses in the structure of Committee Print Number One:

1. The bill would be expensive and discriminatory for the consumer.

2. It would needlessly and expensively complicate underwriting and claim administration.

3. The bill unfairly shifts the cost burden of automobile accidents from truckers and irresponsible drivers to careful passenger-car owners.

4. The bill is inconsistent and ambiguous.

5. The bill eliminates all elements of personal responsibility.

6. Like its predecessor, S.945, the bill would permit federal preemption of automobile insurance regulation.

Finally, and more precisely, [illegible] reform of the automobile compensation insurance system [illegible] is not needed. There is overwhelming evidence that reform is necessary at the state level, and the state legislatures should be given the opportunity to take such action which they believe is in the best interest of their constituents.

insurance would be dissipated. It should be remembered that an important reason given by no-fault automobile insurance supporters in the early days of the debate was the need to bring to bear the rehabilitation expertise to auto accident victims as had been done for the workmen's compensation beneficiaries. We agree with this point and it is for this reason that we are recommending a minimum of $50,000, first-party automobile coverage in our Guaranteed Protection Plan. We are convinced that the rehabilitation of the traumatically injured can best be undertaken at the direction of those institutions that specialize in managing traumatic medicine. We do not believe that if the care and responsibility for the treatment of automobile accident victim is left in the hands of those that have responsibility for the total medical care of our citizens, that the type of rehabilitative techniques best suited to traumatic case specialities will be applied.

In conclusion, it is obvious that Committee Print One falls far short of equitably allocating the cost burden of automobile accidents.

VI. COURT CONGESTION

There is a great deal of dispute today related to the responsibility of the present system for congesting our courts. We believe that much of the discussion which has related to automobile insurance reparation and "congestion" has been irrelevant. Our courts would be congested even if they did not have to handle a single auto accident case. The objective should be to facilitate the handling of claim disputes so as to minimize the recourse to the courts. Again, this we have done in our Guaranteed Protection Plan.

However, Committee Print One raises a number of questions about the extent of coverage to be provided which will need to be answered by the courts, in some instances on a case-by-case basis. For instance:

A. What is the term "accidental harm" intended to cover? Is the proposed new form of auto insurance intended to pay for all events occurring in automobiles which might be held to constitute "accidental harm," such as kidnapping, rape, robbery, assault, psychic injury attributed to witnessing a gory accident, etc.?

B. The term "operation, maintenance, or use" is said to include "unloading the vehicle" and includes the repair, servicing and maintenance of the car if not done within the course of a business. Is it the inten-

tion to include injuries received while washing a car, working on it, etc.? If someone suffers a slipped disc while unloading a bag of fertilizer from the trunk of his car, is this intended to be covered?

C. Does the bill contemplate that the proposed property damage coverage would pay for damage to the policyholder's own property and that of his family? For example, if the policyholder backs over his son's bicycle, is it intended that the proposed new policy pay for it? If someone loses a valuable gem out of a ring while riding in an automobile, would that be covered under the proposed broad terms of the bill?

No allowance has been made for such claims in cost figures which we have presented today and one can say with certainty how much the "blue sky" coverages and lack of cost controls would increase the cost of the proposed new system. However, such grandiose new social programs have a way of greatly exceeding the cost estimates offered by their proponents in advance of their enactment. The recent sad cost experience with Medicaid and Medicare should be instructive in this regard.

Our claims people forsee major difficulties and legal controversy in determining what to pay large numbers of auto accident victims for their income loss. The bill proposes

to pay actual earning losses as well as expected future earning loss. Several aspects of this issue are troublesome. One is that 55% of the persons injured in auto accidents are not wage earners at the time of the accident. These include minor children, housewives, students, the unemployed and retired persons. Many of these persons expect to enter or reenter the work force at some future date, or to earn supplementary income in some way. How is the claim going to be handled under a system which provides no yardstick for measuring the amount of a loss, and which does not provide for any payment until the loss has already occurred? What assumptions are to be made about the future earning potential of an infant child? A student? A young person just starting out in a business or profession? What assumptions are to be made about the effect of a permanent disability on future earning potential? Is a [illegible] compensation for persons with [illegible] disabilities to be [illegible] And for the permanently [illegible] Persons whose income is [illegible] different kinds of jobs [illegible] made about the future [illegible] salesman or [illegible] A person whose only [illegible]

are known to the underwriter and can be examined in more detail with regard to their loss potential. Thus, the present rate classification plans probably would be modified and new plans would evolve as loss experience accumulated. The variables now used in setting rates would continue to be pertinent, plus many new ones such as family income, existence of other insurance, etc. The additions of just the major new variables would produce more than 2.5-million possible rate classifications for New York vehicle owners alone.

2. The system in which the claimants are indentifiable in advance would likewise tend to produce rating cateories and/or underwriting decisions based on personal factors which have little or no relevance under the liability system, where the claimants are mostly randomly selected persons who get involved in accidents with the policyholder. In general, our underwriters said higher rates would be required for the following categories of people under Committee Print One:

a. Persons with large families.

b. Persons with stationwagons and other vehicles with large capacity.

c. Persons who use their cars in carpools or take part in other activities likely to fill their cars with wage earners.

d. Persons who have pre-existing injuries or other health conditions which would make them prone to long and costly medical treatment and disability in case of further injury.

e. Persons who, because of their marginal skills or age, would be likely to be out of work for protracted periods (perhaps permanently) in the event of even a moderately disabling injury.

f. Persons living in areas subject to a high accident frequency, because of traffice congestions, poor weather conditions, mediocre law enforcement or other environmental factors. This includes congested older sections of major cities.

g. Persons likely to incur most expensive medical treatment in the event of a disabling injury--our senior citizens.

h. Persons exhibiting more "claims consciousness" than the general population.

i. Motorcycle owners.

On the other hand, lower rates should be charged the following categories of policyholders, other things being equal:

a. Single persons and those with small families.

b. Owners of vehicles with limited seating capacity.

c. Healthy persons.

d. Persons who have lower wage losses, either because their earnings are low or because their income is from sources which would not be effected by a disabling injury.

e. Persons who could continue to earn a livelihood despite a disabling injury.

f. Persons who live in areas of low accident frequency and severity.

g. Muscle-car owners.

In some instances, these factors would tend to pull in opposite directions. In other instances, however, the various factors would reinforce each other and create even greater extremes in pricing than is now the case. This assumes that auto insurers would be allowed to establish rate categories that reflect the actual differences in loss potential among various motoring groups and individuals under the proposed type of system. To the extent that the classifications were not permitted to reflect these actual differences, whether for sound public policy reasons, political expendiency or for whatever reason, the proposed new system would simply create new groups of unprofitable "substandard risks".

3. Underwriting applications for insurance under the proposed system would become more complex, time consuming and costly. All of the data presently needed would be needed under the new system, including information on geographical location and usage of the vehicle, type of vehicle, the age, sex, and marital status of the owner. In addition, either the agent or a company

representative would have to gather and verify a number of other pieces of information. These include the policyholder's health, number of persons in the family, education and job skills, occupation, existence of other insurance and other sources of reimbursement, the income levels of all members of the family, the taxes they pay, the family's environmental exposure to accidents caused by others. Similar information would be needed in order to determine the benefits payable at the time of loss. This raises a number of troublesome questions:

a. How would people react to being asked to divulge their income, the taxes they pay, their health problems, personal habits and other similar details?

b. How would the insurance company verify such personal information without being accused of snooping?

c. What safeguards would be available to prevent concealment of collateral sources which can be deducted from the benefits paid, tax deductions, second jobs and other information which would have to be taken into account in settling claims?

d. What penalties would be provided for misstatements and omission of pertinent information on the insurance application?

e. What would be the degree of cooperation given by employers, doctors, the Internal Revenue Service, hospitals, law enforcement agencies, and other groups when asked to provide and verify the necessary information? How much would they charge for handling the additional paperwork?

f. Persons who live in areas of low accident frequency and severity.

g. Muscle-car owners.

In some instances, these factors would tend to pull in opposite directions. In other instances, however, the various factors would reinforce each other and create even greater extremes in pricing than is now the case. This assumes that auto insurers would be allowed to establish rate categories that reflect the actual differences in loss potential among various motoring groups and individuals under the proposed type of system. To the extent that the classifications were not permitted to reflect these actual differences, whether for sound public policy reasons, political expendiency or for whatever reason, the proposed new system would simply create new groups of unprofitable "substandard risks".

3. Underwriting applications for insurance under the proposed system would become more complex, time consuming and costly. All of the data presently needed would be needed under the new system, including information on geographical location and usage of the vehicle, type of vehicle, the age, sex, and marital status of the owner. In addition, either the agent or a company

representative would have to gather and verify a number of other pieces of information. These include the policyholder's health, number of persons in the family, education and job skills, occupation, existence of other insurance and other sources of reimbursement, the income levels of all members of the family, the taxes they pay, the family's environmental exposure to accidents caused by others. Similar information would be needed in order to determine the benefits payable at the time of loss. This raises a number of troublesome questions:

a. How would people react to being asked to divulge their income, the taxes they pay, their health problems, personal habits and other similar details?

b. How would the insurance company verify such personal information without being accused of snooping?

c. What safeguards would be available to prevent concealment of collateral sources which can be deducted from the benefits paid, tax deductions, second jobs and other information which would have to be taken into account in settling claims?

d. What penalties would be provided for misstatements and omission of pertinent information on the insurance application?

e. What would be the degree of cooperation given by employers, doctors, the Internal Revenue Service, hospitals, law enforcement agencies, and other groups when asked to provide and verify the necessary information? How much would they charge for handling the additional paperwork?

Again, let me stress that Committee Print One would restructure the cost burden of automobile accidents by requiring the accident victims to subsidize the reckless driver. It would be difficult, if not impossible, to devise an acceptable merit rating plan under a system based on categorical rejection of the fault concept. Actuarially, a driver's past accident record is a good indicator of his probable future accident frequency. And there is strong public support for the idea of charging higher rates for accident-prone drivers and lower rates for those who are safe drivers.

However, it is also clear that most people are adamantly opposed to being surcharged because of their involvement in an accident which was not their fault. How is fault to be determined under a system which rejects the whole idea of fault? If proponents of Committee Print One remain true to their convictions and ignore fault entirely, will the majority of safe drivers be content to pay surcharges when they are involved in accidents caused by negligent drivers? And if the fault concept is smuggled back into the pricing of insurance, why is it not also a valid concept to use in the settlement of claims?

Committee Print One would restrict the payment of benefits to the extent that the loss exceed, among others,

recovery from any "public health insurance plan." Here again, we see little justification for switching the cost of automobile accidents from the users of the highway to the general tax bases. This also runs counter to Congressional policy adopted in 1967, when Medicaid was amended by requiring that wherever a third party was liable, Medicaid should seek to subrograte the amounts which it paid. In fact, this provision is the only one enacted by Congress since Medicaid came into being, which has brought any relief to the tax bases. What Committee Print One does is reverse this public policy by charging taxpayers with the cost of automobile accidents.

Committee Print One would also make automobile benefits excess to whatever national health insurance plan might be enacted by Congress. Although we concur with the need to prevent duplication between national health benefits and automobile insurance benefits, we believe that the general tax base should not be used to subsidize automobile accidents. National health benefits should only be paid to the extent automobile benefits fail to meet the victims' total medical expenses. Not only is it undesirable, from a standpoint of public policy, to hide the cost of automobile accidents within the general tax structure--as Committee Print One would do--but a major advantage of first-party automobile

Again, let me stress that Committee Print One would restructure the cost burden of automobile accidents by requiring the accident victims to subsidize the reckless driver. It would be difficult, if not impossible, to devise an acceptable merit rating plan under a system based on categorical rejection of the fault concept. Actuarially, a driver's past accident record is a good indicator of his probable future accident frequency. And there is strong public support for the idea of charging higher rates for accident-prone drivers and lower rates for those who are safe drivers.

However, it is also clear that most people are adamantly opposed to being surcharged because of their involvement in an accident which was not their fault. How is fault to be determined under a system which rejects the whole idea of fault? If proponents of Committee Print One remain true to their convictions and ignore fault entirely, will the majority of safe drivers be content to pay surcharges when they are involved in accidents caused by negligent drivers? And if the fault concept is smuggled back into the pricing of insurance, why is it not also a valid concept to use in the settlement of claims?

Committee Print One would restrict the payment of benefits to the extent that the loss exceed, among others,

recovery from any "public health insurance plan." Here again, we see little justification for switching the cost of automobile accidents from the users of the highway to the general tax bases. This also runs counter to Congressional policy adopted in 1967, when Medicaid was amended by requiring that wherever a third party was liable, Medicaid should seek to subrograte the amounts which it paid. In fact, this provision is the only one enacted by Congress since Medicaid came into being, which has brought any relief to the tax bases. What Committee Print One does is reverse this public policy by charging taxpayers with the cost of automobile accidents.

Committee Print One would also make automobile benefits excess to whatever national health insurance plan might be enacted by Congress. Although we concur with the need to prevent duplication between national health benefits and automobile insurance benefits, we believe that the general tax base should not be used to subsidize automobile accidents. National health benefits should only be paid to the extent automobile benefits fail to meet the victims' total medical expenses. Not only is it undesirable, from a standpoint of public policy, to hide the cost of automobile accidents within the general tax structure--as Committee Print One would do--but a major advantage of first-party automobile

insurance would be dissipated. It should be remembered that an important reason given by no-fault automobile insurance supporters in the early days of the debate was the need to bring to bear the rehabilitation expertise to auto accident victims as had been done for the workmen's compensation beneficiaries. We agree with this point and it is for this reason that we are recommending a minimum of $50,000, first-party automobile coverage in our Guaranteed Protection Plan. We are convinced that the rehabilitation of the traumatically injured can best be undertaken at the direction of those institutions that specialize in managing traumatic medicine. We do not believe that if the care and responsibility for the treatment of automobile accident victim is left in the hands of those that have responsibility for the total medical care of our citizens, that the type of rehabilitative techniques best suited to traumatic case specialities will be applied.

In conclusion, it is obvious that Committee Print One falls far short of equitably allocating the cost burden of automobile accidents.

VI. COURT CONGESTION

There is a great deal of dispute today related to the responsibility of the present system for congesting our courts. We believe that much of the discussion which has related to automobile insurance reparation and "congestion" has been irrelevant. Our courts would be congested even if they did not have to handle a single auto accident case. The objective should be to facilitate the handling of claim disputes so as to minimize the recourse to the courts. Again, this we have done in our Guaranteed Protection Plan.

However, Committee Print One raises a number of questions about the extent of coverage to be provided which will need to be answered by the courts, in some instances on a case-by-case basis. For instance:

A. What is the term "accidental harm" intended to cover? Is the proposed new form of auto insurance intended to pay for all events occurring in automobiles which might be held to constitute "accidental harm," such as kidnapping, rape, robbery, assault, psychic injury attributed to witnessing a gory accident, etc.?

B. The term "operation, maintenance, or use" is said to include "unloading the vehicle" and includes the repair, servicing and maintenance of the car if not done within the course of a business. Is it the inten-

V. EQUITABLE ALLOCATION OF COST BURDEN

A major impact of Committee Print Number One on our society will be a redistribution of who will bear what losses. Committee Print would require that accident victims pay the greater share of the total incurred automobile accident losses. The present system, on the other hand, bears down hardest on those who have caused the losses, on the theory that as a matter of equity, good drivers should not subsidize those who abuse the privilege of driving.

More specifically, Committee Print Number One would bring about a windfall to two large groups of vehicle users--truck owners and owners of muscle cars. Let us see how each of these groups would fare under the proposal.

Truck owners would have no responsibility whatsoever for injuries arising on the highway except to their own employees riding in their trucks. The fact is that today they already have this responsibility. Full medical benefits and most wage losses are covered and have been covered for many, many years by state workmen's compensation laws. Thus, Committee Print Number One does not impose any new liability or responsibility or cost on the truck owners while removing much of the responsibility and liability and cost which the present auto reparations system imposes on them.

Passenger cars are being asked to subsidize the truckers' use of the road.

This is particularly unfortunate since recent studies and investigations have demonstrated that accidents involving trucks are often due to inadequate maintenance of the trucks or carelessness of drivers arising from long hours on the road and insufficient rest periods. Recent hearings before the Senate Subcommittee on Alcoholism and Narcotics have highlighted the unfortunate working practices in the trucking industry and the Department of Transportation has published reports which clearly show that many trucks on the road today have a great many mechanical defects which cause serious numbers of accidents and deaths.

I want to make it clear that I am not attacking the trucking industry generally--simply pointing out that this industry, like all others, has its irresponsible elements and that Committee Print One would remove one of the strong incentives for encouraging responsible conduct on the part of both owners and drivers.

Committee Print Number One would absolve truck owners from their negligence and would unfairly shift the cost of accidents which they cause on to those who use their cars mainly for pleasure.

The owners of high-powered automobiles also would benefit substantially from Committee Print Number One. As we testified earlier, there is sound statistical evidence indicating that muscle cars cause more accidents and more serious injuries than other private passenger automobiles. The existing compensation mechanism allows this to be reflected in the price which the owners of such cars must pay for insurance. In fact, it is the high cost of insurance which is being blamed by automobile manufacturer executives for the drastic drop in the sale of these cars.

Committee Print Number One would force a dramatic change. Most of these cars are owned by young people with little if any family responsibilities. When involved in accidents, these young people have little if any wage losses and, their medical expenses are below average because of the ability of their young bodies to heal quickly. Hence, an insurance system which is predicated on the amount of <u>benefits paid</u> to a victim and not on <u>the losses caused</u> would greatly benefit these people. There would be a two-fold result. On the one hand, the reduced accident and severity rate brought about by the sharp decrease in the number of muscle cars on the road will be reversed. Secondly, the increased accident costs resulting from the reckless operation of muscle cars would not be paid by the muscle-car owners

themselves but, again, by the large body of passenger-car owners. We believe that this shift in cost is not only inequitable but clearly against public interest.

One of the major considerations involved in assessing the feasibility of any new auto reparations system is how it would work out in practice. How would the proposed new system effect the underwriting and claims handling functions? Which groups of drivers would be regarded as more desirable or less desirable customers, from the standpoint of loss exposure? What new considerations would become pertinent in raising or lowering auto insurance prices for particular groups of individuals?

The Alliance staff asked a group of underwriters to assess Committee Print One. I would like to report on the questions that were raised and the observations that they offered.

1. One of the findings is that the proposed new system would lend itself to many more rating classifications among drivers than the present classification system is. This results primarily from the fact that people who apply for insurance will be judged in the light of the amount of [illegible] they are [illegible] than on the [illegible] they are [illegible] one class. This means that the proposed [illegible]

are known to the underwriter and can be examined in more detail with regard to their loss potential. Thus, the present rate classification plans probably would be modified and new plans would evolve as loss experience accumulated. The variables now used in setting rates would continue to be pertinent, plus many new ones such as family income, existence of other insurance, etc. The additions of just the major new variables would produce more than 2.5-million possible rate classifications for New York vehicle owners alone.

2. The system in which the claimants are indentifiable in advance would likewise tend to produce rating cateories and/or underwriting decisions based on personal factors which have little or no relevance under the liability system, where the claimants are mostly randomly selected persons who get involved in accidents with the policyholder. In general, our underwriters said higher rates would be required for the following categories of people under Committee Print One:

a. Persons with large families.

b. Persons with stationwagons and other vehicles with large capacity.

c. Persons who use their cars in carpools or take part in other activities likely to fill their cars with wage earners.

d. Persons who have pre-existing injuries or other health conditions which would make them prone to long and costly medical treatment and disability in case of further injury.

e. Persons who, because of their marginal skills or age, would be likely to be out of work for protracted periods (perhaps permanently) in the event of even a moderately disabling injury.

f. Persons living in areas subject to a high accident frequency, because of traffice congestions, poor weather conditions, mediocre law enforcement or other environmental factors. This includes congested older sections of major cities.

g. Persons likely to incur most expensive medical treatment in the event of a disabling injury--our senior citizens.

h. Persons exhibiting more "claims consciousness" than the general population.

i. Motorcycle owners.

On the other hand, lower rates should be charged the following categories of policyholders, other things being equal:

a. Single persons and those with small families

b. Owners of vehicles with limited seating capacity.

c. Healthy persons.

d. Persons who have [illegible] because their [illegible] income is [illegible] effective by a [illegible]

e. Because the [illegible] hospital a [illegible]

f. Persons who live in areas of low accident frequency and severity.

g. Muscle-car owners.

In some instances, these factors would tend to pull in opposite directions. In other instances, however, the various factors would reinforce each other and create even greater extremes in pricing than is now the case. This assumes that auto insurers would be allowed to establish rate categories that reflect the actual differences in loss potential among various motoring groups and individuals under the proposed type of system. To the extent that the classifications were not permitted to reflect these actual differences, whether for sound public policy reasons, political expendiency or for whatever reason, the proposed new system would simply create new groups of unprofitable "substandard risks".

3. Underwriting applications for insurance under the proposed system would become more complex, time consuming and costly. All of the data presently needed would be needed under the new system, including information on geographical location and usage of the vehicle, type of vehicle, the age, sex, and marital status of the owner. In addition, either the agent or a company

representative would have to gather and verify a number of other pieces of information. These include the policyholder's health, number of persons in the family, education and job skills, occupation, existence of other insurance and other sources of reimbursement, the income levels of all members of the family, the taxes they pay, the family's environmental exposure to accidents caused by others. Similar information would be needed in order to determine the benefits payable at the time of loss. This raises a number of troublesome questions:

a. How would people react to being asked to divulge their income, the taxes they pay, their health problems, personal habits and other similar details?

b. How would the insurance company verify such personal information without being accused of snooping?

c. What safeguards would be available to prevent concealment of collateral sources which can be deducted from the benefits paid, tax deductions, second jobs and other information which would have to be taken into account in settling claims?

d. What penalties would be provided for misstatements and omission of pertinent information on the insurance application?

e. What would be the degree of cooperation given by employers, doctors, the Internal Revenue Service, hospitals, law enforcement agencies, and other groups when asked to provide and verify the necessary information? How much would they charge for handling the additional paperwork?

Again, let me stress that Committee Print One would restructure the cost burden of automobile accidents by requiring the accident victims to subsidize the reckless driver. It would be difficult, if not impossible, to devise an acceptable merit rating plan under a system based on categorical rejection of the fault concept. Actuarially, a driver's past accident record is a good indicator of his probable future accident frequency. And there is strong public support for the idea of charging higher rates for accident-prone drivers and lower rates for those who are safe drivers.

However, it is also clear that most people are adamantly opposed to being surcharged because of their involvement in an accident which was not their fault. How is fault to be determined under a system which rejects the whole idea of fault? If proponents of Committee Print One remain true to their convictions and ignore fault entirely, will the majority of safe drivers be content to pay surcharges when they are involved in accidents caused by negligent drivers? And if the fault concept is smuggled back into the pricing of insurance, why is it not also a valid concept to use in the settlement of claims?

Committee Print One would restrict the payment of benefits to the extent that the loss exceed, among others,

recovery from any "public health insurance plan." Here again, we see little justification for switching the risk of automobile accidents from the users of the highway to the general tax bases. This also runs counter to Congressional policy adopted in 1967, when Medicaid was amended by requiring that wherever a third party was liable, Medicaid should seek to subrogate the amounts which it paid. In fact, this provision is the only one enacted by Congress since Medicaid came into being, which has brought any relief to the tax bases. What Committee Print [illegible] is reverse this public policy by charging taxpayers with the cost of automobile accidents.

Committee Print One would also [illegible] excess to whatever national health insurance plan might be enacted by Congress. Although [illegible] prevent duplication between [illegible] automobile insurance benefits, [illegible] tax base should not be used to [illegible] National health insurance should [illegible] automobile insurance [illegible] expense. [illegible] public policy [illegible] within the general [illegible] would be a major [illegible]

insurance would be dissipated. It should be remembered that an important reason given by no-fault automobile insurance supporters in the early days of the debate was the need to bring to bear the rehabilitation expertise to auto accident victims as had been done for the workmen's compensation beneficiaries. We agree with this point and it is for this reason that we are recommending a minimum of $50,000, first-party automobile coverage in our Guaranteed Protection Plan. We are convinced that the rehabilitation of the traumatically injured can best be undertaken at the direction of those institutions that specialize in managing traumatic medicine. We do not believe that if the care and responsibility for the treatment of automobile accident victim is left in the hands of those that have responsibility for the total medical care of our citizens, that the type of rehabilitative techniques best suited to traumatic case specialities will be applied.

In conclusion, it is obvious that Committee Print One falls far short of equitably allocating the cost burden of automobile accidents.

VI. COURT CONGESTION

There is a great deal of dispute today related to the responsibility of the present system for congesting our courts. We believe that much of the discussion which has related to automobile insurance reparation and "congestion" has been irrelevant. Our courts would be congested even if they did not have to handle a single auto accident case. The objective should be to facilitate the handling of claim disputes so as to minimize the recourse to the courts. Again, this we have done in our Guaranteed Protection Plan.

However, Committee Print One raises a number of questions about the extent of coverage to be provided which will need to be answered by the courts, in some instances on a case-by-case basis. For instance:

A. What is the term "accidental harm" intended to cover? Is the proposed new form of auto insurance intended to pay for all events occurring in automobiles which might be held to constitute "accidental harm," such as kidnapping, rape, robbery, assault, psychic injury attributed to witnessing a gory accident, etc.?

B. The term "operation, maintenance, or use" is said to include "unloading the vehicle" and includes the repair, servicing and maintenance of the car if not done within the course of a business. Is it the inten-

tion to include injuries received while washing a car, working on it, etc.? If someone suffers a slipped disc while unloading a bag of fertilizer from the trunk of his car, is this intended to be covered?

C. Does the bill contemplate that the proposed property damage coverage would pay for damage to the policyholder's own property and that of his family? For example, if the policyholder backs over his son's bicycle, is it intended that the proposed new policy pay for it? If someone loses a valuable gem out of a ring while riding in an automobile, would that be covered under the proposed broad terms of the bill?

No allowance has been made for such claims in cost figures which we have presented today and one can say with certainty how much the "blue sky" coverages and lack of cost controls would increase the cost of the proposed new system. However, such grandiose new social programs have a way of greatly exceeding the cost estimates offered by their proponents in advance of their enactment. The recent sad cost experience with Medicaid and Medicare should be instructive in this regard.

Our claims people forsee major difficulties and legal controversy in determining what to pay large numbers of auto accident victims for their income loss. The bill proposes

to pay actual earning losses as well as expected future earning loss. Several aspects of this issue are troublesome. One is that 55% of the persons injured in auto accidents are not wage earners at the time of the accident. These include minor children, housewives, students, the unemployed and retired persons. Many of these persons expect to enter or reenter the work force at some future date, or to earn supplementary income in some way. How is the claim going to be handled under a system which provides no yardstick for measuring the amount of a loss, and which does not provide for any payment until the loss has already occurred? What assumptions are to be made about the future earning potential of an infant child? A student? A young person just starting out in a business or profession? What assumptions are to be made about the effect of a partial disability on future earning potentials? Is it contemplated that compensation for persons with long-term disabilities or partial disabilities is to be readjusted periodically for inflation? And for the presumed promotions they would have received? Persons whose income is irregular or speculative would pose different kinds of problems. What assumptions are to be made about the future "net economic loss" sustained by a salesman on commission? A self-employed professional person? A person whose work is seasonal or marginal? An actor or

64-345 O - 72 - pt. 5 - 11

performer who was auditioning for a major assignment at the time of the accident? An athlete who had hopes of a professional career? These problems are present today from the claim viewpoint but they would be greatly exacerbated under a system with no policy limits and no apparent means of reaching a settlement other than by obtaining a court order. Because of these problems, it is likely that persons with irregular or speculative income would have more difficulty obtaining insurance under such a system than would a salaried person with a steady job.

The reopening of old cases could be a very troublesome problem. The open-ended nature of unlimited liability imposed on the insurer would require the company to keep open its claims files indefinitely. This also would raise questions about the adequacy of loss reserves.

The system as proposed in Committee Print One would provide many opportunities and incentives for over utilization of benefits and even outright fraud. Please note that:

A. There is no requirement that an accident occur--not even a recognizable "event" or "occurrence." The bill is completely silent on this.

B. The term "accidental harm" is extremely broad and undefined.

C. The burden of proof is shifted onto the insurance company, which would be heavily penalized if it failed to pay up within 30 days after the policyholder had made his claim.

All these uncertainties and complications will develop substantial friction between policyholders and their insurers and will need to be resolved by the courts. Rather than lessening the burden on the courts it is suggested that Committee Print One will increase it.

In fact, it is apparent that it is contemplated that policyholders will avail themselves frequently of professional, legal expertise. The bill provides that "a person making a claim under a qualifying no-fault policy may be allowed an award for attorney fees (based upon actual time expended) and too reasonable costs of suit in any case in which the insurer denies all or part of the claim for benefits under such policy unless the court determines that the claim was fraudulent excessive or frivolous." It is clear that whether the insurer acts reasonably or not makes no difference as to the awarding of attorney fees. If, for instance, the first notice of a claim to the insurance company is a letter from an attorney, whether the insurance company had the best intention in the world to pay the claim in full or not would make no difference and would cost the [illegible]

of the claim was found to be frivolous, an attorney fee would have to be paid in addition to the economic loss. Only a court would be able to find the filing to be frivolous --hence many cases would gravitate to the courts for a decision on the need for an attorney to become involved on the one hand and the extent of attorney fees on the other.

All in all, Committee Print One will encourage, rather than discourage auto victims, their attorneys and insurance companies to seek the help of the courts to resolve disputes under the system.

VII. CONCLUSION

The following points up some of the basic weaknesses in the structure of Committee Print Number One:

1. The bill would be expensive and discriminatory for the consumer.

2. It would needlessly and expensively complicate underwriting and claim administration.

3. The bill unfairly shifts the cost burden of automobile accidents from truckers and irresponsible drivers to careful passenger-car owners.

4. The bill is inconsistent and ambiguous.

5. The bill eliminates all elements of personal accountability.

6. Like its predecessor, S.945, the bill would permit federal preemption of automobile insurance legislation.

Finally, and more precisely, federal reform of the automobile compensation insurance system [illegible] is not needed. There is overwhelming evidence that reform is [illegible] at the state level, and the state legislatures should be given the opportunity to take such action which they believe is in the best interest of their citizens.

Appendix A

Insurance Provisions of the Guaranteed Protection Plan American Mutual Insurance Alliance

The Guaranteed Protection Plan is a proposal for responsibility in automobile insurance, vehicle design, driver performance and traffic safety regulations. Provisions of the proposed insurance reforms are as follows:

1. Auto crash victims would be guaranteed prompt payment of their basic medical and income losses. State laws would be amended to require that every private passenger automobile policy shall include as minimum benefits, payable regardless of fault:

   a. Medical and hospital expense coverage up to $50,000 a person, with an optional deductible of up to $1,000.

   b. Disability income coverage of 85% of gross income lost, subject to a maximum of $500 per month or a total of $6,000.

   Coverage extends to the policyholder, resident members of his household, passengers in his vehicle and pedestrians injured by his vehicle.

   Insurance companies, of course, would be permitted to offer broader coverages than the statutory minimums.

2. Existing liability protection would be retained. The injured person retains the right to seek a tort recovery against a negligent motorist. Payments already received on a first-party basis would be deducted from

any liability settlement or court award. Insurers paying first-party benefits to innocent victims would be entitled to subrogate against the negligent motorist for reimbursement. Intercompany subrogation claims would be handled by arbitration. Thus the principle of driver responsibility would be retained and the financial consequences of the accident ultimately would be charged against the insurance record of the negligent motorist and not against the record of his unfortunate victim as would be the case under a total no-fault system.

3. Several cost-reducing features are included. The major one is a provision to curb nuisance claims and to provide an objective yardstick for measuring general damages. Payment for these damages would be limited to those cases where medical and hospital expenses exceed $1,000. These limits do not apply in cases involving death, permanent disfigurement, dismemberment, permanent loss of a bodily function, or in other serious cases where a court or jury finds that such a limitation would be unjust.

Another cost reducer in third-party liability claims is a provision for deducting 15% from the gross income loss in recognition of the presumed income tax savings.

The proposal also would permit insurers to sell policies that are excess of certain collateral sources of reimbursement with respect to the first-party medical and income benefits, as some policies now do with respect to medical payments insurance. In the case of the mandatory first-party benefits an insurer may offset collateral benefits payable to the named insured and members of his household under workmen's compensation or uninsured motorist coverages, and may offset part or all of other collateral benefits in paying the mandatory first-party benefits to guest passengers and pedestrians. No offset of collateral benefits is proposed for third-party tort recoveries, except that benefits which the injured person already has received under the mandatory first-party auto insurance benefits will be deducted.

4. Two different types of arbitration would be used to speed settlements, cut the cost of handling claims and ease the burden on the courts. The Plan calls for mandatory arbitration of the vast numbers of liability claims involving damages under $3,000, using court-supervised procedures which have worked successfully in Pennsylvania since 1952. As noted above, intercompany

arbitration also would be used to resolve disputes arising in subrogation claims.

5. Fraudulent claims would be discouraged. The Plan calls for imposing stiff penalties for false and fraudulent activities with respect to claims filed against individuals or insurance companies, or for improperly withholding information needed to settle claims.

6. It has been charged that lawyers' fees in auto accident cases are too high. The Guaranteed Protection Plan would deal with this criticism in two ways -- by resolving most claim disputes out of court, and by the passage of legislation calling for the courts to regulate contingency fees charged by attorneys for handling personal injury lawsuits.

7. The Plan also calls for legislation that would encourage use of advance payments procedures, by providing that such payments do not constitute an admission of liability in any subsequent judicial proceedings. This would give further impetus to the widespread practice of advancing funds to injured victims as medical and wage losses accrue in liability cases, and would promote prompt settlement of property damage liability claims without waiting for settlement of bodily injury claims arising from the same accident.

8. Unwarranted cancellations would be prohibited by legislation restricting cancellation of auto insurance policies to cases of non-payment of premium or suspension of the insured's driver's license or revocation of his vehicle registration.

9. The Plan calls for adoption of comparative negligence laws patterned after the one used successfully for many years in Wisconsin.

10. Property damage claims would continue to be handled as now. Car owners whose vehicles are damaged by a negligent motorist may file a liability claim for reimbursement. Car owners also may purchase first-party collision and comprehensive coverages to pay for damage to their own cars.

Appendix B

Cost Analysis
Compulsory Economic Loss Coverage
Committee Print One

Introduction and Summary

This is a preliminary cost analysis of Committee Print One of S.945 prepared by the staff of the American Mutual Insurance Alliance. It follows the same procedure used by the Alliance Actuarial Committee's review and critique of the cost estimates offered in support of the American Insurance Association's "Complete Personal Protection Automobile Insurance Plan."[1]

The preliminary costs estimates of Committee Print One were prepared by the Alliance staff with guidance and review by the Alliance Actuarial Committee. Data underlying the estimates were obtained from appendix to the cost study of the AIA Report and from reports issued by the Department of Transportation in connection with the study of automobile liability insurance made by Department of Transportation.[2]

---

1. American Insurance Association, Report of Special Committee to Study and Evaluate the Keeton-O'Connel Basic Protection Plan and Automobile Accident Reparations, 1968.

2. Department of Transportation Automobile Insurance and Compensation Study, Economic Consequences of Automobile Accident Injuries, Volume 1, April 1970.
Department of Transportation, Automobile Insurance and Compensation Study, Automobile Personal Injury Claims, Volume II, July 1970.

Information obtained from the New York Insurance Department "Actuarial Supplement to Automobile Insurance...For Whose Benefit?"[3] was also used in making the cost estimates.

It should be pointed out that any estimate of the cost of a new automobile system involving a replacement of the tort system by first-party coverage is subject to a large possible error. The problem is one of determining frequency of claims and average amounts of claims under the new system. Data developed under the tort system, for example from liability claim files, are of little help in determining the frequency of claims under a no-fault plan. Average amount of claims cannot be determined where there is a material change in benefits to be provided. This is particularly true in costing Committee Print One of S.945 which provides that future wage loss payments are to be subject to periodic increases "in a manner corresponding to annual compensation increases that would periodically result but for the injury of death."[4] Committee Print One also provides that in determining loss of earnings of an unemployed person (housewife,

---

3. State of New York Insurance Department, Actuarial Supplement to "Automobile Insurance...For Whose Benefits"? Development of Estimated Cost and Premium Comparisons of Present and Proposed Automobile Insurance Systems, 1970.

4. S.945 page 5, lines 16-19

students, unemployed worker, retirees, children) consideration must be given to the "anticipated annual compensation after income taxes of such person paid from the time such person would reasonably have been expected to be regularly employed."[5] Average claims amounts can not be determined where there are vague limitations or no limitations of total benefits payable. For example, the bill provides:

A. All appropriate and reasonable expenses necessarily incurred for medical, hospital, surgical, professional nursing, dental, ambulance, prosthetic services, and any Federally recognized religious remedial care and treatment;

B. All appropriate and reasonable expenses necessarily incurred for psychiatric, physical, and occupational therapy and rehabilitation.[6]

The analysis of Committee Print One made by Senate Commerce Committee staff states:

> "Committee Print Number One, in effect, makes available to all the motoring public all the benefits that the present automobile reparations system now provides to the accident victim who is not found negligent or contributorily negligent and who is injured by someone who is found negligent and is fully insured up to the extent of the loss suffered by the accident victim."

---

5. S.945 page 5, lines 10-15

6. S.945 page 3, line 24 and page 4, lines 1-7

performer who was auditioning for a major assignment at the time of the accident? An athlete who had hopes of a professional career? These problems are present today from the claim viewpoint but they would be greatly exacerbated under a system with no policy limits and no apparent means of reaching a settlement other than by obtaining a court order. Because of these problems, it is likely that persons with irregular or speculative income would have more difficulty obtaining insurance under such a system than would a salaried person with a steady job.

The reopening of old cases could be a very troublesome problem. The open-ended nature of unlimited liability imposed on the insurer would require the company to keep open its claims files indefinitely. This also would raise questions about the adequacy of loss reserves.

The system as proposed in Committee Print One would provide many opportunities and incentives for over utilization of benefits and even outright fraud. Please note that:

A. There is no requirement that an accident occur--not even a recognizable "event" or "occurrence." The bill is completely silent on this.

B. The term "accidental harm" is extremely broad and undefined.

C. The burden of proof is shifted onto the insurance company, which would be heavily penalized if it failed to pay up within 30 days after the policyholder had made his claim.

All these uncertainties and complications will develop substantial friction between policyholders and their insurers and will need to be resolved by the courts. Rather than lessening the burden on the courts it is suggested that Committee Print One will increase it.

In fact, it is apparent that it is contemplated that policyholders will avail themselves frequently of professional, legal expertise. The bill provides that "a person making a claim under a qualifying no-fault policy may be allowed an award for attorney fees (based upon actual time expended) and too reasonable costs of suit in any case in which the insurer denies all or part of the claim for benefits under such policy unless the court determines that the claim was fraudulent excessive or frivolous." It is clear that whether the insurer acts reasonably or not makes no difference as to the awarding of attorney fees. In, for instance, the first notice of a claim by the policyholder company is a lawsuit from an attorney, despite the policyholder company had the best intentions of the world to pay the claim in full or not would make it frivolous and so had the [illegible]

of the claim was found to be frivolous, an attorney fee would have to be paid in addition to the economic loss. Only a court would be able to find the filing to be frivolous --hence many cases would gravitate to the courts for a decision on the need for an attorney to become involved on the one hand and the extent of attorney fees on the other.

All in all, Committee Print One will encourage, rather than discourage auto victims, their attorneys and insurance companies to seek the help of the courts to resolve disputes under the system.

VII. CONCLUSION

The following points up some of the basic weaknesses in the structure of Committee Print Number One:

1. The bill would be expensive and discriminatory for the consumer.

2. It would needlessly and expensively complicate underwriting and claim administration.

3. The bill unfairly shifts the cost burden of automobile accidents from truckers and irresponsible drivers to careful passenger-car owners.

4. The bill is inconsistent and ambiguous.

5. The bill eliminates all elements of personal accountability.

6. Like its predecessor, S.945, the bill would permit federal preemption of automobile insurance regulations.

Finally, and more precisely, federal reform of the automobile compensation insurance system just is not needed. There is overwhelming evidence that reform is underway at the state level, and the state legislatures should be given the opportunity to take such action which they believe is in the best interest of their constituencies.

Appendix A

Insurance Provisions of the Guaranteed Protection Plan American Mutual Insurance Alliance

The Guaranteed Protection Plan is a proposal for responsibility in automobile insurance, vehicle design, driver performance and traffic safety regulations. Provisions of the proposed insurance reforms are as follows:

1. Auto crash victims would be guaranteed prompt payment of their basic medical and income losses. State laws would be amended to require that every private passenger automobile policy shall include as minimum benefits, payable regardless of fault:

   a. Medical and hospital expense coverage up to $50,000 a person, with an optional deductible of up to $1,000.

   b. Disability income coverage of 85% of gross income lost, subject to a maximum of $500 per month or a total of $6,000.

   Coverage extends to the policyholder, resident members of his household, passengers in his vehicle and pedestrians injured by his vehicle.

   Insurance companies, of course, would be permitted to offer broader coverages than the statutory minimums.

2. Existing liability protection would be retained. The injured person retains the right to seek a tort recovery against a negligent motorist. Payments already received on a first-party basis would be deducted from

any liability settlement or court award. Insurers paying first-party benefits to innocent victims would be entitled to subrogate against the negligent motorist for reimbursement. Intercompany subrogation claims would be handled by arbitration. Thus the principle of driver responsibility would be retained and the financial consequences of the accident ultimately would be charged against the insurance record of the negligent motorist and not against the record of his unfortunate victim as would be the case under a total no-fault system.

3. Several cost-reducing features are included. The major one is a provision to curb nuisance claims and to provide an objective yardstick for measuring general damages. Payment for these damages would be limited to those cases where medical and hospital expenses exceed $1,000. These limits do not apply in cases involving death, permanent disfigurement, dismemberment, permanent loss of a bodily function, or in other serious cases where a court or jury finds that such a limitation would be unjust.

Another cost reducer in third-party liability claims is a provision for deducting 15% from the gross income loss in recognition of the presumed income tax savings.

The proposal also would permit insurers to sell policies that are excess of certain collateral sources of reimbursement with respect to the first-party medical and income benefits, as some policies now do with respect to medical payments insurance. In the case of the mandatory first-party benefits an insurer may offset collateral benefits payable to the named insured and members of his household under workmen's compensation or uninsured motorist coverages, and may offset part or all of other collateral benefits in paying the mandatory first-party benefits to guest passengers and pedestrians. No offset of collateral benefits is proposed for third-party tort recoveries, except that benefits which the injured person already has received under the mandatory first-party auto insurance benefits will be deducted.

4. Two different types of arbitration would be used to speed settlements, cut the cost of handling claims and ease the burden on the courts. The Plan calls for mandatory arbitration of the vast numbers of liability claims involving damages under $3,000, using court-supervised procedures which have worked successfully in Pennsylvania since 1952. As noted above, intercompany

arbitration also would be used to resolve disputes arising in subrogation claims.

5. Fraudulent claims would be discouraged. The Plan calls for imposing stiff penalties for false and fraudulent activities with respect to claims filed against individuals or insurance companies, or for improperly withholding information needed to settle claims.

6. It has been charged that lawyers' fees in auto accident cases are too high. The Guaranteed Protection Plan would deal with this criticism in two ways -- by resolving most claim disputes out of court, and by the passage of legislation calling for the courts to regulate contingency fees charged by attorneys for handling personal injury lawsuits.

7. The Plan also calls for legislation that would encourage use of advance payments procedures, by providing that such payments do not constitute an admission of liability in any subsequent judicial proceeding. This would give further impetus to the widespread practice of advancing funds to injured victims as medical and wage losses accrue in liability cases, and would promote prompt settlement of property damage liability claims without waiving the settlement of bodily injury claims arising from the same accident.

8. Unwarranted cancellations would be prohibited by legislation restricting cancellation of auto insurance policies to cases of non-payment of premium or suspension of the insured's driver's license or revocation of his vehicle registration.

9. The Plan calls for adoption of comparative negligence laws patterned after the one used successfully for many years in Wisconsin.

10. Property damage claims would continue to be handled as now. Car owners whose vehicles are damaged by a negligent motorist may file a liability claim for reimbursement. Car owners also may purchase first-party collision and comprehensive coverages to pay for damage to their own cars.

Appendix B

Cost Analysis
Compulsory Economic Loss Coverage
Committee Print One

Introduction and Summary

This is a preliminary cost analysis of Committee Print One of S.945 prepared by the staff of the American Mutual Insurance Alliance. It follows the same procedure used by the Alliance Actuarial Committee's review and critique of the cost estimates offered in support of the American Insurance Association's "Complete Personal Protection Automobile Insurance Plan."[1]

The preliminary costs estimates of Committee Print One were prepared by the Alliance staff with guidance and review by the Alliance Actuarial Committee. Data underlying the estimates were obtained from appendix to the cost study of the AIA Report and from reports issued by the Department of Transportation in connection with the study of automobile liability insurance made by Department of Transportation.[2]

---

1. American Insurance Association, Report of Special Committee to Study and Evaluate the Keeton-O'Connel Basic Protection Plan and Automobile Accident Reparations, 1968.

2. Department of Transportation Automobile Insurance and Compensation Study, Economic Consequences of Automobile Accident Injuries, Volume 1, April 1970.
Department of Transportation, Automobile Insurance and Compensation Study, Automobile Personal Injury Claims, Volume II, July 1970.

Information obtained from the New York Insurance Department "Actuarial Supplement to Automobile Insurance...For Whose Benefit?"[3] was also used in making the cost estimates.

It should be pointed out that any estimate of the cost of a new automobile system involving a replacement of the tort system by first-party coverage is subject to a large possible error. The problem is one of determining frequency of claims and average amounts of claims under the new system. Data developed under the tort system, for example from liability claim files, are of little help in determining the frequency of claims under a no-fault plan. Average amount of claims cannot be determined where there is a material change in benefits to be provided. This is particularly true in costing Committee Print One of S.945 which provides that future wage loss payments are to be subject to periodic increases "in a manner corresponding to annual compensation increases that would periodically result but for the injury of death."[4] Committee Print One also provides that in determining loss of earnings of an unemployed person (housewife,

---

3. State of New York Insurance Department, Actuarial Supplement to "Automobile Insurance...For Whose Benefits"? Development of Estimated Cost and Premium Comparisons of Present and Proposed Automobile Insurance Systems, 1970.

4. S.945 page 5, lines 16-19

students, unemployed worker, retirees, children) consideration must be given to the "anticipated annual compensation after income taxes of such person paid from the time such person would reasonably have been expected to be regularly employed."[5] Average claims amounts can not be determined where there are vague limitations or no limitations of total benefits payable. For example, the bill provides:

A. All appropriate and reasonable expenses necessarily incurred for medical, hospital, surgical, professional nursing, dental, ambulance, prosthetic services, and any Federally recognized religious remedial care and treatment;

B. All appropriate and reasonable expenses necessarily incurred for psychiatric, physical, and occupational therapy and rehabilitation.[6]

The analysis of Committee Print One made by Senate Commerce Committee staff states:

> "Committee Print Number One, in effect, makes available to all the motoring public all the benefits that the present automobile reparations system now provides to the accident victim who is not found negligent or contributorily negligent and who is injured by someone who is found negligent and is fully insured up to the extent of the loss suffered by the accident victim."

---

5. S.945 page 5, lines 10-15

6. S.945 page 3, line 24 and page 4, lines 1-7

Information obtained from the New York Insurance Department "Actuarial Supplement to Automobile Insurance...For Whose Benefit?"[3] was also used in making the cost estimates.

It should be pointed out that any estimate of the cost of a new automobile system involving a replacement of the tort system by first-party coverage is subject to a large possible error. The problem is one of determining frequency of claims and average amounts of claims under the new system. Data developed under the tort system, for example from liability claim files, are of little help in determining the frequency of claims under a no-fault plan. Average amount of claims cannot be determined where there is a material change in benefits to be provided. This is particularly true in costing Committee Print One of S.945 which provides that future wage loss payments are to be subject to periodic increases "in a manner corresponding to annual compensation increases that would periodically result but for the injury of death."[4] Committee Print One also provides that in determining loss of earnings of an unemployed person (housewife,

---

3. State of New York Insurance Department, Actuarial Supplement to "Automobile Insurance...For Whose Benefits"? Development of Estimated Cost and Premium Comparisons of Present and Proposed Automobile Insurance Systems, 1970.

4. S.945 page 5, lines 16-19

students, unemployed worker, retirees, children) consideration must be given to the "anticipated annual compensation after income taxes of such person paid from the time such person would reasonably have been expected to be regularly employed."[5] Average claims amounts can not be determined where there are vague limitations or no limitations of total benefits payable. For example, the bill provides:

A. All appropriate and reasonable expenses necessarily incurred for medical, hospital, surgical, professional nursing, dental, ambulance, prosthetic services, and any Federally recognized religious remedial care and treatment;

B. All appropriate and reasonable expenses necessarily incurred for psychiatric, physical, and occupational therapy and rehabilitation.[6]

The analysis of Committee Print One made by Senate Commerce Committee staff states:

> "Committee Print Number One, in effect, makes available to all the motoring public all the benefits that the present automobile reparations system now provides to the accident victim who is not found negligent or contributorily negligent and who is injured by someone who is found negligent and is fully insured up to the extent of the loss suffered by the accident victim."

---

5. S.945 page 5, lines 10-15

6. S.945 page 3, line 24 and s 1-7

App

Information obtained from the New York Insurance Department "Actuarial Supplement to Automobile Insurance...For Whose Benefit?"[3] was also used in making the cost estimates.

It should be pointed out that any estimate of the cost of a new automobile system involving a replacement of the tort system by first-party coverage is subject to a large possible error. The problem is one of determining frequency of claims and average amounts of claims under the new system. Data developed under the tort system, for example from liability claim files, are of little help in determining the frequency of claims under a no-fault plan. Average amount of claims cannot be determined where there is a material change in benefits to be provided. This is particularly true in costing Committee Print One of S.945 which provides that future wage loss payments are to be subject to periodic increases "in a manner corresponding to annual compensation increases that would periodically result but for the injury of death."[4] Committee Print One also provides that in determining loss of earnings of an unemployed person (housewife,

---

3. State of New York Insurance Department, Actuarial Supplement to "Automobile Insurance...For Whose Benefits"? Development of Estimated Cost and Premium Comparisons of Present and Proposed Automobile Insurance Systems, 1970.

4. S.945 page 5, lines 16-19

students, unemployed worker, retirees, children) consideration must be given to the "anticipated annual compensation after income taxes of such person paid from the time such person would reasonably have been expected to be regularly employed."[5] Average claims amounts can not be determined where there are vague limitations or no limitations of total benefits payable. For example, the bill provides:

A. All appropriate and reasonable expenses necessarily incurred for medical, hospital, surgical, professional nursing, dental, ambulance, prosthetic services, and any Federally recognized religious remedial care and treatment;

B. All appropriate and reasonable expenses necessarily incurred for psychiatric, physical, and occupational therapy and rehabilitation.[6]

The analysis of Committee Print One made by Senate Commerce Committee staff states:

> "Committee Print Number One, in effect, makes available to all the motoring public all the benefits that the present automobile reparations system now provides to the accident victim who is not found negligent or contributorily negligent and who is injured by someone who is found negligent and is fully insured up to the extent of the loss suffered by the accident victim."

---

5. S.945 page 5, lines 10-15

6. S.945 page 3, line 24 and page 4, lines 1-7

It is clear therefore that it is expected that there would be many more claims under the system to be established than under the present automobile reparations system. However, no estimate is made by the committee staff of the increase in frequency of claims nor of the expected average claim payment nor of the cost of the new system. It is difficult to see with an increase in number of claims and with "all the benefits that the present automobile reparations system now provides," how the new system would cost less. It is obvious that the new system will cost more - the actuarial problem is how much more.

Using a number of assumptions necessitated by the vagueness of the bill with respect to benefits, and making conservative estimates of increased frequency, the staff of the American Mutual Insurance Alliance estimates that the average premium cost of the compulsory coverages will be at least 37% greater than current Bodily Injury Liability premiums.

Benefits to be paid under a "Qualifying No-Fault Policy"

The benefits to be paid under a qualifying no-fault policy are stated in Sec. 5 (a) and (b) of Committee Print One. These benefits are summarized as follows and costs estimates in terms of current bodily injury costs are

presented for each summary group. All estimated costs are expressed in terms of percentage of current B.I. and U.M. loss costs for standard limits of $10,000 per person and $20,000 per accident (loss costs include medical expenses, wage losses and general damages paid under the tort system).

A. Medical Expenses - 49% of current bodily injury costs

"All appropriate and reasonable expenses necessarily incurred for medical, hospital, surgical, professional nursing, dental, ambulance, prosthetic services, and and Federally recognized religious remedial care and treatment."[7]

B. Rehabilitation - 3% of current bodily injury costs

"All appropriate and reasonable expenses necessarily incurred for psychiatric, physical, and occupational therapy and rehabilitation."[8]

C. Income Loss - 83% of current bodily injury costs

1. "The monthly earnings for the period during which the injury or death results in the inability to engage in available and appropriate gainful activity" limited by $1,000 per month.

2. "A monthly amount equal to the amount (if any) by which (i) a person's monthly earnings or $1,000, whichever is less exceeds (ii) any lesser monthly earning of such person at such times as he resumes gainful activity.

---

7. S.945 - page 3, line 24, page 4, lines 1-4

8. S.945 page 4, lines 5-7

3. Survivors benefits - "net economic loss sustained by spouse and defendents as a result of... death."

All of the above benefits to be "periodically increased in a manner corresponding to annual compensations increases that would predictably result but for the injury."

D. General Damages - 5% of current bodily injury costs

Compensation for damage other than economic loss to guests and pedestrians who are members of non-car-owning families on a no-fault basis.[9]

E. Miscellaneous expenses - 12% of current bodily injury costs

"All appropriate and reasonable expenses necessary incurred as a result of injury or death"[10] including, but not limited to:

1. Expenses incurred in obtaining services in substitution of those that the injured or deceased person would have performed for the benefit of himself or his family,

2. Funeral expenses, and

3. Attorneys' fees and costs to the extent provided in Section 8.

---

9. S.945, page 12, lines 7-12

10. S.945, page 4, lines 19-24, page 5, lines 1 and 2

Medical Expenses

Medical expenses under a no-fault automobile reparation plan were estimated by the American Insurance Association, the New York Insurance Department and by the Actuarial Committee of the American Insurance Alliance. Using as a base for costing and for comparison with the current automobile system. bodily injury liability costs and uninsured motorists loss costs are taken as unity. Estimated costs are then expressed in terms of percentage of B.I. and U.M. Loss Costs.

Based on the AIA sample of claim files, the AIA estimated that medical expenses would be 37.9%[11]. The New York Department estimated that medical expenses would be 37.7% using a subsample (N.Y. data only) of the AIA sample. The Alliance Actuarial Committee after careful study of the AIA data and data from other sources was of the opinion that the AIA and the New York Department hed underestimated the number of injuries that would become claims under a no-fault plan. The reasons for this opinion are presented in the Alliance's Actuarial Report on the Adequacy of the Costing of the American Insurance Association's "Complete Personal Protection Automobile Insurance Plan." Since this report

11. AIA study, Exhibit II, sheet 1

64-346 O - 72 - pt. 8 - 13

was published, the data made available in the Department of Transportation study of serious auto injury cases[12] reveals that the Alliance projections are very conservative. Whereas the AIA had estimated that the number of persons collecting bodily injury benefits would increase 27% under a total no-fault system, and the Alliance projected a 65% increase, the Department of Transportation data indicates that only 47.7% of today's seriously injured crash victims receive compensation under the tort system. If this Department of Transportation finding was taken at face value, then the number of compensable injuries could be expected to more than double under a no-fault system. Nevertheless, we have stayed with the more conservative projection of a 65% increase.

Since the AIA had used an estimated percentage increase of only 27%, the Alliance compensable injury frequency adjustment factor was 1.30 (1.65 divided by 1.27). Applying this factor to the AIA medical cost estimate, the AMIA estimates that these costs would be 49.3%. It should be pointed out, however, that the AIA and the New York Department also had underestimated the average medical loss costs as well as the frequency because the AIA sample

---

12. Department of Transportation: Economic Consequences of Automobile Accident Injuries, Volume 1, page 47

contains no cases with medical expenses greater than $20,000. Since S.945 provides for unlimited medical the estimate of 49% of B.I. and U.M. costs for medical expenses is conservative.

Rehabilitation

Under the tort system a minor part of the total B.I. costs goes toward rehabilitation. It is impossible from a study of claim files developed under a tort system to determine the cost of "psychiatric, physical and occupational therapy and rehabilitation" which would be provided for without limitations by Committee Print One. Complicating the cost analysis is the problem of the estimation of the rehabilitation costs which would be borne by public health facilities. Also to some extent a rehabilitation program would reduce "income loss" which would be greater if there was no rehabilitation. The New York Department is considering this question in the "Actuarial Supplement to Automobile Insurance...For Whose Benefit?[13] stated:

> "It is believed that the possible additional costs of such rehabilitative procedures would be more than overcome by the resulting reduction in long-term income loss and medical expense."

---

13. New York Department Study, page 31

However, the Alliance Actuarial Committee felt that Committee Print One with its emphasis on psychiatric and occupational therapy would involve extra costs not offset either by public health programs nor by reduction in medical expenses and wage loss. The Alliance staff estimates the rehabilitation costs as 3% of B.I. and U.M. costs.

Income Loss

Under a no-fault automobile plan the AIA estimated "income loss" with a $750 per month limitation and a 15% tax deductible costs to be 21.2%. The New York Department estimates, which include not only "income loss" but "additional cost of long-term cases," "deferred benefit to disabled children" and survivorship benefit as "death cases liability to 10/20 limits" amounts to 42.6%. It is the opinion of the Alliance Actuarial Committee that the "income loss" estimates of the AIA and the New York Department are understated because of the underestimation of the frequency of cases under a no-fault program and an underestimation of the average claim cost. This is particularly true of the AIA estimates which did not include income loss due to permanent partial injuries, income loss beyond 99 weeks of disability due to permanent total injuries, and survivor's benefits in death cases. The AMIA staff estimate

of the total income loss including survivorship benefits is 83%. The calculations are shown in attached Exhibit 1. As indicated in notes 2 and 3 of this exhibit, the Department of Transportation's Economic Consequences study would indicate that the income loss is even greater than is projected in the Alliance's analysis.

General Damages to Pedestrians and Guests

Section 5 (b) (1) of the bill provides that the insurer shall pay, without regard to fault, compensation for damages other than economic loss, to pedestrians and guests (not an owner of a motor vehicle or a spouse or dependent of an owner). The cost of this provision as shown in Exhibit 2 is 5% of B.I. plus U.M. costs.

Miscellaneous Expenses

Miscellaneous expenses, not including payment of claimant's attorney's fees provided for by Section 8 (a) of Committee Print One was estimated by AIA to be 6.9% of B.I. and U.M. loss costs. Multiplying this present by 1.30 to adjust for expected injury frequency, an estimate of 9% is obtained to cover such costs. Section 8 (a) provides that "a person making a claim under a qualifying no-fault policy may be allowed an award of a reasonable sum for attorney's fee (based upon actual time expended) and all reasonable

costs of suit in any case in which the insurer denies all or part of a claim for benefits under such policy unless the court determines that the claim was fraudulent, excessive, or frivolous." No data is available to cost this provision. The costs will depend on the number of claims which are resisted, the amount of time attorneys would spend on such cases, the attorney's rate per hour, and court decisions on whether claims are excessive--all under an untried new reparations system. The costs also would include the cases for which claims for general damages are made by pedestrians and guests. Under the tort system the Department of Transportation estimates that attorney's fees amounted to 27.3% of total payments to all claimants.[14] Assuming that only 10% of total attorneys' fees would be covered under Section 8 (a) of Committee Print One the cost would be 3%. Adding this rough estimate of attorney fees to other miscellaneous expneses produces a total for this item of 12%.

Collateral Sources

The economic loss benefits of the qualifying no-fault policy would be primary except that these benefits would

---

14. U. S. Department of Transportation, Automobile Personal Injury Claims, (1970) Volume 1, page 80.

be excess of any public health insurance plan or any private insurance policy that provides a primary clause. The AIA survey[15] indicates that medicare and workmen's compensation would amount to 6.5% of medical expenses. Applying this 6.5% to the 49% of estimated medical expense, the collateral sources offset would be approximately 3%. It is unknown to what extent private insurance plans would be made primary over automobile no-fault plans. If they are made primary the result would be a shifting of costs from the auto no-fault plan of Committee Print One to other insurance plans. For this analysis of costs under Committee Print One, no assumptions are made as to additional offsets other than medicare and workmen's compensation.

Estimated Total Cost of Benefits

The following is a summary of the costs of the various benefits provided by Committee Print One expressed as a percentage of Bodily Injury and Uninsured Motorists loss costs:

---

15. AIA Study, Exhibit V, sheet 1

Medical expenses	49%
Rehabilitation	3%
Income loss	82%
General Damages	5%
Miscellaneous expenses	12%
TOTAL	152%
Less Collateral sources	3%
NET COST	149%

Under a no-fault automobile plan, loss adjustment expenses would be less than under the present tort system. Using 12.5% of loss costs for loss adjustment expenses[16] under the no-fault plan of S.945, the following calculation indicates the cost of the no-fault system compared to the current tort system.

	Present System		S.945	
Pure Loss Ratio		.550	(.55 x 1.49)	.820
Loss Adj. Exp. Ratio	(.19 x .55)	.105	(.125 x .82)	.103
Gen. Adm. Exp. Ratio		.065		.065
TOTAL		.720		.988

Increase in Cost for Basic (10/20 BI & UM) Bodily Injury:

(.988/.720) -1 = 37.2% increase

---

16. Various estimates of loss adjustment expenses under a no-fault system have been made:

Current tort system	19.0% of losses
AMIA analysis of AIA Plan	14.5%
AIA Study	11.0%
NY Dept. Study	10.9%
Current workmen's compensation system	12.5%

Calculation of Income Loss as Percent of BI and UM Loss Costs

Income Loss - "Losses to date of settlement". . . . . 21. % (Note 1)

Expected Future Losses. . . . . 43. % (Note 2 & 3)

Total Income Loss before application of frequency adjustment factor . . . . . 64. %

Frequency adjustment factor 1.30%

Total income loss (Line 4 x Line 3) . . 83. % (Note 4)

NOTES:

1. Income loss from AIA Study, Exhibit II, sheet 1 after deduction for 15% tax and $750 per month limitation.

2. Average of AMIA additional income loss under AIA Plan* of 28.8% and estimated future income of 57.8% based on Department of Transportation Study.

3. Estimated "future income" based on Department of Transportation Study calculated as follows:

a. Average future earnings (personal and family losses) for serious injuries including death per family . . . . . $6,088 **

b. Estimated future earnings per serious injury including death ($6,088 ÷ 1.10) ***. . . . $5,536

c. Discounted value to eliminate time factor between Department of Transportation survey and AIA survey. (12% discount for the approximate two-years difference in time). $4,872

d. Discounted value for 15% tax deduction and 6.2% reduction because of $750 limitation . . . $3,839

---

*AMIA Actuarial Report, page 10.

**DOT, Economic Consequences of Automobile Accident Injuries, Volume I, page 33.

***From DOT Study, page 32.

Appendix B
Exhibit 1

e. Number of serious cases including death cases included in AIA Study (application of percentage of serious and death cases in Appendix F of AIA Study to the total number of 5,526 injuries used in the AIA costing). 661

f. Total income loss costs (661 x $3,839) $2,537,579

g. Total income loss expressed as a percentage of BI & UM losses. (Line f ÷ $4,387,379 from AIA Study Exhibit II, sheet 1) 57.8%

4. The 83% estimate is conservative based on a $750 monthly limitation instead of $1,000 per month limitation in S.945.

Calculation of General Damages to Pedestrians and Guests as Percent of BI & UM Losses

Non-car-owning families . . . . . 20% (Note 1)

Pedestrians and guests as percent of total number of injuries . . . . . 25.8% (Note 2)

Pedestrians and guests members of non-car-owning families (20% of 25.8) 5.16%

Number of injuries in AIA Cost Study. 5,526

Number of claimants for general damage (5,526 x 5.16%) 285

Average BI & UM loss cost $1,034

Average amount for general damages (60% of total BI costs) . . . . . $ 620

Total amount for general damages ($620 x 285). $176,700

Ratio to total BI & UM costs in the AIA Study ($176,700 ÷ $4,387,379) 4%

Compensable injury frequency adjustment factor. 1.30%

Estimated cost of general damages provided for by S.945 (1.30% x 4%) 5%

NOTES:

1. Statistical abstract of the United States, 1970, page 327.

2. From AIA Study, Exhibit IV

Type of Accident	Driver	Passenger	Pedestrian	Total
One car in State	436	452	280	1,168
Multi-car in State	2,268	1,746	38	4,052
Out of State	177	144	21	342
	2,881	2,342	339	5,562

Appendix B
Exhibit 2

Of those injured in the policyholder's car, 79% are related to the policyholder. Therefore, using this percentage, the 5,562 injuries would be distributed as follows:

	Number	Percent
Family Household Members	4,126	74.2
Guests and Pedestrians	1,436	25.8
	5,562	100.0

3. AIA Study, Exhibit II, sheet 1.

Optional Intangible Damage Benefit Cost

Present System Cost

Economic Losses	40
Intangibles	60
Total	100

Optional Intangible Damage Benefit Cost

Economic Losses	0
Intangibles	120
Total	120

Appendix B
Exhibit 3

OCTOBER 21, 1971.

MR. ANDRE MAISONPIERRE,
Vice President and Manager,
American Mutual Insurance Alliance,
Washington, D.C.

DEAR MR. MAISONPIERRE: In your appearance before the Senate Commerce Committee on October 15th, you agreed to answer questions which the Committee submitted in writing to you. Would you be so kind as to provide answers to the following questions:

(1) In your testimony you present figures showing the present costs of bodily injury liability coverage and projected costs for the qualifying no-fault coverage in your Committee Print One (transcript 207). Would you please present the benefits which each system would deliver for those costs? Would the benefits under Committee Print One be utilized by the policyholder differently? For example, would the policyholder have to pay plaintiff attorney's fees?

(2) In your testimony (transcript 211) you conclude that certain persons would pay higher rates. What considerations did you give to the risk of loss when setting forth these categories of high loss exposure?

(3) Why would muscle car owners receive lower insurance rates?

(4) In your testimony (transcript 222) you claim that the bill would "needlessly and expensively complicate underwriting and claims administration". To what claims administration complications do you refer? To what claims administration complications do you refer? Have you assigned a less expensive cost to the claims administration procedures in Committee Print One as compared with present system? Would claims administration costs under a complete no-fault program be less expensive than those under a modified no-fault program or a mandatory first party benefit insurance reform program?

Your prompt response to these questions would be appreciated. We anticipate sending the transcript to press by October 28th. Thank you very much for your cooperation.

Sincerely yours,

WARREN G. MAGNUSON, *Chairman,*
Senate Committee on Commerce.

AMERICAN MUTUAL INSURANCE ALLIANCE,
Washington, D.C., October 27, 1971.

Hon. WARREN G. MAGNUSON,
Chairman, U.S. Senate Committee on Commerce,
Old Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: Your letter, dated October 21, 1971, submitting four questions related to our testimony on S. 945—Committee Print Number One on October 15, was not received until October 26. In order to meet the deadline of October 28, we are rushing these answers to you, with the understanding that had we been given more adequate time, we would have been able to develop in more detail some of the thoughts suggested.

QUESTION NO. 1

A. Comparison between qualifying no-fault benefits (Committee Print One) and present system benefits.

All available studies indicate that the overwhelming majority—well up in the ninety percentile—of automobile accident victims who receive benefits under the present system, recover on the average, considerably in excess of their economic losses. It is obvious that these innocent victims of auto accidents would receive considerably less in benefits from Committee Print Number One than they are today. The qualifying no-fault coverage of Committee Print Number One restricts benefit payments to partial economic loss of the injured. Hence, the innocent victims of accidents will have their benefits reduced if Committee Print One becomes law.

Committee Print Number One will, of course, pay benefits to all accident victims, regardless of negligence. In order to achieve this objective, the innocent accident victim is asked to subsidize those injured as a result of their carelessness in two ways. On the one hand, innocent accident victims' benefits are substantially reduced and, on the other hand, as policyholders, their insurance premiums will be greatly increased.

B. Would policyholders utilize benefits differently?

Yes they will. Benefits paid accident victims under the present system are used in a variety of ways. Obviously, an important portion of the benefits are used to pay for medical expenses and to replace wages lost as a result of accidents. In addition, a sizeable amount of present benefits are invested by accident victims who have suffered permanent injuries and who have been deprived of the enjoyment of life to compensate for this loss. The exact nature of these investments will vary from individual to individual. To the extent that the quality of life is appreciated differently by different individuals, the flexibility afforded by the present system to allow innocent accident victims to restructure their dislocated lives as they see fit, is highly desirable.

As we have already noted, the qualifying no-fault benefits would restrict accident victims to reduced economic loss benefits. However, it is still possible that the more affluent accident victims may, combining qualifying no-fault benefits and investment incomes, have sufficient disposable incomes to readjust their dislocated lives as a result of an accident. The less fortunate accident victims—the greatest bulk of victims—will have their benefits so restricted by Committee Print Number One that they will have to use all of these benefits to cover their medical and wage losses and will have no disposable benefits to readjust their broken lives.

C. Will the policyholder have to pay plaintiff attorneys' fees?

Again, the answer is yes. Whether the attorney fee is paid directly by the insurance carrier, in addition to the benefits paid the accident victim, or whether the fee is paid out of the benefits paid to the accident victim, makes no difference in the final result. Policyholder insurance premiums are a reflection of the total losses paid by insurance carriers. Whether attorney fees are added to the benefits paid accident victims or whether they are lumped into the benefits paid those victims makes no difference. Either way, attorneys' fees are losses paid by carriers and are reflected in the premium paid by the policyholders.

QUESTION NO. 2

What considerations were given to the risk of loss when setting forth categories of high loss exposure?

A great deal more consideration can be given to the "risk of loss" under a no-fault system than under the present system.

"Risk of loss" is a function of the expectations of the extent of the benefits to be paid accident victims. The present system selects accident victims on a random basis. Accordingly, under the present system, the insurance company has no control over the selection of whom he will be paying benefits to and "risk of loss" can be discounted as an important underwriting consideration.

On the other hand, this situation is completely reversed under a no-fault insurance system. Under a no-fault system, the insurance carrier knows whom his potential claimant will be and, the carrier is thus in a position to protect himself against high-loss exposures. Let me be more specific:

We said in our statement, that persons who, because of their marginal skills or age, would be likely to be out of work for protracted periods (perhaps permanently) in the event of even a moderately disabling injury would be considered "high risks." Let us now assume a hypothetical accident involving, on the one hand, a laborer and, on the other hand, an executive. Both sustained identical compound wrist fractures.

It goes without saying that the laborer will have a prolonged disability following the accident. Perhaps the fracture and its resultant permanent disability may prevent him from ever returning to laboring work.

Our executive, on the other hand, may not lose one day's work as a result of the accident. He will be back at his desk, with a cast, and whether he has any permanent disability will certainly not materially effect his earnings.

The insurance carrier insuring the laborer will be paying economic loss benefits to the laborer for an extended period of time—if not for life.

The insurance carrier insuring the executive may not have to pay a single dollar in income loss replacement.

It is clear that the high "risk of loss" of the laborer must be taken into account by the insurance carrier in determining his insurance premium.

In conclusion, a system which identifies the claimants in advance, will produce rating categories and underwriting decisions based on "risk of loss" considera-

tion which have little or no relevance under the present system where the claimants are mostly randomly selected persons who get involved in accidents with the policyholder.

QUESTION NO. 3

Would muscle-car owners receive lower insurance rates?

Generally speaking, the answers would be yes. However, there would obviously be exceptions.

As stated above, the "risk of loss" would, under a no-fault system, play a major role in underwriting considerations.

There are a number of characteristics of muscle-car owners which would lead us to believe that their "risk of loss" would be less than average. Generally speaking, muscle-car owners' earnings are below average. They have little family responsibilities. Furthermore, the seating capacity of a muscle car is very limited so that again, the "risk of loss" of muscle cars is limited by the seating capacity of those cars.

We have also indicated in our statement that a consideration of "risk of loss" is the ability of the individual to recover from physical injuries. We know that young people, generally speaking, recover much more quickly than their elders.

Accordingly, we think that the majority of muscle-car owners will have a lot going for them insurance-rate wise under a no-fault system. Their "risk of loss" will be lower than average and one should expect their rates to be lower than average.

QUESTION NO. 4

Administration complications anticipated by Committee Print Number One.

We anticipate that the claim problems generated under the qualifying no-fault coverage of Committee Print One will be at least as involved as those encountered in workmen's compensaiton claims. It is of interest to note that some of the critics of the workmen's compensation system have accused that system of being the most litigious legal system in this country today.

We anticipate that the following disputes will frequently arise under qualifying no-fault coverage:

1. *Disability.*—The policyholder will claim that he is not able to return to work and the carrier will claim that the can.

2. *Need for further treatment.*—The policyholder and his doctor will claim the need for additional treatment whereas the carrier and its doctor will deny such a need.

3. *Relationship between disability and accident.*—The policyholder will allege that his disability is the result of the accident; his carrier will say that it is due to some condition unrelated to the accident. Or, the policyholder will claim that inability to work is a result of the accident and the carrier will claim that the inability to work is due to economic conditions.

4. *Wage expectancy.*—As we have indicated in our statement, what guideline is going to be used to determine who, among the 55% of non-employed accident victims would have entered the employment market had there not been an accident or what the economic achievement would have been a student but for the accident, etc.

5. *Fraudulent claims.*—No one can say for sure the extent to which the qualifying no-fault coverage will be abused. For instance what is there to prevent a policyholder who broke his arm tripping down a flight of stairs from claiming that he fell out of his car and broke his arm?

This incomplete list of areas which will lead to disputes between policyholders and their carriers is provided merely as an indication of claims administration problems which will arise under this coverage. Committee Print Number One makes no provision to relieve the courts from the task of deciding these disputes. One must recognize that state workmen's compensation laws, for the most part, have provided administrative tribunals to handle disputes of this nature and to relieve the burden which might be imposed upon the courts. We are convinced that if Committee Print One does become law that sooner or later, similar tribunals will have to be established to determine the compensability of qualifying, no-fault coverage.

We did assign, in costing out the qualifying, no-fault coverage, a lower claims administrative factor than the one used under the present system. This was consistent with our general approach of projecting all expected losses and expenses in a most conservative fashion. The factor which we used to project

claims administrative expenses is the factor presently used in workmen's compensation claims. We believe that the similarity in claims administration problems between workmen's compensation and qualifying no-fault benefits demands the application of the workmen's compensation expense factor in costing out the qualifying, no-fault coverage of Committee Print Number One. However, we are concerned that this factor may not be adequate in view of the lack of an administrative tribunal to administer the disputes which will arise under the qualifying, no-fault coverage.

Sincerely,

ANDRE MAISONPIERRE,
Vice President.

(The following information was subsequently received for the record:)

AMERICAN MUTUAL INSURANCE ALLIANCE,
Washington, D.C., October 27, 1971.

Hon. HOWARD H. BAKER, Jr.,
U.S. Senate, Committee on Commerce,
New Senate Office Building, Washington, D.C.

DEAR SENATOR BAKER: Thank you so much for your letter of October 20, 1971 setting forth three (3) questions related to Committee Print Number One.

We have attached our answers to these questions to this letter.

Sincerely,

ANDRE MAISONPIERRE,
Vice President.

Enclosure.

Question: The American Insurance Association stated in its testimony that the Committee version of no-fault would result in premium cost reduction of approximately 27%. Can you explain the disparity of these figures?

Answer. The American Insurance Association (AIA) cost projection S. 945 Committee Print Number One was reached by adjusting the basic cost estimates of its own "Complete Personal Protection Automobile Insurance Plan"[1] to the benefits provided by Committee Print Number One.

The American Mutual Insurance Alliance (AMIA) Actuarial Committee publicly criticized the AIA's costing of its own plan because of inadequacies in the AIA's sample from which the raw data was obtained and because it identifies several major cost producing features in the AIA Plan which were not taken into account by the AIA in its cost calculations.[2]

Obviously, to the extent that the basic data used to cost Committee Print Number One by the AIA was erroneous, the cost projection of Committee Print Number One's coverage must be inaccurate.

The major errors identified by the AMIA Actuarial Committee in the original AIA calculation were:

1. The AIA failed to identify a large number of beneficiaries who would be paid under a no-fault system.
2. Survivor's benefits in death cases were omitted.
3. Income loss beyond 99 weeks of disability in permanent total injuries were also omitted.

I. THE AIA FAILED TO IDENTIFY A LARGE NUMBER OF POTENTIAL BENEFICIARIES UNDER A NO-FAULT SYSTEM

It is fundamental that any comparative study of the cost of two automobile systems, one a total liability and the other one a no-fault system, must attempt to measure the difference between the compensable injury frequency of the two systems. Because negligence is a barrier to recovery under the present liability system it follows that a no-fault system would exhibit a higher compensable injury frequency than the present liability system. And the magnitude of the frequency difference between the two systems will depend upon the frequency with

[1] Report of Special Committee to Study and Evaluate the Keeten-O'Connell Basic Protection Plan and Automobile Accident Reparations—American Insurance Association, Oct. 21, 1968.

[2] Actuarial Report on the Adequacy of the Costing of the American Insurance Association's Complete Personal Protection Automobile Insurance Plan—Prepared by the Actuarial Committee of the American Mutual Insurance Alliance, May 2, 1969.

which the negligence prohibition effectively applies. In other words, the increase in compensable injury frequency will, under a no-fault system, depend upon the frequency of injuries that are not being compensated for under the present liability system.

Because the AIA Cost Study used medical payment and tort liability-system generated claim files as its source of injury frequency data, they did not reveal and could not reveal the true relationship between the compensable injury frequency of the present liability system and the compensable injury frequency of proposed no-fault systems. The use of claim files generated by the present auto insurance system only serves, as it did in the AIA's study, to understate the increase in the compensable injury frequency of a no-fault automobile reparation system.

Because the increase in the compensable injury frequency of proposed no-fault plans is so important for comparative cost purposes, the Alliance Actuarial Committee attempted to estimate how many more claims would be produced if no-fault systems were adopted.

Two approaches were used: First, the Committee examined independent studies to see what other investigators had concluded about the percentage of auto accident injuries not compensated for under the present system. Second, it recalculated the compensable injury frequency indicated in the AIA Study, after making reasonable adjustments in the AIA data.

The attached Exhibit A summarizes the findings of the independent studies. It shows that different investigators have come up with wide variations in the estimated percentage of accident victims not now being compensated. However, with the exception of the Harwayne Study in New York, all of these studies indicated that the adoption of a no-fault plan would increase the number of claimants far beyond the 27% figure indicated in the AIA Cost Study.

Confirming the gross inadequacy of the AIA's projected frequency increase was the Department of Transportation's own study which revealed that only 48% of automobile accident victims had recovered benefits under the existing tort system.[3] Hence, Department of Transportation would project an increased frequency in excess of 100% under a no-fault automobile compensation system.

The wide variations found in the various independent studies are related to the existence or absence of laws restricting the right of civil action against negligent drivers as between different states. Jurisdictions with restrictive laws tend to compensate lower percentages of those injured than states with less retrictive law. To the extent that the data used in the AIA Cost Study was strongly biased in favor of jurisdictions which significantly restrict the right of civil action, either by statute or by application of the common law, it is reasonable to conclude that the adoption of a no-fault system in those jurisdictions would produce increases in compensable injuries more in line with the findings of the independent studies.

For these reasons—and more importantly, the fact that four of the six independent U.S. studies produced estimates in the 55–70% range—the Alliance Actuarial Committee concluded that it would be reasonable to project a 65% increase in the number of injuries that would be compensated for under a no-fault insurance system.

II. SURVIVORS' BENEFITS IN DEATH CASES

We believe that the AIA's cost projections failed to include survivors' benefits of the nature described in Committee Print Number One.

Specifically, in its attempt to cost a no-fault automobile insurance system, the AIA valued the total income loss on 48 death claims at $23,625. It is obvious that this nominal amount of income loss in death cases represent only the income loss incurred prior to the death and that no survivor benefits of the nature decribed in Committee Print One was included.

The margin error resulting from this omission is clearly evident when viewed in the light of data published by the Department of Transportation.[4] Department of Transportation tells us that almost 30% of all compensable wage losses resulting from auto accidents are generated by survivor benefits.

---

[3] Motor Vehicle Crash Losses and Their Compensation in the United States—Department of Transportation Automobile Insurance and Compensation Study, March 1971.

[4] Motor Vehicle Crash Losses and Their Compensation in the United States—Department of Transportation Automobile Insurance and Compensation Study, March 1971—Table 2, p. 6.

III. PERMANENT TOTAL DISABILITY—INCOME LOSS BEYOND 99 WEEKS DUE TO PERMANENT TOTAL INJURIES

We believe that the AIA substantially underestimated the cost of providing benefits, without time limit, to those incurring permanent total disabilities. The error arises out of the AIA limiting the average duration of permanent total claims, for costing purposes, to 99 weeks.

This observation is based on the following two statements:

1. Page 9, paragraph 3, of the AIA Cost Study[4] notes that "We have made the arbitrary assumption that 99 weeks reported on the form means permanent, total disability."

2. Table A, Notes, of the AIA Cost Study appendix, explains that "Average Duration—equals the average duration in days of those injured in 'amount and duration known' above."

Since the maximum number of weeks that could be reported for any claimant was 99 weeks and this maximum in day (693) was used in determining the average duration of claims under no-fault insurance, it follows that permanent, total claims were costed only up to 99 weeks.

This arbitrary limitation imposed by the AIA is crucial when viewed within the context of data developed by the Department of Transportation's Study. As we have already reported to the Senate Commerce Committee[5] a detailed study of the tables appended to the Department of Transportation's "*Economic Consequences of Automobile Accident Injuries*" study reveals the startling fact that only 121 persons (out of the total sample of 1,276) account for 94% of the gap between the Department of Transportation's estimate of compensation economic losses and the compensation received by injured victims. In short, nearly all of the uncompensated losses seem to stem from a small group of catastrophic [illegible] ations—those crash victims estimated to have incurred economic losses exceeding $25,000.

To the extent that the AIA has limited income loss benefits to 99 weeks of disability, it is obvious that a [illegible] of presently uncompensated losses.

[illegible]

The failure of the AIA to [illegible] costing of S. 945 assumes [illegible] the bill is enacted.

It is further [illegible] portation that the AIA's [illegible] One, is completely misleading.

The Department of Transportation [illegible] nomic loss resulting from automobile [illegible] cluding property damage.

Since S. 945's Commissioner [illegible] adjustment must accordingly be made [illegible] that coverage. We estimate [illegible]

However, total annual [illegible] Medical Pay [illegible]

The facts seem to [illegible] the full $4.5 billion [illegible] It just cannot be done.

Considering the [illegible] to the cost of paying [illegible] mate of a 5% [illegible] Committee Print [illegible]

---

[4] Report of [illegible] tection Plan [illegible]

[5] Auto Insurance [illegible] the Senate Commerce [illegible]

[6] Motor Vehicle [illegible] ment of Transportation [illegible]

[7] Best's Aggregates [illegible]

EXHIBIT A

Estimated increase in the compensable injury frequency produced by adoption of a no-fault plan

[Indicated percentage increase in compensable injuries]

State and name of study.[1]	*Percent*
1. New York, Harwayne	28
2. Wisconsin, Hold	58
3. New Jersey, Temple University	62
4. Michigan, Harwayne	55
5. Michigan, Bailey	70
6. Michigan, Conard	168
7. Ontario, Canada, Osgoode Hall	133
8. American Insurance Association (seven States)	27
Estimate by AMIA of increase in seven States in which the AIA conducted its survey	65

[1] Source material concerning above studies and surveys follows:

Location of study or survey—Performed by and year data collected	Survey method to determine increase in claim universe	Source
1. New York—Frank Harwayne, 1960.	Adjusted police reports versus insurance company bodily injury claim reports.	Frank Harwayne, "The Relative Cost of Basic Protection Insurance In New York State—An Objective Determination," Prepared for the Study of Automobile Claims Systems, Harvard Law School, February.
2. Wisconsin—William T. Hold, 1964.	Survey—sample of injured parties in motor vehicle accidents reported to State motor vehicle department.	William T. Hold, "The Economic Impact of Automobile Accidents" (unpublished thesis for Ph. D. degree at University of Wisconsin, 1967), table IV, pp. 238-239.
3. New Jersey—Temple University, by John F. Adams, 1955.	Survey—sample of injured parties in New Jersey motor vehicle accidents.	John F. Adams, "A Comparative Analysis of Costs of Insuring Against Losses Due to Automobile Accidents—Various Hypotheses—New Jersey, 1955" Economics and Business Bulletin (Philadelphia: Temple University, March 1960), table 19, p. 26.
4. Michigan—Frank Harwayne, 1962.	Adjusted police reports versus insurance company bodily injury claim reports.	Frank Harwayne, "Insurance Cost of Automobile Basic Protection Plan in Relation to Automobile Bodily Injury Liability Costs in Michigan" (prepared for the Study of Automobile Claims Systems, Harvard Law School, Cambridge, Mass., as amended October 1967), amended table D-1, p. 72.
5. Michigan—Robert A. Bailey, 1962.	do	Robert A. Bailey, "Fallacies Overshadow Validity of Plan's Cost Estimates," trial (Boston: American Trial Lawyers Association, October-November 1967), p. 46.
6. Michigan—Conard, et al., 1958.	Survey of drivers and persons reported injured in personal injury accidents reported to Michigan State Police.	A. F. Conard, et. al., "Automobile Accident Costs and Payments" (Ann Arbor: University of Michigan Press, 1964), tables 4-1, 4-2, and 4-11, pp. 137-149.
7. Ontario, Canada Osgoode Hall Law School—A. M. Linden, 1961.	Investigative survey conducted in 1964 of all persons injured in county of New York during 1961 calendar year.	A. M. Linden, "The Report of the Osgoode Hall Study on Compensation for Victims of Automobile Accidents" (Toronto: Ryerson Press, 1965), ch. IV., p. 13.
8. 7 States as listed in exhibit B which follows—American Insurance Association, March 1968.	Insurance company bodily injury and medical payments closed claim files.	American Insurance Association, "Report of Special Committee to Study and Evaluate the Keeton-O'Connell Basic Protection Plan and Automobile Accident Reparations" (Oct. 21, 1968), exhibit II.

COST ANALYSIS GUARANTEED PROTECTION PLAN, AMERICAN MUTUAL INSURANCE ALLIANCE

INTRODUCTION AND SUMMARY

This is a preliminary cost analysis of the American Mutual Insurance Alliance Guaranteed Protection Plan, prepared by the staff of the American Mutual Insurance Alliance. It follows the same procedure used by the Alliance Actuarial Committee's review and critique of the cost estimates offered in support of the

American Insurance Association's "Complete Personal Protection Automobile Insurance Plan." [1]

The preliminary costs estimates of the Guaranteed Protection Plan were prepared by the Alliance staff with guidance and review by the Alliance Actuarial Committee. Data underlying the estimates were obtained from appendix to the cost study of the AIA Report, and from reports issued by the Department of Transportation in connection with the study of automobile liability insurance made by Department of Transportation.[2]

Information obtained from the New York Insurance Department "Actuarial Supplement to Automobile Insurance . . . For Whose Benefit"? [3] was also used in making the cost estimates.

It should be pointed out that any estimate of the cost of a new automobile system involving a replacement of the tort system in whole or in part by first-party coverage is subject to a large possible error. The problem is one of determining frequency of claims and average amounts of claims under the new system. Data developed under the tort system, for example from liability claim files, are of little help in determining the frequency of claims for medical and wage loss benefits under a no-fault plan.

Using the basic data collected by the American Insurance Association and making conservative estimates of increased frequency of medical payment claims, the staff of the American Mutual Insurance Alliance estimates that the average premium cost of the compulsory coverages under the Guaranteed Protection Plan will be approximately 10% less than premium for current Bodily Injury Liability and Uninsured Motorists Coverage.

BENEFITS TO BE PAID UNDER THE GUARANTEED PROTECTION PLAN

The benefits to be paid under the Guaranteed Protection Plan on a first-party no-fault basis are summarized as follows and costs estimates in terms of current bodily injury and uninsured coverages costs are presented for each summary group. All estimated costs are expressed in terms of percentage of current B.I. and U.M. loss costs for standard limits of $10,000 per person and $20,000 per accident (loss costs include medical expenses, wage losses and general damages paid under the tort system).

A. Medical Expenses—45 percent of current bodily injury costs

All reasonable and necessary expenses for medical, hospital, X-ray, dental, surgical, ambulance and prosthetic services incurred within thirty-six months after the automobile accident not to exceed $50,000 for each person injured in any one accident.

Medical expenses under a no-fault automobile reparations plan were estimated by the American Insurance Association, the New York Insurance Department and by the Actuarial Committee of the American Insurance Alliance. Using as a base for costing and for comparison with the current automobile system, bodily injury liability costs and uninsured motorists loss costs are taken as unity. Estimated costs are then expressed in terms of percentage of B.I. and U.M. Loss Costs.

Based on the AIA sample of claim files, the AIA estimated that medical expenses would be 37.9%.[4] The New York Department estimated that medical expenses would be 37.7% using a subsample (N.Y. data only) of the AIA sample. The Alliance Actuarial Committee after careful study of the AIA data and data from other sources was of the opinion that the AIA and the New York Department had underestimated the number of injuries that would become claims under a no-fault plan. The reasons for this opinion are presented in the Alliance's *Actuarial Report on the Adequacy of the Costing of the American Insurance Association's "Complete Personal Protection Automobile Insurance Plan."* Since

[1] American Insurance Association, Report of Special Committee to Study and Evaluate the Keeton-O'Connel Basic Protection Plan and Automobile Accident Reparations, 1968.

[2] Department of Transportation Automobile Insurance and Compensation Study, Economic Consequences of Automobile Accident Injuries, vol. 1, April 1970.

Department of Transportation, Automobile Insurance and Compensation Study, Automobile Personal Injury Claims, vol. II, July 1970.

[3] State of New York Insurance Department, Actuarial Supplement to "Automobile Insurance . . . For Whose Benefits"? Development of Estimated Cost and Premium Comparisons of Present and Proposed Automobile Insurance Systems, 1970.

[4] AIA study, Exhibit II, sheet 1.

this report was published, the data made available in the Department of Transportation study of serious auto injury cases reveals that the Alliance projections are very conservative.[5] Whereas the AIA had estimated that the number of persons collecting bodily injury benefits would increase 27% under a total no-fault system, and the Alliance projected a 65% increase, the Department of Transportation data indicates that only 47.7% of today's seriously injured crash victims receive compensation under the tort system. If this Department of Transportation finding were taken at face value, then the number of compensable injuries could be expected to more than double under a no-fault system. Nevertheless, we have stayed with the more conservative projection of a 65% increase.

Since the AIA had used an estimated percentage increase of only 27%, the Alliance compensable injury frequency factor was 1.30 (1.65 divided by 1.27). Applying this factor to the AIA medical cost estimate, and taking into account the Guaranteed Benefit Plan's limits of $50,000 per person for medical and hospital expenses incurred within 36 months after the automobile accident, the AIA estimates the total costs for medical benefits would be 45% of current B.I. and U.M. loss costs.

B. Income Loss 8 percent of current bodily injury costs

Disability Benefits—80% of the loss of income from work the injured person would have performed had he not been injured, during a period commencing 30 days after the date of the accident and not exceeding 52 weeks, but subject to a maximum of $500 per month such maximum to apply pro rata to any lesser period of work loss. In the case of a person who did not receive wages, salary, commission or other income from work, such benefits shall consist of expenses not exceeding $12 per day which are reasonably incurred for essential services in lieu of those the injured person would have performed without income during a period commencing one week after the date of the accident and not exceeding 52 weeks.

The costs of the disability under the Guaranteed Protection Plan are estimated to be only 8% of current B.I. and U.M. Coverage. This results from the various limitation on payments for loss of wages and loss of services :

85% of loss of income,
30-day waiting period,
$500 per month maximum, and
52-week limitation on payments.

In the case of a person not receiving wages, there is a 7-day waiting period, a $12 per day maximum and a 52-week limitation on payments. In death cases, serious cases, and cases where the medical expenses exceed $1,000, wage losses will be covered under the tort system on a fault basis. The calculations of the cost of disability benefits under the Guaranteed Protection Plan are presented in Exhibit A.

GENERAL DAMAGES—40% OF CURRENT BODILY INJURY COSTS

The policy to be issued under the Guaranteed Protection Plan must provide for Bodily Injury Liability as well as for the first-party coverages of medical expenses and Disability Benefits. However, the B.I. payments under the Guaranteed Protection Plan will be less than under the current tort system because of the limitation on payments for general damages. The plan provides that:

A. "In any action in tort brought as a result of bodily injury, sickness or disease, arising out of the operation, ownership, maintenance or use of a motor vehicle within this state, there shall be no damages recoverable for pain, suffering, mental anguish and inconvenience, except that this limitation shall not apply in cases of death, permanent disfigurement, dismemberment, permanent loss of a bodily function and injury resulting in reasonably incurred medical expenses exceeding $1,000."

Data from the AIA sample of closed claim files are reported in Exhibit F of the appendix to the AIA Cost Study Report, separately for non-serious cases, serious cases, and death cases. A summary of the AIA data is presented in Exhibit B to this report together with the calculations determining the effect of the Guaranteed Protection Plan limitations on general damages.

---

[5] Department of Transportation: Economic Consequences of Automobile Accident Injuries, vol. 1, p. 47.

COLLATERAL SOURCES

The medical expenses and disability benefits under the Guaranteed Protection Plan would be primary for the named insured and members of his family residing in the same household. The medical expenses and disability benefits for guest passengers and pedestrians are to be excess over any other collateral benefits to which such persons are entitled. From the AIA Study, Exhibit IV, pedestrians and guests represents 25.8% of injuries and the percent of total medical expenses offset by collateral from AIA Study, Exhibit V was 31.5%. Applying these percentages to the estimated cost of medical expenses of 45% of B.I. and U.M. Costs, an estimated offset of 3.6% is calculated.

ESTIMATED TOTAL COST OF BENEFITS

The following is a summary of the costs of the various benefits provided by the Guaranteed Protection Plan expressed as a percentage of Bodily Injury and Uninsured Motorists loss costs:

Medical expenses	$45
Income loss	8
Residual bodily injury	40
Total	93
Less collateral sources	3
Net cost	90

OPTIONAL MEDICAL DEDUCTIBLE

The Guaranteed Protection Plan provides that the insurer may offer medical and hospital benefits to the named insured or member of his family on a Deductible basis not to exceed $1,000. The following is an estimate of the effect on costs of a $1,000 deductible.

On the average the cost of $1,000 medical coverage is approximately 15% of the cost of bodily injury coverage at 10/20 limits. For example if the BI at 10/20 limit premium is $60. the price for $1,000 medical pay coverage would be about $9. There would be some variation in the 15% figure state-by-state but on the average 15% of BI would be equal to the cost for $1,000 medical.

Calculation of income loss as percent of bodily injury and uninsured motorists loss costs

1. Reduction because of 30-day waiting period (note 1)	50%
2. Reduction because of $500-a-month limitation (note 2)	11%
3. Reduction because of 52-week limitation (note 3)	10%
4. Total reduction due to limitations	71%
5. Average income loss before limitations (note 4)	$553
6. Average income loss after limitations	$160
7. Average income loss after 85 percent limitation	$136
8. Number of claims with income loss in AIA sample (note 5)	1,706
9. Frequency adjustment factor	1.30
10. Estimated number of claims with income loss on no-fault basis	2,212
11. Estimated number of claims on a no-fault basis not subrogated (note 6)	2,024
12. Total income loss to be paid (note 7)	$275,264
13. "Paid help" (note 8)	$61,152
14. Total disability benefits	$336,416
15. Total bodily injury and uninsured motorists costs (note 9)	$4,387,379
16. Estimated costs of disability benefits (note 10)	7.7%

Note 1: Exhibit C-1 of the appendix to the AIA cost study presents data on income loss by length of disability and by size of weekly wages. A total of 1,636 injured persons suffered wage loss of $904,185. This amount would be reduced to $453,855 by subtracting all wage loss occurring within the first 30 days.

Note 2: After applying the 30-day limitation. Data from AIA cost study.

Note 3: From data presented in Table C-1 of AIA cost study, after applying the 30-day limitation and the $500 maximum.

Note 4: $904,185 divided by 1636, AIA Report, Exhibit C–1.
Note 5: AIA Report, Exhibit II, sheet 1, line 5.
Note 6: From Exhibit B, 17.5% of the 6,255 cases would be serious, death or over $1,000 medical. Assuming that half of these would be subrogated the total number of claims on a no-fault basic net subrogation would be 91.25% of 2,218.
Note 7: 2,024 times $136.
Note 8: (663) (1.30) (.55) (.60) ($215) =$61,152.
Where: 663=number in AIA sample having "Paid Help"
1.30=Frequency adjustment factor
.55=Ratio of non-wage earner
.60=Ratio of injured for period less than 7 days (from Table C–1 of AIA Study)
$215=Average amount for "Paid Help" from AIA Study, Exhibit II, sheet 1.
Note 9: AIA Report, Exhibit II, sheet 1.
Note 10: $336,416 divided by $4,387,379.

Exhibit B

REDUCTION IN LOSS PAYMENTS RESULTING FROM THE LIMITATION ON AWARDS FOR PAIN AND SUFFERING

Item	Present system (10/20 limits)		Guaranteed protection plan		Reduction in costs
	Number	Amount	Number	Amount	
Nonserious cases (economic loss under $1,000):					
Number of claims	5,160		0		
Medical expenses		$526,488		0	
10/20 B.I. payments [2]		2,926,068		0	$2,962,068
Nonserious cases (economic loss over $1,000):					
Number of claims	316		316		
Medical expenses		265,037		0	
10/20 B.I. payments [2]		1,024,881		$759,844	[1] 265,037
Serious cases:					
Number of claims	727		727		
Medical expenses		638,371		0	
10/20 B.I. payments [2]		2,217,169		1,578,798	[1] 638,371
Death cases:					
Number of claims	52		52		
Medical expenses		43,390		0	
10/20 B.I. payments [2]		262,392		219,002	[1] 43,390
Total all cases:					
Number of claims	6,255		1,095		
Medical expenses		1,473,286		0	
10/20 B.I. payments [2]		6,466,510		2,557,644	3,908,866
Reduction costs (percent)					60
Bodily injury costs under guaranteed protection plan (percent)				40	

[1] All medical expense has been costed under the first-party no-fault medical coverage. The residual B.I. cost will be greater than 40% to the extent that medical expenses will be subrogated. However, if there is subrogation the first-party costs will be less and the estimated cost of the total package of coverages unchanged.

[2] In making the B.I. cost estimates, a $1,000 *economic loss* threshold was used instead of a $1,000 *medical expense* threshold. This would tend to make the cost estimate somewhat over stated. However, with the increase in medical expenses since the period of time during which the AIA Study was made, a greater number of cases would meet the $1,000 threshold now than would be the percentages of cases in the AIA sample.

Source of Data: Table F–3 and F–4, Appendix to AIA Cost Study Report.

Question. Several States have adopted various versions of no-fault insurance. Would you supply for the record your analysis and reaction to any or all of these programs.

Answer. A complete analysis prepared by Prof. Bernard L. Webb, Georgia State University, Atlanta, Georgia, of the various versions of existing no-fault insurance programs is attached.

We do have a number of comments to make on these laws.

MASSACHUSETTS

We supported the enactment of this law in Massachusetts as an affirmative response to the abuses existing in Massachusetts, prior to January 1, 1971, in the compensation system. Two of the principal abuses were:

1. The very large number of bodily injury liability claims pressed by motorists.
2. The very large proportion of claims—including many small ones—which were attorney represented.

We do not believe that the Massachusetts law would be the type which should be enacted in other jurisdictions because the abuses described above do not exist to the degree then present in Massachusetts.

DELAWARE

We neither supported or opposed the enactment of the Delaware law. While we favor the compulsory no-fault benefits now to be required, we were not certain that the restriction in the evidentiary rule with respect to actions for general damages would result in premium cost stabilization or reduction. However, as we have stated repeatedly, we believe in state experimentation in order to determine which are the workable and responsible types of reform and we look forward to the experience which the Delaware law will generate.

FLORIDA

The Alliance opposed the Florida law primarily for these two reasons:

1. The insurers right of subrogation is abrogated to the extent of the tort exemption—a maximum of $5,000 for bodily injury and $550 for property damage with certain exceptions. This results in the ultimate cost of accidents which fall within this range of damages being shifted to innocent motorists in many instances. Internally, insurers will have to devise a radically revised classification and rating system once the claims data is available.
2. A tort exemption for property damage losses up to $550 places an unfair dilemma upon owners of older cars. That is, whether to transfer the risk, and pay a substantially higher total collision premium, or run the risk of an extensive out-of-pocket loss. This situation will by no means be a rare one. The majority of autos in the state are over 3 years old, and most property damage losses are within the $550 range.

ILLINOIS

The Alliance strongly supported the enactment of this law. We believe that this type of reform affirmatively responds to the abuses in the present fault system without abrogating present tort rights. At the same time, cost stabilization or reduction is achievable by abolishing the overpayment of general damage recoveries in the non-serious cases.

MINNESOTA-SOUTH DAKOTA

The Alliance believes that these two laws, while not harmful, do not represent an adequate response to the need for reform of the present system. They are not harmful because the additional premium cost will only apply to those policyholders who elect the no-fault benefits option. However, if all auto accident victims should receive benefits (as we believe they should), there should be no option to purchase them. The benefits should be mandated.

OREGON

This law does mandate no-fault benefit purchase by insurers. However, this necessarily results in an increase in the premium of the average auto policy. Therefore, the Alliance additionally recommended to the Oregon legislature a restriction on general damage recoveries in order to respond to the over payment of nonserious injury claims as well as to stabilize or reduce average premium cost. The legislatures did not feel the average policy price was a point of criticism in that state. However, we believe that some reform with respect to actions for general damages would have allowed for a no-fault benefit level more in line with acceptable standards.

Senator BAKER. At this point, we have one other additional scheduled witness. I am going to recess the hearings briefly, subject to the call of the Chair. It is my hope that we will be able to resume again shortly.

The hearing will be recessed temporarily.

(Short recess.)

Senator STEVENS (presiding). The committee will come to order.

Mr. McGowan, I am sorry to have kept you waiting.

STATEMENT OF ROBERT V. McGOWAN, PRESIDENT, NATIONAL ASSOCIATION OF MUTUAL INSURANCE AGENTS; ACCOMPANIED BY WILLIAM A. STRINGFELLOW, GENERAL MANAGER

Mr. McGOWAN. That is perfectly all right. I recognize there is other business going on at this time.

Mr. Chairman and gentlemen of the committee, my name is Robert V. McGowan, of North Attleboro, Mass. I am the owner of the R. V. McGowan Insurance Agency, Inc., in North Attleboro. I am appearing here today as the current president of the National Association of Mutual Insurance Agents, an organization of more than 18,000 independent property and casualty insurance agents with members in nearly all States and with headquarters in Washington, D.C. Accompanying me is the general manager of the National Association of Mutual Insurance Agents, William A. Stringfellow, CPCU.

As you will recall, I appeared before your committee previously on May 4, 1971, when the committee was considering S. 945, the National No-Fault Motor Vehicle Insurance Act; S. 946, the Motor Vehicle Group Insurance Act; and S. 976, the Motor Vehicle Information and Cost Savings Act. Today, however, I will present my association's views on Committee Print No. 1 of S. 945, pointing out what we consider the major strengths and weaknesses of the new measure.

I would like to first mention those areas where we feel Committee Print No. 1 is superior to the original bill. We are pleased that benefits under the policy would be primary—that is, the amount paid would not be reduced by benefits paid from other sources. However, we do not agree that an exception should be made for collateral benefits provided under any form of public health insurance. We see no justification for making the general public in effect pay for benefits of the driving public. If automobile insurance is considered secondary to health insurance, this is exactly what would happen.

The 25-percent limitation on attorney's contingent fees is, in our opinion, a strong addition to Committee Print No. 1. Such fees have a place in our legal system, but because they are sometimes abused by a segment of the legal profession, they must be properly regulated in order to bring about meaningful reduction in the cost of automobile insurance. We commend highly this provision.

In our opinion, there are four key areas of Committee Print No. 1 which we find particularly objectionable because they will almost surely lead to high costs which will ultimately have to be paid by the policyholder. In many instances, the revised bill fails to clarify definite areas of concern. Adoption of such a vague bill on the Federal level

would undoubtedly lead to a great deal of confusion throughout the country. I would like now to describe those four areas and present to you the reasons we feel they will lead to prohibitive costs.

INCLUSION OF PROPERTY DAMAGE

To include property damage under the no-fault provisions as outlined in Committee Print No. 1 would, in our opinion, not cut costs but at best simply redistribute them. While it can be argued actuarially that eliminating general damage recoveries under bodily injury could produce some cost savings, we see no evidence that including property damage under no-fault would lead to such savings.

HERE IS WHY

Under present auto insurance policies, the insured can elect to take collision coverage to pay for actual damage to his own car or, as is often the case when the car becomes 5 years old or older, the policyholder simply elects to drop the coverage, or "self insure," because the premium is too great in comparison to the car's actual value. However, if another driver is at fault the policyholder still has the right to recover his loss.

According to Committee Print No. 1, the policyholder must either accept the coverage—even if his car is 5 years old or more—[illegible] percent of all autos are today in Massachusetts. I submit this may be a fair percentage on a national basis—or don't not to take the coverage. If he chooses the latter, of course, he has no means of recovery whatsoever since tort actions are prohibited.

I should point out here, Mr. Chairman, that this very situation will adversely affect [illegible] of average income American [illegible] always afford new cars. It is they who will be forced to pay an inordinate premium for very [illegible] coverage [illegible] justice of no recovery at [illegible] driver.

In the same vein [illegible] with the assumption of a percentage recovery [illegible] tends to reduce costs [illegible] would result under Committee Print No. 1.

[illegible]

Committee Print No. [illegible] be paid to attorneys [illegible] spelled out. [illegible] stored. If [illegible] of "malingering" [illegible]

We are concerned [illegible] No. 1 that [illegible] as follows:

All appropriate [illegible] gical, professional [illegible] erally recognized [illegible] able expenses [illegible] therapy and [illegible]

I ask you, who will decide the extent of injury in the event of disagreement? The only recourse a person will have is the courtroom. The inevitable result: soaring costs to be borne by honest victims and policyholders because there is no check on the malingering individual. This is one of many questions that will increase—not decrease—court congestion.

Under the plan for reform of the automobile reparations system developed by our association, entitled "Motorists' Insurance-Protection Plan," we propose that all automobile liability insurance policies include: payable immediately regardless of fault, medical and hospital expense coverage up to $2,000—subject to an optional $250 deductible—with tort action above that figure.

Such a limitation would help to keep costs down, but not deprive the victim of his legitimate benefits. I should point out in this connection that even under the original S. 945 the single driver under age 25, who under present rating procedures is statistically the poor risk, actually becomes the preferred risk, while the driver with a spouse and children suddenly becomes the high risk. This would increase the cost of insurance to the family man who now shoulders the greatest financial burden in the country in the area of taxes, education, et cetera.

Under a total no-fault system as proposed in Committee Print No. 1, insurance rates would be lowered for the careless young drivers who statistically cause most accidents, but premiums would be raised for the over-age-25 family drivers who statistically are more careful, but who are more likely to suffer greater injury and greater economic loss.

UNLIMITED WAGE REPLACEMENT

Rather than permitting wage replacement benefits to be paid indefinitely, as called for in Committee Print No. 1, I would like to again refer to our association's proposal: "Disability coverage of 85 percent of gross income lost, commencing 30 days after the accident and continuing for 52 weeks and subject to a $500 per month maximum or a total of $6,000."

Again I ask, who is going to determine lost wages, and I quote from the committee's print, "anticipated annual compensation," with regard to a 5-year-old child who becomes totally disabled? Who is going to determine the condition of a housewife who might need psychological therapy? Should this housewife be a college graduate who has taken a few years leave from her profession to rear children, who will decide her, and again I quote, "anticipated annual compensation"? If a reasonable time limit is not placed on payment of wage loss benefits, it seems likely that the cost of no-fault coverage will be unaffordable to a majority of the insurance-buying public, especially to the good risk.

EXCESS DAMAGE COVERAGE AT OPTION

Committee Print No. 1 makes excess damage coverage optional. In this case, the policy pays for intangible loss, pain and suffering, et cetera, as measured by the State tort law. As such, you are still faced with one of the major problems in our present reparations system—the tendency to overdramatize and exaggerate pain and suffering and other similar intangible losses.

This is not to say, however, that we agree with those who [illegible] abolish these recoveries altogether. Thus, we feel that some [illegible]

criteria is needed in determining pain, suffering and inconvenience, placing reasonable limitations on the less serious cases.

Our association's proposal suggests the following standards for intangible loss:

Up to 50 percent additional damages when medical and hospital expenses amount to $500 or less;

Up to 100 percent additional damages when medical and hospital expenses exceed $500;

In case of death, permanent disfigurement, loss of limb, permanent loss of bodily function and, other exceptional circumstances, these standards may be raised by the courts.

Until a better means of determining such damage is conceived, we believe these standards will provide reasonable safeguards and prove fair and equitable to all concerned. At the same time, it will tend to keep costs in line.

We are convinced there would be a substantial increase in cost to the insurance-buying public if Committee Print No. 1 is adopted in its present form.

Finally, Mr. Chairman, I would like to reiterate the basic position of our association on the entire matter of automobile insurance reform. While we agree that our present system needs improvement, we do not agree that it should be scrapped altogether—at least without allowing the opportunity for testing new approaches.

Since your original hearings last May, six States—Delaware, Florida, Illinois, Minnesota, Oregon, and South Dakota—have joined Massachusetts in enacting various forms of no-fault insurance.

In addition, some 24 others are considering some type of no-fault plan. They differ in some ways, but represent what the legislatures of those States feel are best for their citizens. And that is exactly our point. Given the chance to observe and evaluate these various plans, offers us a sound, evolutionary approach to improving the auto insurance system on a State-by-State basis.

Accordingly, we respectfully urge this committee to work for a concurrent resolution expressing Congress' intent that the several States adopt reform measures based on their own particular needs, but stipulating minimum criteria for first party coverage.

Given enough time, we are confident that the States will act responsibly to improve auto insurance. At the same time, however, we do feel that the Congress can take another look at the situation in, perhaps 2 or 3 years, to determine what has or has not been done.

This approach would allow the several States ample time to make such improvements in the auto insurance system as they deem necessary, and Congress to fulfill its responsibility to the American motoring public.

Thank you, Mr. Chairman, for allowing us to share with you our thoughts and suggestions on the very important legislation now before you.

Senator STEVENS. Thank you very much, Mr. McGowan.

I have one question, and I understand the previous chairman stated that in the interest of time, he was going to request witnesses to agree to respond to questions submitted to them in writing.

That would be agreeable with you, I am sure?

Mr. MCGOWAN. We would be happy to do that, Mr. Chairman.

Senator STEVENS. I notice in your first comment about the inclusion of property damage you did not point out what your association suggests.

On the other items, disability and unlimited wage replacement, and your concept of excess damage, you have made specific suggestions.

What is the suggestion of your group as to the first item, property damage?

Mr. McGOWAN. Mr. Chairman, our association has not taken a formal position on no-fault property damage as such, except for the comments that I have made here today. In other words, they have not taken a position as an alternative to the present system.

Frankly, we do not see any opportunity to improve the public's position by so-called first-party property damage approach. As I said, we think you would just simply redistribute the cost.

Part of the cost would be distributed to the public in the form of deductibles, part of it is certainly distributed to a very substantial segment of the driving public, as I mentioned the driver with the car 5 years old or older.

We have—and we have made our position very strongly—agreed with the committee's proposed bill on changing or modifying the extreme vulnerability of automobiles to damage. We feel that this needs to be done. We feel this is where substantial savings can be offered the general public in property damage claims.

Senator STEVENS. What you are really saying is you don't want to include property damage under no-fault in any event?

Mr. McGOWAN. That is correct.

Under your proposal, for example, or other proposals which are already in some cases law, or about to become law of the States, you have an actuarial basis for reducing costs, because you do, in effect, reduce benefits.

In Massachusetts, for example, you cannot sue for pain and suffering unless you have at least $500 of medical expense and, actuarially, a study was made before the bill was passed, which indicated that $150 threshold over 5 years previously in Massachusetts would have reduced rates for bodily injury by 22 percent.

If that is true, certainly the $500 threshold we have now should produce a savings of 22 percent, plus. And this seems to be proving out in the early stages, at least.

The 15 percent savings built into the law seems to be producing net profits for the companies which will have to be adjusted in 1972. But there is no provision in your committee print which offers any actuarial basis for savings of property damage costs at all.

You proposed, and I don't want to be repetitious, to redistribute them, I think unfairly. I think it is unfair to say to a driver who owns a car 5 years old, that is worth $700 to $900, that he must, depending on the territory where he is, that he must spend $150 to $300 a year to buy deductible collision insurance. You see, that type of driver is not apt to be accident prone. We have many of them in our agency.

We also call their attention to the fact that their car is worth only so much money in 5 years, do they want to spend that percentage of its total value to insure it?

And invariably, they will elect not to carry the collision insurance, but will continue to carry the comprehensive insurance, which is $14 to $18 a year, protecting him against broken windshields, fire, theft

and very often make the comment, "I have never had an accident, except I was rearended or I was struck by somebody coming from a stop sign, in which case I can collect from the other driver."

You are going to take away this right to do that. You are going to say, you can't collect anymore. Either you buy collision insurance, or you risk exposing your car to a total loss.

I think that is unfair to a segment of the economy that can probably least afford to have that kind of choice presented to them.

Senator STEVENS. You make the point that the family driver over age 25 is more likely to suffer greater injury and greater economic loss.

Do you have anything to bear that out?

We have been told statistically that the driver under 25 is a poorer risk. We have never been told, to my knowledge, that the family driver is a greater economic risk in terms of insurance.

Mr. McGOWAN. But you propose, Mr. Chairman, to change the rules.

Under the present rating procedures, you are correct, that the under-25, statistically, the under-25 male, single driver, causes the most accidents——

Senator STEVENS. Wait a minute. I always understood he was a greater economic risk, and for that reason you charged him higher premiums.

Mr. McGOWAN. We weren't worrying about what was happening to him. We were worrying about what he was doing to somebody else.

In other words, you are insuring his liability—you weren't insuring him personally—so he could hit the family driver with the wife and three children, who is making $25,000 a year, and causes a substantial insurance loss.

Now, under your proposed changes, you don't really care what he does to anyone else, because you are not going to have to pay for that out of his insurance policy.

All you are going to have to pay is for his economic loss. The chances are his income level is either low or nonexistent. You are going to have to pay for his hospital and his medical expenses and his rehabilitation.

But the family man, now, with the three children and the wife, with the $25,000 income, who this young man hits, now his insurance company is going to have to pay him and he is the large exposure. They are going to have to pay all his hospital and medical expenses, his income loss, his possible future income loss. So, you are shifting your exposure.

Do you understand what I mean, Mr. Chairman?

Senator STEVENS. I understand, but I would like to see some statistics on that.

It would seem to me that the underage driver has got the longest period of time to receive compensation, if you are looking toward anticipated income loss, or the other comments that you made about wage replacement.

Secondly, it seems to me that the underage driver has probably more exposure to accident than the family man who drives back and forth to work.

Again, I am just speaking from my limited experience. I think the committee would like to have some statistics on this.

What type of accident has this underage driver been involved in?

Has he been hitting cars with families in it, or has he been doing

what a lot of other people think he has been doing: racing with his buddies and running into another car with another underage driver in it?

Mr. McGowan. We will be glad to develop whatever figures we have on that.

From my experience, I will tell you, this young man has been doing both of these things. He has been wrapping his car around trees in collisions with himself, and he has been running across the road in head-on collisions with family men and kids.

Actually, the loss revenue on this under-25 driver in our State is 174 percent of the loss ratio of all drivers in the State.

Senator Stevens. You may have explained something to me, because I notice a great reluctance of those companies who have preferred risks to go along with this type of no-fault insurance. Maybe that is the reason. I have never heard it expressed before.

Mr. McGowan. I have discussed this with some company presidents, and some company actuaries, and they all concede that under a complete no-fault system—and that is why in Massachusetts, incidentally, the bill there was developed by insurance agents originally, and we supported the legislation and naturally spent a lot of time studying it, and some of the reasons we put on the $2,000 limit is because we showed that would take care of 95 percent of all accident victims, and we thought it would tend to mitigate this problem that would be perhaps socially unacceptable to the public that the good driver would acquire the increase in the rates.

Somebody earlier pointed out the experience in Manitoba. Sixty-six percent of all the drivers experienced a rate increase under the pure no-fault system, and 33⅓ percent experienced a rate decrease.

We think basically the same thing will happen here.

Being very sensitive to public attitudes toward insurance anyway, we thought once the public found this out, the image of the insurance industry would be worse than it already is, if that were possible, and this is why we thought it was possible that the $2,000 limit would tend to mitigate that kind of a problem. You don't shift the burden of exposure.

Senator Stevens. Are you telling me you are the ones who are wearing black hats?

I thought it was the lawyers who were wearing black hats now, not the insurance companies.

Mr. McGowan. That is true, Mr. Chairman.

Senator Stevens. Thank you, very much.

We will recess until tomorrow morning at 10 o'clock.

(Whereupon, at 3:20 p.m., the hearing was adjourned, to reconvene at 10 a.m., the following day, Thursday, October 14, 1971.)

(The following information was subsequently received for the record:)

October 20, 1971.

Mr. Robert V. McGowan,
President, National Association of Mutual Insurance Agents, Investment Building, Washington, D.C.

Dear Mr. McGowan: Pursuant to the stipulation regarding supplemental questions at the Commerce Committee hearings on S. 945, I am submitting the following for your attention:

1. The American Insurance Association stated in its testimony (copies of which are available to you) that the Committee version of no-fault would

sult in premium cost reduction of approximately 27 percent. Can you explain the disparity of these figures?

2. Your organization has developed a proposal for no-fault insurance. Can you provide a detailed cost evaluation of this program?

3. Several states have adopted various versions of no-fault insurance. Would you supply for the record your analysis of and reaction to any or all of these programs.

Thank you for your assistance and for your excellent testimony at these hearings.

Yours truly,

HOWARD H. BAKER, Jr.,
U.S. Senator.

NATIONAL ASSOCIATION OF MUTUAL INSURANCE AGENTS,
Washington, D.C., January 18, 1972.

Hon. HOWARD H. BAKER, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAKER: I am writing in response to your letter of October 20, 1971, requesting answers to several questions relating to the October 13 and 14 hearings of the Senate Commerce Committee on Committee Print One of S. 945.

You asked us to comment on the testimony by the American Insurance Association, which stated that the Committee version of no-fault would result in premium cost reductions of approximately 27 percent.

It is our opinion that the American Insurance Association made a number of questionable assumptions to arrive at a 27 percent premium reduction in Bodily Injury:

(1) AIA concluded that the exclusion of pain and suffering from the basic mandatory coverage would reduce costs.

(2) AIA believes that the President's efforts to stabilize the economy in Phase II will control increasing medical costs enough to reduce premium rates on the bodily injury portion of the auto insurance policy.

(3) AIA has said that although the number of claims will increase, the size and frequency of claims will decrease. This is based on the assumption that the automotive industry will build damage-resistant cars in the near future.

In addition, it seems to us that the AIA has failed to consider certain categories:

(1) AIA does not take into account income loss beyond 99 weeks;

(2) AIA does not include survival costs in death benefits;

(3) AIA has not figured income due when a partial injury occurs;

(4) AIA has not considered unlimited medical, rehabilitation, lost wages, and the possibility of malingering.

Also, and perhaps most important, under an unlimited no-fault system, such as proposed by Committee Print One, everyone collects, regardless of who was at fault. Under our present tort system, the person at fault does not collect. Thus, with an unlimited no-fault system, whereby every person collects, the cost will increase substantially.

Conversely, our Association believes the position taken by the American Mutual Insurance Alliance is far more valid. According to the AMIA, the average premium for bodily injury would be 37 percent greater than present rates because of the following:

(1) The number of persons collecting bodily injury benefits under a complete no-fault system will increase;

(2) The average claim size and frequency are questionable to say the least;

(3) Wage replacement is an unknown factor;

(4) The difficulty in filing claims with rehabilitation expenses;

(5) Eliminating fault does not eliminate losses incurred in accidents;

(6) The need for more rating distinctions. (Under the Hart-Magnuson bill, rating would be based on damage the individual vehicle and driver would sustain, rather than the damage he would do to another vehicle.)

You asked us to provide a detailed cost evaluation of our proposed program. Because of the number of assumptions that must be made to reach any meaningful cost figures, and because our program has not been actually implemented in any state, we feel it is impractical to cost out our "Motorists' Insurance-Protec-

tion Plan" at this time. However, because the present limited no-fault system currently operating in Massachusetts is extremely close to our proposed program, perhaps it would be helpful to look at the cost experience so far there. With a system of basic first party benefits, costs reportedly have come down substantially.

In answer to your third question, relating to an analysis of and reaction to any or all of the various state programs of no-fault, I would like to submit for the record a copy of a speech I gave before the Pekin Insurance Company's convention in Florida. As you will note, I covered all of the state programs which became law on January 1, 1972.

I trust that this will give you the additional information that you requested in your letter. If you have any further questions, I will be happy to answer such in writing or talk further with you and your staff.

Again, thank you for your interest. I am looking forward to working further with you in order to accomplish auto insurance reform.

Very truly yours,

ROBERT V. MCGOWAN,
Immediate Past President.

Enclosure.

AN EXPLANATION OF THE VARIOUS "NO-FAULT"-PROPOSALS

by Bob McGowan

An in depth analysis of the history of "No Fault" auto insurance and the various plans adopted and proposed in The Congress and by the states of Florida, Delaware, Illinois and Oregon. A real primer for the local independent agent that can be used as the basis for service club speeches in your own community.

I have been asked to give you a comprehensive analysis of the present status and outlook of the automobile reparation system with particular emphasis on the so-called "no fault" concept. I have long felt that it was unfortunate that the word "no fault" became the widely accepted terminology for a first party benefit system. My concern was based on the deep-rooted philosophy in American Society that there is a difference between right and wrong, and if one man carelessly injures his fellow man by wrongful conduct, the wrongdoer should be liable for the losses he has caused by violating the rule of careful conduct.

All of us are distressed over the poor image the public has of our industry. One cannot help but wonder about the psychological effect on the careful driver, who, while patiently waiting for a red traffic light to turn green, gets resoundingly rear-ended by some character who was busy changing the cassette in his tape deck. I can visualize him painfully extracting himself from the car, nursing his bruised muscles and viewing with dismay his crumpled automobile—his pride and joy, the extension of his personality, his most treasured and essential personal possession. At this point, the malefactor apologizes, expresses the hope that our innocent victim has adequate "no fault" bodily injury and property damage coverage, and blithely goes off about his business. At that time and place, I wonder how much enthusiasm our friend the careful driver will have for the "no fault" concept. However, the term has been given such widespread repetition by the media and politicians that it is here to stay.

Like many other new ideas, the concept of no fault is not at all new. Judge Robert Marx of Cincinnati proposed that auto victims be compensated in the same manner as workers under workmen's compensation way back in 1925 when he participated in a Columbia University study on the subject. This theory cropped up periodically through the years but no one paid much attention to it until 1965 when Professors Keeton and O'Connell wrote a book in which the term "no fault" was born. Essentially, they proposed a first party coverage up to $10,000 and third party liability thereafter.

This book had a tremendous impact because it arrived on the scene just at a time when—public dissatisfaction over the automobile reparation system was beginning to attract the attention of both the news media and the politicians.

The public's displeasure was grounded on three major causes:

First of all was the increase in cost. Actually this fact was blown up out of all proportions by the politicians and the columnists. There were significant increases in rates to be sure but many other elements of cost price structure were escalating even more dramatically and some of these elements were having dis-

astrous effects on the cost of claims. However, the politician apparently did not think attacking these other elements was politcially popular and he zeroed in on insurance costs as did the commentators.

The second cause of public disenchantment was the practice (since pretty much abandoned) of not paying for property damage in cases of clear liability unless the claimant settled his bodily injury claims first or simultaneously. This practice, combined with the custom of many companies to withhold payment of medical expenses until the entire claim was finally settled, laid the foundation for many of the industries' present troubles. Of course, in recent years, most companies adopted the procedure of paying for property damage claims immediately in cases of clear liability and also made advance payments in out of pocket expenses on bodily injury. But it was too late.

Finally, the public was completely frustrated by the long delay in collecting claims because of court congestion and disagreements over contributory and/or comparative negligence. In some cases the difficulties in proving the claim resulted in no recovery at all. The public seemed reasonably willing to accept these delays in the more serious cases of bodily injury, but was not willing to put up with it on the smaller cases. When you consider that 95% of all bodily injury settlements are under $2500 you can readily see that the great majority of claimants were unhappy.

In my experience the two latter causes far out-weighed the question of cost in the public's mind.

Thus, the stage was beautifully set not only for the would-be reformers outside of the industry, but for a rapid escalation of government interference in the insurance business.

Where then do we find ourselves at the present time? Some form of no fault insurance has become law in seven states and is under consideration in 29 others. Furthermore, Senator Hart's "pure" no fault legislation is under serious consideration in the Congress, and the Nixon administration is expected to come out soon with a model bill for the states which will also probably advocate pure no fault.

Massachusetts, which was the first state to adopt the no fault approach, and is the only state in which we have any actual experience, the other statutes do not actually go into effect until January 1, 1972. The Massachusetts law is not pure no fault but is true no fault up to $2000 in medical expense and wage loss because the claimant is not permitted to recover from the other party within those limits, nor is the claimant allowed to sue for pain and suffering unless his medical expenses exceed $500, or unless he suffers loss of sight or hearing, loss of a body member, permanent and serious disfigurement or fracture, or the accident results in death. In this provision lies the secret of the spectacular drop in claim dollars and frequently in Massachusetts so far.

The Massachusetts law, called Personal Injury Protection, was conceived and filed by the insurance producers in that state and was at first opposed by the insurance companies. However, an actuarial study by a major insurance company revealed that a minimum medical expense threshold of $150 before suits for pain and suffering were allowed would have produced an average premium reduction of 22% over the previous five years in Massachusetts. I know of no actual study of the effect of a $500 threshold, but obviously it has to be some thing in excess of 22% and this seems to be borne out so far in actual experience. A review by the Massachusetts Insurance Department of claim files of 61 companies writing 96.4% of the auto business in the state show for the first six months of 1971 compared to the same period in 1970 a reduction of 52.2% in the average cost of claims and a reduction in the number of claims for the same period of 34%. I think you will agree that this is a spectacular result. The drop in claim frequency is actually baffling. The rate structure contemplated a 30% increase in claim frequency which seems logical when you consider almost everyone is going to get paid regardless of fault up to the $2000 limit. The law does exclude benefits for those under the influence of drugs or alcohol, those committing a felony or fleeing lawful apprehension and cases of intentional injury to self or others. No one has come up with any meaningful answer to this phenomenon but it certainly is not making anyone unhappy. Of course, the entire future results of no fault can by no means be predicated on six months experience, but, while the percentage may change, everyone agrees the reduction in claim dollars will still be substantial.

Perhaps even more important from the viewpoint of the political effects in our business is the degree of satisfaction displayed by claimants. Companies,

mindful of the chaotic situation in our state in 1970, have concentrated on speedy claim settlements to such a degree that most claims are being paid within a week after submission of medical bills or evidence of wage loss. This is the greatest public relations vehicle the industry could have and one would hope that they continue to pay claims rapidly.

Other features of the law in addition to medical expenses include reimbursement of 75% of lost wages subject to deduction for benefits received under wage continuation plans or workmen's compensation and also subject to the same $2000 limit. Benefits are also provided for payments to others for service injured parties would have performed for himself or household.

The Massachusetts legislature has just passed a complicated no-fault property damage law which I fear may get an adverse reaction when the public finds out what it has. The law eliminates liability for damage to any Massachusetts registered automobile but retains liability for damage to out-of-state automobiles and property other than motor vehicles. Unlike the no-fault bodily injury statute there is no actuarial basis for reduction of claims on the property damage. The bill merely re-distributes the costs.

The owner of a Massachusetts car now has three options. He may choose to carry protection similar to his present property damage liability and collision insurance except he would always collect from his own company and would have no right to sue a negligent driver. Under a second option he could collect for damage to his car only if it were parked or if there was clear negligence on the part of the other driver such as a rear end collision or if there were a conviction for being under the influence of drugs or alcohol. Under his third option he could never collect for damage to his car but would be protected for liability for damage to property other than motor vehicle. 53% of all registered cars in Massachusetts are 5 years old or older, and when these people find out that they must now carry collision insurance or suffer a total out of pocket loss when involved in an accident where they were not at fault, I suspect the industry's image will suffer another blow. A substantial segment of the industry is opposed to the law, but we will all be blamed for it anyhow.

So much for Massachusetts. The only other statute that contains a true no fault provision is the Florida law. All of the other state laws passed so far retain true liability in full, but provide for an offset of first party benefits against any settlement under tort liability. The weakness in this approach is that costs in these states may well increase over present rates. If this happens the political effect could be adverse.

Like Massachusetts, the Florida law is compulsory, and provides a $500 maximum first party benefits for both medical expense and wages. The plan reimburses for 100% of gross wages. Suit may be entered for pain and suffering if medical expense exceeds $1000, or there is serious injury similar to the provisions of the Massachusetts law. Florida also has no-fault property damage. This is not compulsory and if no insurance is carried a car owner can only recover in tort only if damage to his vehicle exceeds $550.

Delaware's law provides first party benefits up to $10,000 per person or $20,000 per accident, on a compulsory basis. There are no restrictions on suits for pain and suffering.

Illinois provides first party medical expense up to $2000 and wage benefits based on 85% of income subject to a maximum of $150 per week for 52 weeks. There is no restriction on suit except that recovery for pain and suffering is limited to 50% of medical expense if it totals $500 or less and 100% of medical expense if it is over $500. These restrictions do not apply in the event of permanent disability, dismemberment, permanent service disfigurement, or death.

Oregon has a $3000 limit on medical expense and pays loss of wages up to 70% of gross, maximum of $500 a month for 52 weeks. There is no restriction of any kind on suit under tort liability.

Now we come to Senator Hart's proposal in the Congress for a pure no fault reparation plan which would be under the jurisdiction of the Federal government and, if it passes, will almost certainly lead to complete Federal government regulation of auto insurance. When we say "pure" no fault we mean the bill completely eliminates tort liability.

The benefit structure calls for the payment of all expenses without limit for medical and psychiatric treatment, physical and occupational therapy and rehabilitation. For wage loss the plan would pay 100% of gross earnings after taxes, with a maximum $1000 a month, for as long as the insured is disabled. No re-

covery for pain and suffering is provided under the bill but companies would be required to offer such coverage as an extra-cost option as well as wage replacement over the $1000 a month. For an unemployed person or one not regularly employed, or for the self-employed, the plan would pay on the basis of the "anticipated annual income" of such person. The plan would be compulsory.

The bill has a strange quirk. While it prohibits recovery for pain and suffering on the part of the owner of a motor vehicle, or his spouse or dependents, it allows any other passenger carte blanche in general damages as well as first party benefits. This favored group will include persons of considerable wealth who live in large cities and have given up trying to drive or park a car in the metropolis. It will also include the very poor, who cannot afford even the oldest used car, and doubtless some elderly widows who never learned to drive. If a member of this select group is injured by an automobile, regardless of the circumstances, the insurer must pay all wage loss, all medical, and full tort damages for disability, disfigurement and pain. These benefits are "free". No member of this class ever pays a nickel in premiums. The cost, of course, will have to be charged to owners of vehicles.

The bill also requires the insurer to offer coverage for damage to the insured's automobile. This coverage is not compulsory, but the insured is precluded from recovering from any other party.

Speaking of costs, objective analysis indicates that because of unlimited benefits and wage provisions which will encourage malingering the cost will be substantially higher. Actuarial studies by the American Mutual Alliance indicate an increase of between 37% and 100% depending on the optional coverages purchased by the insured.

In addition to total cost, a pure no fault system will have a rather strange effect on distribution of cost. Under the present rating system the premium reflects the risk that the particular driver will cause the loss, that is, that he will be at fault in hitting someone else. Statistically it can be shown that most drivers pay a relatively low rate, as "good risks", and a relatively small group of "bad risk" drivers pay a high rate.

Under a pure no fault system, the rate will have to reflect the risk of sustaining loss, of being struck. Under the present system the worst risk of all possible risks is the 17 or 18 year old male, with no driver training, possessing his own car. He has an inordinately high risk of being to blame for a high speed collision, often with serious and fatal result. Under Senator Hart's approach he becomes a fairly good risk. If he becomes a fatality case, he has no dependents to claim lost support. If injured he will lose no wages. The chief risk is medical expense, and youth tends to heal fast without the lingering complications suffered by the older driver with arithritic joints.

The middle-aged hard working average family man is likely to be a good risk under present classification. Under no fault, he is not as good a risk. His recovery rate from injury is slower. If injured he is likely to demand the best medical attention, at high cost, and sustain near maximum monthly wage loss. Furthermore, his wife and children are apt to be in the car with him, and his company must consider this exposure. One authority in the field, Professor Braniard of the University of Rhode Island has calculated that about two-thirds of the drivers will pay more for no fault coverage and one-third will pay less. This projection has been borne out almost exactly under Manitoba's no fault systems, and the two-thirds whose cost went up were the heretofore good drivers.

I will leave it to you to conjure up a vision of the reaction in this country if the good drivers find that their rate has increased dramatically while the irresponsible driver, the drunken driver, gets a significant decrease in rates. The potential political effects and the effect on our industry's image are somewhat horrendous.

Limited no fault, of course, tends to ameliorate this problem because of the two or three thousand dollar maximum on first party benefits. The higher you raise these limits, the greater impact you have on the rate structure of the good driver.

After listening to all this discordant music, I am sure you must be asking what is the outlook for the future of automobile reparations. Insofar as the Congress is concerned, it is my judgment that we have a better than even chance of defeating Senator Hart's bill.

However, I think we will end up with Federal standards under which the Congress will propose minimum criteria for the states to follow with a grace period of two or three years for the states to act before Federal intervention. Republican members of the Senate who have opposed the Hart concept seem to be moving in that direction, and Senator Hart's supporters are giving some subtle signs that they might compromise on this approach. We would prefer no Federal interference of any kind, but many states are dragging their feet. The only hope to preserve state control of auto insurance, lies in swift and positive action in the 1972 legislatures to pass some form of first party benefits, and if they are going to keep costs from going up there must be some restrictions on tort liability and on general damages. If costs escalate, the public will react violently, and there will be considerable agitation for complete government take-over of the auto insurance business.

In that unpleasant truth, gentlemen, lies a message which comes through loud and clear. All of us must get off our apathy and become heavily involved. Our involvement must include our time as well as our financial resources.

On the degree of your involvement depends the final answer as to whether our way of doing business is to endure.

AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

THURSDAY, OCTOBER 14, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 10:10 a.m., in room 5110, New Senate Office Building, Hon. Philip A. Hart, presiding.

Present: Senators Hart and Baker.

Senator HART. The committee will be in order.

Our first witness as we resume hearings on the redraft of S. 945 will be Mr. Charles Rue of New York. Mr. Rue appears as a spokesman for the Independent Mutual Insurance Agents Association.

STATEMENT OF CHARLES L. RUE, INDEPENDENT MUTUAL INSURANCE AGENTS ASSOCIATION; ACCOMPANIED BY IRVING B. MICKEY, DIRECTOR OF COMMUNICATIONS

Mr. RUE. Good morning, Senators. My name is Charles L. Rue, Jr. I am an independent insurance agent and a chartered property and casualty underwriter from Trenton, N.J. I am testifying today on behalf of the Independent Mutual Insurance Agents Associations of Connecticut, New Jersey, and New York State, which collectively represent 3,500 agencies and 10,000 individual agents in these three States and service approximately 5 million insured persons. I am currently chairman of our three-State national affairs committee.

Accompanying me is Mr. Irving B. Mickey, director of communications at our three-State headquarters in Glenmont, N.Y., and staff representative for both our national affairs and auto study committees.

I will not read all of the statement because quite a bit of it you have heard before.

Senator HART. It was good music then. I am sure it will be today as far as I am concerned. But let me order the statement printed in the record in full. As you proceed, if you wish to add to it, feel free to do so.

Mr. RUE. Our objective today is to reiterate our position that we previously related to you and again to extend our full support of the no-fault concept of accident reparations and to comment upon Committee Print No. 1 of July 1971.

We do not think the present system is working adequately. Conversely, our association, both individually and collectively strongly

supported the concept of first-party, no-fault systems because we are convinced that it will do the job that is not presently being done.

I would like to make these comments on the basic provisions of Committee Print No. 1.

Our comments last May on S. 945 were generally favorable, and we are highly gratified to note that its successor, Committee Print No. 1, either overcomes completely or minimizes most of the few serious objections which we raised toward the original document. Specifically:

1. It virtually eliminates the fault and tort concepts from automobile accident reparations, thereby assuring significant reduction of at least those costs associated with accident investigation and claims litigation.

2. Unlike the extremely narrow plans recently adopted by several States, it provides unlimited compensation for economic loss involving bodily injury and/or death, including the all-important but often-ignored factor of compensation for rehabilitation.

3. It places the automobile insurance much closer to a primary position relative to collateral coverages—and you may recall that this was our principal area of objection to the original S. 945. I will comment on that in just a bit.

4. It has eased, to a considerable degree, the severe restrictions on cancellation and nonrenewal which were established by S. 945. This, too, will be the subject of further comment.

These points, together with the other coverages provided for in Committee Print No. 1, add up to an extremely comprehensive reform measure. Such reservations as we have about the basic portion of the new bill center primarily on two areas.

1. Section 2(15), definition of "net economic loss," places the automobile insurance in a primary coverage position, except for: (a) any public health insurance plan; or (b) any private plan explicitly providing primary benefits under a qualifying no-fault policy.

While this represents a significant improvement over the wording of S. 945—and we are most grateful for this—we are still obligated to repeat our basic contention that automobile insurance should, in theory, pay all costs of automobile accidents and, therefore, should occupy a primary position over all collateral coverages. For a detailed explanation of this position, we again refer you to our testimony of May 14. All exceptions become artificial in the light of this fundamental truth, and any attempt to circumvent it can only result in shifting the economic burden of highway losses to other sectors of the economy.

2. Section 5(g)(1)(B) would permit policy cancellation or nonrenewal for two reasons only: failure to pay premium; or suspension or revocation of license. Both totally logical.

We suggest merely that there is one error of omission which should be given serious consideration—the chronic offender, who is involved in an abnormal number of accidents and creates disproportionately large losses for his insurance company.

Under an open rating system, such as we have in New York State, this is not an insurmountable problem—insurance companies can adjust rates in a manner commensurate with their losses. Under prior approval rating systems, however, where rates tend to be more sensi-

tive to political pressures, losses created by these chronic offenders could pose an unfair burden upon insurers.

As a solution to this problem, we repeat the suggestion which we offered last May: namely, that a statute of limitations of perhaps 3 to 5 years be placed upon these noncancellation and nonrenewal provisions, permitting the insurance company, at the conclusion of such period, to refuse further coverage of the risk upon presentation of reasonable evidence that the insured person is unworthy of such coverage or is in fact to all intents and purposes uninsurable.

Gentlemen, with these exceptions—and neither is decisive in our minds—we view the basic portions (sections 2 through 5, 8, and 9) of Committee Print No. 1 as a model first-party, no-fault accident reparations reform bill. We commend its authors for both their farsightedness and their courage. In the absence of positive, realistic reform action on the part of our respective States in a reasonable period of time—and let's face it, most of our States have been woefully delinquent in this regard—we would readily support the basic portions of this measure, provided that they were offered in the form of a standardized guidelines bill, leaving complete regulatory, implementation and enforcement authority in the hands of the States.

As to the question of State versus Federal control, unfortunately sections 6 and 7 of Committee Print No. 1 raise the same reservations on our part as did the comparable portions of S. 945. Specifically, they very clearly dictate certain critical implementation procedures which we believe should remain under State control.

This does not infer that the uniform statistical plan and the assigned claims plan are not meritorious in their intent; the reasoning behind them is completely sound.

However, both the actuarial operations and the data involved in the former; i.e., the uniform statistical plan, are already generally inherent in State ratemaking procedures, and the information contained in rate filings is a matter of public record.

Similarly—as we pointed out in cross-examination last May—the basic machinery for handling assigned claims already exists in the form of State automobile insurance or assigned risk plans. With relatively modest augmentation and additional expense, we are convinced that these existing facilities could be used to accomplish this mission.

Hence, we believe that Federal involvement in both of these areas is unnecessary from a practical standpoint and, therefore, represents unjustified infringement upon the prerogatives of State regulatory authorities. We simply cannot support these two sections.

For a more elaborate statement of our position with regard to State versus Federal jurisdiction over insurance, we refer you again to our testimony of May 14.

I would like to close our testimony this morning by explaining something which may have created some confusion in the minds of this committee. It has probably become apparent to you that our position on accident reparations reform differs somewhat from that adopted by our own national organization, the National Association of Mutual Insurance Agents. Specifically, we advocate a pure no-fault approach to the issue, while NAMIA supports a first-party payment system which retains fault and tort concepts and relies heavily upon arbitration machinery for its implementation.

To avoid any misinterpretation of our motives, we wish to make it abundantly clear that we do not in any way oppose the NAMIA position. Our ultimate objectives are identical—rapid, equitable compensation of accident victims—and both approaches, through their reliance upon first-party payments, achieve this goal.

We simply believe, at this stage of planning, that the pure no-fault approach, by eliminating the costs inherent in accident investigation and claims litigation, offers the most economical route to the desired goal.

If, however, the reform measures which ultimately evolve at either State or national level should take the form of the NAMIA plan or similar first-party systems, then we shall support that approach wholeheartedly and a reasonable evolutionary step toward our own no-fault objective.

Gentlemen, with the exception of these few areas of disagreement, we view Committee Print No. 1 as a masterpiece of reform legislation to which our own States might well pay heed. We wish you well with it, we hope that our suggestions will be taken under advisement, and if we can be of any further service, please feel free to call upon us.

We thank you for this opportunity to appear before you this morning.

Senator HART. Thank you, Mr. Rue. You have been helpful previously and you have again been helpful. It is my impression that as further—and we hope reasonably objective—attention is given to the study there will develop increasing support for the legislation to which you have addressed yourself and to which you have very clearly expressed some reservations while endorsing its major features.

May I ask if Mr. Mickey had anything he cared to add?

Mr. MICKEY. No, sir; I do not at this time.

Senator HART. Mr. Sutcliffe.

Mr. SUTCLIFFE. Mr. Rue, just a few questions. You discuss the present status of the primary-secondary issue in the committee print and suggest that there are two areas, namely, a public health plan or upon election of a private insurance plan, where automobile insurance can become secondary. How would you take into account the fact that some collateral benefits are provided to individuals in this country on a basis other than cash payout? In other words, there are fringe benefits in employment contracts and so forth. So if you make automobile primary, it is very difficult to avoid a duplication of payment. How do you do this without writing the contract so that it specifically makes one primary or secondary?

Mr. RUE. First of all, if you want to make that kind of division, in the circumstance to which you speak, and incidentally, automobile insurance may one day be a fringe benefit as well, that is a very real possibility, both are actuarially computed. A premium is paid for both coverages. So it would seem that duplication, if indeed it is, and oftentimes it is supplemental rather than duplication per se, is a matter of individual choice.

This is particularly true with the individual who carries his own personal hospitalization as well as his automobile insurance as well as other supplementary coverages. It seems to me if he elects to pay a premium for each of these coverages, then he should be entitled to recover in the event of a loss that touches any of these coverages.

Mr. SUTCLIFFE. It is not in the context of where he is paying a premium in the normal sense. Let me use a specific illustration A person is a member of a labor union which has negotiated a contract providing for certain health care and wage replacement coverages. Nothing goes out of the union man's pocket to pay for that particular coverage. He is then placed under a mandatory first-party insurance plan by this bill. If the benefits of that fringe contract are to accrue to him, he would have to have some way to set off those benefits against his compulsory auto plan. Otherwise his fringe benefit is reduced when his union contract is given a secondary status to his auto insurance benefits in the automobile environment.

What I am asking you is:

How do you take account of that particular problem in a bill which you are trying to establish on a national basis and still give some consumers the benefit of something they have at this point in time?

Mr. RUE. Of course. No. 1, the automobile contract is limited to the automobile. Theoretically under the proposal we have here he should not need any collateral coverage beyond that which he would get as part of his automobile policy. It seems to me if that coverage is primary, as we believe it should be, it would not in the normal course of events affect his personal insurance.

Second, his personal or fringe benefit covers far more than just automobile per se; the individual accident nonautomobile and perhaps more important the sickness provisions.

Mr. SUTCLIFFE. You see no reason for giving that particular individual who has fringe benefits a cost break on his auto insurance mandatory policy?

Mr. RUE. No. I think his automobile insurance, as we have said repeatedly, should be primary. If, in fact, there is an adjustment, perhaps it should be on the other side of the coin.

Mr. SUTCLIFFE. You mentioned that the State regulatory authorities at the present time accumulate much of the information which the committee print would require the Secretary of the Department of Transportation or whatever other department to accumulate. What mechanism is there on a national basis for having the State regulatory authorities disseminate, for example, consumer cost information so that the consumer has the ability to shop for price when choosing his insurance carrier?

Mr. RUE. So far as I know, there is no present mechanism. The information is available. If one were curious enough you could go to a State insurance department and see the actual filings.

Mr. SUTCLIFFE. Is this a rather complicated thing for the individual consumer to understand?

Mr. RUE. Yes, it is; because he has to interpret what he is reading.

Mr. SUTCLIFFE. Could the insurance departments, could each of the insurance departments put it into a usable consumer form?

Mr. RUE. Yes, they have it all available. I think, if the uniform plan was established, then it would be a matter literally of filling in blanks to the amounts. I have reservations personally concerning the value of publishing this information. No. 1, I am not so sure that people are going to be as interested as I think you may anticipate they are. The papers are full of this kind of information in years before the crisis. Many companies advertised the so-called low cost

Mr. SUTCLIFFE. Is the problem that the low cost is not necessarily an indication of the quality of the product? In other words, you need information as to both the quality of the insurance company as well as the price of the product that they are selling—quality measured in terms of claims payment?

Mr. RUE. It is very difficult to measure. I am sure he does assume that, if he is licensed to operate in a given State, it is in fact a quality company. The record shows that once in a while there are ones that are not of such great quality. Generally they are the ones that are selling their product at the lowest price; either they are trying to buy business and cannot make it or they are operating below the level that they should be for any given number of reasons.

I think there has to be and I think there will always be differences, simply because there are differences in companies and their modes of operation. Stock companies, if we can take the old cliches, that pay the stockholders, the mutual company that pays the policyholder, the so-called direct-writing companies who do not have to pay anybody—I do not think that is necessarily bad. People can find this out very readily. We get calls every single day of the week in our office from people who are doing more or less some shopping. They have gotten their renewal policy, the premium is up, it is more than they budgeted.

What do they do? They go to the yellow pages and they call the companies that they have seen advertised or whose ad sounds attractive to them. I have actually seen people who had quotations from 12 to 15 different sources. Then, after they had all this information, they really did not know what to do with it. They could not gage quality. They knew the XYZ company because they had seen the ad on the golf show on television. They knew the ABC company because they advertise regularly in the paper. What did they know? They only knew a name.

Mr. SUTCLIFFE. Is claims payment information a measure of quality to any extent?

Mr. RUE. It probably is, but I am not sure how it is gaged. There is all sorts of claim information available. We hear as agents as a feedback, because John Doe has a claim and he immediately tells all his friends down at the shop what happened, and he immediately gets all kinds of advice as to No. 1, what he should do, No. 2, what John Doe's company did, and how it should be handled.

He measures the performance that he receives from his insurance company based upon the hearsay, and it is only hearsay, of what he heard in the shop.

Now, if you get in there quick and settle the claim, you are great, you become a hero in the shop. If there is a problem, there is always somebody else either at work or in his association who has had the same experience but got better results. There is no real official claim experience available. It is purely a matter of hearsay, and often inaccurate, because no one wants to own up to the fact that he did not get enough in settlement. Even if they were shortchanged, they are not likely to admit it. So the information that is available is purely hearsay.

Mr. SUTCLIFFE. You mentioned potential for cost savings under the committee print. Yesterday we received testimony from certain insurance associations based upon actuarial studies that claimed cost increases. One of the assumptions that was made in those cost studies was

that there would be no reduction in acquisition cost. I recall at the last meeting you suggested that it would be possible, perhaps, to maintain the same margin of profit in your insurance agency operations by selling more units at lower cost because of the improvements or lowering of overhead under a first-party system. Is it realistic to expect that there would be cost savings in the acquisition cost area under a bill such as this without any determination of fault required?

Mr. RUE. That might depend on whose side you are on. But I will guarantee you that the first cost savings in the whole program will come in the acquisition cost. Historically, when there was a need for cost savings and a reduction in the expense factor, the agent's commission has been item A and subject 1 for consideration.

Mr. SUTCLIFFE. But this is something that the insurance associations have not been considering in their cost estimates; is that correct?

Mr. RUE. I do not know what they have been considering, frankly. I do not know their statistical base. But I can guarantee you that that will be the first thing that will happen. Of course, as you say, we did discuss this before, and I think it is entirely possible to operate on a lesser amount, again depending on what that lesser amount is, and still maintain a reasonable operational margin.

I think this kind of program is going to be helpful to my people and to my operation in terms of less time spent on claims problems. Seemingly, it has to be that way. If that is true, then I would be willing to talk about the acquisition cost. But it will be item A, I guarantee you.

Mr. SUTCLIFFE. That is all, Senator.

Senator HART. Thank you very much, gentlemen.

Mr. RUE. Thank you, sir.

(The statement follows:)

STATEMENT OF CHARLES L. RUE, NATIONAL AFFAIRS COMMITTEE, INDEPENDENT MUTUAL INSURANCE AGENTS ASSOCIATIONS OF NEW YORK, NEW JERSEY AND CONNECTICUT

INTRODUCTION

My name is Charles L. Rue. I am an independent insurance agent and a Chartered Property and Casualty Underwriter from Trenton, New Jersey. I am testifying today on behalf of the Independent Mutual Insurance Agents Associations of Connecticut, New Jersey and New York State, which, collectively, represent 3,500 agencies and 10,000 individual agents in these three states and service approximately 5,000,000 insured persons. I am currently Chairman of our three-state National Affairs Committee.

Accompanying me is Mr. Irving B. Mickey, Director of Communications at our three-state headquarters in Glenmont, New York, and staff representative for both our National Affairs and Auto Study Committees.

OBJECTIVES

The subject of first-party, no-fault automobile accident reparations is beginning to resemble the weather—everybody is talking about it, but, except for a few feeble experiments, nobody seems willing or able to do much about it.

Unlike the weather, however, if enough people keep talking about automobile accident reparations reform, somebody eventually is going to do something about it, because this is becoming virtually a public mandate.

And that's precisely why we're here today—to keep talking, in the hope that, each time we do, our arguments will fall upon a few more receptive ears and more credence will be given to people like yourselves, who see the shortcomings in our present reparations system and are earnestly attempting to rectify them.

More specifically, our objectives in testifying are to restate our full support of the no-fault concept of accident reparations and to comment upon Committee Print No. 1 of July, 1971.

BASIC POSITION ON FIRST PARTY REPARATIONS

Our basic position on accident reparations remains unchanged since our last appearance before this committee on May 14, 1971, and can be summarized as follows:

1. In our opinion, the present tort (or adversary) system of accident reparations is cumbersome, costly, painfully slow, leaves many relatively innocent accident victims uncompensated, clogs our court system, is predicated upon a factor (fault) which is frequently impossible to prove and, despite its theoretically punitive nature, has really done nothing to deter the chronic offender or reduce our burgeoning highway accident rate.

We can provide statistics galore to substantiate these charges and still others, but we won't take the time to do so, because you gentlemen have seen the same statitics. Simply stated, the system has proved itself completely out of step with present day needs and deserves the same fate as the dinosaur—extinction!

2. Conversely, our associations, both individually and collectively, *strongly* support the concept of a first-party, no-fault reparations system, because we are convinced that it will greatly speed claim settlements, lead to more equitable settlements for *all* accident victims, reduce at least those costs associated with claims investigation and litigation, and materially relieve court congestion. Needless to say, the first two of these—rapid, equitable claim settlements—outweigh all other considerations and should be the primary objectives of any reparations reform program.

For a more detailed discussion of these points, we refer you to our testimony of May 14.

COMMENTS ON BASIC PROVISIONS OF COMMITTEE PRINT NO. 1

As you may recall, our comments last May on Senate Bill 945 were generally favorable, and we are highly gratified to note that its successor, Committee Print No. 1, either overcomes completely or minimizes most of the few serious objections which we raised toward the original document. Specifically:

1. It virtually eliminates the fault and tort concepts from automobile accident reparations, thereby assuring significant reduction of at least those costs associated with accident investigation and claims litigation.

2. Unlike the extremely narrow plans recently adopted by several states, it provides unlimited compensation for economic loss involving bodily injury and/or death, including the all-important but often ignored factor of compensation for rehabilitation.

3. It places the automobile insurance much closer to a primary position relative to collateral coverages—and you may recall that this was our principal area of objection to the original Senate Bill 945. We shall comment further on this point in a moment.

4. It has eased, to a considerable degree, the severe restrictions on cancellation and non-renewal which were established by Senate Bill 945. This, too, will be the subject of further comment.

These points, together with the other coverages provided for in Committee Print No. 1, add up to an extremely comprehensive reform measure. Such reservations as we have about the basic portion of the new bill center primarily on two areas.

1. Section 2(15), definition of "net economic loss," places the automobile insurance in a primary coverage position, except for: (A) any public health insurance plan; or (B) any private plan explictly providing primary benefits under a qualifying no-fault policy.

While this represents a significant improvement over the wording of Senate Bill 945—and we are most grateful for this—we are still obligated to repeat our basic contention that automobile insurance should, in theory, pay *all* costs of automobile accidents and, therefore, should occupy a primary position over *all* collateral coverages (for a detailed explanation of this position, we again refer you to our testimony of May 14). All exceptions become artificial in the light of this fundamental truth, and any attempt to circum-

vent it can only result in shifting the economic burden of highway losses to other sectors of the economy.

2. Section 5(g)(1)(B) would permit policy cancellation or non-renewal for two reasons only: failure to pay premium; or suspension or revocation of license. Both totally logical.

We suggest merely that there is one error of omission which should be given serious consideration—the chronic offender, who is involved in an abnormal number of accidents and creates disproportionately large losses for his insurance company.

Under an open rating system, such as we have in New York State, this is not an insurmountable problem—insurance companies can adjust rates in a manner commensurate with their losses. Under prior approval rating systems, however, where rates tend to be more sensitive to political pressures, losses created by these chronic offenders could pose an unfair burden upon insurers.

As a solution to this problem, we repeat the suggestion which we offered last May—namely, that a statute of limitations of perhaps three to five years be placed upon these non-cancellation and non-renewal provisions, permitting the insurance company, at the conclusion of such period, to refuse further coverage of the risk upon presentation of reasonable evidence that the insured person is unworthy of such coverage or is, in fact, to all intents and purposes uninsurable.

Gentlemen, with these exceptions—and neither is decisive in our minds—we view the basic portions (Sections 2 through 5, 8 and 9) of Committee Print No. 1 as a model first-party, no-fault accident reparations reform bill. We commend its authors for both their farsightedness and their courage. In the absence of positive, realistic reform action on the part of our respective states in a reasonable period of time—and let's face it, most of our states have been woefully delinquent in this regard—we would readily support the basic portions of this measure, provided they were offered in the form of a standardized guidelines bill, leaving complete regulatory, implementation and enforcement authority in the hands of the states.

STATE V. FEDERAL CONTROL

Unfortunately, Sections 6 and 7 of Committee Print No. 1 raise the same reservations on our part as did the comparable portions of Senate Bill 945. Specifically, they very clearly dictate certain critical implementing procedures which we believe should remain under state control.

This does *not* infer that the Uniform Statistical Plan and the Assigned Claims Plan are not meritorious in their intent—the reasoning behind them is completely sound.

However, both the actuarial operations and the data involved in the former (Uniform Statistical Plan) are already generally inherent in state rate-making procedures, and the information contained in rate filings is a matter of public record.

Similarly—as we pointed out in cross-examination last May—the basic machinery for handling assigned claims already exists in the form of state Automobile Insurance or Assigned Risk Plans. With relatively modest augmentation and additional expense, we are convinced that these existing facilities could be used to accomplish this mission.

Hence, we believe that federal involvement in both of these areas is unnecessary from a practical standpoint and, therefore, represents unjustified infringement upon the prerogatives of state regulatory authorities. We simply cannot support these two sections.

For a more elaborate statement of our position with regard to state versus federal jurisdiction over insurance, we refer you again to our testimony of May 14.

POSITION RELATIVE TO NAMIA

We want to close our testimony by explaining something which may have created some confusion in the minds of this committee. It has probably become apparent to you that our position on accident reparations reform differs somewhat from that adopted by our own national organization, the National Association of Mutual Insurance Agents. Specifically, we advocate a pure no fault approach to the issue, while NAMIA supports a first-party payment system which retains

the fault and tort concepts and relies heavily upon arbitration machinery for its implementation.

To avoid any misinterpretation of our motives, we wish to make it abundantly clear that we do *not*, in any way, oppose the NAMIA position. Our ultimate objectives are identical—rapid, equitable compensation of accident victims—and both approaches, through their reliance upon first-party payments, achieve this goal.

We simply believe, at this stage of planning, that the pure no-fault approach, by eliminating the costs inherent in accident investigation and claims litigation, offers the most economical route to the desired goal.

If, however, the reform measures which ultimately evolve at either state or national level take the form of the NAMIA plan or similar first-party systems, then we shall support that approach wholeheartedly as a reasonable evolutionary step toward our own no-fault objective.

Gentleman, with the exception of these few areas of disagreement, we view Committee Print No. 1 as a masterpiece of reform legislation to which our own states might well pay heed. We wish you well with it, we hope that our suggestions will be taken under advisement, and if we can be of any further service, please feel free to call upon us.

Senator HART. The committee welcomes again the vice president, government affairs, of the American Insurance Association, Mr. Melvin Stark.

STATEMENT OF MELVIN L. STARK, VICE PRESIDENT, GOVERNMENT AFFAIRS, AMERICAN INSURANCE ASSOCIATION; ACCOMPANIED BY LESLIE CHEEK, MANAGER, WASHINGTON OFFICE

Mr. STARK. Senator Hart, I have with me my associate, Mr. Leslie Cheek, who is the manager of our Washington office, and who will be my technical consultant.

Senator HART. I think this is the first time you have been here. You are welcome.

Mr. CHEEK. Yes, sir. Thank you.

Mr. STARK. We are pleased to have the opportunity to appear before you to speak to Committee Print No. 1 of S. 945.

We have attached to the statement submitted to you an appendix of three or four pages containing some cost information and some suggested technical amendments to the present version of the bill.

I won't get into that as part of my presentation, and I think perhaps the value of our appearance here might lie more in any questions you might ask.

I will abbreviate the statement, which in itself, is not too long.

Senator HART. In any event, it will be printed in the record.

Mr. STARK. Mr. Chairman and members of the committee. I am Melvin L. Stark, vice president, government affairs, of the American Insurance Association, whose membership of property and casualty insurance companies writes approximately one-third of the Nation's automobile insurance.

When he appeared before you to discuss the original S. 945 last May, our president, T. Lawrence Jones, said:

> In our judgment, the great debate has ended. It can no longer be seriously contended that the auto tort liability system must be maintained. As we see it, the area of discussion has narrowed. There are two issues before us. One, should we seek change through State or Federal action? Two how extensive should the change be to meet the pressing needs of the public?

Our answers to these two questions remain unchanged. We continue to believe that auto accident reparations reform should be accomplished on a State-by-State basis, and that only a complete no-fault system will achieve the reform demanded by the American public. This past year we have diligently worked to accomplish these objectives.

It now seems clear and unmistakable that no-fault auto insurance is inevitable, that it will be enacted in one form or another by one body or another throughout the country.

Six months have now passed since the Nixon administration presented the conclusive findings of the Department of Transportation's two-and-a-half-year study of auto accident compensation systems, which established sound principles for no-fault reform. In so doing, the administration clearly advocated that reform be accomplished on a State-by-State basis.

That, too, has been the position of our association. But we must clearly admit surprise at both the number and variety of people and organizations who have been calling for reform by Federal legislation.

They have, in effect, been answering the Nixon administration's position of "let the States do the job," with the retort, "The States can't or won't, they are too dominated by opponents of reform, it will take too long," and the like.

At this point in time, our association must also confess disappointment in the legislative scorecard, the achievement of reform at the State level in the last 6 months. Some measures have been passed superimposing medical and wage loss benefits on the existing fault system, but with the exception of Florida, these cannot be called pieces of meaningful reform.

Massachusetts enacted a limited no-fault law in 1970, under which savings have exceeded the initial estimates of its sponsors and supporters.

If the States do not enact substantial no-fault reform bills, we believe they will substantiate the arguments of those who say that the States are not apt to act swiftly and decisively. We believe that the States want to design their own auto insurance laws. But they must show that they are willing to come to grips with the problem. Otherwise, as Secretary of Transportation, John Volpe puts it, "If they cannot or will not, Washington has a call for preemption."

All this could be chalked up to political or governmental infighting, if it were not for the fact that auto insurance reform touches so many millions of people in so many ways, and that it offers correction of recognized ills and satisfaction of public complaint.

As to the extent of reform, we continue to believe that only a complete no-fault system, replacing the current auto tort liability system in toto, will achieve maximum reform. Thus, we are in accord with the basic concepts underlying Committee Print No. 1 of S. 945. We can, and will, support at the State level legislation which closely follows the committee print subject to certain amendments we suggest in appendix A of this statement.

We would add further, that we would accept such a measure in terms of model legislation if it were passed by the Congress as standards or criteria for State action.

The staff analysis of the committee print, issued in July of this year, accurately states that the print would create an essentially restructured automobile insurance reparations system. Tort liability arising out of automobile accidents would be eliminated, and insurance benefits to pay for losses arising out of automobile accidents would be paid without regard to fault.

We vigorously endorse this alteration of the original S. 945, because it eliminates all vestiges of a system that spends one dollar of every three paid simply to determine which party to an auto accident is legally liable and whose insurance company should pay.

We would now like to address ourselves to an analysis of the no-fault program envisioned in Committee Print 1 of S. 945.

COST SAVINGS

While the original S. 945 would have resulted in some overall cost savings to automobile insurance consumers, the savings under Committee Print No. 1 would be considerable.

We estimate, on the basis of a cost study made in connection with our original no-fault auto insurance plan, that the average savings from premiums which would otherwise be considered adequate under the present system for bodily injury liability with limits of $10,000/$20,000 and uninsured motorist insurance would range from 25 to 30 percent.

Additional savings will be possible under the property damage portion of the committee print, but these will vary according to the deductible and the coverage modifications the insured chooses.

I might add that we have reinforced our comments with respect to the 25–30 percent range of savings in the exhibit attached to the statement, appendix A.

Taking loss costs under the present system as 100 percent, we have estimated the loss costs under the no-fault system as percentages of the existing system's loss costs. The general calculations for this estimate may be found in appendix A.

Now, I would like to address myelf to pain and suffering. The committee print eliminates, for all but a tiny number of cases, intangible damages, or "pain and suffering," as a compensable loss under the basic no-fault auto insurance policy.

Recognizing, however, that some motorists may wish to place monetary values on dignitary harms incurred in automobile accidents, the print mandates the provision by insurers of optional, first-party contracts for pain and suffering. We endorse these changes with a single major reservation, and are prepared to offer our estimate of the cost of an optional first-party pain and suffering contract.

First, however, we would like to make some observations about "pain and suffering."

Opponents of no-fault auto insurance have rallied around this element of the current tort liability system, arguing, in effect, that while all other elements of loss can, and indeed should, be compensated on a first-party basis, "pain and suffering" should somehow be left to the adversary system.

We submit that there is no logical basis for this argument.

Opponents of no-fault allege that the elimination of "pain and suffering" will "reduce benefits" to auto accident victims. What benefits? Which accident victims?

According to the Department of Transportation study, table 13, page 41, 92.4 percent of all paid claimants under the tort system have no permanent injury at all. Their average economic loss is $333, but their average tort recovery is $830, almost 2½ times their actual losses.

The elimination of "pain and suffering" in these cases would not "reduce benefits," but would take the profit element out of compensation of accident victims whose injuries are insignificant, or whose economic loss is slight.

It is well known today that pain and suffering awards are the major factor in the rising cost of auto insurance today. Auto insurance costs, in theory, should rise in direct proportion to increases in the costs of such things as medical and hospital care.

In fact, however, auto insurance costs rise geometrically, because, in the vast number of cases where economic loss is slight, it is almost always cheaper, despite the obvious waste, for an insurer to multiply the actual loss by a "pain and suffering factor" and pay the claim at up to eight times its actual value, rather than to contest it in the courts.

We are confident that not even the stanchest defenders of the current system would argue in favor of continuing this blatant misallocation of resources.

What about the seriously injured victims? First of all, again according to the DOT report, page 35, 55 percent of all those killed or seriously injured in auto accidents derive no benefit whatsoever from the tort liability system.

For the 45 percent who do benefit from the system, their recovery under it is inversely proportional to the severity of their losses. For example, when the economic losses alone exceed $25,000, even successful tort claimants average a net recovery of only one-third of these losses. Recovery for pain and suffering is nonexistent in most of these cases, so eliminating it will in no way "reduce benefits."

The elimination of the wasteful and distorting element of "pain and suffering" under the basic no-fault system will make possible the compensation of all economic losses of all accident victims at reduced cost to the American motoring public.

We believe that the only "victims" of "reduced benefits" under the no-fault system proposed in the committee print are those crying loudest for the maintenance of "pain and suffering"—members of the bar who draw their fees from these awards.

In this connection, we would suggest that if the bar is sincere in its protestations that "pain and suffering" should be preserved for the sake of auto accident victims, rather than for the benefit of the legal profession, then it cannot oppose this legislation on this point. The committee print would make optional first-party pain and suffering contracts available to all motorists.

We have long believed that however real the pain experienced by auto accident victims may be, dollar values cannot be objectively assigned to it and dollar awards cannot ease it. But we are willing

to offer first-party contracts for pain and suffering that will provide for a scale of benefits above actual economic loss, either as a percentage of medical expenses or on the basis of fixed amounts for each type of injury.

We believe, however, that the demand for this coverage will be small; that there is no market for pain; and that few motorists will want to pay in advance for benefits for suffering they hope never to incur.

In our 1968 study, we recommended that a no-fault insurance system "provide extra payment to persons who sustain permanent impairment or disfigurement in automobile accidents to compensate them for such injuries which cannot be measured by economic loss."

We suggested that benefits vary according to the degree of impairment or disfigurement, but be limited to 50 percent of the amount payable to the claimant for his hospital and medical expense.

We estimated that this protection could be provided at a cost of 8.2 percent of the current premium charged for bodily injury insurance of $10,000/$20,000 and uninsured motorists coverage.

Obviously, if benefits under contracts of this sort were increased, or the scope of coverage was broadened to include the less seriously injured, the cost would increase greatly. The important point, however, is that contracts of this sort can be accurately priced by actuaries, and thus can be tailored to meet individual requirements.

Our reservations about the committee print's provisions in this area relate to the fact that section 2(17) defines "intangible damage" as being "measured by applicable State tort law which would have been applicable" but for the tort exemption in section 3.

To our mind, it is unsound to require companies to offer contracts in which their liability for pain and suffering is open ended, subject only to the vague standards of "applicable State tort law" and the whims of a jury. Contracts of this sort would be an open invitation to litigation and would preserve the evils that no-fault would otherwise eliminate.

We cannot overemphasize the importance in any first-party pain and suffering contract of making the insurer's liability explicit and easy recognizable by the insured.

EXTENT OF NO-FAULT BENEFITS

The scope of benefits provided under the basic no-fault policy has been greatly expanded in Committee Print No. 1, and we applaud virtually all of these additions. We offer some technical revisions in appendix A.

We particularly wish to endorse the expansion of S. 945 to include vehicular damage within the no-fault ambit of the bill. The elimination of the tort system in this important area of auto accident claims will result in significant savings, because it will no longer be necessary to investigate accidents to determine legal liability for vehicular damage.

Furthermore, insurers will be able to achieve a high degree of cost manageability and rating sophistication in connection with insured vehicles' design and repairability characteristics.

I would like to condense my statement in speaking of the [illegible] ance benefits as primary. I think the AIA has made its position clear as to having auto insurance primary. There are a variety of [illegible]

Perhaps if the committee staff, or the Senator wishes to question us on it, we can go into it in detail.

I come now to the conclusion. Rejection and nonrenewal. We speak to this because that section of the proposal places severe prohibitions on insurers with respect to rejecting an applicant for insurance and the right not to renew a policy.

The only exceptions are where the domiciliary State insurance supervisory authority finds that the company's solvency would be impaired by writing additional policies, or where the company ceases to write all lines of business in a given jurisdiction. These exceptions are not available in the case of policy renewals.

These provisions might be acceptable if incompetent and reckless drivers were removed from the road, but in real life this does not happen. In our judgment, these provisions are far too severe, and should be eliminated. Under a no-fault auto insurance system, companies should be able to underwrite all risks without compulsion, because they will be able to measure the loss potential of each driver, an impossible task under the third-party liability system.

The industry recognizes its obligation to provide completely adequate coverage to all licensed motorists who cannot be readily insured in a voluntary market. But the rejection and nonrenewal provisions of S. 945 are not the way to assure that each licensed motorist will be afforded adequate insurance coverage.

POLICY FORMS, RATING CLASSIFICATIONS AND TERRITORIES, STATISTICAL PLANS

The committee print bestows on an unspecified "secretary" at the governmental executive level, enormous powers with respect to policy forms, classes of risks, and rating territories.

It also gives this secretary extensive control over the kinds of statistics companies can compile and requires insurers to submit detailed reports whenever the secretary calls for them.

Clearly, these provisions would be inappropriate if the bill were to be used as a model for State legislation. However, looking at the bill strictly as a Federal no-fault auto insurance reform measure, we believe these provisions should be eliminated, because they would subject insurance companies to both Federal and State regulation of policy forms, rating classifications, and territories and premium rates charged to policyholders.

From any standpoint, this confusing overlapping of regulatory authority is unsound.

This concludes our formal presentation, Mr. Chairman. We would be happy to answer the committee's questions.

Senator HART. Mr. Stark, thank you for repeating your support of the concept contained in this bill.

I would appreciate an exchange between you and Mr. Sutcliffe to develop more fully the element of cost and cost savings, but in your prepared remarks you emphasize, I think, something that is obscured when we get to thrashing around about cost.

The policyholder clearly is concerned about the cost, and if you stop him on the street and ask him what he thought about automobile insurance, that would be his first point of criticism and point for his openmindedness to another system.

But you remind us that as far as bodily injury cases are concerned, the real deficiency in the existing system is not so much the cost, as it is either the uncompensated or the disproportionately compensated victim of an accident.

When you look beyond the premium bill, here is where you see the really unsatisfactory aspect of the existing system. I need not repeat it, for you do it very well, and in very great scope here when you make the point that the thing is out of whack. The average economic loss runs $333 for 92½ percent of all paid claimants under the tort system, none with permanent injury, with an average tort recovery of $830, two and a half times actual losses.

As you put it later, that is a blatant misallocation of resources.

Second, before getting into the dollars and cents discussion, I think you speak a wise cautionary voice to all of those concerned about the Federal-State issue. You do counsel, not shyly, but soundly, that as time passes and legislative reform at the State level is either cosmetic or zero, that you buttress the argument of those who say that the States can't or won't, or that it will take too long.

I would offer for the record a letter that Larry Jones sent to the *New York Times* just a few days ago, commenting on a *Times* press report a few days before that which also I would suggest be added to the record, along with a similar press report from the *Long Island Press*.

In the letter to the *Times*, Mr. Jones is reaffirming your association's support of State reform, but cautions that that effort is being jeopardized by the kind of behavior that the press articles report occurring when a State legislative committee took to the field to hear testimony with respect to automobile insurance reform.

Too often our predictions are proved slightly wrong in the passage of time, but I am sure Mr. Jones' prediction is absolutely right, to wit, too much time continues to pass without genuine reform at the State level.

The demand for automobile insurance legislation at the Federal level will become overwhelming, and those who think it wrong will have only themselves to blame if in the passage of that time, they were in the position to persuade State action, but did not.

(The letter and press reports follow:)

AMERICAN INSURANCE ASSOCIATION,
New York, N.Y., September 28, 1971.

Hon. PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: Enclosed you will find a copy of accounts in the *New York Times* and the *Long Island Press* of a hearing on no-fault auto insurance reform held earlier this month by the New York State Assembly Insurance Committee.

These accounts, supplemented by a first-hand report by one of our staff detailing hostile badgering by members of the Committee, prompted us to write the enclosed letter to the *Times*.

We thought that this development might be of interest to you.

Sincerely,

T. LAWRENCE JONES,
President.

Enclosure.

[From the Long Island Press, Sept. 9, 1971]

BAD DAY FOR NO FAULT INSURANCE

Advocates of no fault insurance were given a rough ride yesterday during a State Assembly Insurance Committee hearing on proposed changes in auto coverage laws.

Standing on their home turf at the Queens County Bar Association building, various lawyers issued expected attacks against no-fault. The asperity of the attacks combined with the sharpness of questioning by the assemblymen placed no-fault advocates on the defensive.

* * * * * * *

Bess Myerson, Commissioner of the New York City Department of Consumer Affairs, was all but chased from the podium when the committee realized her personal expertise in the field of insurance was very limited.

Standing tall and composed at the beginning of her speech calling for no-fault insurance, the former Miss America was later visibly shaken when told by one assemblyman to sit down "and let people who know what they are talking about—who have something to say—speak."

* * * * * * *

The committee's critical view of no-fault centered on its failure to provide for compensation for "pain and suffering."

No-fault insurance primarily eliminates the need to find one party in an accident to be "at fault" in order for compensation for injuries or damages to be paid. Under existing no-fault proposals, however, payments would be limited to medical and other costs, such as loss of income.

Kew Gardens Hills Assemblyman Emanuel Gold and others emphasized that a non-working individual, such as a retiree, would not be compensated for the discomfort and suffering resulting, for example, from loss of a limb.

Committee Chairman Alfred D. Lerner of Jamaica questioned the claim of no-fault supporters that such a plan would result in major premium reductions. He also said he disapproved of the loss of a person's right to sue the other party in an accident.

While Lerner placed this latter concern on the level of legal rights and established jurisprudence, other critics of no-fault seemed concerned over the loss of the right to punish the offending auto operator.

* * * * * * *

A special assistant to Gov. Rockefeller, Lewis Bart Stone of the State's Consumer Protection Board, said that because of the need for arguing "fault" more than 50 percent of auto insurance premiums are now used to cover administrative costs, compared to only 5 percent under no-fault systems such as Blue Cross.

Stone said that under the present system many accident victims are denied any compensation for losses. He said under no-fault, all injured would have out-of-pocket costs covered. He estimated that with the administrative cost savings, and the ending of payments for "pain and suffering," premiums would drop by an average of $100.

* * * * * * *

Stone incurred the wrath of Seymour L. Colin, president of the State Trial Lawyers Association, by suggesting that "pain and suffering" payments were really payments to cover attorney fees. Colin termed Stone's remarks "offensive" and insisted lawyers were fighting no-fault in the interest of the public, and not to maintain lucrative negligencce law practices.

Several lawyers suggested that control of insurance costs should center on automobile damages and coverage which used up the larger part of the insurance dollar.

A no-fault proposal supported by Rockefeller was criticized for provisions that would allow the auto coverage to remain untouched until an injured person has exhausted his personal medical insurance.

[From the New York Times, Sept. 22, 1971]

TO REFORM CAR INSURANCE

To the Editor: The accounts in The Times and other papers of the appearance by New York City Consumer Affairs Commissioner Bess Myerson on Sept. 8 before the New York State Assembly committee concerning no-fault auto insurance reform indicate shocking conduct on the part of some committee members.

As the city official chiefly responsible for consumer protection, Miss Myerson was attempting to bring to the members of the committee the point of view of knowledgeable, nonlegal consumers of insurance. Instead, some committee members sought highly legalistic information. The committee will have many opportunities to get such legal testimony because lawyers seem eager to appear and testify against reform of the auto insurance system.

Our association is in favor of state reform of the present costly and unfair auto insurance system. The opportunity to achieve reform at the state level is jeopardized, however, by conduct of state legislative committees such as that reported in connection with Miss Myerson's appearance. Such predisposed hostility toward consideration of auto insurance reform is fostering a growing feeling by members of the U.S. Congress that it is necessary for them to act if there is to be reform of the present slow, wasteful and expensive law-suit system.

T. LAWRENCE JONES.
President, American Insurance Association.

[From the New York Times, Sept. 9, 1971]

MISS MYERSON AND PANEL ON NO-FAULT INSURANCE CLASH

(By Robert J. Cole)

Bess Myerson, the city's Consumer Affairs Commissioner, came out strongly yesterday, for no-fault auto insurance and immediately found herself under repeated attack from members of a legislative committee who considered her ill-prepared to answer questions on the subject.

The Commissioner attempted to read a prepared statement before an Assembly hearing called to consider legislation on no-fault insurance but she was interrupted repeatedly for clarification. On each occasion, she turned to her general counsel, Susan J. First, for assistance.

At one point, Assemblyman Alfred D. Lerner, Republican of Queens and chairman of the committee, gestured to Miss First to stand back, saying: "I want to get Miss Myerson's testimony. I don't think we need an alter ego."

At another point, following a series of arguments over complicated legal questions, Miss Myerson asserted that "legislators are a little prehistoric and medieval when it comes to consumer legislation."

CHIDED BY ASSEMBLYMAN

Assemblyman Joseph R. Pisani, a New Rochelle Republican, shouted back to Miss Myerson: "I've listened patiently to your diatribe. . . . If you don't have any informed statements to make, thank you for your time, and let's hear from someone who does."

The legislative panel, composed of four lawyers and two businessmen, is considering a number of plans to reimburse victims of auto accidents without regard to fault.

The New York State Bar Association is proposing a measure to enable accident victims to recover up to $1,500 of economic losses, but to retain the right to sue for other damages. A more comprehensive measure—the so-called Stewart plan, named for Richard E. Stewart, former State Insurance Superintendent—would provide for payment of all economic losses but prohibit suits for pain and suffering.

FURTHER FRICTION ARISES

Attempting to end her testimony on a positive note, Miss Myerson said that she didn't feel that legislation under consideration had to be "either, or," as she put it. She said she felt that "some kind of compromise can be reached."

Mr. Lerner then asked if she would remain "to hear some other testimony." But Miss Myerson went into an outer lobby to confer with Assemblyman Emanuel Gold, Democrat-Liberal of Queens.

"Would you see if Miss Myerson would care to remain," Mr. Lerner asked.

"She doesn't appear to be interested in learning anything from us," Mr. Pisani replied. "Let's proceed."

Miss Myerson returned to the hearings, conducted at the Queens County Bar Association at 90-35 148th Street, Jamaica, and sat in the audience for nearly 30 minutes before leaving.

"She wasn't prepared," Mr. Lerner said later.

Governor Rockefeller's special assistant on consumer questions, Lewis Hall Stone, charged that "it would be better to consider pain and suffering [illegible] as a measure of the pain and suffering of lawyers, rather than that of accident victims."

Senator HART. Mr. Sutcliffe?

Mr. SUTCLIFFE. Mr. Stark, to pursue the cost problem somewhat because of conflicting testimony received by this committee, what is the cost of the present system if you look beyond acquisition cost to the policyholder and consider such things as the Department of Transportation's report that seriously injured automobile accident victims go uncompensated to the tune of $[illegible] billion per year?

Is that a cost of the present system, though it is not an acquisition cost problem?

Mr. STARK. It is a cost.

Mr. SUTCLIFFE. Is that ever calculated in any actuarial figures?

Mr. STARK. I can't say for sure.

I think the projections that have been made of the cost of paying all victims of automobile accidents must take into consideration the fact that under the present system some are uncompensated, some are undercompensated, as the Senator said, and I think that must be part of an actuarial projection, if I understand your question.

Mr. SUTCLIFFE. I think my question goes more to the calculations of either cost savings, or cost additions.

Do they take into account costs of the present system outside the acquisition cost area?

In other words, when they say that it will cost [illegible] yesterday said, 37 [illegible] the calculation of [illegible] that go uncompensated [illegible]?

Mr. STARK. [illegible] that [illegible] that projection. [illegible] to it at this [illegible]

Mr. S[illegible] acquisition [illegible] 10 and 20 [illegible] would be [illegible]

Mr. STARK [illegible]

We have [illegible]

Mr. S[illegible] into [illegible] take into [illegible] be compensated [illegible] compensat[illegible]

In other [illegible] may be [illegible]

Mr. STARK. The answer to both of your questions is, yes.

Mr. SUTCLIFFE. So, in cost projections, we have to consider both acquisition cost and cost to the society not necessarily reflected in the price of the product?

Mr. STARK. That is correct.

Mr. SUTCLIFFE. Let me turn, then, to your cost projections so that perhaps we can understand in less technical terms, the calculations of those costs.

In appendix A you list the percentage of loss cost. Can you please describe for the committee what loss costs include?

Does this include pure premium loss as well as loss adjustment expense?

Mr. STARK. Yes. The economic losses we have set forth here include the medical, hospitalization, rehabilitation expense, income loss, and other expenses.

Then we have listed some loss-reducing factors.

If I understand you correctly, you are asking me whether or not the loss cost includes loss and loss expense?

Mr. SUTCLIFFE. Yes.

Mr. STARK. Yes.

Mr. SUTCLIFFE. They include both of those?

Mr. STARK. Yes.

Mr. SUTCLIFFE. In effect, you are not saying of the present loss, medical, hospital, and rehabilitation expenses will be 37.9 percent of that loss.

The present loss cost—I am trying to develop some comparability between these figures and figures that were presented to us yesterday, which were based upon percentages of pure loss rather than loss plus adjustment expense because they came out with 149 percent of the present pure loss as opposed to here an 18.1 percent of what you establish as loss cost.

Mr. STARK. Can I ask Mr. Cheek to field that? He had the advantage of being here yesterday, and he prepared the actual statistics.

Mr. CHEEK. I did have a chance to read carefully the actuarial studies that were submitted by the other two trade associations, and as they quite honestly point out, this is an area in which a lot of rather large assumptions must be made.

Comparing the total no-fault system to a third party liability system is really like comparing apples to oranges. There are frictional costs within the existing system, and, as you pointed out earlier, societal costs under the existing system by virtue of the fact that a large number of injured people are a burden to society as a whole, rather than to the tort liability system, that must be taken into account on some basis.

My feeling about the other two studies is that they are projecting medical expenses, for example, on the basis of the current levels of cost increases in medical services.

It is our belief, particularly in light of the President's economic program, that these factors will no longer continue to rise at the same rate that they are currently rising.

Mr. SUTCLIFFE. Let me stop you at that point.

Does the payment for rehabilitation have a depressing effect upon medical expense experienced in the liability area?

Mr. CHEEK. It certainly does. Under the liability system there is almost a counterincentive to rehabilitation, and to the extent that you delay it, you almost invariably increase its ultimate cost.

Under a first party system, you can proceed to rehabilitation immediately and lower its ultimate cost to the system.

Mr. SUTCLIFFE. Excuse me, I did not mean to interrupt.

Mr. CHEEK. Now, on the wage loss side, they are assuming. I would have to say, that there are going to be a lot of horrible hypotheticals. We don't believe this is the case.

If I could just cite one company's experience, that of the Aetna Life & Casualty, which has, for a number of years, administered the Federal Employees Health & Benefits Association. They found in culling their claims records for a period of 6 years in a program insuring 2-plus million Federal employees, that there were only 16 cases in which the claims exceeded $50,000 and this is in medical.

But the point is that when your medical expenses reach that stage, obviously, your income loss is going to be of a comparable, if not greater, severity.

My point is that the number of cases that will constitute what are called big hits in the insurance business is a tiny fraction of the total number of cases, and that the reductions you achieve in not overcompensating the less seriously injured persons more than offset the provisions in this committee print for more lavish income loss benefits to those that are disabled for a substantial amount of time.

Mr. SUTCLIFFE. Let me put it in simple terms, and see if you can give me a simple answer.

People ask how can you significantly expand benefits which Committee Print No. 1 does and not at the same time, significantly expand acquisition cost?

Mr. CHEEK. Acquisition cost?

Mr. SUTCLIFFE. Premium.

Mr. CHEEK. I understand you.

Mr SUTCLIFFE. Because I want to draw the distinction at all times between costs of the system and acquisition cost or premium cost.

Mr. CHEEK. I have got you.

The answer to that question is in the statistic that we put in our statement from the DOT report, which is 92.4 percent of the paid accident victims sustain no permanent injury, no serious economic loss of any sort.

That is a very large number of people, and they are being overpaid by a factor ranging from 2½ in some cases, to 4½ times in other cases.

To the extent that you eliminate the profit factor, the overpayment factor in the vast number of accident cases that have minor injuries and minor wage loss, you free up an enormous amount of money to pay the economic losses of those seriously injured victims who are now recovering very little even of their economic loss.

Mr. STARK. May I add to that?

There are two other areas of savings, which I will mention for the record.

Legal fees—we pay lots of money to our own defense lawyers, and an additional expense that goes into the field of claims investigation——

Mr. SUTCLIFFE. Let me stop you there.

Senator HART. Wait a second.

What was that?

Mr. STARK. Claims administration and investigation.

Mr. SUTCLIFFE. You mentioned the legal fees you paid your defense attorneys.

What about the legal fees paid to the plaintiff? Is that money now available instead of paying for the plaintiff's attorney—available for benefit payments?

Mr. STARK. Obviously, because the statistics as to what we pay include not just a net recovery of a representative victim, but gross payments paid in his behalf, which includes whatever the attorney fee is that he is going to pay his lawyer, which averages out to somewhere around 35 percent, according to the DOT study.

Mr. SUTCLIFFE. You mentioned another area; claims?

Mr. STARK. Claims expense administration.

That is an internal cost that we have to sustain for the purpose of investigating causation to find out who is responsible.

Mr. SUTCLIFFE. Under the committee print the only thing you would have to be investigating is the extent of injury.

Mr. STARK. Extent of injury. The whole investigation narrows down to the nature and extent of injury.

Mr. SUTCLIFFE. Are there examples of other insurance mechanisms that undertake this same kind of investigation?

Mr. STARK. I think the most dramatic one is workmen's compensation. There, to all intents and purposes, the factual investigation is rather small, but the area of investigation that we go through and the costs involved in the nature and extent of injury for the purpose of arriving at a settlement or an award, is relatively large.

Mr. SUTCLIFFE. Another thing that puzzles me on your appendix submission is your offsets for collateral sources under the committee print.

You have credited here 0.2 percent of the present cost of the system as an offset for collateral sources.

How is this going under the primary-secondary issue, to have an impact?

Mr. STARK. This, I think, if I understand your question, relates to what is available in terms of benefit payments to auto injured vicitms by contracts other than automobile insurance.

Mr. SUTCLIFFE. Here, this is collateral sources.

Mr. STARK. So, it would be governmental plans and private plans.

Mr. SUTCLIFFE. So, if this is based upon Committee Print No. 1, we haven't really disturbed very much—the primary-secondary issue—if it is only 0.2 percent of the total cost?

Mr. STARK. Let me get back for a moment. You asked me a question before about an example of causation versus the medical, and I spoke of workmen's compensation.

An obvious example is the present accident health system, where payment is paid without regard to causation. You have an injury, and you are paid.

Mr. CHEEK. As for the figure to which you referred on collateral sources, remember, we assumed that auto benefits would be primary to all other sources of recovery, with the exception of social security as it is now constituted.

Mr. SUTCLIFFE. On what basis did you make that assumption?

Mr. CHEEK. In our study of the personal injury files, we calculated the availability of social security benefits as an element in the compensation that those victims received, and it came out to that percentage of the total loss.

Mr. SUTCLIFFE. You did not project what the collateral source exceptions in Committee Print No. 1 would end up giving?

Mr. CHEEK. No; I did not. That would vary tremendously.

Our sole feeling there is that if you make auto secondary to virtually all other sources of compensation, you waste some of your administrative savings.

In other words, if rating were confined to the basic things like salary, size of family, and so forth, rather than on what other coverages are available to the man, rating becomes an extremely simple proposition.

But, if you have to, as your bill would make us, calculate a different rate for each person on the basis of his other coverages, that consumes an enormous amount of time and a great deal of expense.

There is also the question of whether that coverage will be there when the loss occurs.

In other words, if an insured promises you that he will have such and such amount of medical payments before your liability attaches, your rate presumes that that is going to, in fact, happen.

If it does not, what happens ultimately is that the rate for the auto insurance will have to go up.

Mr. STARK. The point is that the logic of the situation is inevitable, in our minds. If you are going to have a compulsory mandatory automobile insurance system, that in itself calls for the fact that that should be primary, because if you have that primary, then you know you have got to pay when the losses are incurred there.

As to other sources of the kind that Mr. Cheek was referring to, collateral sources other than governmental—they are not compulsory to a great extent. Some group coverages may or may not provide the necessary protection. They may be very short.

This bill calls for unlimited payment of medical, rehabilitation, and hospital cost.

I am quite sure there are no group plans of that character available in this country. The fact that this is a plan that has much wider scope, much wider applicability, providing a system for 108 or 110 million automobiles and the members of families and others who are in those cars. It seems to me we make a case for making automobile insurance primary and all other private sources definitely secondary.

Mr. SUTCLIFFE. Of course, the committee print calls for standardized deductions to take into account the possible cost of calculating each individual's secondary sources to the penny.

So, if you had five categories, it would entitle a person to one of five levels of deduction, and his particular collateral sources that were made primary to the auto would make them fit into those five notches?

Mr. STARK. We are not sure he is going to have them all the time during the course of the policy.

We know he has to carry automobile insurance, but is he necessarily 365 days of the year going to carry faithfully all those coverages on

the basis of which we have given him a discount on the first day of the policy?

We have no way of enforcing it. We have a great administrative problem here.

Mr. SUTCLIFFE. The enforcement problem is the most crucial.

Mr. STARK. The hodgepodge—would involve unnecessary hanky-panky. We would have to get statements from people, affidavits, we would have to investigate every case to find out for sure whether the man was still carrying that coverage.

There could be a breach of warranty. There would have to be a readjustment of the premium if there was a violation of his initial promise.

These things, I feel, really frustrate the essential rationale.

Mr. SUTCLIFFE. Are your policyholders really that sly?

Mr. STARK. Some of them are, yes.

Senator HART. Senator Baker.

Senator BAKER. Thank you, Mr. Chairman. I have no questions.

Senator HART. We were reminded of this concern yesterday and repeatedly it was called to our attention. Oversimplified a little, it goes this way: what you are doing by moving to a no-fault system is removing one's feeling of responsibility to operate a vehicle. The drunk drives into the bridge abutment and you see what you have done. I think nobody has pushed the argument to the extreme of saying that the drunk wouldn't have hit the bridge if you hadn't had no-fault, but there are other areas where it is suggested that no-fault simply increases the irresponsible use of vehicles on highways.

How do you respond to that?

Mr. STARK. You have tossed me a soft ball. I am going to try to knock it out of the park.

I try to answer this so frequently, Senator, in terms of some of the original arguments that were made to this whole issue, that somehow a no-fault proposal for automobile insurance diminishes ethics, moral responsibility, and the devotion to careful driving.

That argument is not only false, it is illusory, it does not stand up under scrutiny.

Senator BAKER. Why is it false? I would like to hear just an elaboration of that point if you would.

Mr. STARK. If the system of tort law were operating today in terms of automobile accidents where the individual who would cause the accident—let's assume the classical application—paid the victim for damages under civil law, I think we have a fair test of that. But the fact of the matter is that the insurance mechanism has by itself frustrated this whole approach.

The insurance mechanism offers itself as a vehicle, as a buffer, as an insulator between the injured person and the one who may cause the injury by saying you pay us a premium and we will take your premium and we will put it into a common fund. Now, out of that fund we are going to pay people for their injuries, assuming legal liability.

I think we all know by this time that classical negligence law is no longer in existence in practically any jurisdiction in this country. The whole impact of the law, trial, appellate, otherwise, whether before a judge or a jury, has been, in the case of automobile accidents, to broaden the base of those compensated for being hurt.

The idea of one suing and then being told he can't collect because of contributory negligence is a fast-vanishing aspect of the law.

What we do in effect is those very minute number of cases that actually do go to suit and trial, is to balance the equities. The jury is doing it, the judge is doing it, and only in that rare number in the spectrum of black and white cases where you can definitely show that there is clear liability, clear nonliability, do we have the situation of classical law operating.

Where somebody is sitting in a car and it is legally parked, and that car is struck by another vehicle, that is unmistakable. Those cases are disposed of. But, today, with the insulating mechanism that exists with this enormous insurance fund paying off and people making it eminently clear that they want to be paid, they do not want all these legalisms, they do not want all this rigamarole, they do not want to go through trouble in order to collect.

I think what we have tried to do is to gage the public mood, and I think a logical case can be made for the fact that, in terms of its present situation, there is no deterring effect as far as the fault system is concerned, on the conduct of the driver.

Our representation is that the careful driver today under the fault system is going to be a careful driver under the no-fault system, and the miserable driver under a no-fault system is going to be the same under a fault system.

The point we make is that the burden of acting as the enforcer or the preventor or the inhibitor of automobile accidents should not rest on the insurance mechanism. It rests on public authority.

To the extent the government in different jurisdictions has a relatively different, relatively stronger or weaker approach to dealing with those who cause accidents and violate the law, that is the way to deal with the problem of conduct on the highways. But we do not think there is any deterrence at all in a system, either a fault system or a non-fault system; we do not think that a no-fault system would increase accidents or cause a higher degree of driver misbehavior.

Senator BAKER. If the chairman will indulge me for just a moment I would like to pursue this a little bit further. Might it be said that your argument can be equally sustained by outlawing insurance?

Mr. STARK. Sure, you could have a government operated fund.

Senator BAKER. Can you tell me approximately how many drivers of automobiles in the country are insured for liability?

Mr. STARK. We think, Senator, it is in the neighborhood of 80 to 85 percent, but I would say no more than 85 percent.

Senator BAKER. Are there figures available on that point?

Mr. STARK. They are in the DOT study.

Senator BAKER. Tell me what they are.

Mr. SUTCLIFFE. The estimate is 15- to 20-percent uninsured motorists nationwide.

Mr. CHEEK. Senator, on that same point, the three States that have made liability insurance compulsory have had no better experience as to the degree to which people carry liability insurance than those States which have not made it compulsory.

The percentages of uninsured motorists are about the same in the States whether it is compulsory or noncompulsory.

Senator BAKER. What about the accident figures?

the basis of which we have given him a discount on the first day of the policy?

We have no way of enforcing it. We have a great administrative problem here.

Mr. SUTCLIFFE. The enforcement problem is the most crucial.

Mr. STARK. The hodgepodge—would involve unnecessary hanky-panky. We would have to get statements from people, affidavits, we would have to investigate every case to find out for sure whether the man was still carrying that coverage.

There could be a breach of warranty. There would have to be a readjustment of the premium if there was a violation of his initial promise.

These things, I feel, really frustrate the essential rationale.

Mr. SUTCLIFFE. Are your policyholders really that sly?

Mr. STARK. Some of them are, yes.

Senator HART. Senator Baker.

Senator BAKER. Thank you, Mr. Chairman. I have no questions.

Senator HART. We were reminded of this concern yesterday and repeatedly it was called to our attention. Oversimplified a little, it goes this way: what you are doing by moving to a no-fault system is removing one's feeling of responsibility to operate a vehicle. The drunk drives into the bridge abutment and you see what you have done. I think nobody has pushed the argument to the extreme of saying that the drunk wouldn't have hit the bridge if you hadn't had no-fault, but there are other areas where it is suggested that no-fault simply increases the irresponsible use of vehicles on highways.

How do you respond to that?

Mr. STARK. You have tossed me a soft ball. I am going to try to knock it out of the park.

I try to answer this so frequently, Senator, in terms of some of the original arguments that were made to this whole issue, that somehow a no-fault proposal for automobile insurance diminishes ethics, moral responsibility, and the devotion to careful driving.

That argument is not only false, it is illusory, it does not stand up under scrutiny.

Senator BAKER. Why is it false? I would like to hear just an elaboration of that point if you would.

Mr. STARK. If the system of tort law were operating today in terms of automobile accidents where the individual who would cause the accident—let's assume the classical application—paid the victim for damages under civil law, I think we have a fair test of that. But the fact of the matter is that the insurance mechanism has by itself frustrated this whole approach.

The insurance mechanism offers itself as a vehicle, as a buffer, as an insulator between the injured person and the one who may cause the injury by saying you pay us a premium and we will take [illegible] and we will put it into a common fund. Now, out of [illegible] going to pay people for their injuries, assumin[illegible]

I think we all know by this time that classi[illegible] longer in existence in practically any jurisdi[illegible] whole impact of the law, trial, appellate, o[illegible] judge or a jury, has been, in the case [illegible] broaden the base of those compensated fo[illegible]

The idea of one suing and then being told he can't collect because of contributory negligence is a fast-vanishing aspect of the law.

What we do in effect is those very minute number of cases that actually do go to suit and trial, is to balance the equities. The jury is doing it, the judge is doing it, and only in that rare number in the spectrum of black and white cases where you can definitely show that there is clear liability, clear nonliability, do we have the situation of classical law operating.

Where somebody is sitting in a car and it is legally parked, and that car is struck by another vehicle, that is unmistakable. Those cases are disposed of. But, today, with the insulating mechanism that exists with this enormous insurance fund paying off and people making it eminently clear that they want to be paid, they do not want all these legalisms, they do not want all this rigamarole, they do not want to go through trouble in order to collect.

I think what we have tried to do is to gage the public mood, and I think a logical case can be made for the fact that, in terms of its present situation, there is no deterring effect as far as the fault system is concerned, on the conduct of the driver.

Our representation is that the careful driver today under the fault system is going to be a careful driver under the no-fault system, and the miserable driver under a no-fault system is going to be the same under a fault system.

The point we make is that the burden of acting as the enforcer or the preventor or the inhibitor of automobile accidents should not rest on the insurance mechanism. It rests on public authority.

To the extent the government in different jurisdictions has a relatively different, relatively stronger or weaker approach to dealing with those who cause accidents and violate the law, that is the way to deal with the problem of conduct on the highways. But we do not think there is any deterrence at all in a system, either a fault system or a non-fault system; we do not think that a no-fault system would increase accidents or cause a higher degree of driver misbehavior.

Senator BAKER. If the chairman will indulge me for just a moment I would like to pursue this a little bit further. Might it be said that your argument can be equally sustained by outlawing insurance?

Mr. STARK. Sure, you could have a government operated fund.

Senator BAKER. Can you tell me approximately how many drivers of automobiles in the country are insured for liability?

Mr. STARK. We think, Senator, [illegible] n the neighborhood of 80 to 85 percent, but I would say no [illegible] n 85 percent.

Senator BAKER. [illegible] re fig[illegible] able on that point?

Mr. STA[illegible] Th[illegible] the[illegible] dy.

Senato[illegible] wha[illegible]

Mr. [illegible] ate[illegible] -percent uninsured motorists nation[illegible]

M[illegible] th[illegible] nt, the three States that have ma[illegible] co[illegible] ave had no better experience as [illegible] h p[illegible] liability insurance than those S[illegible] ade[illegible] ry.

[illegible] nin[illegible] rists are about the same in th[illegible]

[illegible] pul[illegible] compulsory.

[illegible] at al[illegible] dent figures?

Mr. CHEEK. That doesn't seem to vary with the amount of insurance available. I would say that is more a matter of the number of cars.

Mr. STARK. The question does have special adaptability to Massachusetts where accident frequency had been remarkably high.

Senator BAKER. Do you find any correlation in your judgment between those factors?

Mr. STARK. No, not necessarily.

Mr. CHEEK. As far as claims frequency is concerned, there is a correlation, but as far as accident frequency is concerned, I don't see how any case can be made.

Senator BAKER. Explain that a little further.

Mr. CHEEK. To the extent that plaintiffs in Massachusetts were assured that at least the bodily injury liability coverage was available, presumably if it was another Massachusetts driver involved in the accident, the incentive to bring a claim was certainly higher.

What happened in Massachusetts was that because only the BI liability was compulsory, you had a good many cases of what came to be known as "the Massachusetts back," where a driver who had sustained no personal injury whatsoever would bring a claim for his vehicle damage against the other party alleging that there was bodily injury involved, and as a result the claim frequency in Massachusetts under BI was approximately double the national average.

Senator BAKER. Do you see that as a correlation to compulsory insurance?

Mr. STARK. No.

Mr. CHEEK. Not really.

Senator BAKER. What is it a correlation to?

Mr. STARK. If I may pick up, I think in terms of Massachusetts, the situation was rather unique, and they moved away from it by virtue of the enactment of the modified No-fault statute, which incidentally has shown a rather stunning reversal of both accident frequency and claim frequency.

Incidentally, those statistics are being compiled on the first 6 months of operations, and they will be out very shortly from Massachusetts for analysis.

Senator BAKER. What would be your evaluation of the situation where a person didn't or was unable to purchase insurance under the No-fault system? What is the equity of that situation?

Mr. STARK. Let me try to describe it this way: presently, except for these three States that require compulsory insurance, Massachusetts, New York, and North Carolina, practically every other State, I believe, has financial responsibility laws which are, in effect, one-bite laws. So, the law says that you must carry insurance for the benefit of a third party. That is the whole basis for it.

The motivation for carrying that has been rather suspect for a long time, because both in the compulsory States and in the financial responsibility States at any given time there is always a percentage of people that just do not carry automobile insurance. That does not necessarily mean they cannot afford it. They do not carry it.

Even when they are required to carry it, they are willing to take the chance of a revoked or suspended license.

Under a No-fault system, we think there is a greater motivation. This is a judgmental decision on our part. We have no facts to sustain it.

We are saying we are going to write a policy for you and your automobile, we are going to pay claims to you, your family, and the occupants of your car, friends or relatives, and that an occasional pedestrian is also included that you might strike.

There is no motivation to make a person buy automobile insurance to protect that random unknown third party that neither he nor we can ever identify. The compulsion to buy under the no-fault system is here, you have got to buy it, and it is compulsory, this is what our plan calls for, what this bill calls for, but if you do not buy it, you are not hurting some random third party, some fellow you might have a collision with. You are hurting yourself, your family, the occupants of your car, the pedestrian you may strike. This is very personal now.

So, if you do not buy it, you are hurting yourself, you are hurting your own pocketbook, you are putting yourself on the line for possible financial obligation or loss of earnings to which you may not have any other way to go for collection.

We think there are some logical arguments for assuming that this will cause more people to buy insurance than presently buy insurance.

Senator BAKER. It would cause more people to buy insurance, but how do you defend against the charge that the price you pay for compelling more people to buy insurance is to remove by statute the chance that someone has to collect through the negligence of someone else when he could not afford to buy insurance for himself?

Mr. STARK. That is a long chance, but, after all, it is only a percentage of the people who collect that. The DOT statistics indicate that only 45 percent of the people who are seriously hurt even collect anything.

Senator BAKER. But the figures do not impress me. Even if there was just one person who was injured for life and had a traditional tort claim for hundreds of thousands of dollars, for instance, a young man with a family and good earnings, if he did not buy no-fault insurance it is his fault and the blame lies with him. This is still unfortunate. But it seems to me that the price we are paying for no-fault is high if this young man did not buy insurance or could not afford to buy insurance and someone in the most wanton and negligent way ran him down. We would have made him totally incapable of seeking any remuneration at all.

Even if there is just one such person in the country, we have made him pay a terrible price for no-fault.

Mr. STARK. Senator, I do not think there is any possible plan or way of approaching this that will solve each and every situation. Our particular program does call for an assigned claims plan for individuals who might otherwise be entitled to benefits, but because of lack of insurance would have no policy to go to.

Our program calls for a fund that the licensed insurers in any State would have to contribute to that would pay the victims of these accidents. That would exclude the individual who was a driver or the owner of the car who saw fit not to buy the automobile insurance.

Senator BAKER. Would your program include the negligence, would it include him, if the driver of the car involved in the accident was nonnegligent?

Mr. STARK. No, he would have no claim for negligence. I come back again to the point I made previously, not only are there only 45 percent

of those seriously hurt that you have hypothesized who do not collect, but let us take the other 55 percent. Again I have got to go back to statistics, because our own study and also the DOT study shows that here in this area where there is this greatest concern for whether or not the fault system or the no-fault system is a proper apparatus for compensation, in that area of greatest concern is the greatest failing of the fault system. Those it does pay are under compensated seriously, relatively, and absolutely. They are under compensated for several reasons. One, the great majority of automobile insurance policies are written at a modest liability limit, 15/30, let's assume is the median—let's take 25/50, where the individual would have the right to get a maximum of $25,000. Twenty-five thousand dollars for the hypothetical case is a pittance. That is all you are going to get.

Senator BAKER. Isn't that a commentary on the inadequancy of the system rather than the imperfection of it? Couldn't you meet the objection you have just now raised in this context by going to a European plan of unlimited coverage?

Mr. STARK. Oh, yes. We would be glad to sell unlimited coverage if people would pay the premium.

Senator BAKER. They pay it in Europe. Do you have any idea how that would affect your reserve requirements?

Mr. STARK. I think the problem essentially is that it would be difficult to compare our situation with the European situation. The economic situation here in the United States, the degree of sophistication——

Senator BAKER. Would you be willing to give me an estimate on those differences?

Mr. STARK. No, I do not think I could give you that.

Senator BAKER. Could you later?

Mr. STARK. I might. I will try.

Senator BAKER. Would you try? And I ask unanimous consent that this response be included in the record.

What I want is to have an estimate of what additional cost in premiums to people in the United States would be involved in providing a system of unlimited liability. I am thinking of systems similar to those used in Germany, England and other parts of the world.

Back on the question of this small statistical sample of people who do not or cannot buy no-fault insurance but who get clobbered; there are some and, as I said, if there is one, there is cause for concern.

Can you give me some estimate of how many people would fall in that category based on our present insurance coverages? You obviously cannot transpose liability insurance into no-fault insurance, but your estimate is that 15 to 20 percent of the drivers in the country are not now covered?

Mr. STARK. That is correct.

Senator BAKER. In your judgment, would that be a comparable figure to the experience we might have with no-fault?

Mr. STARK. For the purposes of analogy, yes, subject to the fact that it is our conception that there would be an increase in the number of people who would buy it. I think the area would be narrowed down to 10 percent.

Senator BAKER. There are how many drivers in the United States?

Mr. STARK. About 105 million, I believe.

Senator BAKER. So there would be about 10.5 million people who in fact you could run down without any responsibility?

Mr. STARK. These are only drivers you are talking about, not the potential injured?

Senator BAKER. How many would the potential injured be? Can we average 2.5 people to three to a driver?

Mr. STARK. I believe the latest statistic we have between bodily injuries was somewhere between 4.5 and 5 million.

Senator BAKER. I am trying to identify those that would have no remedy.

Mr. STARK. The driver.

Senator BAKER. What about the passengers in his car?

Mr. STARK. The assigned claims plan would pick up the passengers who were not responsible.

Senator BAKER. Is there an assigned claims plan in Committee Print No. 1?

Mr. SUTCLIFFE. Yes, sir.

Senator BAKER. The 10.5 million drivers then would not be covered under any circumstances in the no-fault plan.

Mr. STARK. Who did not purchase.

Senator BAKER. That is your estimate of the number, it would be about 10 percent?

Mr. STARK. Yes.

Senator BAKER. But the passengers in their cars would be covered?

Mr. STARK. Yes, under the assigned claims plan. Then we would have to narrow down the 10.5 million exposure to the likely fraction of that number who would be sustaining an injury during the course of the year. That you could do by relating the 5 million figure I gave you previously to the 200 million American population, which is what, 4 percent, am I right? So, it would be 4 percent of the 10.5 million, or less than 500,000 persons.

Senator BAKER. That is a pretty good size group who are unable to pay.

Mr. STARK. That is a lot of people.

Mr. SUTCLIFFE. There is something that may mitigate against that, and that is the Department of Transportation is undertaking a system of uniform motor vehicle registration which would make it much easier to tie your insurance, licensing, and your registration procedures into the requirement for insurance and also through visual detection of the vehicle itself. You may be able to cut the number not purchasing mandatory insurance significantly.

I think the example is the voluntary activities of the American people in the payment of income tax which is a federally mandated requirement, compare that to the European system of the voluntary payment of income tax and you have disparity.

Mr. STARK. As a supplement, Senator Baker, if I may reply to your comment, I would like to add for the completion of the record that under the present fault system I suspect there is much more than that number of drivers who are hurt and who are not insured who are cast on society because they have been unable to collect for injuries.

Senator BAKER. I do not doubt that. But the thing that bothers me is that we by Federal statute are preparing to extinguish the rights

of theoretical possibility of recovery as distinguished from the unsuccessful effort to recover or the failure to try.

I am sure that someone has long since deprived us of any concern for the constitutional consequences of depriving 10.5 million people life, liberty, and property, and I expect this probably is due process of law, but it is still a heavy burden for 10.5 million people to pay, and there is one whale of a difference between a man who does not recover versus a man who says you are helpless and you cannot recover under any circumstances.

That bothers me.

Mr. STARK. If there is a way to make this bill adapt itself to that kind of a vacuum, we would be very interested in trying to see what can be done about it.

Senator BAKER. It is important for me to understand you agree that this omission does occur and it is not covered under the no-fault plan.

Mr. STARK. Yes. But it does not make the no-fault plan a worse plan than the fault system.

Senator BAKER. I have not reached that judgment yet, and I am not prepared to say I will. But I am prepared to say at this time that that is a defect that ranks at least with the other defects that have been noted to the fault system.

Mr. STARK. Perhaps.

Senator BAKER. Thank you, sir.

Senator HART. I am reminded that we do have a witness schedule this morning. We would suggest if there are further questions, if there would be no objection, we could address them to you in writing and your replies may be made in writing.

Mr. STARK. Thank you, gentlemen. We would be very happy to reply.

(The statement and questions and answers follow:)

STATEMENT OF THE AMERICAN INSURANCE ASSOCIATION

Mr. Chairman and Members of the Committee: I am Melvin L. Stark, Vice President-Government Affairs of the American Insurance Association, whose membership of property and casualty insurance companies writes approximately one-third of the nation's automobile insurance. We appreciate this opportunity to express our views on Committee Print No. 1 of S. 945, the National No-Fault Motor Vehicle Insurance Act.

> In our judgment, the great debate has ended. It can no longer be seriously contended that the auto tort liability system must be maintained. As we see it, the area of discussion has narrowed. Thee are two issues before us. One, should we seek change through state or federal action? Two, how extensive should the change be to meet the pressing needs of the public?

Our answers to these two questions remain unchanged. We continue to believe that auto accident reparations reform should be accomplished on a state by state basis, and that only a complete no-fault system will achieve the reform demanded by the American public. This past year we have diligently worked to accomplish these objectives.

It now seems clear and unmistakable that no-fault auto insurance is inevitable, that it will be enacted in one form or another by one body or another throughout the country. Six months have now passed since the Nixon Administration presented the conclusive findings of the Department of Transportation's two-and-and-half-year study of auto accident compensation systems, which established sound principles for no-fault reform. In so doing, the Administration clearly advocated that reform be accomplished on a state-by-state basis.

That, too, has been the position of our Association. But we must clearly admit surprise at both the number and variety of people and organizations who have been calling for reform by federal legislation. They have, in effect, been answer-

ing the Nixon Administration's position of "let the states do the job," with the retort, "the states can't or won't, they are too dominated by opponents of reform, it will take too long," and the like.

Our Association also must confess to disappointment in the legislative scorecard, the achievement of reform at the state level in the last six months. Some measures have been passed superimposing medical and wage loss benefits on the existing fault system, but with the exception of Florida these cannot be called pieces of meaningful reform. Massachusetts enacted a limited no-fault law in 1970, under which savings have exceeded the initial estimates of its sponsors and supporters.

If the states do not enact substantial no-fault reform bills, we believe they will substantiate the arguments of those who say that the states are not apt to act swiftly and decisively. We believe that the states want to design their own auto insurance laws. But they must show that they are willing to come to grips with the problem. Otherwise, as Secretary of Transportation John Volpe puts it, "If they cannot or will not, Washington has a call for pre-emption."

All this could be chalked up to political or governmental in-fighting, if it were not for the fact that auto insurance reform touches so many millions of people in so many ways and that it offers correction of recognized ills and satisfaction of public complaint.

As to the extent of reform, we still believe that only a complete no-fault system, replacing the current auto tort liability system *in toto*, will achieve maximum reform. Thus, we are in accord with the basic concepts underlying Committee Print No. 1 of S. 945. We can, and will, support at the state level legislation which closely follows the Committee Print subject to certain amendments we suggest in Appendix A of this statement.

The staff analysis of the Committee Print, issued in July of this year, accurately states that the Print "would create an essentially restructured automobile insurance reparations system. Tort liability arising out of automobile accidents would be eliminated, and insurance benefits to pay for losses arising out of automobile accidents would be paid without regard to fault." We vigorously endorse this alteration of the original S. 945, because it eliminates all vestiges of a system that spends one dollar of every three paid simply to determine which party to an auto accident is legally liable and whose insurance company should pay.

We would now like to address ourselves to an analysis of the no-fault program envisioned in Committee Print No. 1 of S. 945.

COST SAVINGS

While the original S. 945 would have resulted in some overall cost savings to automobile insurance consumers, the savings under Committee Print No. 1 would be considerable. We estimate, on the basis of a cost study made in connection with the American Insurance Assocsiation's no-fault auto insurance plan, that the average savings from premiums which would otherwise be considered adequate under the present system for bodily injury liability with limits of $10,000/$20,000 and uninsured motorist insurance would range from 25 to 30 percent. Additional savings will be possible under the property damage portion of the Committee Print, but these will vary according to the deductible and the coverage modifications the insured chooses.

Obviously, greater savings will accrue to those consumers who now carry bodily injury liability limits in excess of $10,000/$20,000, and to those persons whose wage levels are below the $1,000 per month maximum. Savings will vary for individual insureds from the overall range above depending upon the economic characteristics of the family unit.

Taking loss costs under the present system as 100 percent, we have estimated the loss costs under the no-fault system as percentages of the existing system's loss costs. The general calculations for this estimate may be found in Appendix A.

PAIN AND SUFFERING

The Committee Print eliminates, for all but a tiny number of cases, intangible damages, or "pain and suffering," as a compensable loss under the basic no-fault auto insurance policy. Recognizing, however, that some motorists may wish to place monetary values on dignitary harms incurred in automobile accidents, the Print mandates the provision by insurers of optional, first-party contracts for pain and suffering. We endorse these changes with a single major res-

ervation, and are prepared to offer our estimate of the cost of an optional first-party pain and suffering contract.

First, however, we would like to make some observations about "pain and suffering." Opponents of no-fault auto insurance have rallied around this element of the current tort liability system, arguing, in effect, that while all other elements of loss can, and indeed should, be compensated on a first-party basis, "pain and suffering" should somehow be left to the adversary system. We submit that there is no logical basis for this argument.

Opponents of no-fault allege that the elimination of "pain and suffering" will "reduce benefits" to auto accident victims. What benefits? Which accident victims? According to the Department of Transportation study (Table 13, p. 41), 92.4 percent of all paid claimants under the tort system have no permanent injury at all. Their average economic loss is $333, but their average tort recovery is $830, almost 2½ times their actual losses. The elimination of "pain and suffering" in these cases would not "reduce benefits," but would take the profit element out of compensation of accident victims whose injuries are insignificant or whose economic loss is slight.

It is well known that pain and suffering awards are the major factor in the rising cost of auto insurance today. Auto insurance costs, in theory, should rise in direct proportion to increases in the costs of such things as medical and hospital care. In fact, however, auto insurance costs rise geometrically, because in the vast number of cases where economic loss is slight, it is almost always cheaper, despite the obvious waste, for an insurer to multiply the actual loss by a "pain and suffering factor" and pay the claim at up to 8 times its actual value than to contest it in the courts. We are confident that not even the staunchest defenders of the current system would argue in favor of continuing this blatant misallocation of resources.

What about the seriously injured victims? First of all, again according to the DOT report (p. 35), 55 percent of all those killed or seriously injured in auto accidents derive no benefit whatsoever from the tort liability system. For the 45 percent who do benefit from the system, their recovery under it is inversely proportional to the severity of their losses. For example, when the economic losses alone exceed $25,000, even successful tort claimants average a net recovery of only one-third of these losses (p. 36). Recovery for pain and suffering is non-existent in most of these cases, so eliminating it will in no way "reduce benefits."

The elimination of the wasteful and distorting element of "pain and suffering" under the basic no-fault system will make possible the compensation of *all* economic losses of *all* accident victims at reduced cost to the American motoring public.

We believe that the only "victims" of "reduced benefits" under the no-fault system proposed in the Committee Print are those crying loudest for the maintenance of "paid and suffering"—members of the bar who draw their fees from these awards. In this connection, we would suggest that if the bar is sincere in its protestations that "pain and suffering" should be preserved for the sake of auto accident victims, rather than for the benefit of the legal profession, then it cannot oppose this legislation on this point. The Committee Print would make optional first-party pain and suffering contracts available to all motorists.

We have long believed that however real the pain experienced by auto accident victims may be, dollar values cannot be objectively assigned to it and dollar awards cannot ease it. But we are willing to offer first-party contracts for pain and suffering that will provide for a scale of benefits above actual economic loss, either as a percentage of medical expenses or on the basis of fixed amounts for each type of injury. We believe, however, that the demand for this coverage will be small; that there is no market for pain; and that few motorists will want to pay in advance for benefits for suffering they hope never to incur.

In our 1968 study, we recommended that a no-fault insurance system "provide extra payment to persons who sustain permanent impairment or disfigurement in automobile accidents to compensate them for such injuries which cannot be measured by economic loss." We suggested that benefits vary according to degree of impairment or disfigurement, but be limited to 50 percent of the amount payable to the claimant for his hospital and medical expense.

We estimated that this protection could be provided at a cost of [illegible] of the current premium charged for bodily injury insurance of [illegible] and uninsured motorist coverage.

Obviously, if benefits under contracts of this sort were increased, or the scope of coverage was broadened to include the less seriously injured, the cost would increase greatly. The important point, however, is that contracts of this sort can be accurately priced by actuaries, and can thus be tailored to meet individual requirements.

Our reservations about the Committee Print's provisions in this area relate to the fact that Section 2(17) defines "intangible damage" as being "measured by applicable State tort law which would have been applicable" but for the tort exemption in Section 3. It is unsound to require companies to offer contracts in which their liability for pain and suffering is open-ended, subject only to the vague standards of "applicable state tort law" and the whims of a jury. Contracts of this sort would be an open invitation to litigation and would preserve the evils that no-fault would otherwise eliminate.

We cannot overemphasize the importance in any first-party pain and suffering contract of making the insurer's liability explicit and easily recognizable by the insured.

EXTENT OF NO-FAULT BENEFITS

The scope of benefits provided under the basic no-fault policy has been greatly expanded in Committee Print No. 1, and we applaud virtually all of these additions. We offer some technical revisions in Appendix A.

We particularly wish to endorse the expansion of S. 945 to include vehicular damage within the no-fault ambit of the bill. The elimination of the tort system in this important area of auto accident claims will result in significant savings, because it will no longer be necessary to investigate accidents to determine legal liability for vehicular damage. Furthermore, insurers will be able to achieve a high degree of cost manageability and rating sophistication in connection with insured vehicles' design and repairability.

AUTO INSURANCE BENEFITS PRIMARY

Under Committee Print No. 1, net economic loss benefits are secondary to other sources which state that they are primary to the auto policy. We think this is unsound for both economic and public policy reasons, and that compulsory auto insurance benefits ought to be primary to all other benefit sources except the present Social Security System.

From an economic standpoint, if auto insurance benefits are primary, the administrative work of the insurer will be limited to the simple determination that an auto accident has occurred and the subsequent payment of benefits. If auto insurance benefits are secondary to other coverage, the insurer will be forced to make a time-consuming and costly investigation of other benefits available to each injured person in order to avoid duplicate payment for the same loss.

Furthermore, shifting the administrative costs of processing bodily injury claims to accident and health or hospitalization insurers will not result in any appreciable savings to motorists. Since any accident causing significant injury will undoubtedly be accompanied by considerable property damage, the auto insurer will be required to investigate the accident anyway to assess the extent of such damage. It makes little economic sense to require multiple investigations of the same accident by several insurers, when under a primary auto insurance system, a single investigation will assure payment of all benefits from a single source.

Making no-fault automobile insurance primary will greatly simplify the process of classifying motorists for rating purposes, in that rates for drivers with similar exposures will not have to vary according to the amount of other insurance available to them. The elimination of such random variables will facilitate the adoption of a broad classification system, which in turn will lower premium costs by spreading losses over the large numbers in each class.

It should be noted that the variations in auto insurance prices which will result from making collateral sources primary will serve to frustrate the potential of a primary no-fault auto insurance system to reverse the existing pattern of auto insurance costs, in which those least able to afford it frequently pay the highest premiums. If collateral sources are primary, the affluent driver secure in a job with good fringe benefits will continue to pay less for his auto insurance than the center city dweller whose employment typically has less tenure and fewer fringe benefits.

From a public policy standpoint, the internalization of automobile accident costs to the auto insurance system will serve several essential goals.

First, it will prevent the shifting of economic losses generated by the nation's motoring populace onto the nation's population as a whole. The non-motoring public should not be required to pay for auto accident losses in the form of higher premiums for their hospitalization and medical insurance or higher taxes.

Second, the statistical separation of auto accident losses from other kinds of losses, which a primary auto insurance system will assure, will demonstrate the cost of automobile transportation relative to the costs of alternative modes of transportation. The public interest in the rational allocation of transportation resources will be ill-served if a portion of the true cost of motoring is hidden from scrutiny, as it would be if the auto insurance system were secondary.

Finally, it should be remembered that the placing of collateral sources before auto insurance benefits may, in many instances, inadvertently exhaust the limits provided under the other systems for losses resulting from causes other than automobile accidents and produce severe hardships for auto accident victims who later suffer non-auto related injury or disability.

REJECTION AND NON-RENEWAL

The Committee Print places severe prohibitions on insurers with respect to rejecting an applicant for insurance and the right not to renew a policy. The only exceptions are where the domiciliary state insurance supervisory authority finds that the company's solvency would be impaired by writing additional policies, or where the company ceases to write *all* lines of business in a given jurisdiction. These exceptions are not available in the case of policy renewals.

These provisions might be acceptable if incompetent and reckless drivers were removed from the road, but in real life this does not happen. In our judgment, these provisions are far too severe and should be eliminated. Under a no-fault auto insurance system, companies should be able to underwrite all risks without compulsion, because they will be able to measure the loss potential of each driver, an impossible task under the third-party liability system.

The industry recognizes its obligation to provide completely adequate coverage to all licensed motorists who cannot be readily insured in a voluntary market. But the rejection and non-renewal provisions of S. 945 are not the way to assure that each licensed motorist will be afforded adequate insurance coverage.

POLICY FORMS, RATING CLASSIFICATIONS AND TERRITORIES, STATISTICAL PLANS

The Committee Print bestows on an unspecified "Secretary" enormous powers with respect to policy forms, classes of risks and rating territories. It also gives this Secretary extensive control over the kinds of statistics companies can compile and requires insurers to submit detailed reports whenever the Secretary calls for them.

Clearly, these provisions would be inappropriate if the bill were to be used as a model for state legislation. However, looking at the bill strictly as a federal no-fault auto insurance reform measure, we believe these provisions should be eliminated, because they would subject insurance companies to both federal and state regulation of policy forms, rating classifications and territories and premium rates charged to policyholders. From any standpoint, this confusing overlapping of regulatory authority is unsound.

This concludes our formal presentation, Mr. Chairman. We would be happy to answer the Committee's questions.

Respectfully submitted,

MELVIN L. STARK,
Vice President—Government Affairs.

APPENDIX A—COST SAVINGS

The calculations underlying our estimate of cost savings under a total no-fault auto insurance system, expressed in terms of percentages of loss costs under the existing bodily injury liability insurance coverage, are as follows:

Economic Losses:	
Medical, hospital and rehabilitation expenses	37.9
Income loss	36.3
Other expenses	6.9
Total of economic losses	81.1

Reductions in these loss costs and their amounts, again in percentage terms, are as follows:

Medical expense reductions: Medicare	1.5
Medicare	1.5
Income loss reductions:	
15 percent deductible	4.0
$1,000 per month recovery limit	.9
Collateral sources	.2
Total of all reductions	6.6

Subtracting the reductions from the gross economic losses, we found that the basic total no-fault system for compensating injured auto accident victims would cost, on the average, 74.5 percent of the current loss costs for $10,000/$20,000 bodily injury liability and uninsured motorist protection. Expressed in terms of premium, the average saving would be approximately 27 percent.

Following is a list of those sections of Committee Print No. 1 of S. 945 that the American Insurance Association believes need clarification or amendment, or, in some cases, deletion.

SECTION 2—DEFINITIONS

The term "insurer" includes any "governmental entity" engaged in the business issuing or delivering motor vehicle insurance policies. We believe that this portion of the definition should be deleted. Unless the Congress decides that a federal entity is needed to sell any of the no-fault coverages mandated in the bill, at which point separate enabling legislation would have to be enacted, reference in this legislation to such a government-operated insurer is unnecessary.

"Criminal conduct" is defined as "the commission of an offense punishable by imprisonment for one year or more, or operation or use of a motor vehicle with the specific intent of causing injury or damage, or operation or use of a motor vehicle as a converter without a good faith belief that the operator or user is legally entitled to operate or use such vehicle." This definition is the key to the residual right to bring tort actions under Committee Print No. 1. However, the definition does not make clear the kind of proof of "criminal conduct" which will be necessary to subject a person to liability for tort damages. We believe that the definition should be amended by inserting the words "the conviction for" before the words "the commission of * * *." Without this addition, it is possible that the mere assertion by one party that another was "engaging in criminal conduct" will be sufficient to sustain a tort action.

The "substantially the same or similar" test for "gainful activity" in the original S. 945 has been altered to read "available and appropriate" in Committee Print No. 1. We believe that the language of the original S. 945 should be reinstated. The new standard is vague and subjective, and raises the question of whether benefits will become payable merely upon a claimant's assertion that work of the kind he wants is either not "available" or not "appropriate" in his view.

That portion of the definition of "economic loss" which provides for monthly benefits equalling the difference between a person's earnings prior to an accident and those after the accident does not take into account the possibility that a job with lower pay might be taken by a claimant as a matter of personal preference, rather than out of physical necessity. We believe the definition should be tightened to make benefits under this subsection payable only upon proof that the lower-paying job is directly related to the automobile accident injury.

The portion of the definition of "economic loss" dealing with household replacement services and other benefits includes provisions for funeral expenses with no apparent dollar limit. We believe that such a limit should be included in this subsection. We recommend a limit of $1,000.

The Committee Print's definition of "monthly earnings" does not contain the subsection of the original S. 945 describing how annual earnings are to be computed. Instead, the Committee Print contains provisions authorizing "the Secretary" to promulgate rules defining the term "monthly earnings." We believe that the language from the original S. 945 should be reinstated.

While we applaud the concept incorporated in the Committee Print's definition of "monthly earnings" of anticipated earnings benefits for unemployed or irregularly employed accident victims, we are concerned that the provisions as drafted in the Committee Print will inject an element of speculation and sub-

jectivity into the provisions of the basic no-fault automobile insurance contract, and will be certain to invite extensive litigation. We recommend that this portion of the definition of "monthly earnings" be amended to provide that anticipated compensation benefits be calculated according to average wage statistics prepared by the Department of Labor's Bureau of Labor Statistics. We assume, of course, that anticipated earnings benefits are subject to the bill's upper limits on salary loss of $1,000 per month.

The definition of "monthly earnings" also contains a subsection for built-in cost-of-living increases in monthly wage loss payments and other periodic increases to reflect "annual compensation increases that would predictably result but for the injury or death." This subsection should be amended to specify that it is subject to the $1,000 per month ceiling on wage loss replacement.

The definition of "net economic loss" incorporates the proposition that no-fault automobile insurance benefits should be secondary to "any public health insurance or plan," but primary to "any private insurance or plan" which contains no "explicit provisions making its benefits primary to any benefits" under the no-fault auto policy. We believe that the no-fault automobile insurance benefits should be primary to all health insurance or other plans, except the present Social Security system.

The definition of "loss resulting from damage to the insured's motor vehicle" contains provisions for benefits "including expenses incurred in renting a vehicle in substitution for the insured motor vehicle." We believe that the words "of comparable value" should be inserted before the words "in substitution for * * *" in the rental benefits provision, in order to prevent abuses.

SECTION 3—TORT EXEMPTION

Section 3 of Committee Print No. 1 ties the tort exemption to "criminal conduct," providing essentially that no owner, operator, or user of an insured motor vehicle will be liable in tort "unless that person is engaging in criminal conduct." Here again, we would suggest that the test for tort liability be made conviction for engaging in criminal conduct, rather than merely "engaging" in such conduct.

This Section raises other important questions as well. First, it appears that the owners or operators of uninsured vehicles will remain liable for tort damages. We do not believe that this provision is necessary, in view of Section 4's provisions for fines of up to $1,000 or imprisonment for a period of up to six months for "any knowing violations" of the operation and registration conditions of the bill. Second, the remainder of the bill does not make it clear whether tort liability incurred as a result of "engaging in criminal conduct" is insurable. Rather, the Section suggests the intent to create a "tort fine" for "engaging in criminal conduct." If indeed this is the intent of the legislation, we believe that it should be specified.

SECTION 5—INSURANCE REQUIREMENTS

The provisions requiring insurers to offer optional pain and suffering contracts do not specify how much "intangible damage" benefits will be payable, or on what basis they will be paid. We recommend that these benefits be paid according to the terms and conditions of the pain and suffering contract, rather than by reference to "applicable state tort law." Otherwise, insurers' liability under these contracts will be theoretically unlimited, and a great deal of unnecessary litigation will be interjected into the auto accident reparations system.

We object strongly to the subsection requiring that "any policy of insurance * * * must offer standardized categories of premium reductions reflecting the benefits available * * * as a result of public or private insurance or plan or other benefit sources * * *, being primary to benefits under a qualified no-fault policy." First, as we have indicated above, we believe that no-fault auto insurance benefits should be primary to all other benefit sources. In addition, the variety of benefits available under contracts offered by private accident and health insurers today is almost unlimited. It would be extremely difficult for auto insurers to ascertain precisely what benefits were available to prospective auto policyholders in order to apply the "standardized categories of premium reductions." In addition, the bill contains no provisions whatever to assure automobile insurers that the collateral sources for which auto premium reductions are offered will be in force at the time of an auto-related injury. At the very least, if it is the will of the Committee to retain this subsection, auto insurers should be freed from liability for losses the insured had indicated upon application for his automobile insurance policy would be paid by other benefit systems.

We also object to Section 5's provisions restricting insurers' ability to reject applicants or cancel no-fault policies. We believe that the Committee should explore alternative means of assuring qualified applicants of a readily available market for the compulsory no-fault coverages.

SECTION 10—ADMINISTRATION

This Section of the Committee Print leaves the references to the Administrative Procedure Act in the original S. 945's provisions for promulgation of regulations by the Secretary. The new section provides that the Secretary shall "make, promulgate, amend, and repeal such regulations as he deems necessary." We believe that the references to the Administrative Procedure Act should be reinstated, in order to assure that all parties at interest are given an opportunity to participate in the promulgation of rules and regulations under the Act.

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C., November 15, 1971.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: I am forwarding a copy of a letter I received from Mr. Melvin L. Stark of the American Insurance Association in response to two questions I submitted as a followup on testimony received at our recent hearings. I ask that this additional information be included in the record of those hearings. The attached document mentioned in the letter has been retained for my files. I will be happy to make it available to the Committee.

Thank you very much.
Yours truly,

HOWARD H. BAKER, Jr.

Enclosure.

AMERICAN INSURANCE ASSOCIATION,
Washington, D.C., November 8, 1971.

Hon. HOWARD H. BAKER, Jr.,
U.S. Senate, New Senate Office Building,
Washington, D.C.

DEAR SENATOR BAKER: Pursuant to my testimony on October 14, 1971 before the Senate Commerce Committee, and with particular reference to your interrogation, I have your October 19, 1971 request in the form of supplemental questions for completion of that record.

The questions and answers are listed below in sequence for your information:

1. During testimony at the hearings you testified that small claims had been paid an excess of 2½ to 4½ times their loss. Would you please supply the statistical basis for this statement?

A. The statistical base for my answer can be found in two places within the U.S. Department of Transportation's summary report titled "Motor Vehicle Crash Losses and Their Compensation in the United States."

On page 41 in Table 13 it is shown that 92.4% of all paid claimants under the tort system have an average economic loss of $333. The table indicates that the average claim payment to the persons is $830. Thus, approximately 2½ times the economic loss is paid in disposition of those claims. On page 36 of the report in Table 9, it is shown that fatally or serious injured accident victims with an economic loss less than $500 averaged a tort recovery of 4½ times economic loss.

These tables were originally published in the earlier fact finding volumes, the former in "Automobile Personal Injury Claims" (pp. 19, 32 & 53) and the latter in "Economic Consequences of Automobile Accident Injuries" (p. 47).

2. What portion of the estimated 27 percent reduction set forth in your testimony is attributable to administrative cost savings? To a reduction in costs of small claims as discussed in Question 1 above? Please supply statistical basis for these calculations.

A. The Appendix attached to our formal statement of October 14, 1971 will be helpful in answering your question. More detail exists in the content of our voluminous cost study completed in mid-1968 which provided statistical support

for the enclosed yellow pamphlet distributed by our organization in October, 1968 when we first announced the AIA complete no-fault plan.

Administrative savings will come chiefly from the claims administrative and claims investigative area because "causation" and relevance to legal liability will be eliminated as a predicate for payment. Instead, "occurrence", a factor which is the predicate for payment of insurance benefits under other first party systems, will be the criterion. There will still be investigative and administrative expense of a lessor degree in connection with nature and extent of injury. On balance, I believe we can safely estimate savings of 50% in this area from the present system's approximate 15¢ out of every premium dollar, or about 7%.

In terms of reduction of payments on small claims, may I refer to our AIA cost study that provides a significant figure to supplement the answer to Question 1. In a survey of some 18,000 bodily injury claims, we found that cases involving economic loss of $100 or less were being disposed of at 7½ times economic loss. A substantial number of bodily injury claims in the total spectrum fall within that category and the overpayment here for general damages is noteworthy. The nature of the fault system and the need to provide for defense costs in threat of litigation, cause insurance companies to pay more on these cases because the economics of the situation bring it about.

We have called attention to the overcompensation of claimants with modest economic loss as opposed to the undercompensation or non-compensation of claimants with substantial economic losses. Our cost study, the Rockefeller-Stewart New York report and supporting data, and the Department of Transportation statistics all bear out the potential of substantial savings from elimination of "pain and suffering" money to claimants with low economic losses.

In addition to administrative cost savings, and savings in the field of general damages, savings are also obtainable from defense attorney fees. The report on automobile accident litigation by the Federal Judicial Center for DOT cited the average cost of defense attorneys in all litigated matters irrespective of ultimate loss payments, to be approximately $820. The great bulk of that average payment is related to the issue of "causation" and not to the nature and extent of injury.

You posed an additional question at page 353 of the transcript of proceedings which requested information on the cost implications if a compulsory system of unlimited liability for automobile accidents were to be established in this country. As soon as I have received some additional information, I will respond to that question to the best of my ability.

We hope that our answers have been responsive. If you feel additional data is required, please feel free to contact me.

Very truly yours,

MELVIN L. STARK.
Vice President—Government Affairs.

Senator HART. Our committee next welcomes Senator Jack Davies of the State of Minnesota.

Senator Davies, we have heard about your work. We are delighted to see you here this morning. I know that you have been involved in this effort and have been an effective voice to correct some of the problems that have been highlighted by that DOT study. We are glad that you are here.

Let me put your statement in the record in full, if there is no objection. If there is any reaction you want to add as you go along, we would welcome that, too.

STATEMENT OF JACK DAVIES, MEMBER, MINNESOTA STATE SENATE; PROFESSOR OF LAW, WILLIAM MITCHELL COLLEGE, ST. PAUL, MINN.; AND COMMISSIONER, UNIFORM STATE LAWS, STATE OF MINNESOTA

Mr. DAVIES. Thank you very much Senator.

My name is Jack Davies. I am a professor at William Mitchell College of Law in St. Paul, and a commissioner on uniform state laws

Since 1959 I have also been a member of the Minnesota State Senate.

Early in our 1967 legislative session, I introduced a no-fault bill and have been working vigorously on the issue since that time. Included in my efforts is an April 1970 article in the Minnesota Law Review presenting my bill with comments explaining the policy judgments reflected in its various provisions.

Since May of this year, I have spent 14 full days working as a member of the drafting committee for the Uniform Motor Vehicle Accident Reparations Act, a no-fault project of the National Conference of Commissioners on Uniform State Laws.

I want the no-fault insurance system implemented as early as possible because I know the benefits this system will bring to the citizens of Minnesota and other States. I would like to accomplish that reform through the Minnesota legislature and through other State legislatures, but we have been frustrated in that effort, as this committee well knows. Therefore, I endorse affirmative congressional action on S. 945.

I have studied Committee Print No. 1 in detail and am willing to respond to questions on its no-fault provisions if the committee desires. Many of its provisions are similar to ones I defended in hearings in the Minnesota State Legislature.

Adoption of the Hart-Magnuson bill in its present form will accomplish the objectives of the no-fault reform and be to the great advantage of the American public. It is worthy of passage without substantial modification.

However, I share the concern of most State officials that State sovereignty be preserved as much as possible. In thinking about the problem of State-Federal relationships, I recently conceived a device by which passage of the national no-fault bill can be reconciled with preservation of State sovereignty over tort law and auto insurance.

I propose that S. 945 be amended by adding a provision making the national law temporary. I propose including in the bill an expiration date 2 to 4 years after the effective date of the law. When the bill becomes effective, no-fault will be instituted nationwide. But Federal involvement would be declared to be temporary. Power and responsibility and sovereignty in the field would be returned to the States in 2, 3, or 4 years.

Senator BAKER. Would that include the right to repeal no-fault after that period of time?

Mr. DAVIES. Mr. Chairman and members of the committee. If a State failed to act, I would contemplate that particular State would go back to the fault system. But once citizens of a State have lived under a federally instituted no-fault system, its legislature unquestionably will be forced by political reality to pass a State no-fault law to prevent a return to the waste and injustice of the fault system.

Adding an expiration date to S. 945 has the advantage of protecting State jurisdiction in the long run, but promptly securing the no-fault reform for all our citizens.

The return of responsibility to individual States could be accelerated even more by allowing each State legislature at any time to make the Federal law inapplicable within the borders of the State by adopting a State no-fault act conforming to a set of minimum Federal

standards. This provision is similar to that which exists in the Federal Truth-in-Lending Act.

I understand the committee yesterday heard testimony favoring the adoption of Federal standards with a deadline for State adoption of no-fault. I can endorse that procedure as an alternative to what I have just suggested.

The committee should not get hung up on a choice between those two routes.

However, I think the expiration date approach is the more advantageous, both for getting no-fault promptly implemented and for more certainly giving the States the long-term responsibility in this area of the law. It would also have the advantage of giving the States the experience of existing under the Federal program before their individual laws are shaped.

For example, on the question of primary, secondary, we can try out the version that is in your present draft and see if it does in fact make auto primary to the extent I think it will and to the extent that I think it should. If it fails in the effort then the States may more vigorously assign to the auto policy the primary coverage.

One other modification in your bill would make a significant improvement. Earlier drafts contained a provision allocating to trucks a portion of the cost of injuries to auto occupants in cases where truck and auto collide. That provision has been deleted from Committee Print No. 1. I miss it.

In fact, apportioning to heavy vehicles some of the cost of damage arising solely because of unusual weight may be essential for justice, for appropriate allocation of costs to various economic activities and for political acceptability.

If cost transfers to heavy vehicles are not made, an operator of a truck weighing 70,000 pounds will pay to compensate for bodily injuries in highway accidents a small fraction of the per mile insurance premiums paid by owners of 4,000-pound Plymouths, Fords, and Chevrolets.

Under a no-fault system without some reallocation of cost in collisions between a car and a truck, truck insurers will pay in the usual accident a tiny fraction of the costs of the personal injuries suffered. The public will not, and should not, accept that illogical allocation of costs.

If the trucking industry interferes with prompt adoption of no-fault by haggling for the unfair subsidy inherent in Committee Print No. 1 it will be hurting itself, for no other industry has more to gain from the efficiency of the no-fault insurance system than does the trucking industry.

Conceiving and drafting a provision to accomplish the reallocation I urge is a difficult task. Everyone working in the field has struggled with it. Part of the problem is to make the provision fair. Another part of the problem is to make the provision—on reading—sound equitable.

I am submitting to the committee staff a draft which I believe accomplishes both objectives. It improves somewhat on the section originally drawn from my Minnesota bill which was included in the previous draft of S. 945.

The concept of the section I propose is this: The Department of Transportation will make statistical studies of past accidents involving heavy vehicles. From these studies the Department will calculate the average amount by which injuries to occupants of lighter vehicles are made more severe by the unusual weight of various classes of heavy vehicles.

The DOT will then allocate to each heavy vehicle, according to its weight class, responsibility for a designated percentage of loss suffered by occupants of any lighter vehicle with which it collides. The percentage will represent for vehicles of each class the average weight-caused injury—no more and no less.

The amount of cost reallocated to the larger vehicles through this provision as a matter of course will be reflected in the insurance premiums charged trucking companies.

I hope my new draft will be acceptable to the committee and will find its way into the bill reported out.

I am not pleased to come to Congress to ask you to win here the no-fault battle we have thus far lost in the State legislatures. With the kind of support and effort existing in Minnesota we should not need congressional help. But we do.

If there is any feeling that the American Insurance Association has not been sincere in its effort at the State level, I can assure you that they proved in Minnesota that they are sincere. They gave us marvelous support. We have just had a wonderful situation in Minnesota but have not been able to pass the bill.

The legislative obstacle is a simple one. In Minnesota and in almost every other State legislature the committees in control of no-fault legislation are stacked against it. The stacking occurs somewhat innocently as legislatures seek to provide expertness on each legislative committee.

Expertness comes from assigning to committees those who earn their livings in the field of committee jurisdiction. So agents and insurance lawyers are assigned to insurance committees. I feel these part-time lawmakers vote in committee to protect their vested interest in the present system.

The Minnesota statistics are revealing. The house insurance committee of 27 members has 19 agents and lawyers and, for good measure, two other members took office after election recounts in which legal counsel was provided by a particularly aggressive foe of no-fault insurance.

The Senate committee of 19 members includes 11 lawyers and agents, plus two bankers who own insurance agencies.

Changing the composition of insurance committees in the various state legislatures is a long-term project. No-fault will remain bottled up in stacked committees in most States for several more years. The no-fault reform is too vital to wait. Congress should act.

If there are those on the committee who would like to aid the special interests seeking to guard their profits from the present lawsuit system, my advice is to pass a national bill to preempt the field with a status quo law of the Illinois, Delaware, or Oregon type.

I recently received the Public Affairs Newsletter of the Kemper Insurance Group. I was startled to find Minnesota listed among seven States which have enacted no-fault laws.

Passed in Minnesota were all gimmicks and smokescreens and hollow shells—and a few honest reforms—which opponents of no-fault could think of to distract attention from my bill to abolish the fault lawsuit.

The Illinois, Delaware, and Oregon laws are not much more than what we have in Minnesota, and that is not no-fault.

The no-fault movement seeks in its essence to stop the flow of dollars down the rat hole of the third party, liability, lawsuit-insurance system and to redirect those dollars to payment of efficient first-party nonfault benefits. Any bill which does not abolish the fault lawsuit fails as a no-fault bill.

My plea to the friends of no-fault on this committee and in the Congress is to resist strenuously any bogus national bill. Preemption by a bogus national bill is the one thing which could in the long run stop the no-fault reform.

I would like to place in the record at this point several items relative to the point just made. First is this large chart which compares the legislative response to auto insurance in a number of jurisdictions.

The chart shows particularly the shallowness of the Illinois, Oregon, and Delaware effort in the key aspect of freeing the individual from the tort lawsuit system and the obligation of buying liability insurance.

Senator HART. Would you hold that chart up a little?

Mr. DAVIES. You won't be able to read it, Senator.

Senator HART. I was wondering if it was possible to reproduce it?

Without objection, it will be printed in the record.[1]

Mr. DAVIES. The next items I would like to put in the record, Mr. Chairman, relate to the waste the liability insurance system entails. These charts drawn from the DOT study show that more than 25 percent of the liability premium dollar goes to litigation and claim adjusting expense. In dollars, the total of these costs is $2.5 billion out of the $9.5 billion paid for auto lability insurance in 1970.

I have not really spoken much to the merits of no-fault. Since Congress financed the Department of Transportation studies and this committee has received through those studies the overwhelming statistical evidence supporting the no-fault reform, this committee should be convinced of the merits.

Any lingering theoretical doubts have been demolished by the Massachusetts experience where drivers continue to act as morally, carefully, alertly, and competently since no-fault has been adopted as they did before its enactment.

Let me describe two actual cases which have come to my attention. One was the case of a 14-year-old girl who was injured in Minnesota. She lost one leg and requires a brace on the other leg. She received a badly scarred face. The driver who negligently caused those injuries carried $25,000 liability coverage, and from his own pocket paid another $2,500, which raised the total money available for the girl's compensation to $27,500.

Medical costs in the case were $48,000. The family could not pay. So, the county picked up the medical bills. When there was a settlement made in the case, $9,200 went to the attorney—a third went to the attorney who represented the girl and her family. The welfare department received $15,000 as reimbursement for the medical expenses they

[1] See p. 2431.

had already incurred, which was just a fraction of those medical expenses. The girl received for the loss of a leg, scarred face, and the wearing of a brace on another leg the grand total of $2,700, which I suspect is subject to further medical liens when you get right down to the reality of it.

In this regard I would like to submit for the record an editorial from the *Minneapolis Tribune* of June 21, 1971, commenting on this particular tragic case.

Senator HART. It will be received.

(The article follows:)

[From the Minneapolis Tribune, Monday, June 21, 1971]

WHAT IF "NO-FAULT" WERE LAW?

One argument raised consistently against "no-fault" auto insurance in the Minnesota Legislature is that benefits would be inadequate. A related argument—the "jackpot" appeal—is that, under the present lawsuit system, seriously injured victims can collect large settlements, which would be impossible under "no-fault."

It's interesting to compare those assertion with the recent settlement in Hennepin County District Court of a case involving a 14-year-old girl struck on Hwy. 12 in St. Louis Park last winter. She lost one leg, requires a brace for the other and received a badly scarred face.

The driver, who was insured for $25,000 will add another $2,500 to make the total settlement $27,500. Medical costs are expected to be about $48,000. The girl's family cannot pay them. So Hennepin County taxpayers—through the Welfare Board—will foot much of the bill. Of the $27,500 settlement, the girl's attorney will get $9,200; welfare gets $15,550 as partial repayment; the girl gets $2,750.

Under the "no-fault" proposal killed again this year by the Legislature, insurance would automatically pay the girl's entire $48,000 medical bill, plus the full amount of justifiable additional costs for rehabilitation. The girl—not welfare, not a lawyer—would receive between $6,600 and $25,000 (depending upon the condition of her remaining leg), plus benefits for lost earning power.

Backers of "no-fault", supported by national studies including one by the federal government, maintain that today's lawsuit system is very expensive; that it does not provide adequate coverage; that attorneys get too much of the insurance-premium dollar; that the "jackpot" is a phantom, because most accident victims never hit it; and that seriously injured victims usually are undercompensated, while those with lesser injuries most often are overcompensated.

The girl's case certainly illustrates the arguments of "no-fault" backers. She didn't hit the jackpot. Insurance paid only about half her medical costs. No money was provided specifically for rehabilitation. The girl herself received only 10 percent of an inadequate settlement. Her attorney got three and a half times as much One example isn't necessarily conclusive. But it suggests to us that there's a good deal more to be said for "no-fault" than its critics admit, and that the self-interest of lawyer-legislators in the lawsuit system may explain why "no-fault" bills have died in subcommittee in three consecutive legislative sessions.

Mr. DAVIES. The other case I would like to mention, Mr. Chairman, and members of the committee, relates to a student who this year is a freshman in the law school at which I teach. It is an evening law school. The student has a daytime job as an engineer. He is in his forties, is concerned about his future employability because, as a result of an auto accident, he has one leg which is very weak, one arm that is only partially useful.

I handle admissions. It is routine when someone over 35 applies that I ask them to come in for an interview to test their motivations and whether they really understand what they are getting into with a program of evening law study.

I asked him to comment on his reaction. His comments were stunning, because the disappointment in the fault system that he expressed was how long it took the girl that he injured in the auto accident to be compensated. His insurance company compensated her.

He passed over entirely the reality that although he was insured, that he had been paying premiums for years, that he had lost the substantial use of one arm and one leg, that he had received not one single cent from the insurance system. It did not seem to bother him, but it bothered me.

I think when he goes to that point in law study where he learns that the punishment should fit the crime that he will decide whatever monetary negligence or the extra drink or whatever it was that caused him to be at fault in the accident hardly justified the kind of penalty which our fault liability system imposed on him in the case of his own auto accident.

Mr. Chairman, I feel that the battle for no-fault on the merits is at an end. The battle now is a power struggle between those who realize the necessity for reform and those who profit from the inefficiency of the fault lawsuit system. I ask this committee to act on behalf of reform.

Senator HART. Senator, there is no need to tell you that your expression as one who has lived with an effort at the State level to see the adoption in Minnesota of a no-fault and the counsel you give us is welcome at least by me. I must confess I am uncomfortable when we talk about—we are inclined to be very free in our description of committees of State legislatures that are made up of 19 lawyers—there are 19 lawyers and three insurance agents, and therefore—I am a lawyer. too, and I am sitting now with another very good lawyer.

But this committee is loaded with lawyers, too, and I guess what I am saying is why do you think it is different here?

Mr. DAVIES. Mr. Chairman, I think it is different here. The lawyers in the legislature are part-time public officials, and they go back to their courthouse and to their law office at the end of the legislative session; they are in partnerships and in daily practices. Until this last session, I have defended the lawyer legislators, and I was sure they were going to come around. What I have discovered is I can get some support from those who are sole practitioners, but little support from those who are in partnerships because of the fact of the pressure they get from the partners in their office.

The reality is in the Minnesota Senate, out of the 22 lawyers, only four, including myself, supported the no-fault bill. It is a performance that speaks for itself.

Mr. Chairman, I go further to say in the rest of the body, excluding the lawyers, I have a clear majority.

Senator HART. Senator Baker?

Senator BAKER. That same testimony disturbed me, Senator, as it did Senator Hart, although I must say as a lawyer who was once active in practice and still on occasion has some nostalgic recollection of it—as my son stated, "you used to be a lawyer"—not quite for that reason. I was concerned that I thought I understood you to say or imply that no-fault had not passed because there were lawyers on the committee or because there are insurance agents and the like.

At that time it occurred to me that we heard testimony before and I believe had heard statistics from a sample done by the Department of Transportation that showed that some seven out of 10 or eight out of 10 people do not favor a change from the tort system.

I think seven out of 10 didn't favor that, and one out of 10 said we ought to go to what is equivalent to what I interpret to be a comparative negligence system. Yes, that is right.

What I am reading is the testimony of Craig Spangenberg before this committee on October 13. The public response was that it was satisfied 2 to 1. "In your opinion is there a need to change this system?" A strong majority of seven out of 10 indicated no, and one out of 10 said the change should be to a system of contributory negligence. That is, eight out of 10 citizens approved and would not wish to change a fault system based on sole negligence or comparative negligence.

As I understand it, this was a DOT study entitled "Public Attitudes."

The point I am mentioning is that coupled with some newspaper clippings I have read and other data, it would indicate that at least there is an arguable case that the public is not making a clamor for a shift to no-fault or is opposed to it. I am not really quite sure which.

In addition to being a lawyer, I am also a full-time legislator. If there is one thing I can verify, it is that legislators tend to resonate fairly well to their constituents. I wonder if you could not make an equally good argument that in Minnesota maybe the majority of people do not want no fault.

Mr. DAVIES. Mr. Chairman, Senator Baker, the nonlawyer, noninsurance agent legislators of Minnesota are responding to what they hear from the public, and a clear majority of them favors no fault. What they hear from the public in Minnesota, aside from what comes to them in their personal mail, shows up in a Minnesota poll, which is very well thought of as a public opinion survey.

There was a poll in April of 1969 which showed 62 percent favoring no fault and 31 percent of the Minnesota residents opposed to it. There were two more recent polls this spring. One was on April 18 and the other on June 27 of this year. They both showed 54 and 53 percent favorable, 30 and 29 percent unfavorable, and 16 and 18 percent undecided.

In Minnesota, we have had a 4-year campaign of education, and the public understands the issue and the public supports it, and that part of the legislature which is not lawyer, which is not insurance agent, supports the bill.

Senator BAKER. I am still troubled by the implications of venality that go with that. I won't press it any further. That is Minnesota's concern.

Mr. DAVIES. I am disturbed by your use of the word "venality." I think that the problem is a certain stubborn, closedmindedness among the lawyer-legislators.

Senator BAKER. As strange as it may seem I am reassured that you use "stubbornness" rather than "venality."

Mr. DAVIES. One of the problems, frankly, is that the best, the strongest, the most imaginative, the most creative legislators generally are the lawyers. It is hard to pass something that is new and creative and far reaching without their help.

Senator BAKER. You make a very convincing case, particularly for the idea that in Minnesota there is a great popular support for no fault.

I have two other questions, Mr. Chairman, that I would like to put.

First, in the illustration you gave us of the young man who negligently injured another party and his concern for the delay in his liability carrier paying benefit to her, that is a countercomplaint, and I am not sure it is criticism of the tort system as much as it is criticism of insurance companies. But, be that as it may, I wonder if in the example you made you couldn't reach the results you want; that is, some element of redress on the part of the negligent driver notwithstanding his negligence with something far short of no fault? I wonder if there isn't a way to do that without destroying the tort system?

Mr. DAVIES. Mr. Chairman, Senator Baker, we are going to see that in the Illinois law, because they have added some no-fault benefits on top of the present system. You can do all kinds of things if you are willing to pay the price, the dollar price. I think what we have to do is get some efficiency in this system in order to make it possible for the public to buy adequate no-fault benefits, first party benefits. We really can't do the one without doing the other.

Senator BAKER. Why can't you? Why is it necessary in order to have no-fault, that is, first party coverage? Why is it necessary to extinguish the rights of other people, which in the case of the testimony of the last witness number over 10 million?

Mr. DAVIES. Because for every element of the fault system that you preserve, for every dollar of benefit that is delivered through the fault insurance system, you have $1.07 of overhead. In contrast, for every dollar of first party no-fault benefit that we deliver, we will have only 30 to 25 cents overhead.

I think that the difference is just a better buy.

Senator BAKER. You mean that you would effect a savings between 25 cents and $1.07, whatever it is, in administrative overhead at the price of extinguishing the rights of 10 million people?

Mr. DAVIES. Mr. Chairman, let me speak to the rights that you speak of. You spoke of the one young man who failed to buy insurance but was not at fault in the accident. My reaction is that the young man first of all is irresponsible in not making his legitimate contribution to the insurance pool from which he proposes to collect. The uninsured motorist is a freeloader. We first of all don't have too much sympathy for the freeloader.

Senator BAKER. Isn't there a distinction in the moral concern or the sympathy that is shown toward a freeloader who must bear the consequences of freeloading himself versus a freeloader who injures someone else?

Mr. DAVIES. Mr. Chairman, that is one of the reasons why I favor going from a third party system to a first party system. Today's freeloader freeloads at the expense of his innocent victim. Under a first party system, as Committee Print No. 1 now exists, the freeloader freeloads at his own risk.

Senator BAKER. And the other fellow's too?

Mr. DAVIES. Not at all at the other person's, because any passenger in his car would recover from the assigned claims plan and the occupants of another vehicle would be going against that vehicle. A pedestrian would also recover from the assigned claims plan.

Senator BAKER. If it was covered?

Mr. DAVIES. There has to be coverage. You are describing the situation where two uninsureds run into each other. Of course, then they are each in the same boat.

Mr. Chairman, I think there is a solution to Senator Baker's problem.

Senator HART. I was suggesting to him that he didn't have a problem.

Mr. DAVIES. He does have a very slight problem, and I have a very simple solution to that very slight problem.

Senator BAKER. I have a strong suspicion that it is not going to suit me. But you go right ahead

Mr. DAVIES. It will solve your problem. So if that is what you are looking for, it will suit.

Senator BAKER. That is what I am looking for.

Mr. DAVIES. The Committee Print No. 1 is similar to the bill that I had in Minnesota, where an uninsured motorist was left out of the system. He didn't pay for insurance, so he didn't get insurance. In the deliberatians on our uniform act, I learned something. I learned that we could provide a sanction against the uninsured motorist, the freeloader. I propose that they be allowed to go to the assigned claims and get their compensation, but there will be deducted from what they get as compensation a fine of some sum of money, $500, $1,000, something like that, plus a fine of all the insurance premiums that they have evaded over the past years by breaking the law and driving as an uninsured motorist.

Senator BAKER. That is not my problem. It is one of them. But the other one is this 10½ million people who are not the pedestrian who when for example, walking down the side of the highway and someone with gross negligence ran them down. It is my understanding that they receive compensation from the assigned risk pool, notwithstanding the negligent driver was not insured; is that right?

Mr. DAVIES. True.

Senator BAKER. To what extent?

Mr. SUTCLIFFE. If they were not members of a car-owning family, they would receive it to the extent that present law would allow them to recover. If they were members of a car-owning family and there was an election as to an intangible loss and that election had been negative, they would recover only the economic loss suffered. But it would be compensation for total economic loss suffered because of that injury.

In other words, you have two categories. If, in fact, that person is not a member of a car-owning family, hasn't been subject to the election of whether he takes tangible or intangible loss, he is totally covered under the assigned claims plan.

Senator BAKER. To what extent?

Mr. SUTCLIFFE. Without limitation, only measured by the applicable law of the State tort law on the assumption the person would have been negligent. Whether the person was or was not negligent is not important. It is on the assumption that he was negligent to get the measure of damages. So you get tangible loss and intangible loss.

Mr. DAVIES. Mr. Chairman, I would suggest that to permit the uninsured motorist himself to go to the assigned claims plan and recover

with this penalty provision is not unfair and would work, and it would be much simpler than anything we could do to the present system to allow the 45 percent who are excluded entirely because of the fault concept to get something out of the insurance system although retaining the fault concept.

Mr. Chairman, while the committee is thinking of another question for me, previous testimony I think focused for the moment on the proposition of deterrence. I would like to suggest that the no-fault system—if you are willing to accept the idea that what happens after the accident ever has any deterrent effect on how people drive—the no-fault system spreads that deterrent a little wider than the present system does. Now, if you are dead right as you speed along, the other person has to pay 100 percent, so there is no premium on defensive driving. Just obey the rules, and the other person will have to pay.

Under the no-fault system we expect there will be deductibles applicable and those deductibles will be applicable to every claim. So, even the innocent driver will have to pay $100 or $50, depending on what kind of a policy he buys. Everyone is going to face that economic deterrent. So we do not in fact give up an economic deterrent by adopting the no-fault system.

However, I personally don't believe the after-accident conditions have any deterrent value whatsoever.

Senator HART. On that one, I raised the question of Mr. Stark, as he indicated it was a slow ball. I sensed that he would swing as he did——

Senator BAKER. And missed.

Senator HART. Let me try my answer. I think many of the areas we are talking about have complexity, but on this one, I am a legislator with a closed mind.

To tell me that my driving attitude or suggest that the driving attitude of other people is affected by what kind of automobile insurance is or isn't available, I just can't buy. I can understand, I think I, too, am affected by my desire to avoid physical suffering. I know I am liable to get hurt if I am careless. That has a deterrent effect. And I am not sure when the policeman is around the corner, so that has a deterrent effect. And I may be vain about my car, I don't like to get it scratched or worse, or I may depend on the car and be deterred by inconvenience if it is laid up.

These things in one's common experience are deterrents, and if the cumulative effect of all those deterrents doesn't deter, the kind of policy, as I say, to me isn't important. Is that an answer?

Senator BAKER. That is an answer, Senator Hart, but I don't think it was an answer on the question that I was trying to put to the previous witness. I don't doubt for a moment that every element you have described and identified is a deterrent, and there is one omitted: you may not wish wish to injure another person. That is the greatest deterrent, but that does not necessarily exclude the deterrent that one hates to be sued, one hates to be charged with negligence; one hates to pay a judgment; one hates to be subject to punitive damages; and most of all one would hate to be uninsured under these circumstances.

I believe that deterrent would be added to the list as well. I do not contend for a moment that our present system is a pure-fault system. It has been modified to the point it is a contract reparation [illegible]

the extent of 80 or 85 percent of the accidents involved. But it seems to me there is an additional deterrent involved which is implicit in the tort system. The question is whether we are going to give up one of the deterrents, not all of them.

Mr. DAVIES. I have before me a couple of paragraphs from the DOT study on deterrents which, if it is appropriate, I would like to read into the record.

Senator HART. All right.

Mr. DAVIES. The DOT study said:

In order to be effective, the deterrents depends on the presence of three factors. First, there must be strong social sanction for the use of punitive or deterrent methods. Second, the potential offender should be sufficiently susceptible to societal sanction or pressures so he responds to the full extent to which he is capable to the wishes of the community. Finally, the potential offender must in fact be capable of changing his behavior in the intended direction. The actual effects of deterrence measures on the general driving public are poorly understood. There is, however, strong evidence that with respect to highway safety, no one of the three factors described above exist to a sufficient degree to permit deterrence to function very effectively. As we show in this section, our society does not really sanction strong deterrent measures. The most flagrant offenders are affected only minimally, if at all, by societal pressures, and many among those who would respond to the wishes of the community are prevented from doing so by either personal or environmental factors or both.

Senator HART. If I could, let me note for the record that the excerpt that was in Mr. Spangenberg's testimony yesterday and to which Senator Baker made reference today suggesting two-thirds of the people were satisfied with the existing automobile insurance system did, in fact, come from the DOT study, but I would ask that the full analysis be made a part of the record, and I will ask staff to include it.

It shows after a little discussion and description of the nature of the system and alternative systems that 65 percent figure just about reverses.

(The information follows:)

E. PUBLIC OPINION: COMPLAINTS AND ATTITUDES ABOUT AUTOMOBILE INSURANCE

Increasingly vocal public concern over the operation of the automobile insurance system has been a major force in attracting the interest of government at all levels. Indeed, public concern led to the creation of the Department of Transportation's Automobile Insurance and Compensation Study.

Any institution that directly and substantially affects the lives of three out of every four American families is bound to generate at least some consumer dissatisfaction. During the course of the Study, the Department became a natural collection point for citizen complaint letters about auto insurance. A selection of these letters were sent to the companies involved for comment. The complainants were contacted and asked for additional information.[1]

It is an indication of how strongly these complainants felt that 80 percent of them responded even though they were advised that the Department of Transportation had no power to assist them.[2] About 40 percent of these complainants considered their complaints still open, despite the fact that many were concerned with matters several years old. Only 26 percent of those that believed their complaints were resolved felt justice had been done.

Although no formal adjudications of the facts in dispute could be made, many of these complaints appeared to be unwarranted in the context of the present insurance system. Others reflected gross misconceptions about the operation of the system or the respective rights of insureds, claimants or insurance companies. Many of the complaints, however, did appear to be justified. In some cases, the company admitted error and frequently gave evidence of going to considerable lengths to rectify it. In still other cases, neither the company nor the complainant appeared, either in a legal or moral sense, to be completely "right."

One study of consumer complaints about automobile insurance indicated that non-standard (i.e., high-risk) companies are responsible for a disproportionate

[1] Public Attitudes, pp. 137–266.
[2] *Ibid.*, p. 140.

number of complaints. This study, based on the experience of four jurisdictions—California, Illinois, West Virginia and the District of Columbia—revealed that while high-risk companies had from 5 to 11 percent of the market, their share of complaints ranged from 14 to 48 percent of the total analyzed.[3] While the distribution of complaints by type varied from one jurisdiction to another, delay of claims payment, disputes of the value of the loss and denial of coverage accounted for slightly over 70 percent of all complaints.[4]

One of the Department's principal concerns was to find out what the public thinks and feels about the present automobile insurance system. To this end, two large-scale surveys were conducted, one of the general public and the other of persons known to have been seriously injured in automobile accidents.[5] In general, these surveys indicate that the public has mixed attitudes about the performance of various aspects of the system, is generally ill-informed about the current system, and, on the whole, shows an openness to change when made aware of alternatives to the present system.

When respondents to the survey of the general public were asked to mention what they felt were the good and bad points of auto insurance, most mentioned both kinds of features. However, while most references to desirable features were couched in the form of generalities, references to undesirable features tended to be specific, relating to rising costs, fear of cancellation and delays in the settlement of claims.[6] Only 8 percent of the general public could think of more than one favorable point and 17 percent were unable to think of any: however, 27 percent mentioned two or more unfavorable features while only 12 percent could think of none. The most frequently stated undesirable aspect of auto insurance was high or rising cost (44 percent of all respondents), policy cancellation or nonrenewal (11 percent), and delay in claims by others or against large loss (37 percent)—a function which perhaps could be equally well provided by alternative systems—and good service (12 percent) were most frequently mentioned as good points.

A motorist's level of satisfaction with the system might logically be expected to be related to his experience with it. As reflected by an Index of Satisfaction—a measure combining the responses to several questions [7]—respondents with personal injury accident experience during the two-year period prior to the interview, either personally or by association with another family member, tended to be less satisfied than respondents with property damage or no accident experience (Table 24). One likely explanation is the widespread possession of collision insurance that pays auto damage costs without regard to fault and also facilitates third-party recovery. Indeed, the Index shows that the level of satisfaction for persons with first-party claims is significantly greater than that of third-party claimants (Table 25).

TABLE 24.—INDEX OF SATISFACTION OF THE GENERAL PUBLIC WITH AUTO INSURANCE BY TYPE OF AUTO ACCIDENT

[Percentage distribution of car-owning families]

Level of satisfaction	Type of accident		
	Personal injury	Property damage only	No accident
Very satisfied	18	24	27
Generally and somewhat satisfied, and pro-con	53	52	59
Dissatisfied	29	24	20
Total	100	100	100

Source: Public Attitudes, p. 109.

[3] Insurance Accessibility, p. 70.
[4] An Analysis of Complaints, p. 10.
[5] See Public Attitudes and Public Attitudes Supplement.
[6] Public Attitudes, pp. 24–25.
[7] For a discussion on the Index of Satisfaction, see Public Attitudes, pp. 15–31.

TABLE 25.—INDEX OF SATISFACTION OF THE GENERAL PUBLIC WITH AUTO INSURANCE BY TYPE OF INSURANCE CLAIM

[Percentage distribution of car-owning families with accidents]

Level of satisfaction	Type of claim	
	1st party	3d party
Very satisfied	31	20
Generally and somewhat satisfied, and pro-con	47	53
Dissatisfied	22	27
Total	100	100

Source: Public Attitudes, p. 110.

The Index also reflects the much greater degree of dissatisfaction with auto insurance on the part of motorists living in the central cities of the twelve largest Standard Metropolitan Statistical Areas (SMSA's) as compared to those living in all other sections of the country (Table 26). The relatively high cost of automobile insurance protection in urban areas, the problem of court delay and the greater difficulty in obtaining and keeping insurance are all reasonable explanations for the differences.

TABLE 26.—INDEX OF SATISFACTION OF THE GENERAL PUBLIC WITH AUTO INSURANCE BY DEGREE OF URBANIZATION

[Percentage distribution of car-owning families]

Level of satisfaction	Respondent's residence	
	12 largest SMSA's	Other areas
Very satisfied	13	22
Generally and somewhat satisfied, and pro-con	49	58
Dissatisfied	38	20
Total	100	100

Source: Public Attitudes, p. 112.

When asked whether they had ever personally experienced cancellation or nonrenewal, 14 percent of the car-owning families replied affirmatively.[8] Excluding those motorists who were themselves cancelled, more than half of all respondents, particularly youthful motorists, had *heard* of others who had been cancelled. Most respondents who were cancelled or denied renewal purchased other insurance, but low income people were more likely than others to go without insurance after a cancellation.[9]

One of the more important observations to be drawn from this survey of the general public was that a substantial number of motorists do not clearly understand how the fault system is intended to work. Nearly 30 percent of all respondents believed that they could collect from a third-party insurer when partly at fault in an accident with another driver.[10] Another 14 percent did not know whether they could or could not collect. Those with significant direct recent experience with the system, in this case seriously injured victims, showed a better understanding of the fault doctrine with only 21 percent replying incorrectly and 12 percent not knowing.[11]

A comparison of the seriously injured victims' responses with those of the general car-owning public to a series of attitudinal questions on the reasons for carrying automobile insurance indicates that the former tend to attach greater relative

[8] *Ibid.*, p. 35.
[9] *Ibid.*, p. 37.
[10] *Ibid.*, pp. 71–72.
[11] Public Attitudes Supplement, p. 36.

importance to all reasons.[12] One of the largest differences between the two groups concerned their feelings about compensation for "pain and suffering" caused by an accident. Sixty-four percent of the seriously injured victims considered this a "very important" reason for carrying auto insurance, while only 46 percent of the general public expressed the same attitude.[13] Fifteen percent of the general public thought it was "not at all important," but only 7 percent of the seriously injured victims agreed.

As the interview developed and respondents gained additional knowledge of the present system and a possible alternative to it (i.e., no-fault insurance), the general public tended to express less satisfaction with liability insurance and tended to favor a no-fault system (Table 27). When first asked whether based on their experience they were or were not satisfied with auto insurance, 65 percent of respondents replied with some degree of satisfaction while 22 percent were dissatisfied. Later, after a brief description of auto liability insurance, the level of dissatisfaction increased; 56 percent indicated satisfaction while 28 percent displayed dissatisfaction. Respondents were then given a brief description of an alternative, no-fault insurance system and were asked for their reaction. The pattern of responses to this question very closely matched that relating to the evaluation of the liability system. In both cases close to 60 percent replied favorably to what had been described. Either respondents changed their opinion upon learning about a no-fault alternative or else they did not see any contradiction in approving two different insurance systems.

TABLE 27.—ATTITUDES OF THE GENERAL PUBLIC TOWARD FAULT AND NO-FAULT INSURANCE

[Percentage of car-owning families]

Level of satisfaction	Question relating to—		
	Experience with fault system	Evaluation of fault system	Evaluation of no-fault system
Very, generally, and somewhat satisfied	65	56	57
Pro-con	6	4	2
Generally dissatisfied	22	28	30
Other	7	12	11
Total	100	100	100

Source: Public Attitudes, pp. 18 and 73.

The views of seriously injured victims to these same three questions generally paralleled those of the general population, tending to be somewhat more extreme (Table 28). On the question relating to experience with auto insurance, seriously injured victims were clearly less satisfied than the general public, with only 50 percent—compared to 65 percent—voicing satisfaction. Almost half (46 percent) of seriously injured victims expressed some dissatisfaction with the present system. One-third of those dissatisfied expressed only moderate dissatisfaction but the other two-thirds answered an unqualified "dissatisfied."

TABLE 28.—ATTITUDES OF SERIOUSLY INJURED ACCIDENT VICTIMS TOWARD FAULT AND NO-FAULT INSURANCE

[In percent]

Level of satisfaction	Question relating to—		
	Experience with fault system	Evaluation of fault system	Evaluation of no-fault system
Very, generally, and somewhat satisfied	50	48	62
Pro-con	15	13	5
Generally dissatisfied	31	25	22
Other	4	13	11
Total [1]	100	100	100

[1] Detail may not add to total due to rounding.

Source: Public Attitudes Supplement, pp. 5, 13, and 15.

[12] Public Attitudes, pp. 63–65 and Public Attitudes Supplement, pp. 7–9.
[13] Public Attitudes Supplement, p. 8.

As in the case of the general public, a majority of seriously injured auto accident victims (62 percent) evaluated a brief description of no-fault insurance favorably; and fewer of these respondents were opposed to the no-fault system as described. Once again, respondents either did not see any contradiction in their views on fault and no-fault, or they changed their opinion after becoming aware of an alternative to tort liability.

In the final part of both survey interviews, respondents were given descriptions of two alternative types of automobile insurance (i.e., fault and no-fault) and asked to choose between them.[14] The descriptions were brief, but included the major points of both systems. Because of the desire for brevity and simplicity, the description of fault insurance did not explicitly exclude the first-party coverage which is available within the existing system as a supplement to liability insurance, though it did focus on the third-party liability aspects of insurance. The descrption of no-fault insurance did not emphasize certainty of payment, an integral part of most such systems that have been proposed.

In response to this choice question, 40 percent of the general public opted for no-fault without qualification, another 15 percent preferred it if the cost were lower and 35 percent favored the present system even if it were more costly (Table 29). Among seriously injured victims, 39 percent chose no-fault without qualification, 9 percent more would choose it if the cost were lower and 39 percent favored the status quo. Accident victims who had recovered under tort understandably showed a greater tendency to favor the fault system than those who had not recovered under tort.

TABLE 29.—COMPARISON OF EXPRESSED CHOICE BETWEEN FAULT AND NO-FAULT INSURANCE FOR THE GENERAL PUBLIC AND SERIOUSLY INJURED VICTIMS

[In percent]

Choice between systems	General public	Seriously injured victims
Favors no-fault	40	39
Favors no-fault only if less costly	15	9
Favors fault even if more costly	35	39
Undecided/not ascertained	10	13
Total	100	100

Source: Public Attitudes Supplement, p. 18.

The descriptions of the fault and no-fault systems used in the foregoing "choice" question stressed that the former sometimes paid an additional amount for "pain and suffering" while the latter did not. This matter was addressed in another question which asked if compensation for "pain and suffering" should be eliminated if that would reduce insurance costs. Fifty-three percent of the respondents answered affirmatively, 37 percent negatively and 10 percent gave no opinion.[15]

The expression "pain and suffering" is widely used in insurance circles and elsewhere to connote the entire range of intangible or "general" damages including inconvenience, mental anguish, emotional distress, denial of future happiness or vocational opportunity because of disfigurement, physical impairment, loss of limb, sight or other bodily function, etc. It is more than probable that the majority of the respondents did not have a complete understanding of the full meaning of the term "pain and suffering," in particular the fact that it encompasses the more serious kinds of intangible loss. This likelihood, however, by no means undermines the usefulness of the responses to the survey's questions. Most accident liability claims involving personal injury do not involve serious kinds of intangible loss. For example, a survey of paid personal injury liability claims showed that only 7.6 percent involved permanent disability, permanent disfigurement or death.[16] Moreover, it would appear that liability insurance payments to such victims, on the average, *do not* even approach their *economic*

[14] A description of the alternative systems can be found in *Public Attitudes Supplement*, p. 16.
[15] Public Attitudes, p. 66.
[16] Automobile Personal Injury Claims, p. 19.

losses. Average total economic loss (including lost future earings) for fatally injured victims was estimated at $22,894; liability insurance payments averaged $10,981. Average total economic loss for permanently and totally disabled victims was $78,000; liability insurance payment averaged $12,556.[17]

Indeed, it is clear that most of "pain and suffering" dollars are going to victims with relatively minor, transient injuries who experience their "pain and suffering" in the literal dictionary sense of the term. That a majority of the public would be willing to forego compensation for these hard to measure intangible losses is important.

A provocative point to consider is that the overwhelming majority of respondents to the attitudinal survey of the general public who were involved in multi-car accidents believed that the "other driver" was at fault (Table 30). Since fault obviously has been attributed wrongly to the "other driver" in some unknown but large number of cases, it would have been interesting to learn whether the respondents to both surveys who favorably evaluated the fault system and expressed preference for liability insurance over no-fault insurance still would hold these opinions if the actual "guilty" part were known.

TABLE 30.—OPINION OF THE GENERAL PUBLIC ABOUT WHO WAS AT FAULT IN MULTICAR ACCIDENTS

[In percent]

Opinion on fault	Property damage only	Personal injury
Family member	26	18
Both drivers	4	3
Other driver	65	76
No one/unknown	6	4
Total	100	100

Note. Detail does not add to total due to rounding.

Source: Public Attitudes, p. 119.

In evaluating these responses, it should be recognized that any question asked of a large group of people concerning their satisfaction with an existing institution is likely to carry a built-in bias in favor of that institution. While there may often be a number of complainers or fault-finders, there will also be a sizeable percentage of people who accept the status quo as they have had no negative experience to make them question it. Many of these people have given no thought to their auto insurance; they pay their premiums when they are billed, and are grateful for the feeling of being protected. It is not surprising, therefore, that when asked whether they were satisfied with their auto insurance two out of three of the general car-owning public said that they were. Understandably, those who had been seriously hurt in an auto accident and who most likely had had recent experience with auto insurance were differently conditioned as a group; only half of them expressed satisfaction.

By the time in the interview when the respondents were asked about their evaluation of and choice between fault and no-fault systems, their understanding of auto insurance had been somewhat clarified and their experiences and reactions had been recalled to their minds. Respondents showed a definite interest in preference for a no-fault system.

No survey on an issue as complex as automobile insurance can claim to be perfect in every way. Some may be subject to errors of construction (e.g., simplicity vs. complexity of questions and inadequacy vs. abundance of information provided to respondents); some may be subject to errors of sampling (e.g., the representativeness of the sample to the population); and some may be subject to errors of response (e.g., misinterpretation of questions). Each of these possible sources of error can produce substantially different results to seemingly similar questions. Moreover, small variations in phrasing can lead to different responses. A question written as "Car insurance companies have the duty to provide insurance for all people who need it" will likely evoke a different response than an alternate wording as "Car insurance companies should have the right to refuse to insure some people." Thus, although the responses to several public opinion surveys

[17] *Ibid.*, p. 53.

sponsored by various segments of the insurance industry at times conflict with the results of the Department's two surveys, after carefully reviewing each one, the basic validity of the results of the Department's surveys appears unimpaired.

One of the things that is apparent from all these attitude surveys, from the complaint letters of insurance buyers and claimants, and indeed, from almost any investigation of the consumer and his auto insurance is how imperfectly the consumer comprehends the insurance product and institution. This holds true of the existing system, and would hold true of possible changes or alternatives to it.

Large numbers of consumers appear to be unhappy with auto insurance today, largely with its cost but also with the effects of market constrictions. When insurance consumers become claimants, especially third-party claimants, the focus of their unhappiness shifts to the conduct of the insurance company. Consumers would appear to be open to change, especially if it would reduce costs. The shift in opinions observed during the two public opinion surveys conducted for the Department of Transportation from general satisfaction with the present automobile liability insurance system to an approval of substantial changes makes it probable that the wide-spread availability of more information about such alternatives as a no-fault plan will increase the support for a change in the present system.

Mr. DAVIES. Senator, the same thing happened in the Minnesota poll. They asked a naked question, then they explained some of the tradeoffs, and got 50 percent of the negatives to change their position in the process of the polltaking.

Senator BAKER. You mean the polltakers changed their minds?

Mr. DAVIES. In the process of just explaining what the first question meant. That was one of the very early polls in Minnesota before there had been public education on the issue.

Senator BAKER. How many people under Committee Print No. 1, according to your interpretation, would not be entitled to benefits based on your estimate of the number of people who would be insured and those who would not be insured?

Did you hear the testimony of the previous witness?

Mr. DAVIES. I heard the testimony. As I understand it, the only individuals excluded are those who are in the process of committing a crime or who are motor vehicle owners who have not bought insurance in violation of the law.

Senator BAKER. And they are completely out of the system according to Committee Print No. 1?

Mr. DAVIES. I yield to the staff on that. That is my understanding.

Mr. SUTCLIFFE. That is correct.

Senator BAKER. And there would be 10.5 million of them?

Mr. DAVIES. Mr. Chairman, I go with Mr. Stark in his estimate that when you are insuring for your own benefit, you are much more apt to buy the insurance than you are when you are buying for somebody else's protection and you happen to be a judgment proof——

Senator BAKER. I really don't think that is why I buy liability insurance for someone else's protection. I think it is for my protection. Wholly aside from that, what I am trying to arrive at is not the merits of the controversy, but some estimate that I can feel relatively comfortable with of the number of people that would be involved in this situation, that is, the number of people who would not be under the system.

Mr. SUTCLIFFE. I am sorry, there has been confusion. I think it is important to straighten out the confusion, because under the committee print, the tort exemption applies only to the owner, operator, or user of an insured motor vehicle.

So that those people who chose not to insure under the qualifying no-fault policy would then automatically subject themselves to the very tort liability that Senator Baker is suggesting we have abolished with the tort exemption.

So, not only do you have the assigned claims plan, but those people who are injured by an uninsured motorist have recourse to that uninsured motorist under the existing tort liability scheme.

And that appears in the committee print, section 3(a) on page 12, line 1.

Mr. DAVIES. Mr. Chairman, if I could pursue that. We now insure the 85 percent of the public that is motivated, as Senator Baker is and as I am and as Senator Hart is, as is everybody in this room. We choose to pay our share. Under a no-fault system, we are speaking of an additional motivation on that other 15 percent.

If you want to get your loss of earnings and your medical expenses paid if you are injured in an auto accident, you are going to have to pay. There is no other way to get that.

We are working on the 15 percent through the first party system and I think very effectively.

Mr. SUTCLIFFE. Senator, there was some suggestion in your testimony that the committee print reflects a decision to give a subsidy to the trucking industry. I am not sure that that suggestion is accurate, but let me explore the present liability system and the present responsibility for truck operations.

Under he liability system you would think there would be a very strong incentive to operate the vehicles in such a manner as to not antagonize the accident environment situation because these truckers have so-called deep pockets under the liability situation.

Is that a fair statement?

Mr. DAVIES. I think the trucking industry tries very hard to keep its accident involvement at a minimum, certainly.

Mr. SUTCLIFFE. By assessing greater premium to the trucking industry under a first-party system, how are you operating any differently than at the present time of assessing greater premiums because of the deep-pocket theory of the tort liability system?

In other words, what greater incentives are you providing to prevent the collision of a very large vehicle with a very small vehicle on our highways?

Mr. DAVIES. The draft that I submitted to staff makes the truck pay only in those circumstances where it is actually involved in an accident. So, to the extent——

Mr. SUTCLIFFE. In other words, it is a loss shift operation after the fact?

Mr. DAVIES. Yes; accident by accident, but a predetermined percentage. In other words, a semitrailer truck would be rated ahead of time x number of tons weight, it would be, say, a 70-percent reallocation if it collides with an ordinary passenger vehicle.

That would automatically happen every time the truck and a car came into collision. Even if the car ran into the back end of the truck, the truck could——

Mr. SUTCLIFFE. But this would be without regard to fault?

Mr. DAVIES. Without regard to fault, yes. It is simply an effort to isolate the weight factor as an injury-causing factor. I think to the extent that weight is an injury-causing factor that that cost should fall on the heavy vehicles.

Mr. SUTCLIFFE. But isn't the goal the prevention of the collision of those larger vehicles with smaller vehicles to the extent possible?

Mr. DAVIES. Certainly, certainly. But they are going to happen.

Mr. SUTCLIFFE. But if they are going to happen, why are you assigning a greater cost to the heavier vehicle?

In other words, why don't you assign a greater cost to the Cadillac than the Volkswagen because that same kind of weight disparity causes greater intrusion into the compact car by the heavier vehicle?

Mr. DAVIES. The theory of the section could be extended to the Cadillac-Volkswagen distinction. I chose in my draft, as a policy judgment to lump the passenger automobiles into a single class.

Mr. SUTCLIFFE. That is what I am after. What is the policy reason for assigning a greater share of the cost to the heavier vehicle? You could make the exact opposite conclusion and assign a greater cost to the smaller vehicle that is on the roadway with the heavier car or truck, because it is the lightness of the vehicle that causes it as much as the heaviness of the vehicle.

Mr. DAVIES. What causes the accident——

Mr. SUTCLIFFE. I am not talking about the causation of the accident. I am talking about the causation of the damage.

Mr. DAVIES. Let me lay a foundation for my reasoning. The accident occurs because both vehicles happen to be in that vicinity and one or the other or both—or the road conditions—cause them to come into contact.

At that point, if we have a first party system where the insurer of each vehicle covers only the losses of his own vehicle, in the normal case the occupants of the auto would be seriously injured, it would be high insurance cost to their insurer. The truck driver would not be injured at all or very slightly injured, and there would be very low cost.

But the reality of causation of injury in that circumstance was that the many tons of weight represented in that truck caused the injury to be more severe.

I don't know if this will help focus, but we had a collision on a freeway in Minnesota between a Volkswagen and a semitrailer in which the truckdriver was killed and the Volkswagen driver was uninjured. It was a front page story, unbelievable. The public does not expect that to happen and the public would expect the big vehicle to be responsible for the very serious damage that it typically causes.

Mr. SUTCLIFFE. So, your policy is to try to determine who should bear a cost?

Mr. DAVIES. Just an appropriate allocation of cost.

Mr. SUTCLIFFE. For the use of the larger vehicles on our roads and highways?

Mr. DAVIES. True. I don't believe that the draft has any penalty for the large vehicle whatsoever. It just has an appropriate allocation of cost.

Mr. SUTCLIFFE. This would be analogous to requiring trucks using interstate highways to pay a Federal motor vehicle tax for fuel consumption?

Mr. DAVIES. Just as they wear away the pavement faster than the Volkswagen, so they create more costs in the form of bodily injury.

Mr. SUTCLIFFE. You would only assess that tax on those people on a random basis who were involved in accidents with smaller vehicles?

Mr. DAVIES. True, If one trucking company through a good selection of drivers, good training programs, good maintenance of vehicles and so on was able to keep its accident involvement at an extremely low level, their experience rating by their insurer would be very, very fine. They would pay lower premiums than a company that was more careless with its driver selection and had a greater degree of accident involvement.

Mr. SUTCLIFFE. Whereas that same theory applied to a heavier vehicle on our highway, if it was a passenger motor vehicle, wouldn't have the fallout of possible accident avoidance of what you are suggesting it might have in the trucking industry?

Mr. DAVIES. I do not deny your point that the rationale of this section applies exactly the same to the Volkswagen-Cadillac collision as it does between the semitrailer and the passenger vehicle.

The rationale is the same. I just felt that the law can't make all its distinctions so precisely, and that it would be more practical in administration to lump the passenger vehicles.

Mr. SUTCLIFFE. Thank you very much.

That clarifies the issue for me.

Senator HART. Senator, you have, as you see, stimulated all of us.

Thank you very much.

(The statement follows:)

STATEMENT OF JACK DAVIES, PROFESSOR, WILLIAM MITCHELL COLLEGE OF LAW, ST. PAUL, MINN.

Mr. Chairman, members of the committee. My name is Jack Davies. I'm a professor at William Mitchell College of Law in St. Paul, and a Commissioner on Uniform State Laws. Since 1959 I have also been a member of the Minnesota State Senate. Early in our 1967 legislative session I introduced a no-fault bill and have been working vigorously on the issue since that time. Included in my efforts is an April 1970 article in the Minnesota Law Review presenting my bill with comments explaining the policy judgments reflected in its various provisions. Since May of this year I have spent 14 full days working as a member of the drafting committee for the Uniform Motor Vehicle Accident Reparations Act, a no-fault project of the National Conference of Commissioners on Uniform State Laws.

I want the no-fault insurance system implemented as early as possible because I know the benefits this system will bring to the citizens of Minnesota and other states. I would like to accomplish that reform through the Minnesota legislature and through other state legislatures, but we have been frustrated in that effort. Therefore I endorse affirmative Congressional action on S 945. I have studied committtee print one in detail and am willing to respond to questions on its no-fault provisions if the committee desires. Many of its provisions are similar to ones I defended in hearings in the Minnesota State legislature.

Adoption of the Hart-Magnuson bill in its present form will accomplish the objectives of the no-fault reform and be to the great advantage of the American public. It is worthy of passage without modification.

However, I share the concern of most state officials that state sovereignty be preserved as much as possible. In thinking about the problem of state-federal relationships I recently conceived a device by which passage of the national no-

fault bill can be reconciled with preservation of state sovereignty over tort law and auto insurance.

I propose that S 945 be amended by adding a provision making the national law temporary. I propose including in the bill an expiration date two to four years after the effective date of the law. When the bill becomes effective no-fault will be instituted nationwide. Power and responsibility and sovereignty in the field would be returned to the states in two, three or four years.

Once citizens of a state have lived under a federally instituted no-faul system, its legislature unquestionably will be forced politically to pass a state no-fault law to prevent a return to the waste and injustice of the fault system. Adding an expiration date to S 945 has the advantage of protecting state jurisdiction in the long run, but promptly securing the no-fault reform for all our citizens.

The return of responsibility to individual states could be accelerated even more by allowing each state legislature at any time to make the federal law inapplicable within the borders of the state by adopting a state no-fault act conforming to a set of minimum federal standards. This provision exists in the federal truth-in-lending act.

One other modification would significantly improve the bill. Earlier drafts contained a provision allocating to trucks a portion of the costs of injury to auto occupants in cases where truck and auto collide. That provision has been deleted from committee print one. I miss it. In fact, apportioning to heavy vehicles some of the cost of damage arising solely because of unusual weight may be essential for justice, for appropriate allocation of costs to various economic activities and for political acceptability. If cost transfers to heavy vehicles are not made, an operator of a truck weighing 70,000 pounds will pay to compensate for bodily injuries in highway accidents a small fraction of the per mile insurance premiums paid by owners of 4000 pound Plymouths, Fords and Chevrolets. Under a no-fault system without some reallocation of cost in collisions between a car and a truck, truck insurers will pay in the usual case a tiny fraction of the costs of the personal injuries suffered. The public will not, and should not, accept that illogical allocation of costs.

If the trucking industry interferes with prompt adoption of no-fault by haggling for the unfair subsidy inherent in committee print one it will be hurting itself. No other industry has more to gain from the efficiency of the no-fault insurance system.

Conceiving and drafting a provision to accomplish the reallocation I urge is a difficult task. Everyone working in the field has struggled with it. Part of the problem is to make the provision fair. Another part of the problem is to make the provision—on reading—sound equitable. I am submitting to the committee staff a draft which I believe accomplishes both objectives. It improves somewhat on the section originally drawn from my Minnesota bill which was included in the previous draft of S 945.

The concept of the section I propose is this: the Department of Transportation will make statistical studies of past accidents involving heavy vehicles. From these studies the department will calculate the average amount by which injuries to occupants of lighter vehicles are made more severe by the unusual weight of various classes of heavy vehicles. The DOT will then allocate to each heavy vehicle, according to its weight class, responsibility for a designated percentage of loss suffered by occupants of any lighter vehicle with which it collides. The percentage will represent for vehicles of each class the average *weight-caused injury*—no more and no less. The amount of cost reallocated to the larger vehicles through this provision will be reflected in the insurance premiums charged trucking companies.

I hope my new draft will be acceptable to the committee and will find its way into the bill reported out.

I'm not pleased to come to Congress to ask you to win here the no-fault battle we have thus far lost in the state legislatures. With the kind of support and effort existing in Minnesota we should not need Congressional help. But we do. The legislative obstacle is a simple one. In Minnesota and in almost every other state legislature, the committees in control of no-fault legislation are stacked against it. The stacking occurs somewhat innocently as legislatures seek to provide expertness on each legislative committee. Expertness comes from assigning to committees those who earn their livings in the field of committee jurisdiction. So agents and insurance lawyers are assigned to insurance committees. They vote in committee to protect their vested interest in the present system.

Mr. SUTCLIFFE. This would be analogous to requiring trucks using interstate highways to pay a Federal motor vehicle tax for fuel consumption?

Mr. DAVIES. Just as they wear away the pavement faster than the Volkswagen, so they create more costs in the form of bodily injury.

Mr. SUTCLIFFE. You would only assess that tax on those people on a random basis who were involved in accidents with smaller vehicles?

Mr. DAVIES. True, If one trucking company through a good selection of drivers, good training programs, good maintenance of vehicles and so on was able to keep its accident involvement at an extremely low level, their experience rating by their insurer would be very, very fine. They would pay lower premiums than a company that was more careless with its driver selection and had a greater degree of accident involvement.

Mr. SUTCLIFFE. Whereas that same theory applied to a heavier vehicle on our highway, if it was a passenger motor vehicle, wouldn't have the fallout of possible accident avoidance of what you are suggesting it might have in the trucking industry?

Mr. DAVIES. I do not deny your point that the rationale of this section applies exactly the same to the Volkswagen-Cadillac collision as it does between the semitrailer and the passenger vehicle.

The rationale is the same. I just felt that the law can't make all its distinctions so precisely, and that it would be more practical in administration to lump the passenger vehicles.

Mr. SUTCLIFFE. Thank you very much.

That clarifies the issue for me.

Senator HART. Senator, you have, as you see, stimulated all of us.

Thank you very much.

(The statement follows:)

STATEMENT OF JACK DAVIES, PROFESSOR, WILLIAM MITCHELL COLLEGE OF LAW, ST. PAUL, MINN.

Mr. Chairman, members of the committee. My name is Jack Davies. I'm a professor at William Mitchell College of Law in St. Paul, and a Commissioner on Uniform State Laws. Since 1959 I have also been a member of the Minnesota State Senate. Early in our 1967 legislative session I introduced a no-fault bill and have been working vigorously on the issue since that time. Included in my efforts is an April 1970 article in the Minnesota Law Review presenting my bill with comments explaining the policy judgments reflected in its various provisions. Since May of this year I have spent 14 full days working as a member of the drafting committee for the Uniform Motor Vehicle Accident Reparations Act, a no-fault project of the National Conference of Commissioners on Uniform State Laws.

I want the no-fault insurance system implemented as early as possible because I know the benefits this system will bring to the citizens of Minnesota and other states. I would like to accomplish that reform through the Minnesota legislature and through other state legislatures, but we have been frustrated in that effort. Therefore I endorse affirmative Congressional action on S 945. I have studied committtee print one in detail and am willing to respond to questions on its no-fault provisions if the committee desires. Many of its provisions are similar to ones I defended in hearings in the Minnesota State legislature.

Adoption of the Hart-Magnuson bill in its present form will accomplish the objectives of the no-fault reform and be to the great advantage of the American public. It is worthy of passage without modification.

However, I share the concern of most state officials that state sovereignty be preserved as much as possible. In thinking about the problem of state-federal relationships I recently conceived a device by which passage of the national no-

fault bill can be reconciled with preservation of state sovereignty over tort law and auto insurance.

I propose that S 945 be amended by adding a provision making the national law temporary. I propose including in the bill an expiration date two to four years after the effective date of the law. When the bill becomes effective no-fault will be instituted nationwide. Power and responsibility and sovereignty in the field would be returned to the states in two, three or four years.

Once citizens of a state have lived under a federally instituted no-faul system, its legislature unquestionably will be forced politically to pass a state no-fault law to prevent a return to the waste and injustice of the fault system. Adding an expiration date to S 945 has the advantage of protecting state jurisdiction in the long run, but promptly securing the no-fault reform for all our citizens.

The return of responsibility to individual states could be accelerated even more by allowing each state legislature at any time to make the federal law inapplicable within the borders of the state by adopting a state no-fault act conforming to a set of minimum federal standards. This provision exists in the federal truth-in-lending act.

One other modification would significantly improve the bill. Earlier drafts contained a provision allocating to trucks a portion of the costs of injury to auto occupants in cases where truck and auto collide. That provision has been deleted from committee print one. I miss it. In fact, apportioning to heavy vehicles some of the cost of damage arising solely because of unusual weight may be essential for justice, for appropriate allocation of costs to various economic activities and for political acceptability. If cost transfers to heavy vehicles are not made, an operator of a truck weighing 70,000 pounds will pay to compensate for bodily injuries in highway accidents a small fraction of the per mile insurance premiums paid by owners of 4000 pound Plymouths, Fords and Chevrolets. Under a no-fault system without some reallocation of cost in collisions between a car and a truck, truck insurers will pay in the usual case a tiny fraction of the costs of the personal injuries suffered. The public will not, and should not, accept that illogical allocation of costs.

If the trucking industry interferes with prompt adoption of no-fault by haggling for the unfair subsidy inherent in committee print one it will be hurting itself. No other industry has more to gain from the efficiency of the no-fault insurance system.

Conceiving and drafting a provision to accomplish the reallocation I urge is a difficult task. Everyone working in the field has struggled with it. Part of the problem is to make the provision fair. Another part of the problem is to make the provision—on reading—sound equitable. I am submitting to the committee staff a draft which I believe accomplishes both objectives. It improves somewhat on the section originally drawn from my Minnesota bill which was included in the previous draft of S 945.

The concept of the section I propose is this: the Department of Transportation will make statistical studies of past accidents involving heavy vehicles. From these studies the department will calculate the average amount by which injuries to occupants of lighter vehicles are made more severe by the unusual weight of various classes of heavy vehicles. The DOT will then allocate to each heavy vehicle, according to its weight class, responsibility for a designated percentage of loss suffered by occupants of any lighter vehicle with which it collides. The percentage will represent for vehicles of each class the average *weight-caused injury*—no more and no less. The amount of cost reallocated to the larger vehicles through this provision will be reflected in the insurance premiums charged trucking companies.

I hope my new draft will be acceptable to the committee and will find its way into the bill reported out.

I'm not pleased to come to Congress to ask you to win here the no-fault battle we have thus far lost in the state legislatures. With the kind of support and effort existing in Minnesota we should not need Congressional help. But we do. The legislative obstacle is a simple one. In Minnesota and in almost every other state legislature, the committees in control of no-fault legislation are stacked against it. The stacking occurs somewhat innocently as legislatures seek to provide expertness on each legislative committee. Expertness comes from assigning to committees those who earn their livings in the field of committee jurisdiction. So agents and insurance lawyers are assigned to insurance committees. They vote in committee to protect their vested interest in the present system.

The Minnesota statistics are revealing. The house insurance committee of 27 members has 19 agents and lawyers. For good measure two other members took office after election recounts in which legal counsel was provided by a particularly aggressive foe of no-fault.

The Senate committee of 19 members includes 11 lawyers and agents, plus two bankers who own insurance agencies.

Changing the composition of insurance committees in the various state legislatures is a long term project. No-fault will remain bottled up in stacked committees in most states for several more years. The no-fault reform is too vital to wait. Congress should act.

If there are those on the committee who would like to aid the special interests seeking to guard their profits from the present lawsuit system, my advice is to preempt the field with a status quo law of the Illinois, Delaware, or Oregon type. I recently received the Public Affairs Newsletter of the Kemper Insurance Group. I was startled to find Minnesota listed among seven states which "have enacted no-fault laws." Passed in Minnesota were all gimmicks and smokescreens and hollow shells—and honest reforms—which opponents of no-fault could think of to distract attention from my bill to abolish the fault lawsuit. The Illinois, Delaware, and Oregon laws are not much more than what we have in Minnesota and that is not no-fault. The no-fault movement seeks in its essence to stop the flow of dollars down the rat-hole of the third-party, liability, lawsuit insurance system and to redirect those dollars to payment of efficient first-party non-fault benefits. Any bill which does not abolish the fault lawsuit fails as a no-fault bill. My plea to the friends of no-fault on this committee and in the Congress is to resist strenuously any phony national bill. Preemption by a bad national bill is the one thing which could in the long run stop the no-fault reform.

I have not spoken to the merits of no-fault. Since Congress financed the Department of Transportation studies and this committee has received through those studies the overwhelming statistical evidence supporting the no-fault reform, this committee should be convinced of the merits. Any lingering theoretical doubts have been demolished by the Massachusetts exerience where drivers continue to act as morally, carefully, alertly, and competently since no-fault has been adopted as they did before its enactment.

The battle on the merits is at an end. The battle now is a power struggle between those who realize the necessity for reform and those who profit from the inefficiency of the fault lawsuit system. I ask this committee to act on behalf of reform.

We had hoped we might be able to hear all of the witnesses and not delay them for a luncheon break, but it being 12:35, I would suggest a recess to resume at 1:45.

(Whereupon, at 12:35 p.m., the hearing was recessed, to reconvene at 1:45 p.m., this same day.)

AFTERNOON SESSION

Senator HART. The committee will be in order.

Let me welcome the commissioner of insurance of the State of California, Richards Barger. Commissioner, let me order printed in the record in full your statement. As you go along, particularly if you would like to respond to any of the things that have been exchanged here this morning, feel free to do so.

STATEMENT OF RICHARDS D. BARGER, INSURANCE COMMISSIONER, STATE OF CALIFORNIA

Mr. BARGER. Thank you, Senator. I would like to first of all thank the committee for allowing me to appear and you, Senator Hart, for allowing me time on your crowded agenda to present the thoughts of the National Association of Insurance Commissioners on this very important bill.

My name is Richards D. Barger. Today I am appearing on behalf of the National Association of Insurance Commissioners, commonly referred to as the NAIC, both as the insurance commissioner of the State of California, and as president of the NAIC. Having its inception in and regular meetings since 1871, the NAIC is the oldest voluntary association of State officials. It includes the principal insurance regulatory authorities of the 50 States, the District of Columbia, and the territories of the United States.

The proposed National No-fault Motor Vehicle Act, as revised in Committee Print No. 1, poses two fundamental issues:

(1) To what extent should the concept of fault be eliminated from the legal and automobile insurance system and how might it best be tested and implemented, and (2) if the system is changed, how should it be regulated?

On May 13, Commissioner Lorne R. Worthington, the past president of the NAIC, testified before this committee on the original version of S. 945 which also posed these two basic issues in a somewhat different form. As to the issue of No-fault, the NAIC recommends the experimentation on a State-by-State basis to resolve this complex and varying problem. The State-by-State approach provides a means to do so in a manner responsive to the public's choice in the marketplace between the benefits it wants at costs it's willing to pay.

I think this is very important. The reasons for this conclusion are spelled out in Commissioner Worthington's statement and we will not repeat them there. Subsequently at the NAIC meeting in June, the following resolution was adopted, which I will not recite.

It refers to the fact that the auto reparation systems currently in force do not uniformly and adequately compensate all injured parties, that they often fail to provide prompt payments of insured losses, and fail to equitably distribute the claims dollar among all victims and claimants.

Based on those recitals we say there should be:

(1) Prompt payment for economic loss;

(2) Distribution of the auto insurance claims dollar in such a manner that a close relationship is developed between the benefits delivered to each injured party and his actual economic loss; and

(3) Distribution of a larger percentage of the premium dollar to parties suffering economic loss.

I might deviate for a moment, if I might. There is one further factor that I think is very important, and I would like to refer to that as the commissioner from California. I think cost is a very vital factor in this whole thing. One of the great clamors for reform in the automobile reparations system is based upon cost and the fact that the public is very concerned about the increasing cost of automobile insurance.

Let me note that State insurance regulation has no vested interest in either eliminating or continuing the third-party legal liability system for automobile insurance. We currently oversee both fault and No-fault type coverages. What is ultimately in the best interest of the public is what we favor and support. The problem is determining what is ultimately in the public interest.

Today we shall concentrate on the second basic issue—i.e., how should the system, if changed, be regulated. As an essential backdrop,

let me briefly highlight the State insurance regulatory mechanism which is both broad and detailed. For example—

(1) Insurers must obtain and continue their licenses in order to do business. This, in turn, requires complying with statutes and regulations pertaining to formation, financial standards concerning assets, capital and surplus, permissible investments, adequacy of reserves, and qualifications as to character of management, experience and knowledge of the business. Licenses may be suspended or revoked for failure to comply with the law or when the public interest so requires.

(2) Insurers must file comprehensive annual and other periodic reports under oath in each State in which they do business. This is on an annual form required by the NAIC which gives us information. The NAIC annual statement requires detailed information concerning financial condition, underwriting, investments, reserves et cetera.

(3) Insurers are subject to comprehensive periodic examinations to, among other things, ascertain the financial condition of the company—and in our State we have rating examinations as to how companies charge the public for automobile types of insurance.

(4) By virtue of statutory standards on policy content and the commissioners' policy form approval or disapproval power, much of the source of misrepresentation or other unfair practices is deterred in advance.

(5) Control is exercised over the pricing practices of property and liability insurers by implementing either through prior approval or subsequent review the standards that rates shall not be excessive, inadequate nor unfairly discriminatory between the same classes of insurers.

(6) Market practices are controlled by, among other things, laws governing the qualifications of agents and brokers, licensing of the same, prohibitions against certain practices such as false and misleading advertising—I might state in this regard the NAIC has put out a study on mass advertising which I would recommend for your perusal, because I think it is a fine piece of work—and representations, defining standards of fair competition, control over policy forms, rate controls in several areas, and department investigations of complaints.

(7) The insurance commissioner may, for a variety of causes (e.g., insolvency, refusal to comply with orders, failure to remove officers, et cetera), apply for a court order of liquidation, rehabilitation, or conservation.

(8) Among the sanctions available for enforcement of the insurance laws are criminal and civil penalties, cease and desist orders; injunctions; removal of officers and directors; fines; and revocation of or refusal to renew licenses of agents, adjusters, brokers, and insurers. These express powers and sanctions, plus the informal powers, sanctions, and alternative modes of relief stemming therefrom, extend far beyond what is being talked about in connection with the proposed Federal bill.

Supplementing the efforts of the individual States has been the NAIC which is a 100-year-old organization consisting of the insurance commissioners of the several States. The NAIC has sought to promote uniformity where appropriate, develop model laws and regu-

lations for use in various States, and conduct various types of studies and research projects. The NAIC, as a whole, meets twice a year. Various committees meet during the interim. In addition, a central research office has been established, of which Mr. Hanson, on my right, is the executive director. Thus the NAIC provides a flexible and timely facility to develop and implement change. In short, the NAIC has served as a mechanism to improve regulation and has provided impetus for change.

Committee Print No. 1 vests a wide range of regulatory powers in the Secretary. However, the Secretary may be defined by the omissions left in the bill. Several of these are listed in the footnote on my prepared statement. In evaluating such provisions, we think it is important to differentiate between the goals being sought and the techniques used to achieve such goals. Once the goals are delineated, we are in a better position to evaluate alternative approaches to achieve them. The primary insurance regulatory goals implicit in Committee Print No. 1 seem to be as follows:

(1) Policy provisions which are fair and equitable;

(2) Development of meaningful cost information affording the public a reasonable opportunity to compare price and quality of the product; and

(3) Assurance that coverage availability extends to all meeting the eligibility requirements.

If the no-fault concept, as embodied in this bill is adopted, few, if any, would quarrel with these regulatory goals. However, questions are posed in evaluating the manner of their effectuation:

(a) Do the techniques embodied in the statute seem reasonably calculated to achieve their precise goal?

(b) If so, does it conflict with other objectives equally or more important?

(c) Are there preferable alternatives?

Let us briefly review each of these goals with these questions in mind.

I refer to the provisions for our fair and equitable policy provisions. Section 5(d)(1) vests in the Secretary approval power over policy terms, conditions, exclusions, deductibles, coverages, and benefits if such are fair and equitable. The use of policy approval power is a time-honored insurance regulatory technique to achieve this goal. In fact, it is standard practice in every State, either before or after the sale of that particular policy. Numerous individuals in the various State insurance departments, with countless numbers of years of experience and expertise, receive and scrutinize insurance company policy forms before they can be issued to the public, or after they are issued to the public, which is the case in our State in automobile insurance. Their purpose is to assure that the policies conform to applicable law, whether State or Federal. Changes must also be approved. A pattern of policyholder complaints, if any, will lead to subsequent review and possible withdrawal of approval. I might say, Senator, in our State we coordinate the number of complaints from the public with our legal department who approve policy forms and most kinds of insurance on our rating examination so we can have some kind of coordination between the complaints that the public has and how they relate to

certain policy provisions to the next time we review the company's books or approve their policy forms. We then are able to make improvements on their forms to eliminate these complaints by the public. In short, the same goal and technique already exists at the State level. State approval procedures will continue, even if a similar mechanism is adopted at the Federal level as proposed by this bill, since each insurance department is charged with the responsibility of seeing that insurers comply with that State's requirements. Repeating the same goal in a Federal statute and creating a Federal approved procedure would seem to be needless duplication in terms of time, effort, and the taxpayer dollars.

Secondly, relating to price information, both section 5(d)(1) and section 6 seek to develop meaningful cost information to enable the public to compare company prices and claims and loss experience. This is sought through the establishment by the Secretary of a common uniform statistical plan for allocation and compilation of claims and loss experience to be followed by every insurer. To accomplish the purpose of the statistical plan, the Secretary would be authorized to prescribe uniform policy provisions, classes of risk and rating territories for each coverage (section 6(d)). Section 5(d)(1)—approval power over policy terms discussed above—relates to limiting the variety of coverages available; its purpose is to give buyers a reasonable opportunity to compare the costs of various insurers as well as to assure fair and equitable policies. Each insurer will submit to the Secretary the actual rates it charges (section 6(e)). The Secretary is then directed to make available to the general public a comparison of each insurer's "indicated rate" based solely on claims and loss experience and the actual rate being charged for each class of risk in each territory. The goal of providing increased meaningful price information to the public is a valuable one. We concede this, but at the same time the technique suggested to do so needs to be evaluated in terms of its impact on other objectives.

First, the establishment of uniform policy provisions, classifications, and rating territories will rigidify a system at a time when experimentation and innovation are most important. Digressing for a moment, I would like to relate to you the California experience. As you are I am sure well aware, since 1947 we have had an open competition type rating law that does not impose any perimeters of conduct upon the companies in terms of innovating in classifications of risks, rates, and policy forms. We have found that the public in our State has been the beneficiary of the ability of the companies to innovate in terms of different driving classifications, different types of policies, and different types of rates. I think it would be a serious mistake to impose certain parameters of conduct upon the insurers, because I think the public ultimately will suffer if this is done.

The elimination of the fault concept and the shift to an entirely first party no-fault coverage will revolutionize the writing of automobile insurance. I think even its proponents will concede that, sir. Policy forms and rating techniques will undergo substantial transformation.

In any undertaking of this magnitude and complexity, no person or persons can reasonably be expected to "devine" the proper course to take in buying automobile insurance. Yet the assumption of omni-

science is implicit in the provision for establishing nationwide uniformity in policy provisions, classifications, rating territories, et cetera. What is needed is a period of trial and error—a shakedown period on a State by State basis—giving both the industry and the public the maximum opportunity to learn and select. Only in this manner is there a reasonable likelihood that the best techniques and approaches will emerge over the long run for the benefit of the general public.

Second, if the States retain the regulatory power, the likelihood of improved regulation, as the proposed no-fault system evolves, would be greatly enhanced. Change could then originate from any one of several sources whereas the national regulatory approach limits the initiative for change and improvement to one source—i.e., the Federal Government.

Third, if the fault concept is eliminated for automobile insurance, it can be anticipated that some, if not several, life and health insurance companies will enter the field and compete for this business. Such a development offers intriguing possibilities and new thinking redounding to the benefit of the insurance-buying public. However, the imposition of a straightjacket of uniformity could seriously impair, if not derail, this promising development.

Fourth, the sponsors of S. 945, as well as many others, have endorsed the concept of expanded utilization of the mass marketing concept as a means to reduce the cost of automobile insurance. I have already referred to our NAIC report on mass merchandising. As is documented by the NAIC central office staff study on Mass Marketing, significant momentum has and is continuing to develop in this area. As is the case in most marketing developments, insurers are feeling their way by experimenting with those types of programs, coverages and underwriting which they feel can appropriately be undertaken. However, if their freedom to experiment is frozen, this promising development conceivably could be arrested in its infancy, thereby eliminating possible cost savings to the insured from marketing efficiencies and/or employer contributions.

I might say I am not espousing that this be done, but I say it is a development that is going to happen at some point in time somewhere in the foreseeable future.

Five, Committee Print No. 1 does not purport—nor does the staff analysis suggest—that the bill would regulate rates. Yet for the purposes of a statistical plan, a Federal regulatory agency would be vested with control over classification and rating territories, both fundamental elements in ratemaking. This would severely disrupt the existing regulatory pattern. Also it could result in Federal establishment of national groupings which may be less relevant when applied to local situations.

Furthermore, the elaborate statistical scheme proposed in this bill—designed to provide meaningful cost information to the public—appears to be quite impractical. Remember, we are not dealing with a single national rate structure. Rates will vary by territories and their classifications. Under a competitive system, rates are being constantly changed. I have already referred to that.

Hundreds of companies write automobile insurance. To provide timely information on a multitude of insurers, each having a multi-

tude of rates in an economic environment fostering frequent rate changes, presents a Herculean task. Publication of comparative rates and experience will most likely be out of date before the public has an opportunity to receive and absorb it. In other words, this scheme would not provide timely—i.e., meaningful—information for the public. Some States have attempted to grapple with this problem and found it to be a difficult one to solve. The proposed scheme in the bill, in our judgment, oversimplifies the problem. Thus, not only does the proposal conflict with other objectives embodied in the bill, it does not offer a practical solution to even achieve its stated goal.

In short, while we concur in the goal of improved cost information for the public, at the same time we submit that the techniques proposed—such as a uniform policy provision, rating territories, classifications, et cetera—would adversely impinge upon the long-term sound development of the proposed non-fault automobile insurance program. That is, techniques embodied in Committee Print No. 1 would inhibit the flexibility necessary for a meaningful "shakedown" period, would lessen the likelihood of improved and responsive regulation as the system develops, could deter the influx if life and health insurance company involvement, might arrest the development of mass marketing, and would disrupt the State regulatory pattern.

As it now exists today, section 7 authorizes the secretary to organize an assigned claims bureau and assigned claims plan to enable each person or his legal representative sustaining injury or death to obtain the benefits prescribed by statute if no insurance benefits under a qualifying policy are applicable, identifiable, or payable due to an insurer's financial inability to perform. The assigned claims mechanism is proposed as a means to make available protection that would not otherwise be forthcoming.

Developing a mechanism to provide coverage in residual areas is not uncommon. State insurance regulators have substantial experience in this area. Assigned risk plans for automobile insurance exist in every State. Approximately half of the States found it appropriate to institute FAIR plans to provide property insurance coverage in urban areas. Nearly all States have enacted guaranty fund legislation to protect insureds and claimants in the event an insurer becomes insolvent. The proposed assigned claims bureau is another variant on the same theme.

Some may question the assigned claims approach as being the best technique. In the development of the FAIR plans, this concept was originally considered and then abandoned in favor of the pool concept of one type or another. This is not to say that the assigned risk approach is wrong, but rather its superiority has not been proven to the point that it should be mandated for all States in all circumstances. Furthermore, because of State expertise and willingness to grapple with residual problems such as this, the responsibility for assuring the availability of residual coverage should be left with the States to be solved with the peculiar problem of each State in mind.

I think a good example is in your State of Michigan, Senator, they have a very successful assigned claims plan where anyone who registers his automobile must either provide evidence of insurance or must pay a flat fee, and this money grows into the assigned claims fund.

Senator HART. Commissioner, on that point, this committee earlier heard from the administrator of that fund, our Secretary of State, Mr. Austin, and he describes it a little differently than you do in terms of the degree of satisfaction. There are two problems with it.

Number one, the legislature has already tapped it for $44 million for the general fund, and number two, many people think it is a form of insurance.

Mr. BARGER. We have been reviewing it in some detail as a possibility in California. I am glad to hear your remarks, because I am going to call Mr. Austin. We have had it touted very highly to us, and I am glad you told me.

Senator HART. He is an extremely competent person, and I know it would be helpful if you talked to him.

Mr. BARGER. I was going to say it may not be the answer for those of us in California, we may desire some other vehicle as an answer to this problem.

In the above discussion we have attempted to differentiate between objectives and the means or techniques to achieve those objectives. The insurance regulatory objectives (as distinguished from the objective of reforming the automobile reparation system on a non-fault basis) implicit in Committee Print No. 1 are threefold: (1) fair and equitable policies, (2) provision of meaningful cost information, and (3) assurance of availability of benefits to those so entitled. We concur in the objectives; we disagree as to the means proposed.

A fundamental factor in evaluating alternative means is one's view on the issue of State versus Federal regulation. It is not our purpose today to delve into this debate in detail. We only note here that utilization of the State insurance regulatory mechanism possess the advantage that it already exists with 50 State insurance departments having over 4,500 employees and budgets in excess of $50 million. Furthermore, State regulation is closer to the public and hence more responsive to the policyholder demands. It facilitates experimentation since the gravity of a mistake is severely limited. It tends to be more responsive in the presence of the continuous threat of congressional removal of its jurisdiction. And, it is consistent with the fundamental concept of decentralization of political power.

With this backdrop, the NAIC expresses serious concern over the creation of an institutional insurance regulatory framework in a Federal agency. Such a framework at best will lead to duplication of effort, time, and taxpayers' dollars, and at worst, will, over the long run, undermine the effective and viable system of State insurance regulation. Furthermore, the insurance regulatory provisions are only incidental aspects and not an integral part of the committee print's proposed nonfault program.

As stated above, we believe that the enactment of the nonfault concept at the Federal level would be inappropriate. If at some future point in time Congress decides to adopt a Federal no-fault program in some form as a matter of national policy, we recommend that no existing insurance regulatory authority be vested in any Federal agency. This would require deletion of such provisions as sections 5 (d) (1), 6, and 7 of print No. 1 of the committee. The responsibility for insurance regulation should remain with the States. The insur-

ance regulatory goals of the State insurance departments are consistent with those implicit in the statute, as discussed above. The States possess the expertise. The NAIC provides a facility and impetus for change and, where appropriate, for uniformity. Thus, it is logical and reasonable to expect the States to fulfill this responsibility. We submit that in the long run this approach is in the best interest of the insurance-buying public.

That concludes my formal and prepared remarks, Senator. You asked if I could make some observations on some of the testimony I heard this morning, and I will now slip into my position as the California Insurance Commissioner, because that concludes my prepared remarks on behalf of the NAIC.

Senator HART. Thank you for the remarks reflecting the feeling of the NAIC.

Now, you tell us as the insurance commissioner of California about some of the things you heard this morning.

Mr. BARGER. As you are well aware, we have had some experience this year with several proposals sponsored in the California Legislature. One bill was successful in getting through one house of the legislature, the other was not. My feeling is very simply this.

No. 1, that most State legislators are not yet convinced that inaction on their part will lead to Federal action. That is point No. 1.

No. 2, I am not convinced that most legislators are really aware of the fact that there is a public demand for some change in the reparations system. I think the reason for this is that there has been no grassroots clamoring for it yet.

No. 3, my deliberations on the problem, and as a lawyer they have been rather soul searching, have led me to believe that the system has to be changed in many material respects, but at the same time there really is no classic solution to the problem.

No. 4, because there are certain inherent assumptions built into any proposal, whether they be by the proponents of the proposal or by the opponents of the proposal. The validity of these assumptions will determine the success of the plan.

Unfortunately, the ultimate payor for someone's mistakes are the premium-paying public of the country.

No. 5, I personally am not yet convinced based upon my observations, at this point in time, that pure no-fault is ultimately going to benefit the public in terms of cost saving or politically it is possible to be enacted yet.

I do say, however, certain parts of the system have to be improved before we can understand whether pure no-fault will work, and I mean meaningfully improved. When I say meaningfully improved I mean changes in the area of pain and suffering. Limitations on general damages (pain and suffering) are the real issue the opponents of change "zero in" on—these opponents of the bar who deal with auto negligence cases.

I am convinced that if you are going to lay any first-party system upon the present system that you are going to have to accomplish some savings elsewhere within the system and the area of pain and suffering is the area where you can accomplish these savings.

At the same time, I do not think it is fair to penalize those who are seriously injured. I mean seriously injured. So, consequently, Senator,

in our proposals in California we propose limitations on pain and suffering in the so-called smaller cases and we also supported the series of bills authored by Senator John Harmer that sought to accomplish this. Later, after the defeat of Senator Harmer's bills, we supported Assemblyman Fenton's bill that imposed a threshold.

Both these proposals had very liberal first-party coverage, but it became obvious to us that if you only lay on first-party coverage alone upon the present third-party system, as the trial lawyers want to do in California, it is going to increase the portion of the premium for liability protection by one-third.

I don't think the public is going to stand still for that. I would not want to be the legislator that was responsible for passing it.

What I am trying to say to you is the legislators in the several States have not gotten the message yet; by the same token, I think it is unfair to impose a 1-year or 2-year perimeter of action upon the States because, as you are well aware from the testimony, any change in the system is going to impose changes upon a long-established socio-economic system of law, and it isn't going to come easy, as you are well aware.

So, I am saying this to you, that the action has to be continuous at the State level because we are not going to have any significant results unless we do.

By the same token, I think that the States are not entitled to an open end on action. They have to be told unless something is done within a responsible period of time that the Federal Government is going to act. I think that is the message that I am trying to get through to you today as the Commissioner from California.

We have gone through one session of the legislature and I think I can speak with some authority having had the lumps and bruises to show for it, and would and will do it all over again.

I think many insurance commissioners feel that way.

Senator HART. You say you think most insurance commissioners feel that way. Am I to understand at conventions and informally at other times this has been the attitude voiced by most of your colleagues?

Mr. BARGER. I think so, yes. Let me point out by way of review just where some of the commissioners stand, and I don't mean to speak for them, but I have talked to them about the problem.

You are familiar with former Superintendent Stewart of New York and his views about the reparation system. Commissioner Van Hooser feels the same way as I do. Whether you agree with the way he did it or not, Commissioner Baylor was one of the people responsible for change in Illinois.

I would say generally that most of the commissioners feel that some kind of a change in the system is necessary, and it is going to come to pass because we, too, are concerned about the problem.

The one thing that I always told the people who opposed our bill in Sacramento, that we were dealing with the public's money, and getting into the area of pain and suffering under the present system was at least something that was foreseeable. Our bill could be evaluated intelligently because it didn't revolutionize, it didn't change the system so dramatically, that there was no way to perceive what it was going

to cost the public. That is the reason I supported the program I did, and I have yet to be convinced that first-party coverage under "pure no-fault" is going to save the public any money.

That is just my feeling generally.

Senator HART. I would hope that the insurance commissioners of the country, if they believe it to be true, would help us on this. But we should understand that cost savings is broader than just premium cost.

If a no-fault program can compensate those thousands of people who today at the premium level, whatever it is today, are not compensated, then that is part of the savings. It may not be reflected by less premium, but our figures indicate that about $2.5 billion of gross national product is lost each year from seriously injured persons who get incomplete compensation. If you can eliminate that loss, even though the premium volume remains the same, you have made a very substantial saving, and it is that broader concept of saving that insurance commissioners should make sure everyone understands.

Mr. BARGER. I talk about containing premium costs, because I have been very careful not to represent to any legislators that I am going to save the public money. I think that anyone representing or proposing that change in the system that is going to save money to the public is a good deal like an elected official saying he is going to save them taxes at the time he is reelected. It does not happen that way. I am not sure you can guarantee the results.

I concur with you, but unfortunately the complaints we get from the public as to what people pay for automobile insurance manifest themselves in what they pay in terms of premiums, not what they receive in terms of benefits when they are injured. That is the unfortunate fact of life.

The public in the letters we get do not equate premiums they pay with benefits paid to others.

Perhaps, Senator, you are right. So, I suppose one answer to the problem would be to put a layer of first-party benefits upon the present system, but I have taken a very strong position that at this reading is inequitable to the public because there has to be some savings elsewhere in the system to offset the increased costs of the first-party benefits.

We are talking about the same thing, but my answer is different than yours. My feeling has been at the outset that the present system shouldn't be completely junked. It should be streamlined. Then let's judge it.

Consistent with that philosophy I have tried to make the attendant savings for the first-party coverage in the smaller cases, only the smaller cases, by putting a limitation on pain and suffering.

I guess our goals are the same. Our methodology is different. That is what I am trying to say to you.

The irony of it is in our first proposal in Sacramento authored by Senator Harris, that I just related to you, is that some of the people who support your bill here opposed our bill.

Now, I happen to think automobile reparations is like religion, as long as you get in the same place, you ought not to argue about the means.

Senator HART. We won't get theological about it.

Mr. BARGER. I think you know what I am trying to say.

Senator HART. I think I would have joined those in Sacramento who opposed your bill for the same reason I think that that Illinois bill is not good.

Mr. BARGER. It may well be——

Senator HART. It isn't a very substantial advance. It improves things some. Maybe your theory is if we can take those small steps, eventually we will get to the point where it will be accomplished.

In the meantime, talking about this cost, our delay is paid for by the public. While we contemplate the gradualism with which we will approach it this year, each year the consumer pays a fair amount of money.

Mr. BARGER. Let me respond to that, if I could, Senator. You may be right. I hope you are right, because if you are wrong the public is going to pay more.

Senator HART. I am generally sort of tentative about my votes and positions, but I am reasonably secure on this one, which doesn't mean it couldn't be wrong.

Now, the association is on record for an approach to insurance reform State by State. There are a great many very large population centers in this country that straddle State boundaries. We happen to be sitting in one now. The Department of Transportation itself has told us that no-fault insurance in the District of Columbia would be of very limited use unless Maryland and Virginia moved at the same level about the same time.

The Kansas Cities, St. Louis—I am told there are 30 U.S. metropolitan areas encompassing two or more States, and in those metropolitan centers live 30 million people. Now, how will the State-by-State approach ease their problem?

Mr. BARGER. It may not be a very satisfactory answer to you, but let me say I can think of a number of areas where a State-by-State approach has been followed in automobile insurance and it seems to have worked out adequately.

For instance, I used to live in the State of Indiana, and if I happened to live in Gary, Ind., and my wife and I had a disagreement that led to a divorce, I could move to Chicago, Ill. The grounds that the divorce might be different, yet I have heard no one espouse a uniform divorce law.

Senator HART. Husbands and wives and automobiles in my book are just not comparable.

Mr. BARGER. You are talking about a——

Senator HART. Maybe the mobility is about the same. I am not even sure of that.

Mr. BARGER. I don't know. I am from California. I am a poor person to ask about that, although I have only been married once.

I know what you are saying, and I think there is some merit to what you are saying, but I am saying we live in a federal system where each State is charged with responsibility for its own problems in a way it deems best fit.

It may well be that our mobile population has changed that, but I am not sure that we are at a point in time yet, Senator, where the mobility of our population is a sufficient reason to take away from the several States the right to solve their own problems.

Senator HART. The principal you suggest is valid, but there is a competing principal at work in my book. I tend to think that the other principle has an overriding claim against it, at least with respect to the consequences involved in a personal injury automobile accident, that if they add a measure of uniformity it would at least be a development for these 30 million people who live in Gary and work in Chicago or vice versa day after day.

Mr. BARGER. One of the things that makes it paricularly difficult to achieve a uniform solution to the problem, not only do you have it in the political dialog that goes on between the vested interests, if you so want to call them that, the organized bar and the trial lawyers on the one hand and those seeking to reform on the other, but you have certain sections of business that say they will only by change that conforms to their idea of change, which results in a theme of variables that I think you are concerned about.

Senator HART. But there is a constant in the subject matter we are talking about. There is a hospital bed and that costs so much, and there is a physician and a surgeon and their fees are so much, whether it is in Gary or Chicago.

What is unique to the Illinois citizen as distinguished from the Indiana citizen with respect to how much it is going to hurt him when he gets hurt in a car?

Mr. BARGER. I can give you a good answer to that because it was the answer given to me in California when I originally proposed a threshold approach, and the answer is very simply this:

> It costs you $26 a day for a bed in Eureka, Calif., and it costs you twice that in San Francisco, Calif., which means that someone has to wait twice as long in Eureka to pierce the threshold as they do in San Francisco.

What I am trying to say is there are certain variables on a State-by-State basis that may require them to adopt their own certain solutions to the problem.

Senator HART. That variable is reflected in the rates, assuming the commissioner is competent. That has introduced a uniformity so far as the traveler is concerned when he gets hurt, whether it happens during a dark night in California or a noonday in Gary.

Mr. BARGER. I tried to point out in my prepared statement, if you have this system of classification of risks and rating, it imposes an inflexible system on the companies that don't allow them to take advantage of these variables.

I am departing at the moment from whether or not change in the system is necessary. I am going to the second part of the problem that I have addressed my remarks to, and I am trying to say to you, all right, conceding arguendo that what you say is right, you have to give the companies the flexibility to make classifications and territories to recognize these changes without a Federal straitjacket imposed upon them.

Senator HART. Mr. Sutcliffe.

Mr. SUTCLIFFE. Mr. Barger, assuming that you have solved the problem of reform and are now concentrating on the problem of regulatory goals that you say are set forth in Committee Print No. 1, with which you agree, how do you accomplish those goals given 50 difference insurance departments with a history of unevenness of action—some very good, some not so good. If you are setting out a na-

tional policy to correct the automobile reparations system, and it seems to me that you are saying the NAIC is not in favor of that, can you leave all regulation to the States?

If that is left to the States, what assurances could you give the Congress of the United States that there would not be an evenness in providing for policy information and level of performance, fairness and equity in a policy itself, and availability of the insurance that is mandated on a national basis?

Mr. BARGER. First of all, I think you would have to question the basic assumption of the question before you answer it. I am not sure that evenness is an absolute necessity in terms of what the public is entitled or wants—that is more important.

Mr. SUTCLIFFE. By evenness, let me clarify that for the record. A minimum level of performance assuring protection of the consumer of insurance.

Mr. BARGER. Do you mean in terms of whether they pay their claims or whether or not they are solvent, or do you mean in terms of what they are buying?

Mr. SUTCLIFFE. Both in terms of solvency, which I think should be given in any regulatory scheme, and also assurance of payment of claims upon proper presentation of proof of loss. But the more important thing is the ability to have the consumer discern what companies have the chance of serving him best so there is indeed the kind of competition that your association has gone on record in favor of.

Mr. BARGER. Well, let me say this to you, let me talk about a State where I think we probably have the greatest degree of competition that I know of because of the history of our rating law. I will give you a personal experience which I think is fairly relevant. I have two teenage drivers in my family, which makes rating shopping pretty relevant. I happen to buy my insurance from an insurance agent whose main office of the company happens to be in the city where you are from.

Every 6 months I happen to drop by the Sears Roebuck Allstate's counter just to keep my agent honest, because I want to know if what I am being charged is competitive.

I find most of my friends want to know what they could be charged by the other companies because they are aware of the competitive facts of life. In terms of whether they are getting the best bargain for their dollar, they are concerned about two things, the price they pay for their insurance, and, No. 2, the quality of claims service rendered to them if there is an accident.

The former I think is a very simple thing to discern, because the ability to do so is there. It doesn't take any genius any more to call your agent up and tell him you want a certain amount of coverage, you want 50–100 or 50–100 and $300 and $200 deductible, and he can tell you how much it is going to cost.

He can tell you very quickly what it is going to cost you and so can the man at the Allstate counter and so can the State Farm agent.

The claims practices is a more subjective decision on behalf of the buyer. But he soon knows, based upon his own experience with the company, as to whether or not he wants to retain them or not.

So, in those two areas, I think the buying public in my State generally have the opportunity to avail themselves of a number of coverages, because it isn't all that difficult any more to get information either from your own agent or from somebody else's agent.

You can look in a phone book under State Farm or Farmers Insurance or an independent agent.

Mr. SUTCLIFFE. I guess one of the problems is that under a third-party liability system the insurance company that you place your business with ends up oftentimes not paying you, it is paying somebody else.

Mr. BARGER. It all depends what I choose to buy. For instance, let's talk about whether he pays me or not. At present, and I am not sounding like one of the trial lawyers, but one of the few things I agree with them on is this: Today if I want to buy loss of time insurance, income replacement, I can do so. The computation of premium is based upon my economic status.

Mr. SUTCLIFFE. Can you do so without buying liability insurance?

Mr. BARGER. Yes. I buy it as a separate package. I can buy immediate pay, which is a form of first-party coverage, but really doesn't suit the purpose that I would want it for.

I could buy first loss of time, income replacement insurance, and the company's exposure as to what they charge me is based upon my age and the standard of living I want to be reimbursed for, and it is simply that.

What they charge me is not predicated upon how I am injured, how I become ill; it is predicated upon simply the fact that I am ill and they are compelled to pay me x dollars, which is really what no-fault really is, isn't it?

Mr. SUTCLIFFE. To answer that, you have to qualify it by saying to the extent you buy that coverage, you are free from the requirement to buy liability protection.

Mr. BARGER. All right, but no-fault——

Mr. SUTCLIFFE. That is the Department of Transportation's definition of no-fault, not simply the adding of first-party benefits.

Mr. BARGER. If I were able to combine with my auto policy and identify loss of time, income replacement, and medical insurance, I would really have a—and I didn't have to worry about paying the other guy—that is what no-fault really is, isn't it?

Mr. SUTCLIFFE. It is not that radical you are telling us, we already have it?

Mr. BARGER. We already have it in a different way. It is going to cost me more if I want to do it today, because I can't combine my two policies, and I can't get rid of the liability unless I refuse to purchase it and take my chances, which I am not inclined to do.

Mr. SUTCLIFFE. Let me give you a proposition and have you react to it. I think that is the more honest way to do it rather than trying through a leading question.

It seems to me that to the extent you are asking for the States to undertake without any Federal involvement the goals that you agree should be achieved, that the assurance that the States will do this may very well depend upon the uniformity of approach to the automobile insurance system.

In other words, there is a better chance of insuring proper regulation of an insurance scheme if that insurance scheme to start with is uniform, so that there is cross-fertilization and exchange of information between various insurance departments about the same general plan. Is that assertion, that proposition tenable, or is it not?

Mr. BARGER. No, it is not tenable to me, and I will tell you why. You have to look at the history of the old rating laws on the present third-party system to understand why it isn't tenable.

The success of the so-called direct writers was predicated upon them deviating from the rates established by the old rating bureaus. They were successful in deviating from the rates charged by the so-called bureau companies and the classifications established by the bureaus, and that I think is one of the reasons they have done so well in the field today.

I think that is why my presentation pointed this out inferentially. I am not sure that the whole world wears a 44 suit or that everyone should be compelled to conform to the same standard. I am not sure that the public benefits by a lack of creativity and innovation that I think they should have whether it is on a State-by-State level or not.

The matter of open competition rating laws is something of some recent—I guess the word is import.

Ten years ago it would have been very difficult to find many who would espouse the law we have in California.

I think they have come to realize because of the lack of redundancy in rates that they need this change. So, I guess in summary what I am trying to say to you is "No," it is untenable to me, because to me the greatest flexibility benefits the public.

Mr. SUTCLIFFE. Does that flexibility of regulation depend upon the need to have flexibility in the scheme that you regulate?

Mr. BARGER. Let's not equate flexibility with competence. What I am saying is in terms of their competence to regulate for rates, first of all, there are two types of rating laws.

Mr. SUTCLIFFE. I have heard about that.

Mr. BARGER. I am sure you have.

I happen to think that the several States are in a very good position to best judge the needs in those States in terms of what they want in the way of rates.

Some commissioners are adamant about prior approval law. They think they are fine; they want to keep them; they feel they protect the public.

Commissioner Preston thinks it is good for his people in the Commonwealth of Kentucky, he is in a better position to judge them than I am.

By the same token, I think I am in a better position to judge for the people of California than Commissioner Preston is.

Mr. SUTCLIFFE. Is it easier for you or Mr. Preston to determine who has the better approach if you are both regulating the same kind of scheme? Are the figures that you use and the information you have more comparable to ascertain in this experimental field that you advocate which is the better one for the consumer?

Mr. BARGER. I am not sure that you don't have it now through the so-called bureaus. There is a touch of irony in what you say, because for the first time in I don't know how many years, the Insurance

Services Office has now notified the subscribing companies that t must rely upon their own expertise and set their own rates, whi admit is a very good thing. I happen to think in the short run and longrun it is in the benefit of the public. Many people have been gr ly concerned about the lack of a rating law in Illinois.

I feel it is an excellent idea. I think for the first time the compa are going to be compelled on their own to set rates to be competit I am not sure that really the collection of data by one entity is go to change that one whit in terms of what you are trying to accompl

Mr. SUTCLIFFE. What would be an appropriate form for his tr ment of variability problems or for his treatment of price infor tion problems, the goals you have pointed out in the testimony?

Mr. BARGER. I know what you are saying. Let me say this to y In a State that has some 20 million prospective insurers, we have trouble at all in our rate examination in discerning what rules of c duct are necessary so that the public gets an adequate buy in our Sta or whether or not the rates are redundant, inadequate or discrimin ing. There are certain truisms in this business, and they don't requ a Federal agency to set them out.

Mr. SUTCLIFFE. I really wasn't suggesting a Federal agent was r quired to set them out. I was exploring whether or not a uniform n fault auto insurance plan would enable——

Mr. BARGER. Statistical plan?

Mr. SUTCLIFFE. No, reform plan, insurance program—that t States absent Federal involvement would regulate, would enable t States to have cross-fertilization from one another. If someone e perimented and found it would work, you would know it would wo in another State because they were operating under the same plan.

Mr. BARGER. Yes, I understand what you are saying.

Mr. SUTCLIFFE. I am exploring. I am really asking——

Mr. BARGER. I have two inherent problems with that. No. 1, if yo don't like it, how do you undo it, how do you unscramble the egg That is No. 1.

No. 2, I am not sure that the needs in the State of Massachusett are the same as the State of California. I have been told, for instance one of the reasons for the initial success in Massachusetts, and I think I heard the testimony this morning by I think Mr. Stark, in glowing terms, was because there was a tremendous amount of frequency and severity of claims that had decreased since the advent of Massachu setts law. This was occasioned by the factor of mandatory insurance and other factors peculiar to the State of Massachusetts. They may not be peculiar to the State of California.

I mentioned Commissioner Preston. He is from the Commonwealth of Kentucky. With the exception of one major area, Jefferson County, which includes Louisville, it is primarily a rural-suburban State. I wouldn't suggest that the problems of the Commonwealth of Kentucky are in any way similar to the problems of Los Angeles.

Mr. SUTCLIFFE. Which problems?

Mr. BARGER. Classification, rating——

Mr. SUTCLIFFE. Regulatory problems?

Mr. BARGER. Regulatory problems. I am talking about the severity of injuries on freeways; I am talking about the kinds of [illegible] in

des of transportation. You know, muscle cars and sports cars -a-vis pickup trucks and trucks.

Mr. SUTCLIFFE. How does that indicate the type of reparations sys- n you would design?

Mr. BARGER. Very simply this: When you are dealing with a public it is extremely mobile with a higher horsepower car and inten- ely overutilizing the freeways, I think we do sometimes have a eater severity of accidents than you would have on a rural road a pickup truck.

Mr. SUTCLIFFE. You have different rates?

Mr. BARGER. We have different rates. We also have a different sys- n to reimburse the person injured.

Mr. SUTCLIFFE. Why, for a person injured in Kentucky or a person jured in California?

Mr. BARGER. Fine. Commissioner Preston may arrive at a point time in Kentucky where costwise he can justify a first party package ly; laid upon the third party system, with very little jockeying in e pain-and-suffering area, which will not cost the people of the Com- onwealth of Kentucky very much because the frequency and sever- y of claims in the State of Kentucky may not be as severe as they are the State of California.

I have already come to a conclusion that there is no way because of equency and severity in California that I can make any savings by riting first-party coverage unless I cut down pain and suffering in naller cases. It is that simple.

Mr. SUTCLIFFE. Of course, if you effect savings with that plan in alifornia, Mr. Preston could effect savings, not just hold the line, ith that plan in Kentucky.

Mr. BARGER. That is correct, but you also must remember this, that ae Federal Congress notwithstanding, we are all creatures of politics.

Mr. SUTCLIFFE. The art of the possible?

Mr. BARGER. The art of the possible. Very nicely put.

Mr. SUTCLIFFE. Thank you very much for your testimony.

Mr. BARGER. Thank you once again for allowing me to speak.

Senator HART. Commissioner, you have been helpful.

Before you call our Secretary of State, I will send down to you the estimony he gave. I marked the section of his comments on the unin- sured motorist.

(The statement follows:)

STATEMENT OF RICHARDS D. BARGER, INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA ON BEHALF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

My name is Richards D. Barger. Today I am appearing on behalf of the National Association of Insurance Commissioners, commonly referred to as the NAIC, both as the Insurance Commissioner of the State of California and as President of the NAIC. Having its inception in and regular meetings since 1871, the NAIC is the oldest voluntary association of state officials. It includes the principle insurance regulatory authorities of the 50 states, the District of Columbia, and the territories of the United States.

The proposed National No-Fault Motor Vehicle Act, as revised in Committee Print No. 1, poses two fuandamental issues; (1) to what extent should the concept of fault be eliminated from the legal and automobile insurance system and how might it best be tested and implemented, and (2) if the system is changed, how should it be regulated?

On May 13, Commissioner Lorne R. Worthington, the past President of the NAIC, testified before this Committee on the original version of S. 945 which also posed these two basic issues in a somewhat different form. As to the issue of no fault, the NAIC recommends the experimentation on a state by state basis to resolve this complex and varying problem. The state by state approach provides a means to do so in a manner responsive to the public's choice in the marketplace between the benefits it wants at costs it's willing to pay.[1] The reasons for this conclusion are spelled out in Commissioner Worthington's statement and we will not repeat them here. Subsequently at the NAIC meeting June, the following resolution was adopted.

Whereas the auto reparation systems currently in force in the various states do not uniformly and adequately compensate all injured parties in auto accidents for their economic loss, and

Whereas such reparation systems often fail to provide prompt payments of insured losses, and

Whereas such reparation systems fail to equitably distribute the claims dollar among all victims and claimants, and

Whereas no-fault insurance is now available for medical payments, comprehensive, and collision coverages, and

Whereas the National Association of Insurance Commissioners feels keenly its responsibility to use its influence and expertise to meet the changing needs of society, now, therefore, be it

Resolved That the National Association of Insurance Commissioners recommends to the legislatures of the several states, which have not already enacted such legislation, enactment at a minimum of "modified no-fault" insurance coverages which provide coverage for economic losses suffered in auto accidents including the following:

(1) Prompt payment for economic loss;

(2) Distribution of the auto insurance claims dollar in such a manner that a close relationship is developed between the benefits delivered to each injured party and his actual economic loss;

(3) Distribution of a larger percentage of the premium dollar to parties suffering economic loss; and be it further

Resolved That the auto reparation systems continue to remain under state regulation and that there be no federal government implementation of any auto reparation system or federal alteration of the tort system; and be it further

Resolved That the NAIC continues to support and endorse state-by-state experimentation with various forms of no-fault coverages and the right of the states to enact systems with differing characteristics.

However, let me note that state insurance regulation has no vested interest in either eliminating or continuing the third party legal liability system for automobile insurance. We currently oversee both fault and no fault type coverages. What is ultimately in the best interest of the public is what we favor and support. The problem is determining what is ultimately in the public interest.

1. THE STATE INSURANCE REGULATORY MECHANISM

Today we shall concentrate on the second basic issue—i.e., how should the system, if changed, be regulated. As an essential backdrop let me briefly highlight the state insurance regulatory mechanism which is both broad and detailed. For example,

(1) Insurers must obtain and continue their licenses in order to do business. This, in turn, requires complying with statutes and regulations pertaining to formation, financial standards concerning assets, capital and surplus, permissible investments, adequacy of reserves, and qualifications as to character of management, experience and knowledge of the business. Licenses may be suspended or revoked for failure to comply with the law or when the public interest so requires.

(2) Insurers must file comprehensive annual and other periodic reports under oath in each state in which they do busines. The NAIC annual statement re-

---

[1] As the DOT study pointed out, the public is primarily concerned over the cost of automobile insurance. Testimony at the previous hearings on S. 945 raised serious questions as to the magnitude of cost increases attributable to increased benefits. Committee Print No. 1 further expands benefits available, so the issue of cost becomes even more critical.

quires detailed information concerning financial condition, underwriting, investments, reserves, etc.

(3) Insurers are subject to comprehensive periodic examinations to, among other things, ascertain the financial condition of the company, the results of operation, corporate investment and underwriting practices, whether the company is meeting its obligations to its policyholders, etc.

(4) By virtue of statutory standards on policy content and the commissioners' policy form approval or disapproval power, much of the source of misrepresentation or other unfair practices is deterred in advance.

(5) Control is exercised over the pricing practices of property and liability insurers by implementing either through prior approval or subsequent review the standards that rates shall not be excessive, inadequate nor unfairly discriminatory.

(6) Market practices are controlled by, among other things, laws governing the qualifications of agents and brokers, licensing of the same, prohibitions against certain practices such as false and misleading advertising and representations, defining standards of fair competition, control over policy forms, rate controls in several areas and department investigations of complaints.

(7) The insurance commissioner may, for a variety of causes, (e.g., insolvency, refusal to comply with orders, failure to remove officers, etc.), apply for a court order of liquidation, rehabilitation or conservation.

(8) Among the sanctions available for enforcement of the insurance laws are criminal and civil penalties; cease and desist orders; injunctions; removal of officers and directors; fines; and revocation of (or refusal to renew) licenses of agents, adjusters, brokers, and insurers. These express powers and sanctions, plus the informal powers, sanctions and alternative modes of relief stemming therefrom, extend far beyond what is being talked about in connection with the proposed federal bill.

Supplementing the efforts of the individual states has been the NAIC which is a 100 year old organization consisting of the insurance commissioners of the several states. The NAIC has sought to promote uniformity where appropriate, developed model laws and regulations for use in various states and conducted various types of studies and research projects. The NAIC, as a whole, meets twice a year. Various committees meet during the interim. In addition, a central research office has been established. Thus the NAIC provides a flexible and timely facility to develop and implement change. In short, the NAIC has served as a mechanism to improve regulation and has provided impetus for change.

2. PROPOSED FEDERAL REGULATORY POWERS: GOALS VERSUS MEANS

Committee Print No. 1 vests a wide range of regulatory powers in the Secretary. Several of these are listed in the footnote.[2] In evaluating such provisions, we think it is important to differentiate between the goals being sought and the techniques used to achieve such goals. Once the goals are delineated, we are in a better position to evaluate alternative approaches to achieve them. The primary insurance regulatory goals implicit in Committee Print No. 1 seem to be as follows:

(1) Policy provisions which are fair and equitable,[3]

(2) Development of meaningful cost information affording the public a reasonable opportunity to compare price and quality of the product,[4] and,

---

[2] For example, the Secretary would be authorized to (1) define monthly earnings (Sec. 2(14)), (2) determine the manner of proof of insurance, (Sec. 4(a)(1)), (3) issue regulations as to lump payment discounts (Sec. 5(a)(3)), (4) approve policy terms, conditions, exclusions, deductibles, coverages and benefits which are fair and equitable and afford opportunity for cost comparison (Sec. 5(d)(1)), (5) issue regulations as to filing claims (Sec. 5(d)(2)), (6) issue regulations as to whether an application for coverage is accompanied by a reasonable portion of the premiums so as to preclude rejection (Sec. 5(g)(1)(A)(ii)), (7) promulgate a uniform statistical plan for allocation and compilation of claims and loss experience data (Sec. 6(a)), (8) prescribe regulations to require a minimal number of standard uniform policy provisions, classes of risk and rating territories (Sec. 6(d)), (9) issue rules on insurers' submission of the actual rate or premium being charged for each class of risk in each rating territory within each coverage in Sec. 5 (Sec. 6(e)), (10) appoint a statistical agent (Sec. 6(f)), (11) determine the time and in what manner insurers' claim and loss experience and actual rates shall be made available to the public (Sec. 6(g)), (12) organize an assigned claims plan (Sec. 7(a)(1)), prescribe regulation as to self insurers' role in an assigned claims plan (Sec. 7(a)(3)), and (13) promulgate regulations he deems necessary to carry out the purposes of the Act (Sec. 10).

[3] See Comm. Print No. 1 Sec. 5(d)(1)(B).

[4] See *id.* Sections 5(d)(1)(B) and 6.

(3) Assurance that coverage availability extends to all meeting the eligibility requirements.[5]

If the no fault concept, as embodied in this bill is adopted, few if any would quarrel with these regulatory goals. However, questions are posed in evaluating the manner of their effectuation. (a) Do the techniques embodied in the statute seem reasonably calculated to achieve the goal? (b) If so, does it conflict with other objectives equally or more important? (c) Are there preferable alternatives? Let us briefly review each of these goals with these questions in mind.

(1) *Fair and Equitable Policy Provisions.*—Section 5(d)(1) vests in the Secretary approval power over policy terms, conditions, exclusions, deductibles, coverages and benefits if such are fair and equitable. The use of policy approval power is a time honored insurance regulatory technique to achieve this goal. In fact, it is standard practice in every state. Numerous individuals in the various state insurance departments, with a countless number of years of experience and expertise, receive and scrutinize insurance company policy forms before they can be issued to the public. Their purpose is to assure that the policies conform to applicable law (whether state or federal). Changes must also be approved. A pattern of policyholder complaints, if any, will lead to subsequent review and possible withdrawal of approval. In short, the same goal and technique already exists at the state level. State approval procedures will continue, even if a similar mechanism is adopted at the federal level, since each insurance department is charged with the responsibility of seeing that insurers comply with that state's requirements. Repeating the same goal in a federal statute and creating a federal approved procedure would seem to be needless duplication in terms of time, effort and the taxpayer dollars.

(2) *Price Information.*—Both Section 5(d)(1) and Section 6 seek to develop meaningful cost information to enable the public to compare company prices and claims and loss experience. This is sought through the establishment by the Secretary of a common uniform statistical plan for allocation and compilation of claims and loss experience to be followed by every insurer. To accomplish the purpose of the statistical plan, the Secretary would be authorized to prescribe uniform policy provisions, classes of risk and rating territories for each coverage (Sec. 6(d)). Sec. 5(d)(1) (approval power over policy terms discussed above) relates to limiting the variety of coverage available; its purpose is to give buyers a reasonable opportunity to compare the costs of various insurers as well as to assure fair and equitable policies. Each insurer will submit to the Secretary the actual rates it charges (Sec. 6(e)). The Secretary is then directed to make available to the general public a comparison of each insurer's "indicated rate" based solely on claims and loss experience and the actual rate being charged for each class of risk in each territory. The goal of providing increased meaningful price information to the public is a valuable one. But at the same time, the technique suggested to do so needs to be evaluated in terms of its impact on other objectives.

First, the establishment of uniform policy provisions, classifications, and rating territories will rigidify a system at a time when experimentation and innovation are most important. The elimination of the fault concept and the shift to an entirely first party non fault coverage will revolutionize the writing of automobile insurance. Policy forms and rating techniques will undergo substantial transformation. In any undertaking of this magnitude and complexity, no person or persons can reasonably be expected to "divine" the proper course. Yet the assumption of omniscience is implicit in the provision for establishing nationwide uniformity in policy provisions, classifications, rating territories, etc. What is needed is a period of trial and error—a shakedown period on a state by state basis—giving both the industry and the public the maximum opportunity to learn and select. Only in this manner is there a reasonable likelihood that the best techniques and approaches will emerge over the long run.

Second, if the states retain the regulatory power, the likelihood of improved regulation, as the proposed no fault system evolves, would be greatly enhanced. Change could then originate from any one of several sources whereas the national regulatory approach limits the initiative for change and improvement to one source—i.e. the federal government.

Third, if the fault concept is eliminated for automobile insurance, it can be anticipated that some, if not several, life and health insurance companies will

[5] See *id.* at Section 7(d).

enter the field and compete for this business. Such a development offers intriguing possibilities and new thinking redounding to the benefit of the insurance-buying public. However, the imposition of a straitjacket of uniformity could seriously impair, if not derail, this promising development.

Fourth, the sponsors of S. 945, as well as many others, have endorsed the concept of expanded utilization of the mass marketing concept as a means to reduce the cost of automobile insurance. As is documented by the NAIC Central Office staff study on mass marketing (a copy of which was recently submitted to this Committee as a follow-up to Commissioner Worthington's testimony), significant momentum has and is continuing to develop in this acrea. As is the case in most marketing developments, insurers are feeling their way by experimenting with those type of programs, coverages and underwriting which they feel can appropriately be undertaken. However, if their freedom to experiment is frozen, this promising development conceivably could be arrested in its infancy, thereby eliminating possible cost savings to the insured from marketing efficiencies and/or employer contributions.

Five, Committee Print No. 1 does not purport (nor does the Staff Analysis suggest) that the bill would regulate rates. Yet for the purposes of a statistical plan, a federal regulatory agency would be vested with control over classification and rating territories, both fundamental elements in ratemaking. This would severely disrupt the existing regulatory pattern. Also it could result in federal establishment of national groupings which may be less relevant when applied to local situations.

Furthermore, the elaborate statistical scheme proposed in this bill—designed to provide meaningful cost information to the public—appears to be quite impractical. Remember, we are not dealing with a single national rate structure. Rates will vary by territories and their classifications. Under a competitive system rates are being constantly changed. Hundreds of companies write automobile insurance. To provide timely information on a multitude of insurers, each having a multitude of rates in an economic environment fostering frequent rate changes, presents a Herculean task. Publication of comparative rates and experience will most likely be out of date before the public has an opportunity to receive and absorb it. In other words, this scheme would not provide timely—i.e. meaningful—information. Some states have attempted to grapple with this problem and found it to be a difficult one to solve. The proposed scheme in the bill, in our judgment, over simplifies the problem. Thus, not only does the proposal conflict with other objectives embodied in the bill, it does not offer a practical solution to even achieve its stated goal.

In short, while we concur in the goal of improved cost information for the public. at the same time we submit that the tchniques proposed—such as a uniform policy provisions, rating territories, classifications, etc.—would adversely impinge upon the long term sound development of the proposed non-fault automobile insurance program. That is, techniques embodied in Committee Print No. 1 would inhibit the flexibility necessary for a meaningful "shakedown" period, would lessen the likelihood of improved and responsive regulation as the system develops, could deter the influx of life and health insurance company involvement, might arrest the development of mass marketing, and would disrupt the state regulatory pattern.

(3) *Availability of Benefits.*—Section 7 authorizes the Secretary to organize an assigned claims bureau and assigned claims plan to enable each person (or his legal representative) sustaining injury or death to obtain the benefits prescribed by statute if no insurance benefits under a qualifying policy are applicable, identifiable, or payable due to an insurer's financial inability to perform. The assigned claims mechanism is proposed as a means to make available protection that would not otherwise be forthcoming.

Developing a mechanism to provide coverage in residual areas is not uncommon. State insurance regulators have substantial experience in this area. Assigned risk plans for automobile insurance exist in every state. Approximately half of states found it appropriate to institute FAIR Plans to provide property coverage in urban areas. Nearly all states have enacted guaranty fund legislation to protect insureds and claimants in the event an insurer becomes insolvent. The proposed assigned claims bureau is another variant on the same theme.

Some may question the assigned claims approach as being the best technique. In the development of the FAIR Plans, this concept was originally considered and then abandoned in favor of the pool concept of one type or another

This is not to say that the assigned risk approach is wrong, but rather its superiority has not been proven to the point that it should be mandated for all states in all circumstances. Furthermore, because of state expertise and willingness to grapple with residual problems such as this, the responsibility for assuring the availability of residual coverage should be left with the states to be solved with the peculiar problem of each state in mind.

3. AN ALTERNATIVE REGULATORY APPROACH

In the above discussion we have attempted to differentiate between objectives and the means or techniques to achieve those objectives. The insurance regulatory objectives (as distinguished from the objective of reforming the automobile reparation system on a non-fault basis) implicit in Committee Print No. 1 are threefold: (1) fair and equitable policies, (2) provision of meaningful cost information, and (3) assurance of availability of benefits to those so entitled. We concur in the objectives, we disagree as to the means proposed.

A fundamental factor in evaluating alternative means is one's view on the issue of state versus federal regulation. It is not our purpose today to delve into this debate in detail. We only note here that utilization of the state insurance regulatory mechanism possesses the advantage that it already exists with 50 state insurance departments having over 4500 employees and budgets in excess of $50 million. Furthermore, state regulation is closer to the public and hence more responsive to policyholder demands. It facilitates experimentation since the gravity of a mistake is severely limited. It tends to be more responsive in the presence of the continuous threat of Congressional removal of its jurisdiction. And, it is consistent with the fundamental concept of decentralization of political power.

With this backdrop, the NAIC expresses serious concern over the creation of an institutional insurance regulatory framework in a federal agency. Such a framework at best will lead to duplication of effort, time and taxpayers' dollars, and at worst will, over the long run, undermine the effective and viable system of state insurance regulation. Furthermore, the insurance regulatory provisions are only incidental aspects and not an integral part of the Committee Print's proposed non-fault program.

As stated above, we believe that the enactment of the non-fault concept at the federal level would be inappropriate. However, if Congress decides to adopt a federal no-fault program in some form as a matter of national policy, we recommend that no existing insurance regulatory authority be vested in any federal agency. (This would require the deletion of such provisions as Sections 5(d)(1), 6 and 7.) The reponsibility for insurance regulation should remain with the states. The insurance regulatory goals of the state insurance departments are consistent with those implicit in the statute (as discussed above). The states possess the expertise. The NAIC provides a facility and impetus for change and where appropriate, for uniformity. Thus it is logical and reasonable to expect the states to fulfill this responsibility. We submit that this approach is in the best interest of the insurance-buying public.

Senator HART. Our concluding witness, and I want to thank him for his patience with us, is the chairman of the Insurance Department of the School of Business Administration at Georgia State College, Atlanta, Dr. John W. Hall.

STATEMENT OF DR. JOHN W. HALL, CHAIRMAN, INSURANCE DEPARTMENT, SCHOOL OF BUSINESS ADMINISTRATION, GEORGIA STATE COLLEGE, ATLANTA, GA.

Dr. HALL. Mr. Chairman, it is a pleasure to be here. I have enjoyed listening to the comments, the questions, and the answers.

I have had the privilege of witnessing some of the testimony today. I wish that I could remember all of the quesions that have been raised because at times I wanted to comment and was not able to do so.

A few stand out in my mind. Would it be all right if I made a few comments on some of the things I heard?

Senator HART. We would appreciate it very much.

Dr. HALL. First, Senator Baker was making reference to I believe it was the Spangenberg comments the other day which I did not hear. But he was referring to the fact that in foreign countries they have unlimited liability insurance benefits, liability insurance system, and that perhaps he was implying that the cost was lower there than in the United States.

Of course, I think we have to take into consideration the fact that the court of law system is considerably different in those countries. For instance, I do not believe that they have a contingent fee system. I do not believe that they have what we term in the United States the collateral source rule. Hence, collateral became important in the total cost of the system, and I believe that one of the important collateral sources in many European countries would be a system of nation health insurance. This would be private health insurance benefits.

All of these would alleviate considerably the cost of the tort law system and unlimited liability. I believe the record ought to state I believe this is true. We do not have those conditions in the United States.

When I was asked to testify on S. 945, we were not asked to speak about the question of state versus nation. Particularly, I did not feel that we were, but in listening to the comments today, I feel compelled to make a couple of remarks.

I understand thoroughly, I believe, and sympathize with the desire to have a nation system. I believe I would disagree with Commissioner Baker that when you are dealing with—I believe when you are dealing with a system of indemnification where you pay benefits based upon economic loss primarily and where ratese are established by territory, given all these conditions, I think that a uniform law would have certain merit.

You could always ask why should consumers be treated differently in one jurisdiction than in another simply because they happen to live there.

I was interested in your remarks regarding the multistate cities. I have to comment on this, just a parenthetical comment, it has nothing to do with no-fault. But I think you are also asking when you ask about multistate cities whether or not our system of reparation of State and nations is really an appropriate system.

A logical question one might raise is perhaps, as we move to massive urban areas, maybe it ought to be city and Federal or city and Nation. You know the arguments better than I.

Senator HART. I am sure I do not know the arguments better than you. I certainly sense there is a developing school of thought that says that we have passed the point in time when we can continue to force ourselves to be accommodated by what initially was an artificial line and increasingly tends to multiply costs and enormously rusts the efficiency in the delivery of service.

Dr. HALL. I think I was referring to the changing balance of power, rural/urban, the feeling of some people I have heard just talking philosophically about the role of State governments and urban governments. I do not want to get into it.

I would like, though, to give you my own philosophical and pragmatic thinking on the question of State and Nation. I have just been offering comments previously.

I feel that while all of us are impatient and I favor some sort of a no-fault plan, I think if we look at the development of workmen's compensations and the number of years that that took that we have moved.

I think we have moved surprisingly fast. I think pragmatically I would have to state that my orders of priority would be, let's try to have the States do it. I think the problems of the multistate city can be solved reasonably.

I am not prepared to offer a solution. I have seen some suggested solutions. I have not analyzed these in detail. If the States are not able to do it, perhaps under some sort of Federal deadline, then I suppose we ought to move to Federal standards.

Then if that does not work, then a nation system. I am speaking philosophically, it is open to debate. I think this is what I would favor.

I have given a statement to you. I am not going to read that statement in its entirity.

Senator HART. Doctor, we will print it in full in the record.

Dr. HALL. I have read it over carefully this morning. I put it together last night. I noticed a few changes, and I would like to make certain some of those changes are placed in this.

Senator HART. We will make sure through staff that the record copy contains those corrections.

Dr. HALL. I appreciate that. This statement is divided into two portions. This first portion I will not read into the record, but it deals with some of my reasons for supporting the concept of no-fault.

It really is based upon a concept of individual responsibility. I think my feelings is that no-fault is a device that encourages a very high type of individual responsibility, the responsibility of a person to take care of themselves economically rather than asking you and I do take care of him as a matter of charity because he is able to take care of himself.

I would offer comments or answer questions if those should arise. I would like to devote most of my remarks to the question of what system should be primary, a system of automobile no-fault insurance, or other collateral sources.

I think we all agree that any change from our present system should have as its objective the reduction or elimination of some of the waste and inefficiency that presently exists. Among the sources of inefficiency is benefit duplication.

There are many no-fault benefit sources for economic losses. Public health insurance might include death, income replacement, and/or medical care benefits available under social security including medicare and medicaid benefits, workman's compensation benefit systems, and State cash sickness plans.

Private health insurance plans include individually purchased and group health insurance benefit systems, group practice prepayment plans, and even the more specialized accident policies available from the private mechanism.

Many benefit systems have been omitted from this listing, but I think the point is made that unless benefits are coordinated, it will be possible for some persons to receive more than indemnification for economic loss while others may receive less. Persons who receive more than indemnification may be inclined to malinger or to overutilize our limited health care facilities: Both malingering and overutilizaton have an adverse impact upon cost. Further, to the extent that there is benefit duplication, there exists an overcharge for the financing of health care, an overcharge which is not economic when one considers the aggregate costs involved.

With regard to the automobile accidents, our goal should be to perfect a system under which all victims of automobile accidents are indemnified for real economic losses. We cannot perpetuate a system in which some are paid double and others are paid nothing. As benefit duplication is minimized, the aggregate cost of the combined economic loss benefit system is reduced because of savings in both loss costs and expenses. As costs are reduced, it becomes more nearly possible for insureds to pay for adequate coverage.

By virtually eliminating the tort remedy, Committee Print No. 1 of the National No-Fault Motor Vehicle Insurance Act effectively deals with one significant source of benefit duplication as regards automobile accidents—the so-called collateral source rule.

Further, the staff analysis of Committee Print No. 1 very wisely suggests that no-fault automobile insurance would be primary over all other private insurance benefits or plans unless such plans specifically provide that their benefits are to be primary to "qualifying no-fault policy benefits."

The bill itself is far from clear, and seems to indicate that where other private insurance is not specific on the point duplication benefits could be and would be paid. Personally, it would be my hope that all other private benefit systems would recognize that no-fault automobile insurance should be primary.

Committee Print No. 1 further states that no-fault automobile insurance benefits should be excess over benefits provided by "public health insurance." "Public health insurance" is not defined. Perhaps this should be made more specific.

It is my firm belief that it is in the interest of the consumer and the public in general that no-fault automobile insurance benefits should be primary over all other benefit systems, public or private. I would state this feeling even though the no-fault insurance benefits were provided by governmental insurers either exclusively or on a competitive basis with private industry.

The issue is not private insurance versus governmental insurance, although I strongly favor the private insurance mechanism, but rather, efficiency in the delivery of benefits, good political or public relations, the provision of specialized care for trauma, equity or fairness among insureds in setting rates for different benefit systems, and the accomplishment of important public policy objectives.

Because "public health insurance" is not defined in Committee Print No. 1, I will limit my remarks to "public health insurance" in the form of the "national health insurance" proposals.

Further, it is assumed that all national health care financing proposals will be funded by specific taxes on a defined wage base, rather

than through general revenue sources. That may be a big assumption, but I think you understand what I am speaking about.

For the most part, I believe my remarks are applicable to most other "public health insurance" systems, however defined.

It is my opinion that automobile insurance no-fault benefits should be primary over all other benefit systems for the following reasons:

First, I think that important public policy decisions or goals would be facilitated. The national health insurance proposals of which I am aware, together with the income replacement provisions under the Social Security Act, have two predominant public policy goals. There are many others.

One would be the provision of adequate economic loss benefits—death, income replacement and medical care—for all at a minimum of cost.

A second goal under national health insurance alone is the control over the delivery cost of medical care and the encouragement of improvement in medical care through the redirection and reorganization of the full medical care delivery system. Fragmentation and duplication in medical care should be reduced.

I think these are public policy goals; important public policy goals, and with regard to automobile legislation which has been proposed or enacted, I think there are certain other public policy goals which are important. Some have been established, some have been suggested.

One public policy goal with regard to automobile legislation has been the provision of reasonable adequate economic loss—death, income replacement, and medical care—benefits at a minimum of cost, the same goal for national health insurance and income replacement benefits.

Another goal of automobile legislation in general has been a reduction of the needless waste of human and property resources caused by automobile accidents through efforts at reducing both accident frequency and severity.

Another is the development of a sound system of mass transportation in order to (a) aid cities to become financially sound and politically stable, (b) create opportunities for ghetto residents to move up the economic ladder, and to become self-sufficient and economically responsible, and (c) reduce pollution of our air and landscape.

Note that there is a common public goal under both national health insurance proposals and automobile legislative proposals and programs. Both seek adequate economic loss benefits at a minimum cost. There is no conflict regarding this goal.

The proposed goal of national health insurance to redirect the health care delivery system is commendable. However, while no-fault automobile insurance may not specifically contribute to the redirection and redesign of our health care system, it is my opinion that it will not detract from it.

Trauma injuries of all types and causes—occupational and nonoccupational, automobile and other accidents—constitute between 4 and 5 percent of the total care bill. Auto accidents alone account for only a part of the 4 or 5 percent—a relatively insignificant part of the total bill.

Except for the requirement of specially supervised care of trauma accidents, I suggest that the care of automobile accident victims will follow the patterns of health care nationally. It will not lead, nor will it obstruct the redevelopment and redirection of health care delivery systems.

It is my opinion that no-fault automobile insurance will be essentially neutral as regards this proposed public policy objective of national health insurance plans.

If this neutrality can be granted, then other public policy issues assume importance. Assuming that both benefit systems are relatively similar in efficiency, that system should be primary which tends to satisfy the greatest number of important public policy objectives.

In our economy, we operate under the so-called "'economic man" concept under which relatively rational consumers make decisions among alternatives, consumer purchases and political decisions based upon their knowledge of needs and estimates of cost, a form of cost-benefit analysis. By internalizing the costs of automobile ownership, including the owner's share of the cost of economic losses suffered from automobile accidents, it becomes possible for the "economic man" to make reasonably rational economic decisions on important individual and public policy goals, such as—and these are individual goals or public policy goals—such as:

(a) How many cars should a person own?

(b) How should one vote on rapid transit issues?

(c) Should a person commute by car, or is mass transportation desirable and less expensive?

(d) What type or make of a car should be purchased from the viewpoint of both accident avoidance and protection in the event of an accident?

These are only a few examples of decisions influenced by the costs of automobile ownership.

Drivers and users of automobiles should bear the cost of automobile ownership and enjoyment. They should have to pay the cost of the benefit system. At the present time, much of the cost of caring for the automobile accident victim falls on society as a whole, either in taxes or charity contributions, or particular elements of that society, such as the family of the victim. These costs are hidden. I am suggesting that if national health proposals are made primary, the economic costs of automobile accidents would continue to be defused and hidden, but perhaps even to a greater degree.

Incidentally, the isolating of the costs of no-fault automobile insurance, and charging them to the driver-owner of vehicles, would facilitate the generation of sufficient statistical evidence regarding traffic accidents and their causes to maximize systematic approaches to traffic safety.

I think a second reason for establishing no-fault insurance as primary is just plain good public and political relationships.

From the viewpoint of the insurance purveyor, private or governmental, it is always best to pay benefits from that benefit system for which premium charges are closest to the consumer's pocketbook. Automobile no-fault benefits would be funded primarily from individual premium contributions, or from payroll deductions on an essentially auto owner pay all basis.

By contrast, workmen's compensation benefits are funded essentially on an employer pay all basis and social security income replacement and medicare benefits are now funded on employer-employee contributions.

Even group insurance premiums are often funded with employer contributions.

Thus, while it is difficult to know exactly the funding that would develop should National Helath Insurance become law, presumably wage base.

Where compulsory no-fault benefits funded by individuals are excess over benefit systems whose premium costs are more diffused, the driver-insured will not see sufficient tangible results of his contributions. He can make no realistic cost benefit analysis, and will damn the no-fault benefit system.

Where the employee or the driver is paying substantial premiums to a benefit system, he ought to see tangible benefits arriving from that system when a need arises.

It would be disastrous to the automobile no-fault system for owners to say: "I paid high premiums but received practically no benefits because those benefits were on an excess basis."

TRAUMA CARE SHOULD BE SPECIALIZED

Another argument for making automobile no-fault primary involves the question of whether or not there should be specialized care for trauma cases.

Perhaps a case could be made for the need to care for trauma victims on a specialized basis and not lost in the shuffle of general medicine.

Historically, insufficient attention has been given to the treatment of trauma cases. Little, if anything, has been done toward improving the emergency care of automobile accident victims and the facilitating of getting the victim to the hospital.

Rehabilitation of the accident victim, economic, social, and medical, has not gone forward as rapidly as it should.

Perhaps a good case could be made for the separation of trauma patients and the treating of them specifically.

Here, the expertise of the private insurance mechanism, especially as it relates to the rehabilitation of trauma cases under workmen's compensation, could make an important contribution to medical and economic recovery and also the ultimate reduction of the cost of no-fault automobile insurance.

In fact, the private enterprise motive for reducing costs should be a prime motivator toward rehabilitation.

Let us go to the question of no-fault benefits and program efficiency.

In the staff explanation of the committee draft, it was stated that public health insurance benefits should be primary because this would be more efficient.

I believe that perhaps no-fault automobile insurance on a primary basis can be delivered just as efficiently, and perhaps more efficiently, than delivering the same benefits under a proposed national health care system.

And in addition to encouraging the specialized care of trauma cases, which should encourage efficiency in the long run, other efficiency factors might be considered.

And often, when we talk about efficiency, we make comparisons, individual automobile insurance, individual insurance with group insurance or, individual insurance with our social security system.

In comparing the efficiency of group health insurance with automobile insurance, or the efficiency of a proposed national health insurance scheme with automobile insurance, it should be observed that all measures of efficiency are based upon averages.

Both group health insurance and the proposed national health insurance measures of efficiency must assume a general range of medical care needs, including those caused by trauma.

Automobile accidents take place in diverse places throughout the United States. Trauma cases require specialized care. This may tend to increase the administrative load of handling such claims.

Even where automobile benefits are funded under a proposed national health insurance scheme, nevertheless, the administrative costs associated with automobile benefits might well be higher than for other benefits covered by the plan. Stated differently, auto accident benefits coverage may reduce the efficiency of proposed national health insurance plans. It should make little difference on aggregate costs where these benefits are funded.

Again, talking about efficiency, in relation to comparative efficiency estimates, it should be observed that private no-fault automobile insurance most likely will be marketed on a mass or group basis, with all the efficiency associated with this form of merchandising.

It is not fair to compare the costs of marketing individual automobile insurance today with the cost of other forms of health insurance, private or governmental, and state that automobile insurance, as it exists today is relatively inefficient. Automobile insurance today is marketed on an individual, and not on a group basis.

No-fault automobile insurance is relatively limited as to covered causes of loss when compared to other forms of health care coverage Benefits are payable only for injuries caused by the automobile.

By making "public health insurance" primary, and automobile benefits excess, admittedly the cost of no-fault automobile insurance will be reduced considerably. These reductions should be recognized in the premium, as required in the proposal.

However, the smaller the premium, the greater will be the expense of delivery of the benefits system in relation to the total premium.

Stated differently, there are a minimum of expenses associated with issuing of a policy or a certificate, or simply maintaining an open account, and the payment of claims.

The more limited the coverage under the contract, excess over public health insurance, the higher will be the expense of providing these services in relation to the premium. This does not lend itself to efficiency.

On the contrary, by making the no-fault benefit system primary, benefit costs in relation to premium will be higher, and the system will operate with greater efficiency. Benefits in relation to premium should be higher.

Another point with regard to efficiency, the proposed national no-fault automobile insurance plan provides economic loss benefits which are more liberal than those provided under most existing public health insurance plans. In my opinion, they are more liberal than those found under any national health insurance proposal likely to be enacted.

Thus, it is very likely that the excess no-fault system will be required to make payments of some sort. In other words, when no-fault benefits are excess over national health insurance, it seems likely to me that they will be required to make payments over national health insurance, especially in severe loss, necessitating the expense of claims and recordkeeping under multiple benefit systems. Simplicity of operation and efficiency would be fostered, in my opinion, by making the relatively liberal automobile no-fault insurance primary.

Finally, as indicated previously, internalizing the costs of economic losses associated to automobile accidents to the owner of automobiles should focus attention on these costs and thus contribute to pressure for safety and reduce, hopefully, total premium.

Let us talk about equity. I think from the viewpoint of price equity, it would appear that the public would benefit from making no-fault benefits primary.

Committee Print No. 1 requires that credit be given in the premiums for the existence of private or governmental public health insurance benefits.

The variability of both private and public health benefit programs as they relate to individuals creates very difficult rating situations, and it would be exceedingly difficult to establish equitable rate credits under the no-fault plan.

Certainly, it would be very difficult to establish equity through standardized deduction, which would create, in my opinion, great inequites.

There are no hard facts on any of the arguments which I have presented today. By the same token, there are no hard facts in opposition.

One could argue for more time for research. I think, as a matter of fact, issues in primary versus secondary do deserve further consideration.

So what are the alternatives from the legislative viewpoint? We could continue with the present committee draft, making public health insurance benefits primary.

Since we do not have a national health insurance program presently, this seems to be forcing us to make a decision without having adequate facts and without having the benefit of the needed research on this particular point.

Further, the present draft does not state clearly that automobile no-fault benefits should be primary over all other private benefit systems and that these other systems should be excess up to full indemnification.

Other alternatives might include the making of no-fault automobile insurance primary over all other benefit systems, public or private. Personally, I think I would prefer that.

Another alternative would be to make no-fault automobile insurance benefits primary over all other benefit systems, public or private, unless all other benefit systems specifically provide that they shall be primary over no-fault automobile insurance, and that no-fault automobile insurance shall be excess up to indemnification.

This latter alternative delays the decision as it relates to national health insurance until such a time as national health insurance is considered seriously by this Congress.

With regard to existing public health insurance programs or plans, since we cannot now describe a program of national health insurance, why make it primary at this time?

Perhaps workmen's compensation or the income replacement provisions of OASDNC, this second alternative would necessitate independent consideration of the relationship of the public plan to no-fault automobile insurance and to make decisions based upon the merits of each case.

Senator HART. Doctor, the point to which you addressed yourself from the text, primary, secondary, and so on, I think is going to be difficult for us to resolve.

Dr. HALL. I agree.

Senator HART. The way you have analyzed it, and balanced the competing claims is very helpful. I am not sure yet that I am willing to say yes to your suggestion, but along with the rest of us, we will be helped enormously to make the decision as a result of what you have told us.

Mr. Sutcliffe?

Mr. SUTCLIFFE. Dr. Hall, you have mentioned the economic man concept. One principle of the economic man theory concerns competition.

We seem to have competing values within the economic man theory working here, because to the extent you argue for the assignment of costs to the automobile accident environment, we may be on a primary basis—we may be taking away from the consumer the choice to determine his reparation source.

It may be that for some reason the automobile reparations mechanism cannot provide benefits in the health care area at an efficiency equal to that provided by some other public or private benefit source.

How can we guard that possibility or insure against the availability of choice without adopting a provision similar to the one in the committee print?

Dr. HALL. First, I am not sure that I would agree.

We say there may be other systems that may be more efficient, but we don't know.

But, let me make an observation. The committee print does not offer an alternative. It says that no-fault automobile insurance should be compulsory.

The alternative, sir, if I understand it, that you seem to be implying, is that we could buy these first-party benefits from other sources.

Mr. SUTCLIFFE. The alternative that it offers is, you must have a qualifying no-fault policy.

Dr. HALL. Right.

Mr. SUTCLIFFE. To the extent that benefits are primary over those benefits, either by contract, an individual choice, or because of a public health program, which I must admit is not up for final decision yet, that you will get a setoff for your auto insurance cost.

The reason that this was done was really, I think, at the suggestion of another witness from Consumer's Union who said right now the first-party auto insurance premiums are provided at a 70-percent effi-

ciency, 70 cents return on the dollar, whereas some private and public health insurance programs provide those same reparations, insurance dollars, at 90-percent efficiency.

To the extent that you have that disparity in efficiencies, you more than make up for what you would lose in public policy objectives by transferring the cost from the auto environment to another insurance——

Dr. HALL. I am not certain we can measure your public policy objectives and the costs saved in one as compared to what we would gain in another, and further, I believe there was testimony this morning indicating that the automobile insurance system will become much more efficient.

I think under our present liability insurance system, we are moving to make it more efficient. Perhaps 90 percent initially is a high objective. I think we are moving in that direction and moving rapidly, and certainly under a no-fault plan, we would approach 90 percent.

Mr. SUTCLIFFE. In other words, you don't think that disparity will be maintained?

Dr. HALL. I do not.

Mr. SUTCLIFFE. That competition within the auto insurance mechanism itself will assure efficiencies close enough so that we don't even have to be worried about that tradeoff potential?

Dr. HALL. That is my hope.

Mr. SUTCLIFFE. So that would mean there would be a significant reduction in acquisition cost?

Dr. HALL. That is correct, under mass merchandising, group merchandising.

Mr. SUTCLIFFE. And significant reduction in claims handling procedures?

Dr. HALL. I think that would be true under no-fault.

Mr. SUTCLIFFE. Under what kind of no-fault, pure no-fault?

Dr. HALL. That would make it, I think, more efficient, yes I am not sure it is pragmatic.

Mr. SUTCLIFFE. But the thrust of your argument goes to the other public policy benefits deriving from an assignment to the primary side.

For example, you would argue that the private insurance mechanism would have great incentives to begin providing better postcrash treatment in terms of ambulance facilities, trauma stations within metropolitan areas or high-accident frequency areas, is that a thrust that you think the private mechanism would undertake if, in fact, they were totally primary?

Dr. HALL. I think the private mechanism has demonstrated already an interest in rehabilitation, in the specialized care of trauma accidents in workmen's compensation with a motive to reduce costs.

I would think that that same motive would be effective under this system.

Mr. SUTCLIFFE. A parallel would be the Insurance Institute for Highway Safety's work for the insurance industry.

Dr. HALL. Partially.

Mr. SUTCLIFFE. As an indication that this would be so?

Dr. HALL. As a partial indication, yes.

Senator HART. We thank you very much for your willingness to think through with us, a tough aspect of this.

Dr. HART. Thank you.

(The statement follows:)

STATEMENT OF JOHN W. HALL, CHAIRMAN, INSURANCE, SCHOOL OF BUSINESS ADMINISTRATION, GEORGIA STATE COLLEGE, ATLANTA, GA.

My statement to this group will be relatively short. I am not here to debate in detail the merits of fault vs. no-fault automobile reparations systems. Each of you are better informed about the arguments than I. In my own mind, after studying much of the material and considering the operation of the present reparations system and the possibilities inherent for improvement under a no-fault system, I believe firmly that consumers will benefit from a compulsory no-fault benefit system designed to compensate all victims of automobile accidents for a significant portion of their economic losses. This is what S. 945, Committee Print One, accomplishes.

I would like to limit this statement to just two matters:

1. A brief statement of one of my reasons for supporting no-fault, a reason which is both different from, and similar to, many of the others that have been articulated in the past, and which supports convincingly many of the tenets of the current bill, and

2. A statement of my belief, and the reasons for my belief, that automobile no-fault benefits, whether funded privately or governmentally, should be primary over other benefit systems, private or governmental.

In both instances, I believe sincerely that I am speaking in the interest of the consumer and the public interest generally.

AUTOMOBILE NO-FAULT BENEFITS AND INDIVIDUAL RESPONSIBILITY

Each of us believes deeply in the concept of "individual responsibility." It has been charged frequently that no-fault automobile insurance contributes to the breakdown of our heritage of "individual responsibility." It is my opinion that the system reenforces the concept of "individual responsibility."

In our American heritage, we operate under a private enterprise democratic system. There are many characteristics of this system, two of which might include:

1. Individual should have the opportunity and responsibility to care for themselves and their families—to provide for their economic security needs.

2. In fulfilling this opportunity, persons should be rewarded reasonably in proportion to their productive contributions to society.

In a private enterprise democracy, to the extent that these characteristics or goals are not fulfilled, governments have intervened in an effort to assure their fulfillment as a matter of public policy. For example:

1. To the extent that persons are not able financially to care for themselves and their families, society as a whole, through some form of private charity or public welfare, shoulders the burden. The fact that individuals are unable to care for themselves constitutes a failure in the private enterprise democratic system which must be compensated by funds taken from all productive persons in society in the form of contributions or taxes. Care for the indigent involves a public policy decision made years ago as a modification of the concept of individual responsibility.

2. In keeping with the concept of individual responsibility, public policy dictates that individuals should be encouraged to make greater contributions to society with the hope of greater rewards in the form of society's bounty. These encouragements include the public policy decisions regarding equal opportunity regardless of race, sex, color, creed, or national origin, and the various programs designed to train and retrain individuals so that they might assume a more productive role in our economy. Again, this is a reenforcing of the basic concept that individuals, by seeking a reward for their contributions to society, are also striving to become financially responsible—for themselves and their families.

Individual responsibility in the economic sense of taking care of one's own needs and being self-sufficient, is a high level of individual responsibility. It has re-

ceived sanction and support in public policy decisions and programs by Congress and governments at all levels.

Today we are considering individual responsibility as it relates to decisions regarding the tort law automobile liability insurance system and the no-fault automobile insurance system.

Our tort law legal system is one of individual equity, individual rights, and individual responsibilities. In this system of equity and responsibilities, individuals who are relatively negligent may be held legally responsible (accountable) for their actions which directly cause harm to others. Liability insurance (which should be compulsory if the system is to function) provides financial responsibility (accountability) giving authority to the legal responsibility. This responsibility for damages caused to others is basic in our heritage. Nevertheless, it is my thesis that the concept of individual responsibility (accountability) to others, as it functions in practice in the automobile tort law system tends to too frequently negate the responsibility of indvduals to care for themselves.

In this light, the basic questions which should be considered are:

1. Is the tort law-liability insurance system in practice, as opposed to theory, a system which furthers the concept of individual responsibility or accountability to others?

2. Assuming that the fault-liability insurance system does in practice contribute to individual responsibility, does the system tend to function in conflict with the individual responsibility concept that one should be able to care for the basic economic needs of himself and his family?

3. If there is a conflict, which is the higher level of individual responsibility? Which should be encouraged in preference to the other?

Regarding the first question, much has been stated about the idea that the tort law system, by making people legally responsible for the damages caused by their negligent acts, tends to make persons more responsible as drivers and thus contributes to safety. Stated differently, it is argued that the fear of legal responsibility is a deterrent to unsafe driving practices, to the improper maintenance or modification of vehicles, to the purchase of vehicles which have inherently high-hazard characteristics, or to the purchase of automobiles or makes of cars whose basic engineering design does not give drivers the greatest possible flexibility as a deterrent to an accident in an emergency situation.

Assuming that:

(1) Liability insurance is unavailable,

(2) Either (a) every driver is financially responsible or (b) Financial Responsibility Laws are enforced (or even enforceable) against financially irresponsible negligent drivers, depriving them of of the right to drive, and

(3) Automobile accidents are reported uniformly throughout the United States, I would agree that the tort law system should encourage safety through driver accountability. The investigation of accidents and the direct confrontation between a plaintiff and a defendant, perhaps through their attorneys, would truly be a traumatic and expensive experience. If every driver with assets and income knew that he might lose his economic well-being through an automobile accident, he would tend to be more careful. If every driver knew that he might lose his driver's license and be unable to drive if he were not financially responsible for the accidents which he might cause, then the tort law system would serve as a strong deterrent to carelessness. As a matter of practice, these conditions do not exist. As a matter of practice, there are many unsafe drivers and unsafe vehicles on our highways, so many in fact that national programs to correct these defects have been or are being considered for implementation—programs which operate independently of the tort law system.

It is common knowledge that in many jurisdictions, the system for reporting automobile accidents is less than satisfactory; accidents are not reported. This has an unfavorable impact on the operation of the financial responsibility law (and the equitable operation of the various rating plans utilized by private insurers). The tort law system is not permitted to serve as a deterrent to unsafe driving practices through the threat of removal of the right to drive.

Further, where liability insurance finances the tort law system, the insured is the defendant in a case—the person who may be held legally and financially responsible. Where cases are settled through negotiation, in most instances, the insured defendant is never informed of the final outcome. He never knows for sure, at least not until the next premium due date, whether or not he was deemed to be legally responsible (and presumably accountable) under the rules

of the tort law system. In fact, because of the expense of carrying cases to long negotiation or trial, cases tend to be settled on expediency. Where a payment is made, there is a presumption of legal responsibility when, in fact, legal responsibility might not have existed as eventually determined by a jury after an adequate investigation of the facts of the case in relation to the relative strength and credibility of witnesses and attorneys. Even assuming that the insured-defendant is conscious of his legal accountability, the financial responsibility is not borne by him, but by the insurer and all drivers insured in the same company. Conceivably, the plaintiff-claimant may have contributed a portion of his own award in the form of a premium to the same insurer. In short, the deterrent pains of legal and financial accountability are diffused throughout the insuring society and are not felt by the individual in either a legal or financial sense. This dilutes considerably (perhaps eliminates) the effectiveness of the tort law system in its role of encouraging responsibility and safety.

Regarding the second question, if one assumes that the tort law-liability insurance system does, in practice, contribute to the concept of individual responsibility and accountability to others, I suggest that the system tends to function in conflict with the concept requiring that persons be responsible for their own basic economic needs and those of their families. Let me elaborate. Given the tort law system, *compulsory liability insurance* is necessary. Through liability insurance, each insured protects his assets and is able to pay others damage awards required under the tort law system. Each driver is reasonably assured that others have funded an award for him if he wins a case against them. The concept of "an eye for an eye" is a meaningless viewpoint if the eyes of the negligent are made of glass.

But is compulsory liability insurance in keeping with the times, especially with our present awareness and public policy concerns for the problems of the poor? Are the Financial Responsibility Laws, which tend to make liability insurance mandatory if one is to retain his driver's license in the event of an accident, appropriate today?

The automobile is an economic necessity for most. While some might say that people do and could get along without their "wheels," the necessity of an automobile is a political fact of life. Perhaps the automobile is even more necessary for the lower economic strata of our population if they are to ever achieve the next higher rung on the ladder of economic opportunity—even to become self-supporting. The mobility of labor within the community is economically important and our mass transportation systems are inadequate; real improvements are many years away.

Is it fair, socially equitable, or desirable, to say to the economically disadvantaged, that they must pay high premiums for compulsory liability insurance to pay you and me for our economic and non-economic losses in an automobile accident in which they are at fault? Without insurance, the poor have little to lose under the fault system. They tend to be judgment proof. Their real needs for liability insurance protection are few. Is it fair to say that in an accident, the poor must be able to take care of the more fortunate *and* their attorneys when they cannot even take care of themselves? When they are at fault, who pays for the damages and losses of the poor? We do, through charity or public welfare programs.

The more affluent buy liability insurance to care for their assets and income for under the fault system, they tend to be targets. Perhaps this is the price which they must pay for success! The more affluent also tend to have full social security coverage, private employee benefits and individual life and health insurance to care for their own. The more affluent tend to be able to care for their basic economic security needs.

In many instances, under the tort law compulsory liability insurance system, relatively affluent innocent parties tend to be asking relatively poor negligent parties to provide for them additional benefits. Doesn't this tort law-compulsory liability insurance system tend to compound society's inequities?

If we assume that all drivers must bear a cost equivalent to *compulsory liability insurance premiums*, would it not be more equitable for each driver (the poor and the rich) to use those same premium dollars to take care of his own family through relatively liberal no-fault *economic loss* benefits? If we are going to force each driver to buy coverage as a condition precedent to driving, isn't it better to force him to take care of himself, rather than you and me *and* the attorneys? Are not the relatively affluent better off *not* to have to fund relatively indigent drivers through charity and welfare for accidents where the

indigent are at fault and cannot afford to take care of themselves? Would not no-fault insurance be inherently more stable politically? And incidentally, wouldn't the relatively well-to-do be better off using the $100, $200, $300 or even $1,000 liability insurance premium to buy additional death, income replacement, or medical care benefits for their own families without having to trust to the vagaries of the fault system for their recoveries in the event they are involved in an accident? Why shouldn't the relatively wealthy have a tort exemption also? Why should they compensate the attorneys?

Does the tort law-compulsory liability insurance system tend to function in conflict with the individual responsibility concept that one should be able to care for the basic economic needs of himself and his family? In my opinion, it does.

The final question, "If there is conflict, which is the higher level of individual responsibility?" must be determined according to the philosophy of the individual. In my opinion, it is in the interest of each of us that the concept of individual responsibility for the basic economic needs of himself and his family is primary. The concept of accountability or responsibility to others must be secondary.

The answers to each of these three questions involve deep soul-searching. No fault automobile insurance solutions suggest a break with tradition—a break with the *status quo*. Such breaks are not easy.

If one can assume that the most important aspect of the concept of individual economic responsibility involves caring for the basic economic needs of an individual and his family, then the concept of no fault automobile insurance, as envisioned by the draft of the bill being considered before this Committee (and other proposals of this nature), furthers the interest of individual responsibility. As a condition precedent to the operation of the automobile, no-fault coverage must be purchased—coverage which provides benefits primarily to the members of the driver's family. Benefit levels would be sufficiently high and broad to indemnify nearly all individuals for true economic losses and to pay those individuals who suffer severe injury, far more than they would receive (on the average) under the present system, including the damages for economic loss and for intangible loss or pain and suffering. Persons desiring excess economic loss coverages because their economic loss potential is higher (income replacement) and those desiring coverage for pain and suffering, can purchase these coverages to the extent that they wish to do so. These optional coverages create no real inequities in relation to the present system. Persons choosing not to purchase them, would, on the average receive higher benefits under the mandatory coverage than under the present system. Persons desiring to pay for the options would get what they pay for.

Senator HART. For the record, let there be printed the resolution from the Assembly of Governmental Employees, in support of no-fault. This assembly represents over one-half million State, county, and municipal employees.

(The resolution follows:)

ASSEMBLY OF GOVERNMENTAL EMPLOYEES

RESOLUTION

Whereas, the present fault liability system for auto insurance has serious shortcomings in providing efficient coverage, adequate market capacity and equitable resources to accident victims, and

Whereas, a number of plans for significant reform of the auto insurance system have been proposed, and

Whereas, the most responsive of these plans calls for the abandonment of fault-finding prohibition of suit for damages and no recovery for unmeasurable losses, and

Whereas, the affiliates of the Assembly of Governmental Employees are concerned over the establishment of a more efficient and more economic system of auto insurance for their members and for the general public, now therefore be it

Resolved, that the Assembly of Governmental Employees encourage its affiliates to introduce or support in their state Legislatures a no-fault plan incorpo-

rating the above concepts and that the Board of Directors be instructed to take appropriate action in support of Federal legislation to accomplish these goals.

Senator HART. For the record, let there be printed a legislative fact sheet prepared by the Communication Workers of America, informing their membership about no-fault automobile insurance.

(The fact sheet follows:)

COMMUNICATION WORKERS OF AMERICA LEGISLATIVE FACT SHEET

NO-FAULT AUTO INSURANCE

No-fault auto insurance is a system devised to lower insurance premiums, give you your income for the time you cannot work because of accident injuries, cover your medical-hospital bills arising from the accident.

In theory, that is what we are buying now. But in practice, that is not what we are getting.

The problem is this—so many cases go to lawyers and to courts to decide who is at fault in an accident that the lawyers end up with a big share of the premium dollar and the injured person too often ends up with not enough to cover his injury.

No-fault eliminates this.

As its name implies, if an accident occurs, you are covered by your insurance company and the other car's occupants are covered by the insurance company carrying the insurance on the other car.

You do not go to a lawyer and to court to find out which person is at fault. Instead, your insurance company pays your salary for the time you cannot work, and pays your hospital-medical bills.

Massachusetts and Puerto Rico have passed laws putting limited no-fault or a variety of no-fault in effect, and very good results are reported. Massachusetts had limited no-fault and rates are down. Next year, they are expected to decrease again. Puerto Rico also has had considerably lower rates.

Lawyers' groups, who obviously are being cut out of a large source of their income, are fighting no-fault on several levels, but they are also fighting it with distortions that often are just plainly lies.

Firstly, they want auto liability legislation left up to the states, where lawyers and insurance men have strong control of the legislatures. No-fault has been brought up in many states, but it has been acted on by only a few, so leaving it up to the states is sending it to limbo. Also, American families travel extensively from state to state, and they should have the comfort of knowing that they are protected regardless of which state they may be driving through. And, some states passed frauds that take away protections from the purchaser under the guise of reforming auto insurance. In those states, unlike Massachusetts and Puerto Rico, premiums will stay high and insurance company profits will go up.

Secondly; through advertisements and in presentations before various groups, the anti-no-fault lobbies have tried (probably successfully) to instill fear in people, by telling them that no-fault will take away their right to go to court, and so deny people a chance to get compensation for their injuries. This is a wholesale distortion of no-fault. But with a Gallup Poll showing that 81 per cent, of the people don't understand no-fault concept, the lawyers' effort at distortion is easy. The poll also showed those people who do understand no-fault support it by a ratio of almost 4 to 1.

Finally, lawyers are saying that they don't want any law passed which will reduce an injured person's right to collect for their injuries. That sounds fine, but under the present, lawyer-dominated system, the more serious your injuries are, the less chance you have of collecting for them. A two-year long study of auto liability insurance shows that serious injury victims do not get what they are entitled to, and often have to wait years to collect anything.

According to the study, the average totally disabled person suffered a $78,000 economic loss but got only $12,556 in liability insurance compensation.

No-fault would change all that.

Every licensed driver would have to be covered, losses would be compensated without legal fees, and payment would be prompt.

The legislation involved is the Hart-Magnuson bill in the Senate, and the Moss-Eckhardt bill in the House.

Since the Senate bill, as of the time this fact sheet is being prepared, is a little closer to what the Communications Workers of America supports, the fact sheet will spell out the basic points in the Senate bill, S. 945.

Every owner of a car in the United States would be required to purchase a policy covering losses, while operating the car, to himself, other drivers, passengers, and to pedestrians injured by the car. This policy would also cover damage to any property by the car, such as a fence or house, but does not include damage to another moving vehicle. (Collision insurance protection for damage to vehicles will be discussed later in this fact sheet.)

Insurance companies would be required to sell the required insurance to every person who has a valid driver's license, and who pays the premium.

Each driver's own insurance company would be required to pay him, other drivers of the car, passengers in the car, or pedestrians injured by the car for all wages (after taxes) lost due to the injury, up to $1,000 a month. Those who make more than $1,000 a month, may purchase additional protection separately.

This section of the bill also states that an injured person whose earning ability is decreased because of the accident will receive compensation for the loss of future earning ability.

If an injury should result in a person's inability to do normal work, such as housework, the person would receive benefits to cover the costs of having the normal work done.

Insurance companies would be required to offer two additional coverages, including one that opponents of the bill frequently misrepresent. That is coverage for intangibles, such as pain and suffering or inconvenience arising from the accident, and loss of the ability to enjoy life.

These intangibles usually were the basis of court suits, because while loss of wages and medical-hospital bills are easily documented, pain and suffering aren't.

Under no-fault those individuals who want coverage only for loss of wages and medical bills could obtain it, and those who want the additional coverage for pain and suffering could get it without putting the extra burden on every other driver.

The other additional coverage which a person could purchase would be coverage above the limits set by the bill—such as coverage to protect you if you earn more than $1,000 a month.

No-fault also makes a progressive move concerning coverage from other insurance. For instance, if national health insurance becomes law, eliminating medical-hospital bills for individuals, then your auto insurance premium would be reduced by the amount which involves these bills. The same situation would hold true if you have private insurance, such as Blue Cross-Blue Shield, and the Blue insurance was designated "primary" to no-fault benefits.

The provision ensures that you don't pay for the same thing twice, even though—in a union-negotiated health insurance program—you may be paying only part or even none of a health plan's premium.

For instance, if a union contract provided that the employer pays for all medical and hospital costs, then your auto insurance premium could be reduced from $200 a year to $150 (figures are only examples).

The bill makes a progressive move concerning disputes between a policy-holder and his insurance company, over some provision of the insurance policy. Under a no-fault policy the matter can be taken to court, but the fees for the policyholder are paid by the insurance company. Suppose a person says he is unable to work, and the insurance company denies his claim. The person hires a lawyer and goes to court. Regardless of who wins, the company pays the attorney's fee, unless the person is shown to have a claim which is fraudulent.

The bill also makes a progressive move concerning rates. It provides that the federal government, together with the states, would establish a system of reporting claims and losses so that uniform risk categories can be set up. This information would also be available to the public, and you could then know how much of the premium dollar is being returned to the public and how much is going into operating the insurance company.

Those items make up the heart of no-fault, and represent a significant change in a system which operates for the benefit of lawyers involved in liability cases more than for premium payers.

It is part of a package of legislation, and the other bills would eliminate state laws which now prohibit the sale of group auto insurance, permit unions to bargain for group auto insurance payments as a benefit in the contract.

require the development of safer cars, and make employer contributions to auto insurance be treated the same as accident and health contributions under the tax laws.

But the major piece of legislation is the basic no-fault law—and its passage substantially as in Hart-Magnuson in the Senate and Moss-Eckhardt in the House would be a direct improvement in the lives of American workers.

Senator HART. Also, for the record a letter from the United States Automobile Association discussion section 5(d)(1) of Committee Print No. 1 of S. 945.

(The letter follows:)

UNITED STATES AUTOMOBILE ASSOCIATION,
October 7, 1971.

Re: S. 945—Section 5(d)(1).

HON. WARREN G. MAGNUSON,
U.S. Senator,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: One of the most significant bills presently being considered by the Senate Commerce Committee is S. 945 (Committee Print #1), which calls for the establishment of a national system of no-fault automobile insurance. As a major writer of automobile insurance, USAA is obviously deeply interested in the outcome of your deliberations in this area. However, it is not the purpose of this letter to expound upon our views on the no-fault concept. Your Committee has already received abundant testimony on that subject. Instead, I wish to draw your attention to the far reaching, and very harmful implications posed by one of the Bill's provisions which has not commanded the attention it deserves in the hearings held by the Committee. We have communicated our views on this matter to the staff of the Committee, and it is at their suggestion that I am writing this letter.

Section 5(d)(1) of S. 945 obviously represents an attempt to assure that the mandated no-fault coverages will be readily available to all members of the motoring public. It does so by providing that:

"Any application for a policy of insurance * * * may not be rejected by an insurer, nor shall such policy of insurance once issued, be canceled or refused renewal, by an insurer except for (A) suspension or revocation of the license of an owner or principal operator to operate a motor vehicle, or (B) failure to pay the premium for such policy after reasonable demand therefor * * *."

I fully recognize that the idea of permitting all motorists to obtain insurance from the company of their choice has considerable surface appeal. It is essential, however, that you look beneath the surface. If implemented, I am convinced that this requirement would prove to be:

Unfair—in that it could force a limited number of companies—and their policyholders—to bear the brunt of financially subsidizing the high risk segment of the motoring population;

Unrealistic—in that it would impose this burden blindly, without any consideration of the physical ability of these companies to service all persons who apply, and;

Unnecessary—in that there are other, more equitable, methods of attaining the objective sought.

If I may, I would like to elaborate upon these allegations.

(1) Equitable Distribution of High Risk Motorists

For many years, Assigned Risk Plans have existed in every State for the purpose of providing automobile insurance to those persons who—because of their accident or conviction record, or other high risk characteristics—are unable to obtain coverage in the voluntary market. The development of these Plans by the insurance industry reflects its recognition and acceptance of the social obligation of making insurance available to this group of motorists. The fundamental principle underlying all of these Plans is that this social burden should be *equitably distributed among all insurers.* In other words, no company is compelled to insure more than its fair share of such persons. To do otherwise would seriously and artifically distort the competitive interrelationship existing between companies in their dealings in the voluntary market.

The importance of this concept of equitable distribution becomes manifestly evident when it is recognized that, in most jurisdictions, the rates insurers are permitted to charge assigned risks are insufficient to cover the losses and expenses generated by that group. As a result, these rates must ultimately be "*subsidized*" by charging those persons voluntarily insured higher premiums than would otherwise be necessary. In the case of USAA, for every $1.00 of premium earned from our assigned risks in 1970, the pay-out was $1.41. This represented an underwriting loss of $2,843,000 to the USAA membership. The existence of this regulatory policy of enforced subsidization was recognized in the recent report entitled "A Study of Assigned Risk Plans," submitted to the DOT by the Federal Trade Commission. It states that:

"It is our opinion that it will probably always be essential that some form of subsidy exist * * *. Individuals in this market in many cases cannot afford the premiums necessary to make this business break even. It is a social cost which the voluntary market must continue to bear."

The enactment of Section 5(d)(1) in its present form would not only result in the abolition of assigned risk plans—it would completely discard the idea of equitably distributing the burden of insuring high risk motorists. It would cast each individual company in the role of a quasi-public utility, obligated: (1) to write all applicants regardless of their driving record or other risk characteristics, and; (2) to continue to insure them for life. Unlike the public utilities, however, insurers are given no assurance by S. 945 that they will be permitted by the States—which retain power over the rates that may be charged—to obtain adequate premiums from such persons. In fact, as I have already observed, virtually all of our past experience indicates that such rates will be inadequate and thus will have to be subsidized.

What can be expected to occur if legislation embodying this principle is adopted? Since motorists will be free to select any carrier, I believe that we will witness a massive movement of the present assigned risk population, and other marginal risks, toward those companies which traditionally have charge the lowest rates. This in turn, will mean that these companies—and, ultimately, the policyholders they represent—will bear a vastly disproportionate share of the financial burden of insuring the accident prone segment of the driving population. The primary beneficiaries of this development will be the higher cost insurers, and their policyholders, who will no longer be responsible for writing their fair share of such business. *In effect, then, a limited segment of the insured motoring population would be forced to bear the brunt of subsidizing the high risk group.*

S. 945 implicitly recognizes the fact that it may have sown the seeds of financial disaster for those insurers who will feel the full impact of the "accept all comers" provision. Thus, it provides that companies may be relieved from compliance with this requirement:

"if the domiciliary State supervisory authority of such insurer deems in writing that the solvency of such insurer would be impaired by the writing of additional policies of insurance."

Provision for relief only after an insurer reaches the brink of insolvency can hardly be said to be consoling either to its management, its policyholders or claimants.

(2) Problems of Physical Capacity

There is yet another reason why equitable distribution is both necessary and desirable from the public's standpoint. As it now stands, Section 5(d)(1) completely disregards the very important practical question of the physical ability of any given insurer adequately to service the enormous influx of applicants who might appear at its door. This problem would be particularly acute for smaller insurers with limited staff and facilities (e.g., claims investigtaors, computer resources, etc.). In effect, S. 945 would force a company to insure all such persons even in the face of its obvious inability to perform that task effectively. The result would be a deterioration in service to all policyholders. I fail to see how this state of affairs would be in the public interest.

(3) Impact Upon USAA

For almost fifty years, USAA has operated as a non-profit member-owned cooperative dedicated to providing reliable insurance coverage, at minimal cost, to officers in the military service. The Association was formed in 1922 by active duty officers, who themselves had experienced great difficulty in obtaining auto

insurance at a reasonable price. By serving the special insurance needs of military men since that time, we have grown to a point where we now have more than 750,000 member-policyholders. One example of the special problems encountered by officers is that of obtaining coverage regardless of where they are stationed. In recognition of this fact we now insure—at a financial loss, I might add—more than 30,000 officers stationed in Europe.

The rates which USAA charges are widely recognized to be among the lowest in the industry. These low rates are primarily attributable to the fact that we operate directly by mail, and thus avoid the payment of agents commissions. They are *not* a product of highly selective or restrictive underwriting practices. Virtually any officer can obtain insurance from the Association, as is evidenced by the fact that we accept in excess of *99.5%* of all applicants, and cancel or non-renew an infinitesimal number of policies. These assertions are substantiated by the fact that, in two major surveys conducted by *Consumer Reports* magazine, have been found to be one of the nation's outstanding insurers from the standpoint of service to policyholders and claimants.

I want to emphasize that USAA does not object to insuring its *fair share* of the assigned risk population. We accept this as an obligation of doing business. Nor do we oppose improvements in these Plans designed to broaden the available coverages and increase their effectiveness. We do object, however, to the "accept all comers" concept embodied in S. 945 which—inadvertently, I think—would severely penalize USAA, and other specialized companies similarly situated, for the compilation of a record of service and savings to the consumer. This would be the result if we are forced to write every high rish applicant who might be attracted by our low rates. *In a word, we think we would be inundated.*

(4) Suggested Alternative Approaches

I am deeply troubled by the fact that the concept embodies in Section 5(d)(1) has found its way into other Congressional no-fault proposals (i.e. H.R. 10222, S. 2322, H. 4994). I strongly suspect that this has occurred without a full realization of the consequences which would flow from the imposition of a requirement of this type. The fact of the matter is that other—far more workable—measures exist for assuring the availability of a market to all licensed drivers. In this regard, I would refer your attention to the discussion of alternative solutions to this problem contained in the reports recently prepared for DOT under the auspices of the Federal Trade Commission. I would note, with particular emphasis, that none of these proposals adopt the approach contained in S. 945. Each of them is founded upon the premise that the burden of insuring substandard risks should be equitably distributed among all insurers, either through improved assigned risk plans, or by a pooling mechanism.

In considering how Section 5(d)(1) might be revised, consideration should be given to the fact that S. 945 leaves within the hands of state regulatory authorities the authority to:

(a) regulate the rates insurers may charge for insurance, and;

(b) license drivers, and thus determine the nature and size of the group which insurers will be required to serve.

Thus, the states will retain the power to define the group which will have to be insured, and the rates which may be charged. Under these circumstances, it does not seem unreasonable to suggest that they should also be charged with the responsibility of seeing to it that an adequate market exists.

As you may be aware, the DOT has requested the National Conference of Commissioners on Uniform State Laws to prepare model no-fault legislation. One of the provisions contained in their draft proposal deals with the problem of assuring the availability of insurance to all licensed drivers. Borrowing in part from the language contained in the draft, the Commerce Committee may wish to give consideration to an amendment of Section 5(d)(1) along the following lines:

"The [commissioner] of insurance shall adopt and implement or approve and supervise a plan assuring that the coverage required by subsection (a) of this section will be conveniently and expeditiously offered, subject only to payment or provision for payment of the premium, to all applicants for such insurance who are required by this act to maintain such insurance and who are unable to conveniently obtain such insurance through ordinary methods at reasonable rates. The plan may be by assignment of applicants among insurers or by pooling or other joint insuring arrangement or by any other method which will

The importance of this concept of equitable distribution becomes manifestly evident when it is recognized that, in most jurisdictions, the rates insurers are permitted to charge assigned risks are insufficient to cover the losses and expenses generated by that group. As a result, these rates must ultimately be "*subsidized*" by charging those persons voluntarily insured higher premiums than would otherwise be necessary. In the case of USAA, for every $1.00 of premium earned from our assigned risks in 1970, the pay-out was $1.41. This represented an underwriting loss of $2,843,000 to the USAA membership. The existence of this regulatory policy of enforced subsidization was recognized in the recent report entitled "A Study of Assigned Risk Plans," submitted to the DOT by the Federal Trade Commission. It states that:

"It is our opinion that it will probably always be essential that some form of subsidy exist * * *. Individuals in this market in many cases cannot afford the premiums necessary to make this business break even. It is a social cost which the voluntary market must continue to bear."

The enactment of Section 5(d)(1) in its present form would not only result in the abolition of assigned risk plans—it would completely discard the idea of equitably distributing the burden of insuring high risk motorists. It would cast each individual company in the role of a quasi-public utility, obligated: (1) to write all applicants regardless of their driving record or other risk characteristics, and; (2) to continue to insure them for life. Unlike the public utilities, however, insurers are given no assurance by S. 945 that they will be permitted by the States—which retain power over the rates that may be charged—to obtain adequate premiums from such persons. In fact, as I have already observed, virtually all of our past experience indicates that such rates will be inadequate and thus will have to be subsidized.

What can be expected to occur if legislation embodying this principle is adopted? Since motorists will be free to select any carrier, I believe that we will witness a massive movement of the present assigned risk population, and other marginal risks, toward those companies which traditionally have charge the lowest rates. This in turn, will mean that these companies—and, ultimately, the policyholders they represent—will bear a vastly disproportionate share of the financial burden of insuring the accident prone segment of the driving population. The primary beneficiaries of this development will be the higher cost insurers, and their policyholders, who will no longer be responsible for writing their fair share of such business. *In effect, then, a limited segment of the insured motoring population would be forced to bear the brunt of subsidizing the high risk group.*

S. 945 implicitly recognizes the fact that it may have sown the seeds of financial disaster for those insurers who will feel the full impact of the "accept all comers" provision. Thus, it provides that companies may be relieved from compliance with this requirement:

"if the domiciliary State supervisory authority of such insurer deems in writing that the solvency of such insurer would be impaired by the writing of additional policies of insurance."

Provision for relief only after an insurer reaches the brink of insolvency can hardly be said to be consoling either to its management, its policyholders or claimants.

(2) Problems of Physical Capacity

There is yet another reason why equitable distribution is both necessary and desirable from the public's standpoint. As it now stands, Section 5(d)(1) completely disregards the very important practical question of the physical ability of any given insurer adequately to service the enormous influx of applicants who might appear at its door. This problem would be particularly acute for smaller insurers with limited staff and facilities (e.g., claims investigtaors, computer resources, etc.). In effect, S. 945 would force a company to insure all such persons even in the face of its obvious inability to perform that task effectively. The result would be a deterioration in service to all policyholders. I fail to see how this state of affairs would be in the public interest.

(3) Impact Upon USAA

For almost fifty years, USAA has operated as a non-profit member-owned cooperative dedicated to providing reliable insurance coverage, at minimal cost, to officers in the military service. The Association was formed in 1922 by active duty officers, who themselves had experienced great difficulty in obtaining [illegible]

insurance at a reasonable price. By serving the special insurance needs of military men since that time, we have grown to a point where we now have more than 750,000 member-policyholders. One example of the special problems encountered by officers is that of obtaining coverage regardless of where they are stationed. In recognition of this fact we now insure—at a financial loss, I might add—more than 30,000 officers stationed in Europe.

The rates which USAA charges are widely recognized to be among the lowest in the industry. These low rates are primarily attributable to the fact that we operate directly by mail, and thus avoid the payment of agents commissions. They are *not* a product of highly selective or restrictive underwriting practices. Virtually any officer can obtain insurance from the Association, as is evidenced by the fact that we accept in excess of *99.5%* of all applicants, and cancel or non-renew an infinitesimal number of policies. These assertions are substantiated by the fact that, in two major surveys conducted by *Consumer Reports* magazine, have been found to be one of the nation's outstanding insurers from the standpoint of service to policyholders and claimants.

I want to emphasize that USAA does not object to insuring its *fair share* of the assigned risk population. We accept this as an obligation of doing business. Nor do we oppose improvements in these Plans designed to broaden the available coverages and increase their effectiveness. We do object, however, to the "accept all comers" concept embodied in S. 945 which—inadvertently, I think—would severely penalize USAA, and other specialized companies similarly situated, for the compilation of a record of service and savings to the consumer. This would be the result if we are forced to write every high rish applicant who might be attracted by our low rates. *In a word, we think we would be inundated.*

(4) Suggested Alternative Approaches

I am deeply troubled by the fact that the concept embodies in Section 5(d)(1) has found its way into other Congressional no-fault proposals (i.e. H.R. 10222, S. 2322, H. 4994). I strongly suspect that this has occurred without a full realization of the consequences which would flow from the imposition of a requirement of this type. The fact of the matter is that other—far more workable—measures exist for assuring the availability of a market to all licensed drivers. In this regard, I would refer your attention to the discussion of alternative solutions to this problem contained in the reports recently prepared for DOT under the auspices of the Federal Trade Commission. I would note, with particular emphasis, that none of these proposals adopt the approach contained in S. 945. Each of them is founded upon the premise that the burden of insuring substandard risks should be equitably distributed among all insurers, either through improved assigned risk plans, or by a pooling mechanism.

In considering how Section 5(d)(1) might be revised, consideration should be given to the fact that S. 945 leaves within the hands of state regulatory authorities the authority to:

(a) regulate the rates insurers may charge for insurance, and:

(b) license drivers, and thus determine the nature and size of the group which insurers will be required to serve.

Thus, the states will retain the power to define the group which will have to be insured, and the rates which may be charged. Under these circumstances, it does not seem unreasonable to suggest that they should also be charged with the responsibility of seeing to it that an adequate market exists.

As you may be aware, the DOT has requested the National Conference of Commissioners on Uniform State Laws to prepare model no-fault legislation. One of the provisions contained in their draft proposal deals with the problem of assuring the availability of insurance to all licensed drivers. Borrowing in part from the language contained in the draft, the Commerce Committee may wish to give consideration to an amendment of Section 5(d)(1) along the following lines:

"The [commissioner] of insurance shall adopt and implement or approve and supervise a plan assuring that the coverage required by subsection (a) of this section will be conveniently and expeditiously offered, subject only to payment or provision for payment of the premium, to all applicants for such insurance who are required by this act to maintain such insurance and who are unable to conveniently obtain such insurance through ordinary methods at reasonable rates. The plan may be by assignment of applicants among insurers or by pooling or other joint insuring arrangement or by any other method which will

The importance of this concept of equitable distribution becomes manifestly evident when it is recognized that, in most jurisdictions, the rates insurers are permitted to charge assigned risks are insufficient to cover the losses and expenses generated by that group. As a result, these rates must ultimately be "*subsidized*" by charging those persons voluntarily insured higher premiums than would otherwise be necessary. In the case of USAA, for every $1.00 of premium earned from our assigned risks in 1970, the pay-out was $1.41. This represented an underwriting loss of $2,843,000 to the USAA membership. The existence of this regulatory policy of enforced subsidization was recognized in the recent report entitled "A Study of Assigned Risk Plans," submitted to the DOT by the Federal Trade Commission. It states that:

"It is our opinion that it will probably always be essential that some form of subsidy exist * * *. Individuals in this market in many cases cannot afford the premiums necessary to make this business break even. It is a social cost which the voluntary market must continue to bear."

The enactment of Section 5(d)(1) in its present form would not only result in the abolition of assigned risk plans—it would completely discard the idea of equitably distributing the burden of insuring high risk motorists. It would cast each individual company in the role of a quasi-public utility, obligated: (1) to write all applicants regardless of their driving record or other risk characteristics, and; (2) to continue to insure them for life. Unlike the public utilities, however, insurers are given no assurance by S. 945 that they will be permitted by the States—which retain power over the rates that may be charged—to obtain adequate premiums from such persons. In fact, as I have already observed, virtually all of our past experience indicates that such rates will be inadequate and thus will have to be subsidized.

What can be expected to occur if legislation embodying this principle is adopted? Since motorists will be free to select any carrier, I believe that we will witness a massive movement of the present assigned risk population, and other marginal risks, toward those companies which traditionally have charge the lowest rates. This in turn, will mean that these companies—and, ultimately, the policyholders they represent—will bear a vastly disproportionate share of the financial burden of insuring the accident prone segment of the driving population. The primary beneficiaries of this development will be the higher cost insurers, and their policyholders, who will no longer be responsible for writing their fair share of such business. *In effect, then, a limited segment of the insured motoring population would be forced to bear the brunt of subsidizing the high risk group.*

S. 945 implicitly recognizes the fact that it may have sown the seeds of financial disaster for those insurers who will feel the full impact of the "accept all comers" provision. Thus, it provides that companies may be relieved from compliance with this requirement:

"if the domiciliary State supervisory authority of such insurer deems in writing that the solvency of such insurer would be impaired by the writing of additional policies of insurance."

Provision for relief only after an insurer reaches the brink of insolvency can hardly be said to be consoling either to its management, its policyholders or claimants.

(2) Problems of Physical Capacity

There is yet another reason why equitable distribution is both necessary and desirable from the public's standpoint. As it now stands, Section 5(d)(1) completely disregards the very important practical question of the physical ability of any given insurer adequately to service the enormous influx of applicants who might appear at its door. This problem would be particularly acute for smaller insurers with limited staff and facilities (e.g., claims investigtaors, computer resources, etc.). In effect, S. 945 would force a company to insure all such persons even in the face of its obvious inability to perform that task effectively. The result would be a deterioration in service to all policyholders. I fail to see how this state of affairs would be in the public interest.

(3) Impact Upon USAA

For almost fifty years, USAA has operated as a non-profit member-owned cooperative dedicated to providing reliable insurance coverage, at minimal cost, to officers in the military service. The Association was formed in 1922 by active duty officers, who themselves had experienced great difficulty in obtaining auto

insurance at a reasonable price. By serving the special insurance needs of military men since that time, we have grown to a point where we now have more than 750,000 member-policyholders. One example of the special problems encountered by officers is that of obtaining coverage regardless of where they are stationed. In recognition of this fact we now insure—at a financial loss, I might add—more than 30,000 officers stationed in Europe.

The rates which USAA charges are widely recognized to be among the lowest in the industry. These low rates are primarily attributable to the fact that we operate directly by mail, and thus avoid the payment of agents commissions. They are *not* a product of highly selective or restrictive underwriting practices. Virtually any officer can obtain insurance from the Association, as is evidenced by the fact that we accept in excess of *99.5%* of all applicants, and cancel or non-renew an infinitesimal number of policies. These assertions are substantiated by the fact that, in two major surveys conducted by *Consumer Reports* magazine, have been found to be one of the nation's outstanding insurers from the standpoint of service to policyholders and claimants.

I want to emphasize that USAA does not object to insuring its *fair share* of the assigned risk population. We accept this as an obligation of doing business. Nor do we oppose improvements in these Plans designed to broaden the available coverages and increase their effectiveness. We do object, however, to the "accept all comers" concept embodied in S. 945 which—inadvertently, I think—would severely penalize USAA, and other specialized companies similarly situated, for the compilation of a record of service and savings to the consumer. This would be the result if we are forced to write every high rish applicant who might be attracted by our low rates. *In a word, we think we would be inundated.*

(4) Suggested Alternative Approaches

I am deeply troubled by the fact that the concept embodies in Section 5(d)(1) has found its way into other Congressional no-fault proposals (i.e. H.R. 10222, S. 2322, H. 4994). I strongly suspect that this has occurred without a full realization of the consequences which would flow from the imposition of a requirement of this type. The fact of the matter is that other—far more workable—measures exist for assuring the availability of a market to all licensed drivers. In this regard, I would refer your attention to the discussion of alternative solutions to this problem contained in the reports recently prepared for DOT under the auspices of the Federal Trade Commission. I would note, with particular emphasis, that none of these proposals adopt the approach contained in S. 945. Each of them is founded upon the premise that the burden of insuring substandard risks should be equitably distributed among all insurers, either through improved assigned risk plans, or by a pooling mechanism.

In considering how Section 5(d)(1) might be revised, consideration should be given to the fact that S. 945 leaves within the hands of state regulatory authorities the authority to:

(a) regulate the rates insurers may charge for insurance, and:

(b) license drivers, and thus determine the nature and size of the group which insurers will be required to serve.

Thus, the states will retain the power to define the group which will have to be insured, and the rates which may be charged. Under these circumstances, it does not seem unreasonable to suggest that they should also be charged with the responsibility of seeing to it that an adequate market exists.

As you may be aware, the DOT has requested the National Conference of Commissioners on Uniform State Laws to prepare model no-fault legislation. One of the provisions contained in their draft proposal deals with the problem of assuring the availability of insurance to all licensed drivers. Borrowing in part from the language contained in the draft, the Commerce Committee may wish to give consideration to an amendment of Section 5(d)(1) along the following lines:

"The [commissioner] of insurance shall adopt and implement or approve and supervise a plan assuring that the coverage required by subsection (a) of this section will be conveniently and expeditiously offered, subject only to payment or provision for payment of the premium, to all applicants for such insurance who are required by this act to maintain such insurance and who are unable to conveniently obtain such insurance through ordinary methods at reasonable rates. The plan may be by assignment of applicants among insurers or by pooling or other joint insuring arrangement or by any other method which will

reasonably accomplish the purposes of this section, including any arrangement or undertaking by insurers that results in all applicants being conveniently afforded the insurance coverages on reasonable and not unfairly discriminatory terms through ordinary markets."

"All insurers authorized to transact or transacting the business of selling automobile insurance as defined by subsection (a) of this section in the state shall participate in such plan and *the plan shall provide for the equitable apportionment among all insurers of the insurance coverages, or financial burdens thereof, provided to applicants under such plan and of the costs of operation of the plan.*" (Emphasis added.)

I want to emphasize that this proposal is merely intended to be illustrative of the type of approach which might be followed. We will be happy to work with the staff of the Commerce Committee in the development of appropriate statutory language.

I want to apologize for the length of this letter. However, the concept discussed is of such fundamental importance to USAA that I felt it essential that we communicate our views as fully as possible.

Sincerely,

ROBERT F. MCDERMOTT.
Brigadier General, USAF–Retired, President.

Senator HART. A statement for the record by the president of the Washington State Labor Council, AFL–CIO, Mr. Joe Davis.

This statement was presented at the Insurance Commissioners Conference on Automobile Insurance Reform at the University of Washington on September 24 of this year.

(The statement follows:)

STATEMENT BY JOE DAVIS, PRESIDENT, WASHINGTON STATE LABOR COUNCIL, AFL–CIO

We commend Insurance Commissioner Herrmann for calling this conference. No-fault automobile insurance is an idea whose time has arrived—with a vengeance. The question before us is not whether there should or should not be no-fault automobile insurance, but what form it should take. And we, like all of you, are groping. We welcome the opportunity to explore with other members of the community the concept of a new approach to the problems of the automobile insurance consumer. We have not come with a complete answer. Today, we will only talk about how we see the problem.

There seems little purpose in once more reviewing the problem as it exists today. It has been thoroughly documented that only about 40% of automobile insurance premiums are returned to victims of automobile accidents. Consumers, public officials and insurance industry spokesmen agree that the existing tort liability system is slow, costly and unfair. It should be obvious to even the most casual observer that the present public outcry for a new approach is symptomatic of the public's impatience with the present system.

Last year, Massachusetts enacted a no-fault auto insurance law representing the first completed step by any state away from the traditional tort liability system. A no-fault system has been in operation in Puerto Rico since 1969. Many other states have proceeded well beynod the talking stage. More than half are considering specific legislation or have instituted exploratory studies in the hopes of coming up with a system better suited to the public's demands and needs.

Herbert S. Denenberg, Pennsylvania Commissioner of Insurance, has termed the 70s the "decade of no-fault." He believes that there is no more obvious candidate for reform than our automobile insurance reparations system. Some knowledgeable observers, according to Denenberg, believe that a monkey with a typewriter could peck out a more rational system than the one we now have. We agree with Commissioner Denenberg that the system compensates too few, with too little, too late. Its processes are expensive and inefficient.

The labor movement, in Washington and the other 49 states, favors a national approach. We believe that allowing the states to enact their own separate no-fault automobile insurance programs will lead to the same hodge-podge of conflicting laws and unequal treatment which presently exists in the unemployment insurance and workmen's compensation programs. Automobiles are constantly crossing state lines and the potential for jurisdictional litigation is beynod belief.

We have discussed with Senator Magnuson and his staff the proposal he and Senator Hart have advanced. We think their approach is simple, direct and workable. We think that a uniform program administered at the federal level will assure equal and equitable treatment to all citizens of the United States. Despite the fact that Senator Magnuson's approach makes sense, there is no assurance it will be enacted by the Congress. There is a very real possibility that the Nixon Administration will continue to sidestep its responsibilities and urge that the State enact their own programs. So we expect to take part in developing a unique Washington approach. We want assurance that our State's no-fault automobile insurance law is an outstanding as our state workmen's compensation law.

We believe that certain minimum criteria must be met in a no-fault automobile insurance program.

1. There should be full coverage for all medical and hospital costs arising out of an automobile accident. Payment should be made by the insurer as costs are incurred. We should not ask those who are injured in automobile accidents to finance their own recovery. The average citizen does not have the immediate financial resources available to meet the high costs of medical care and hospitalization. Prompt and complete medical care can reduce many of the long-term costs of recovery and rehabilitation. Even if he knows that he will ultimately be fully reimbursed for his medical and hospital costs, the accident victim may hesitate to incur extraordinary expenses. Not getting necessary and desirable treatment in the short run, may well increase the long-run medical costs.

2. There should be at least 85% coverage for wage loss up to $1,000 a month with optional coverage available for those with higher incomes. Payments should be periodic, at least semi-monthly. Family living expenses continue even while the wage-earner is unable to work. Money is needed, on a regular basis, to meet continuing expenses. It would be desirable in those cases requiring hospitalization to have an immediate payment equivalent to a week's earnings just to take care of the extra-ordinary, out-of-pocket expenses that occur when a member of a family suddenly goes to a hospital—the taxis, telephone calls, flowers and other innumerable costs—small and large—that create an immediate cash drain. Additionally, some mechanism must be created to adjust periodic payments for those who are unable to return to work for an extended period of time. Inflation has taken its toll in the past and we see no indication that it will not continue to do the same in the future.

3. There should be coverage for loss of personal services when the accident victim is not a wage-earner but a person upon whom others are dependent for their care. This means, primarily, mothers caring for small children.

4. There should be a mandatory schedule of awards, based on income, for permanent, partial disabilities. Monthly income should be multiplied by some factor which relates the disability to total disability. A system of awards, based on family income, should be developed for non-wage-earning accident victims.

5. Economic loss due to property damage should be fully compensated. Property damage coverage should include non-vehicle coverage and damage to nondriven or parked automobiles. There should be additional coverage available on an optional basis, above the minimum amounts provided in the statute. Damage to the automobiles of the insured should also be included, with appropriate deductibles.

6. It is necessary for a no-fault system to provide the opportunity for a pedestrian or passenger who is not a member of the car-owning family to recover general damages, in addition to recovery for economic loss. Minimum coverage should be provided by the no-fault system and additional coverage should be available for those who desire additional insurance protection.

7. Rehabilitation of accident victims should be a major consideration and goal.

8. A system of arbitration should be available for resolution of differences between policyholders and the insurer.

9. Finally, automobile insurance should be the primary insurance coverage, unless another type of policy, such as accident and health, stipulates that it will be the primary source of recovery.

Our insurance system is, at best, chaotic and it will be difficult to coordinate no-fault benefits with other insurance programs. The automobile accident victim may be eligible for benefits from individual and group insurance or a variety of negotiated fringe benefits. The victim may be covered by other forms of social insurance, such as workmen's compensation or social security. A primary issue will be whether there should be duplication of benefits or, if not, which program should be primary. We do not agree that there should be only one source of re-

covery. If duplicate benefits are denied, many persons will not receive insurance benefits for which they have paid.

If duplicate recovery is not to be allowed, the automobile insurance premium must be reduced to reflect the fact that a part of the risk is being taken by someone other than the insurer. Negotiated fringe benefits are paid for by reduced wages. If we deny an employee the right to collect the benefits obtained by foregoing a wage increase, he has given up something for nothing. Collective bargaining is a perilous procedure at best and no-fault insurance should not become an additional obstacle on the road to stable labor management relations.

Perhaps the question raised by this point is whether or not the entire insurance concept is so socially important that it would be best to make it a function of government. Perhaps insurance should be more closely regulated and its benefits more closely coordinated. The duplications of coverage in some instances, and the total absence of coverage in others, argue strongly for some method of benefit coordination. The individual consumer obviously cannot coordinate benefits. He has a difficult enough time simply trying to understand the primary coverage he has. But this, however, is another problem for another time. We raise it here only to emphasize a particularly difficult problem in the area of no-fault insurance.

Much has been said in praise of the no-fault approach as a means of reducing automobile insurance costs. We share the hope that a more efficient method of settling claims and eliminating procedural delays will lead to lower premiums. But we do not believe that "cheap insurance" should be the primary goal of a no-fault system.

Whether consumers regard automobile insurance as expensive depends on many factors. Primarily, the consumer will judge the cost by what he gets in return. A $200 automobile insurance premium which requires endless delays before settlement of claims and which ultimately returns only about a third of the premium dollar in benefits is costly. The same amount of premium for a policy which assures the policyholder that he will be compensated adequately and immediately if he has an accident may be well worth the cost.

Automobile insurance costs will not be reduced solely by changing to a no-fault system. Automobile insurance payments include such items as medical costs and automobile repairs. No-fault insurance will not reduce hospital costs. It will not produce automobiles which will be easier and less expensive to repair. It will not, by itself, make automobiles safer, nor will it reduce the possibility of bodily injury because of poorly designed automobile interiors. But it does offer some hope.

Under the present tort liability system, the insurer pays for property damage sustained by others. There is no way of predicting what kind of automobile the policyholder will become involved with in an accident. No-fault, first party insurance will give the insurer the knowledge of the type of automobile damage for which he must provide. Premiums can vary depending on the type of automobile the policyholder owns. "Safe design" credits can be established, thus encouraging the policyholder, and ultimately the manufacturer, to provide a safer automobile, one that does not crumple the whole front end with a five-mile-an-hour collision.

No-fault automobile insurance will encompass the entire range of problems inherent in the workmen's compensation system. The concepts of no-fault auto insurance and workmen's compensation are identical in many respects. Let me take a few seconds to read something to you.

"The common law system governing the remedy of workmen for work-related injuries is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries that were formerly occasional have become frequent and inevitable."

That, as I am sure you recognize, is the preamble to the workmen's compensation law in the State of Washington. You need only substitute "automobile driver" for "workman" and "insurer" for "employers" and you have an appropriate description of the problems that exist today with automobile insurance. The remedies for those injured in an automobile accident are unsure and uncertain. Little of the premium cost reaches those injured. We could do a lot worse than simply substitute "automobile owner or passenger" every place where

"workman" appears in our workmen's compensation law and "insurer" every place where "employer" appears. We would have a tremendous improvement in automobile insurance and a basically workable document.

The facts seem to us to argue very strongly for a state fund approach to no-fault automobile insurance. We believe that a non-profit state fund should provide basic coverage for everyone. Insurance companies should be allowed to compete for any additional coverage which automobile owners may wish to provide.

The average workmen's compensation program run by private insurance returns only about 65% of the premium dollar in benefits to the injured workman. The state workmen's compensation program consistently pays more in benefits than it collects in premiums. This has been true even during the years that premiums have been abnormally high to correct a reserve deficiency which occurred in the early 1960s.

We want the most efficient automobile insurance system at the lowest possible cost. The answer seems obvious to us. You can't argue with success and the state's workmen's compensation fund has been eminently successful.

A no-fault automobile insurance system must include an appeals board to resolve disputes on cancellations, reclassifications, or slow settlements, whether or not a state fund approach is used. There will be disputes about how much medical care is necessary. There will be disagreements as to when is the victim ready to return to work; what is the extent of disability. The Industrial Insurance Appeals Board has shown that such a system can work successfully. Of the 2,800 cases which are filed with the board each year, only 200 eventually end up with either party going to court.

The Insurance Commissioner should have a Consumer Fraud Division to investigate frauds by claimants, doctors, hospitals and repair agencies. The present Washington State law does not give the Insurance Commissioner any consumer protection authority for individuals. He can only help the general public by means of rate control. The Commissioner can enforce policy provisions for an individual but he can do little if a company refuses to issue a policy or arbitrarily cancels a policy. The consumer needs protection. The Insurance Commissioner is the obvious person to provide the protection.

The insurance companies of Washington have advanced their own proposal, and, as usual, it contains the insurance industry kicker. In return for accepting the inevitable—no-fault insurance—the companies want to remove the Commissioner's right of prior approval of insurance rates. We believe existing protections for consumers are essential, and we will strongly resist any attempt to change the present method of prior approval of insurance rates.

If private insurance companies are to be allowed to invade the no-fault field, rates must be supervised by the Insurance Commissioner. He should have the right to review all rates prior to their being placed into effect. It should be the responsibility of the insurance companies to justify their rates when the Commissioner believes them to be either excessive or inadequate. We will not accept any proposal which would shift the burden of proof to disprove the adequacy or excessiveness of rates to the Insurance Commissioner.

We believe that no-fault automobile insurance coverage should be mandatory, based upon either the licensing of the automobile or licensing of the driver—or perhaps a combination of both. Other states are investigating other approaches.

Obviously, any no-fault insurance system should provide protection against the uninsured driver. An approach similar to that taken by Senator Magnuson in his bill seems to us to be a workable solution. An assigned claims plan, which would be financed by an assessment on insurance companies, including the state fund, doing business in the state on the basis of their premium volume, should provide sufficient funds.

No-fault insurance policies should be noncancellable, except for the loss of license. The assigned claims assessment should be large enough to provide for those who have defaulted on their premiums. The state fund and insurance companies should be allowed a reasonable right of recovery against those who have defaulted.

A question which must be considered is how to integrate no-fault insurance with another idea whose time has come—national health insurance. If national health insurance covers all medical costs, then obviously such coverage will not have to be included in automobile insurance policies. If the national health insurance excludes automobile injuries, then we have a different problem. However,

we do not intend to allow the no-fault insurance question to hang up until the national health insurance problem is solved. If there are overlapping coverages in the two programs, they can be resolved when both programs have become reality.

These are some of the ideas we have and a few of the problems we foresee. The first serious no-fault proposal was made in 1932. Now, 39 years later, it is time to act.

ADDITIONAL COMMENTS—NO-FAULT SPEECH

Last week-end, I was in Colorado for the purpose of introducing Senator Jackson to the Colorado AFL–CIO Convention. They have an interesting proposal. The Colorado AFL–CIO is urging that a no-fault insurance program be enacted, funded by the gas tax. Several other states are also investigating this approach. This proposal has several very appealing aspects.

It would do away with the need for collecting premiums, significantly reducing administrative costs. Insurance agents' commissions are a major insurance cost item and funding by way of the gas tax would eliminate this expense. Funding the no-fault insurance program with a tax on gasoline obviously takes care of the uninsured driver. You pay your premium when you fill 'er up.

Use of the gasoline tax as the premium source would better relate risk and premium. The major exposure is the number of miles driven and the correlation between mileage and gas use is close. Obviously, we are not going to get a perfect match between risk and premium under any of the systems proposed, but the gas tax should give us the best possible correlation.

Funding through the gas tax would solve the problem of arbitrary policy cancellation by insurance companies. It would also protect the insured against excessive and discriminatory premiums.

Most of the no-fault proposals look upon insurance premiums as a policing function. These proposals imply that penalizing of bad drivers and getting them off the road is a function of the insurance premium. We do not look at it that way. Policing bad drivers is the responsibility of the State Patrol and other government agencies. It is the courts and the Patrol who should get the bad drivers off the road, not the insurance system.

Senator HART. A map and table for the record indicating the numerous metropolitan areas in this country that overlap two or more States, and present the difficulties which the able Senator from Illinois, Mr. Stevenson, yesterday discussed with us, relative to the District of Columbia no-fault program absent a similar no-fault reform in Maryland and Virginia.

(The table and map follow:)

U.S. metropolitan areas[1] encompassing two or more States in 1970

Areas	*Population*
1. Chicago, Ill.—Gary, Hammond, East Chicago, Ind	7,612,314
2. Phila., Pa.-Camden, N.J	4,817,914
3. Washington, D.C.-Md.-Va	2,861,123
4. St. Louis, Mo.-East St. Louis, Ill	2,363,017
5. Cincinnati, Ohio-Covington, Newport, Ky.-Ind	1,384,911
6. Kansas City, Mo.-Kansas City, Kans	1,256,649
7. Portland, Oreg.-Wash	1,009,129
8. Providence, Pawtucket, Warwick, R.I.-Mass	914,110
9. Louisville, Ky.-Ind	826,553
10. Memphis, Tenn.-Ark	770,120
11. Toledo, Ohio-Mich	692,571
12. Allentown, Bethlehem, Easton, Pa.-N.J	543,551
13. Omaha, Nebr.-Council Bluffs, Iowa	541,453
14. Wilmington, Del.-N.J.-Md	499,493
15. Davenport, Iowa-Rock Island, Moline, Ill	362,638
16. Chattanooga, Tenn.-Ga	304,827
17. Duluth, Minn.-Superior, Wis	265,350
18. Huntington, W. Va.-Ashland, Ky.-Ohio	253,743
19. Augusta, Ga.-S.C	253,490
20. Columbus, Ga.-Ala	238,584

See footnotes at end of table.

U S DEPARTMENT OF

U.S. metropolitan areas' encompassing two or more States in 1970

Areas	Population
21. Evansville, Ind.-Ky	232, 775
22. Lawrence, Haverhill, Mass.-N.H	232, 415
23. Wheeling, W. Va.-Ohio	182, 712
24. Steubenville, Ohio-Weirton, W. Va	165, 627
25. Fort Smith, Ark.-Okla	160, 421
26. Fall River, Mass.-R.I	149, 976
27. Fargo, N. Dak.-Moorhead, Minn	120, 238
28. Sioux City, Iowa-Sioux City, S. Dak	116, 189
29. Texarkana, Tex.-Ark	101, 198
30. Dubuque, Iowa-Ill.-Wis	90, 609
Total	29, 323, 770

[1] With 55,900 or more of population.

Source: U.S. Senate Antitrust and Monopoly Subcommittee. Derived from: Bureau of Census, U.S. Dept. of Commerce, 243 Standard Metropolitan Statistical Areas, *U.S. Dept. of Commerce News* March 23, CB 71-46.

Senator HART. An article for the record from the *United States Investor*, September 27, 1971, entitled "States Making Out a First-Class Case for Federal No-Fault Insurance Legislation."

(The article follows:)

[From the United States Investor, September 27, 1971]

KEEPING UP TO DATE ON . . . INSURANCE—STATES MAKING OUT A FIRST-CLASS CASE FOR FEDERAL NO-FAULT INSURANCE LEGISLATION!

DELAYS, INACTION, SHAM STUDIES AND PASSAGE OF PSEUDO LAWS RAISE QUESTION OF SINCERETY OF PURPOSE TO PASS TRUE NO-FAULT MEASURES

In addressing the American Bar Association recently, Secretary John Volpe of the Department of Transportation said: "The merits of the no-fault insurance concept are persuasive. So persuasive, in fact, that deliberations in Washington today relate primarily to the matter of where reforms should take place, at the state or the Federal level."

The same theme was adopted by George Crawford, the White House insurance expert, when he said, after seeing proposed no-fault legislation talked to death by lobbyists and others in Colorado: "We have come out for reform of a system we think needs reform. We think the states ought to be given a chance to reform themselves. If they don't do it within a reasonable time, we would want to rethink our position, about leaving it up to state discretion."

From all indications, these messages have not gotten through to the states. Or if they have, they have been drowned out by the outcry raised against such legislation by certain segments of the legal profession, particularly the American Trial Lawyers Association, the members of which have a considerable stake in preserving the present tort system inviolate. At any rate, the record of performance to date on no-fault legislation at the state level is far from impressive—leaving us to question the sincerity of purpose among the states to meet the mandate from Washington for forthright action on the no-fault concept within two years—or else!

"STUDY" LAWS—A FRAUD

Within the past several months no-fault bills have been introduced into the legislatures of some 33 states. Included in the group are bills calling for only token degrees of no-fault—and some, also, calling for "study" which, of course, means that they were destined to die a quiet death in committee. Among the states having such laws are New Jersey, Montana, Hawaii, Idaho, New Mexico, Maine, North Dakota, Texas and Tennessee.

In other states the merciful death of no-fault legislation was accomplished, but in various and diverse manners. Take, for instance, Connecticut, which has long been known for its progressive insurance legislation. In that state, William R. Cotter, now a member of Congress, ran head on into the trial lawyers group when, as insurance commissioner, he tried to get a modified no-fault plan of his

own making through the legislature. His bill which was designed to save 15 per cent in the cost of insurance was referred to the Judiciary Committee of the General Assembly where it had no better chance than a sheep in a packing house—for the simple reason that 32 of the 34 members of the committee were lawyers. Of particular significance is the fact that even though the bill had the editorial support of the major newspapers in the state, the committee refused to report it out—a situation which is not difficult to understand when it is recalled that among other things the bill had a provision calling for a reduction in contingency fees of lawyers to 25 per cent of the settlement figure.

But proposed no-fault legislation proved to be a hardy perennial in Connecticut. A bill was again filed this year and came to no better end. This time sheer pressure from the public forced it out of the committee, but members compromised on a "study"—which Cotter aptly described as a mere "stall." And even that bill didn't pass!

It is no wonder, therefore, that we find in Congressman Cotter today one of the staunchest supporters of action at the Federal level on no-fault insurance. His prediction is that most of the states will not meet the two-year deadline for action at the state level because of the powerful opposition from the legal fraternity and certain groups of agents. As a matter of fact, he seems to believe that Federal legislation should be passed *now* to become effective only where states have not acted within a reasonable time.

THE KISS OF DEATH

A similar situation has been witnessed in Maryland where a no-fault bill was sidetracked into Judiciary Committee—even though every other insurance bill introduced during the session was assigned to the Economics Matters Committee which has an insurance subcommittee. The outcome was no surprise—what with 21 of the 23 members of the Judiciary Committee being members of the legal profession. The committee gave the bill the kiss of death by making an unfavorable report.

In New York, certain segments of the legal profession are credited with more subtle strategy in getting rid of Governor Rockefeller's bill which came nearer to being a "pure" no-fault bill than any of the bills offered to date in other states—it being the handiwork of Richard E. Stewart during his term as insurance superintendent of the Empire State. The Senate Committee considering the no-fault measure got nowhere after finding itself the subject of a heated inquisition from its own special counsel. And to make matters worse, so many bills were introduced into the legislature that the legislators and the public alike became confused. All with the result that no action was taken on no-fault legislation, the sponsors of the original bill refusing to enter a compromise which would adulterate or water down the no-fault concept around which their proposed legislation was framed.

WHY NO-FAULT?

On the question as to what constitutes a "true" or "pure" no-fault bill, it should be kept in mind that the more limited the right to sue under such legislation, the nearer it comes to meeting the basic concept of no-fault first party insurance coverage. And this, for two reasons. In the first place, there is that matter of reduction in legal fees, adjustment expenses and court costs which should result under such method of operation. On this score, there is no dearth of figures to show that the present automobile insurance system is both costly and wasteful. Under the Puerto Rico no-fault system (which, incidentally, has been in existence for about 20 months and is operated by the government), it has been found that 90 cents out of every premium dollar is available for benefits. And this is just twice the amount available in states having the "fault" system.

Looking at this problem another way, trial lawyers received under the tort system in 1970 $1 billion and defense lawyers $300 million out of the $4.2 billion insurers paid to cover the $6.8 billion of auto accident victim loss. Also interesting is the fact that in 1968 parties to automobile accident litigation spent $600 million in legal fees which was equivalent to one-fifth of the legal profession's income. There is no reason to believe that this situation has improved since that time. Quite the contrary!

PRESENT SYSTEM UNJUST AND INEQUITABLE

In addition to being costly and wasteful, the charge is also made that the present system has proved in all too many cases to be unjust or inequitable—

with too many seriously injured accident victims going uncompensated and too many dependents of persons killed in automobile accidents receiving little, if any, benefits. Summarizing this line of argument against the perpetuation of the present auto insurance system wherein suits—warranted and unwarranted—play such an important role, the studies conducted by the Department of Transportation revealed that seriously injured automobile accident victims in the less than $10,000 income bracket recovered only 46 per cent of their personal and family economic loss. The inequity of this situation becomes all the more apparent when it is pointed out that three-fifths of the families in this country fall within the less than $10,000 income category. And what's more, this important segment of our population comprised over four-fifths of all the automobile accident victims during the year under study. Another interesting aspect of this study is found in the statement that those auto accident victims who completed the eighth grade recovered 23 per cent of their loss, while those with college training recovered 64 per cent.

The second reason for all this agitation among the public for no-fault insurance is directly related to the first and is quite as compelling, focused, as it is, on the crying need for a reduction in the ever-mounting cost of automobile insurance to the driving public. It comes right down to the fact that where suits are unlimited—as they are under the present tort liability system—automobile owners are obliged to carry high limits in coverages or face the possibility of bankruptcy if an injured motorist or pedestrian should sue them and be awarded a sum beyond the means of the average person to pay.

OVERPAYMENT OF SMALL CLAIMS

There is another important aspect of the influence of no-fault insurance on the cost of automobile liability coverage. It is quite generally conceded that the tendency of companies operating under the present tort liability system has been to overpay small claims merely to get them out of the way. In Massachusetts—which, under the old system (prior to the adoption of no-fault legislation effective January 1, last), had the questionable distinction of promulgating the highest automobile insurance rates in the country—the custom had grown up among policyholders to claim bodily injury as a mean of assuring prompt payment of property damage losses. In about 80 per cent of all such cases, Massachusetts plaintiffs would retain lawyers. In other states, lawyers have been retained in about 50 per cent of such small claims.

So convinced were the framers of the Massachusetts no-fault law that the elimination of this problem would result in considerable savings to the automobile driving public that they wrote into the law a provision calling for a 15 per cent reduction in bodily injury rates. And we might say in passing that with a 53 per cent reduction in both the number and cost of claims paid in the first six months of 1971, a clamor has arisen for rebates on the premiums paid. A bill designed to return money to Massachusetts motor vehicle operators because of savings realized by the insurance companies during the first year of the Massachusetts no-fault plan is expected to be enacted into law shortly. Under the bill, the insurance commissioner is authorized to conduct a hearing and determine whether or not insurance companies have "realized" "unfair" profits from 1971 compulsory auto insurance rates.

BENCH MARK OF "TRUE" NO-FAULT LAW

The point to be remembered, therefore, is that the bench mark of a true no-fault law is in the extent of its limitations on suits. And in this connection we do not hesitate to say that of the laws passed by the Senate to date very few, if any, qualify even remotely for this category. In all too many cases, there has been a disposition to give only token recognition to the fundamental concept of no-fault insurance by holding down the limits which a policyholder can obtain from his own company on a first-party basis—leaving the remainder to be settled in the already overcrowded courts. In effect, what has been done in many of the states which have passed so-called no-fault legislation is merely to plaster onto the tort system just as little first party coverage as the legislators can get away with—and still label the legislation "no-fault." These are pseudo or counterfeit no-fault laws, particularly those that contain little or no provision for limiting suits for pain and suffering and thus tend to guarantee continuance of the high legal costs which play such an important role in keeping the automobile

rate level at or beyond the reach of so many automobile owners today. And it is no secret that the sponsors of these laws among the legal profession are aided and abetted in their efforts to maintain the present tort system by segments of the American Agency System which, of course, have a stake in the situation by reason of commissions paid to produce business for the companies. On more than one occasion we have heard top company executives bewail privately that because of this latter situation they have been hampered in their efforts to bring about an intellectually honest approach to no-fault legislation.

MASSACHUSETTS AND FLORIDA LAWS

As against these types of greatly "modified" no-fault laws stand such legislation as passed in Massachusetts and Florida. It is generally conceded that in both instances there is at least a recognition of the fundamental concept of no-fault insurance which calls for getting more dollars into the hands of people who really need them—without recourse to the courts. The Massachusetts no-fault law is limited to the compulsory $2,000 bodily injury insurance which all motorists must carry. Under the terms of the law, motorists are prohibited from suing for pain and suffering unless their actual medical bills total more than $500. Instead, they collect from their own insurance companies out-of-pocket medical expenses plus up to 75 per cent of lost wages not exceeding $2,000. It is estimated that 90 per cent of all Massachusetts bodily injury claims are under $2,000. As indicated above, a reduction of 15 per cent in bodily injury rates was written into the law with this in mind.

In upholding the constitutionality of the Massachusetts law, the Supreme Court of the state said that while the no-fault goes a long way toward taking away such forms of redress as payments for pain and suffering, it is balanced by the guarantee of prompt payment for other costs of an accident. This was the court's answer to the "due process" challenge which had been levelled against the new law.

The Florida law makes no-fault mandatory for all drivers in the state and provides for payments to auto crash victims up to $5,000 in medical and wage loss expenses from their own companies, regardless of who caused the accident. It prevents court action for additional benefits until at least $1,000 in medical expenses have been incurred, unless there is disfigurement, disability or a serious bone fracture. Unlike the Massachusetts law, the Florida law covers auto damage, but bars suits under that cover below $550. In this connection, it is interesting to note that there is a strong movement in Massachusetts to include property damage in the no-fault law. Like Massachusetts, Florida wrote into the law a 15 per cent reduction in rates.

STEPS IN THE RIGHT DIRECTION

In all fairness, it must be admitted that while the Massachusetts and Florida laws represent steps in the right direction, they are still far from meeting the standards of a "true" no-fault law. To meet those standards, there will have to be a sharp and pronounced raising of the ceiling on what the policyholder can receive in the way of benefits from his own company—a situation which necessarily calls for a considerable narrowing of what might well be described as the tort or suit area. Limiting the direct first-party payments to $2,000 or even $10,000 will hardly accomplish this purpose!

Whether the states are ready to take a greater plunge into the truly no-fault area, we have serious doubts—what with the trial lawyers lobby and certain segments of the agency forces being as powerful as they are at the state level. Already there is under way a movement to extend the two-year grace period originally granted the states to get in line on no-fault. But whether another two-year extension would accomplish any meaningful purpose, may well be questioned. It's a long step from a full tort liability system to no-fault!

PUBLIC THE FINAL ARBITER

What should be kept in mind, however, is that the final arbiter on whether there is to be a no-fault auto insurance system in this country is not the special interest lobby but the automobile driving public which is running out of patience with the constantly increasing insurance rates. Recognizing this, the stage is already set for further hearings this fall in Washington before the Senate Commerce

Committee. And incidental to these hearings the Hart-Magnuson and Moss proposals—as set forth in S. 945 and H.R. 7514 currently before Congress—will be given an airing, particularly as to the provisions calling for payment of all medical, rehabilitation and incidental expenses not covered by some other source and a monthly payment to the wage earner of 85 per cent of his lost income or $1,000—whichever is lower—for a period of 36 months. Then again, there is that provision calling for cash payments of up to $30,000 for surviving dependents of a wage earner who dies as the result of an auto accident.

These and other provisions of the Hart-Magnuson and Moss bills—particularly the limitation of the suit area to cases of "catastrophic harm" such as permanent or total disability—will certainly serve to place the states on the defensive for their piddling no-fault legislative efforts—or lack of legislative efforts—to date. Add to this the complaint so often heard today that a state-by-state approach to non-fault is absurd without any enforceable standards with teeth in them, and you can see that unless there is a sharp turnabout in the attitude of state legislators toward no-fault auto insurance, the states are almost sure to lose a goodly amount of their regulatory power over automobile insurers.

This is straight talk from a long-time champion of state regulation. It is to be hoped that the states will get our message before it is too late!

ROGER KENNEY.

Senator HART. Also, for the record a chart showing the 20 States with the greatest vehicle registrations and the insurance reform progress in those States.

I think it fair to note that only two of those States have adopted limited no-fault.

One has required the mandatory first-party benefits with limitations on pain and suffering.

(The chart follows:)

NO-FAULT[1] AUTO INSURANCE LAWS—20 LEADING STATES BY MOTOR VEHICLE REGISTRATIONS ESTIMATED FOR 1971

[In millions]

	Amount	Plan
California	$12.3	None
New York	6.9	None
Texas	6.9	None
Ohio	6.2	None
Illinois	5.0	(2)
Pennsylvania	5.0	None
Florida	4.0	(3)
Michigan	4.0	None
New Jersey	3.0	None
Alabama	2.0	None
Georgia	2.0	None
Indiana	2.0	None
Massachusetts	2.0	(4)
Minnesota	2.0	None
Missouri	2.0	None
North Carolina	2.0	None
Wisconsin	2.0	None
Tennessee	2.0	None
Virginia	2.0	None
Washington	2.0	None
Total	75 million	

[1] That is, no recovery in tort action for damages is permitted for any losses of a type covered by the required no-fault benefits provided by victim's own insurer.

[2] NAIA dual protection plan—medical and wage direct benefits, regardless of fault, from own insurer—limitation on recovery for "pain and suffering". Fault finding process completely retained for victims and insurer subrogation.

[3] $5,000 direct no-fault medical and wage benefits—tort action unavailable to this amount and unless $1,000 in medical costs incurred.

[4] $2,000 direct no-fault medical and wage benefits—tort action unavailable for this amount and unless $500 in medical costs occurred.

NOTE.—Federal Highway Administration (DOT) estimates 112,000,000 motor vehicle registrations by end of 1971. Above 20 States represent ⅔ of these registrations.

NOTE.—See "Motor Vehicle Crash Losses and Their Compensation in the U.S.," DOT March 1971, pp. 133 and 136; Concurrent Resolution 23, para. 3 at p. 5.

Source: U.S. Senate Antitrust and Monopoly Subcommittee.

Senator HART. The chart from the Department of Transportation study.

This chart shows that while only 5½ percent of tort cases go to judgment, nevertheless, the courthouse is being used as a settlement arena, scarcely a forum where the issues of fact are being tried.

(The chart follows:)

DOT "ECONOMIC CONSEQUENCES OF AUTO ACCIDENT INJURIES," VOL. 1, TABLE 41FS[1], P. 326

Number receiving tort settlement	Percent retaining counsel	Percent going to verdict	Average net tort recovery	Aggregate tort reparations
214,115	75.4	5.45	$3,798	$813,105,000

Senator HART. A chart showing how the present insurance system unfairly deals with the poor, and particularly how underrepresented the poor are from the standpoint of attorney representation.

(The chart follows:)

DOT "ECONOMIC CONSEQUENCES OF AUTO ACCIDENT INJURIES," VOL. 1, TABLE 45FS.[1] P. 337

[In billions]

Family income	Total wages, medical and future income loss	Net reparations	Recovery to loss	Percent with counsel	Recovery to loss (percent)	
					Counsel	Without counsel
Under $5,000	$1.9	$0.7	38	30	45	33
$5,000 to $9,999	2.1	1.1	52	37	49	54
$10,000 and over	.8	.5	61	42	74	50
Unknown income	.2	.1				
Total	5.0	2.4	49	35	53	46

Senator HART. I would like to read an editorial in the *Baltimore Sun* on September 24, 1971, entitled "Car Insurance":

A special Maryland legislative committee, loaded with lawyers, got off to a negative start in its consideration of no-fault auto insurance. The "hoax" label was applied before thorough study of the proposal, which is intended to eliminate the delays and cost in settling auto insurance claims by providing that the claimant's damages be paid by the claimant's insurance company, without litigation, regardless of who may have been at fault in the accident.

Elimination of the red tape and legal fees now common in the settlement of auto insurance claims, as opposed to most other forms of insurance, would of course cut into the income of the legal profession. But legislators who are also lawyers (as about a third of Maryland's lawmakers are) owe it to their constituents to rise above their own financial concerns and consider the public advantage of reduced auto insurance costs.

While the no-fault plan has been given an initially cool legislative reception, an even colder front has developed in advance of consideration of the Jewell plan of having the state provide minimum liability auto insurance coverage. As the state secretary of licensing and regulation, Mr. Jewell was asked by Governor Mandel to investigate not only the high cost of car insurance but also the cancellations, renewal refusals and penalizing premium rates which, in the Governor's words, have reached the point where "even the average driver is finding it difficult to obtain coverage at regular rates."

Mr. Jewell has proposed that the state provide liability coverage for all Maryland licensed drivers with premiums based on driving and accident records. Nobody's insurance would be cancelled unless his license was revoked, and there would be no rate differentials based on age, sex, occupation, race or place of

residence. Premiums would be paid in part when tags and licenses are renewed and in part as an extra 2-cents a gallon gasoline (the "pay-as-you-drive" plan).

Mr. Jewell's plan is a bold one and not yet fully laid out, since his formal report to Governor Mandel is still at least six weeks from completion. But it has drawn an immediately negative reaction from private insurance spokesmen, just as the no-fault proposal (which insurance companies favor) has brought opposition from lawyers. The Jewell plan also has prompted adverse reactions among state transportation officials who are leery of any infringement on their motor vehicle revenues.

The discernible danger at this point is that one plan will be used against the other in arguments that end in a draw and no action. Yet private car insurance is not now working well in Maryland. A long series of public hearings have brought forth a parade of Marylanders who have described their troubles in getting and keeping car insurance. Legislative action definitely is needed, and it becomes the obligation of legislative leaders to see that proposals get a thorough, objective examination instead of automatic, adverse criticism.

Also an article in the *Journal of Commerce* dated September 30, 1971, entitled "No-Fault Proposal Shelved in California."

Journal of Commerce Special.

Sacramento, California, September 29—California State Senate Judiciary Committee, composed entirely of practicing attorneys, has turned down any consideration of a modified no-fault auto insurance bill during the year.

The California proposal, the final one of three to be considered, was shelved by the committee by referring it to year-long interim study.

The modified proposal covering accidents up to $10,000 had previously received approval in the California Assembly's lower house.

Also, an article in the *Journal of Commerce*, dated October 8, 1971, entitled, "Maryland No-Fault Proposal Gets Chilly Reception From Study Group."

Journal of Commerce Special.

Annapolis, Md., Oct. 7—A proposal to set up a system of no-fault automobile insurance in Maryland has received a cool reception from an eight man legislative committee which has six lawyers as members. Del. Alan M. Resnick, D-Baltimore, an attorney who said he handled no auto negligence cases, assailed no-fault as a hoax on the American public.

The proposal drew similar criticism from other senators and delegates on the committee. In addition to the lawyers, one member is an insurance agent. Two members of the committee are on record in support of no-fault.

Del. Charles S. Blumenthal, D-Prince Georges, a backer of the no-fault plan, but not a member of the committee, said his proposal "will hurt the legal profession financially."

He said legal fees in accident cases are so high that automobile insurance premiums are soaring.

More than one-third of the 185 members of the General Assembly are lawyers. One legislator estimated privately that a no-fault plan should cost those members $500,000 or more in fees each year.

Members of the committee supporting no-fault are Chairman Edward P. Conroy, D-Prince Georges, and Senator Newton I. Steers, Rep.-Montgomery.

Gov. Marvin Mandel has argued that no-fault does not absolve two of the major problems with auto insurance, cancellations and "blackouts" of certain areas. He has indicated interest, however, in the "pay-as-you-drive" plan proposed by John R. Jewell, state secretary of licensing.

Lastly, a letter from Norman V. Harris, 244 Country Club Terrace, Battle Creek, Mich., to me, dated September 15, 1971, in support of no-fault insurance:

Having spent 30 years in the insurance claim business and an officer of an insurance company, I want to express my admiration for your dogged stand on Federal no-fault legislation.

The enacted state bills to date are so watered down as to defeat their avowed purpose and merely add to the jumbled mess already prevailing.

Somewhere somebody has to take the self-serving amendments out of what is originally an excellent proposal.

Keep up the good work and serve the majority of us in this State!

Senator HART. In connection with the reservation that written requests should be addressed to and received from the several witnesses by members of the committee, there should be a time limit fixed.

I suggest that the members who would want to address questions, submit them within 7 days, and the record will be held open for an additional 7 days for such responses as are received.

The committee is adjourned.

(Whereupon, at 3:35 p.m., the committee was adjourned.)

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF FRANK N. BRATTON, PRESIDENT OF THE TENNESSEE BAR ASSOCIATION, ATHENS, TENN.

Mr. Chairman and Members of the Committee: I appreciate your extending an invitation to me to appear here and present my views with respect to Committee Print One of the National No-Fault Motor Vehicle Insurance Act (Senate Bill No. 945).

With your permission and in order to make my comments more easily followed I shall make specific comment on individual portions of the Act and conclude my remarks with a general statement concerning the Bill and the basic philosophy behind it.

SECTION 2, SUBSECTION (1)

My first comment regarding the Bill is that the definition of a motor vehicle is, in my opinion, too broad. Just recently a Tennessee trial court directed a defendant verdict where the court held that a five horsepower motor scooter operated by a ten year old boy was a motor vehicle within the meaning of a Tennessee Statute. The ten year old boy was charged with the same degree of care as any other driver and his contributory negligence thus barred the action. The Tennessee definition is similar, in many respects, to the definition in Subsection (1) of Section 2 of the National No-Fault Insurance Act as presented in Committee Print One.

Similar situations can present themselves in cases arising out of incidents of children operating "Go Carts" propelled by motors manufactured for washing machines and mowers and other small appliances. My suggestions would include making the definition more specific in order to exclude such incidents from coverage within the concept of No-Fault Motor Vehicle Insurance.

SECTION 2, SUBSECTIONS (8) AND (9)

Subsections (8) and (9) of Section 2 appear to be in conflict. Subsection (8) specifically excludes payment to injureds involved in "repairing, servicing, or otherwise maintaining vehicles unless the conduct occurs outside the premises of such business." Subsection (9) says, "The term 'motor vehicle accident' means an accident arising out of the operation, maintenance, or use of a motor vehicle."

To illustrate, if a service station attendant changes a tire or does any other work on a motor vehicle at, in or near his garage or service station, he is excluded from coverage. However, if the attendant leaves his place of business and is injured while changing a tire or in doing other work in, on or about the vehicle, he is covered. Since it is implicit that the Bill is to cover all motor vehicle accidents, it is not fair to exclude persons injured while maintaining or servicing motor vehicles based solely upon location when injured.

SECTION 2, SUBSECTION (12)

Subsection (12) of Section 2 states: "The term injury means accidental harm not resulting in death." This term could easily be construed to cover cases of fright and functional overlay—matters susceptible to being faked and simulated. It would seem that the word "injury" should be used in lieu of "harm."

SECTION 2, SUBSECTION (13)

Subsection (13) of Section 2, which sets forth amounts of compensation, is too restrictive as to the amounts payable. If the Act is to reimburse a person for an economic loss while recovering from an injury, some sliding scale method must be employed, based on living expenses of the injured before the accident. Under the provisions of this subsection there is no differentation made in the

compensation payable to a person with one dependent and that available to a person with twelve dependents. Furthermore, statistics show that in approximately 50% of the accidents where personal injuries are sustained, the injured suffers a permanent disability of some type as well as economic loss while away from work. If he is restricted in his recovery solely to payment for economic loss while away from employment, a portion of his physical functioning is being taken without compensation.

SECTION 2, SUBSECTION (14)

Subsection (14) of Section 2 provides that, "monthly earnings shall be determined as one-twelfth of average annual compensation, after income taxes." The reduction of monthly earnings by deducting taxes is unfair in my judgment. The injuries were not self-inflicted, the injured is not at fault. The injured and his family should be provided with all possible benefits and not be penalized to the benefit of the carrier.

Part (c) of Subsection (14) of Section 2 formulates an unrealistic and impossible method of reaching the monthly income of an unemployed person. Why not compute the compensation of an unemployed on the basis of need for maintenance and dependency, where prior employment experience is not available?

SECTION 2, SUBSECTION (15)

Subsection (15) of Section 2 provides that the term "net economic loss" means, in case of injury or death, actual economic loss reduced by the amount of any benefit or payment received from, (A) any public health insurance or plan (B) any private insurance or plan containing explicit provisions making its benefits primary to any benefits under a qualifying no-fault policy.

Provision (B) acts to penalize the prudent individual who has insured himself over and above minimum amounts. Such individuals have paid premiums for the additional protection and it is unfair to deprive them of the benefits for which they have contracted.

SECTION 4

Section 4 provides for mandatory insurance but does not provide for regulation and administration so as to maintain the insurance in effect for the duration of the period during which the vehicle is operated upon the streets or highways. Guidelines should be established for the exhibiting of proof of continuous insurance coverage at each licensing period, said coverage to extend at least until the next licensing or registration period of that vehicle.

Obviously, this provision will work a hardship on those persons unable to purchase insurance on an annual basis, but it is necessary to assure other persons of protection. Further, it will create great hardships upon State licensing and registration agencies which will have to enforce this provision. Perhaps then, the better solution, if this entire program is to be effectuated, is to remove the registration and licensing of motor vehicles functions from the States and lodge it with the Administrator of the Act.

There is much to be said for the issuance of a permanent, federal registration number for each motor vehicle driven upon the highways of the nation. Such licensing would provide greater control over each vehicle so licensed.

SECTION 3

Section 3, in a mere thirteen lines, totally abolishes the entire concept of tort law relating to automobile accidents.

Under the Constitution of the United States, the Courts are to remain open to all persons whose liberties, rights and guarantees are disturbed. Now Section 3 would act to destroy and abolish the rights of persons to have their day in Court and their civil wrongs righted by the award of monetary damages if they are injured as the result of a motor vehicle accident. The entire concept of our government was and should remain that no person shall be deprived of his right to have his grievances presented before and determined by a jury of his peers. This is just another example of the erosion of the Constitutional rights of the American Citizen, which we witness so frequently today.

Even if, under the guise of pretending to protect the public by saying that as a condition precedent to the operation of a motor vehicle the owner loses his

right to maintain a tort action for his damages, reasons are non-existent to sustain the removal of the right to maintain a tort action by those riding in a motor vehicle or walking along the streets and those whose property, other than motor vehicles, is destroyed or damaged. The innocent pedestrian and the occupants of an automobile can not conceivable be considered parties to a no-fault insurance statute. Nevertheless, under the Act, as drawn, they are precluded from bringing suits to right their wrong.

SECTION 5, SUBSECTION (2) (A)

The insurance requirements embraced within Section 5, Subsection (2) (A), precluding the payment to occupants of a motor vehicle other than the insured motor vehicle, which acts to strip persons of their rights to payment under the Act or to maintain a tort action, is utterly ridiculous.

SECTION 5, SUBSECTION (5) (C) (1)

Subsection (5) (c) (1) of Section 5 provides the vehicle owner with the option of insuring his automobile against damage with such deductible as he elects. The two year study conducted by the Department of Transportation indicates that there are ten times more accidents involving only property damages than those involving bodily injury. Fifty-three percent of the property damage premiums in 1968 was paid out to claimants for property loss. The study further reflected that in the 1969–1970 period, 72% of the premium dollar was paid out on property damages. In dealing with property damage claims we are dealing with tangibles, not human bodies. Yet, this Act does not attempt to provide for payment, on a no-fault basis, for property damages, although the claims for such losses are ten times greater in number. A real service might be rendered the owners of motor vehicles whereby all damages to motor vehicles would be paid and the insurers left with rights of subrogation against the other carrier.

CONCLUSION

My commenting specifically on Committee Print One of the National No-Fault Motor Vehicle Insurance Act should, in no way, be construed to mean that I favor the Act, even with the amendments above set forth. As an individual lawyer, I am opposed to the enactment of any such Bill in principle. As President of the Tennessee Bar Association, I am committed to the policy of the Association, as adopted by our Board of Governors, and that is opposition to Senate Bill 945 specifically and to any Bill which would act to abolish the tort system in compensating victims of automobile accidents.

The whole concept of a No-Fault Insurance Statute was conceived as a vehicle to (a) reduce insurance premiums, (b) prevent the arbitrary cancellation of insurance policies and refusal of insurance companies to renew policies or to write new policies, (c) provide a more equitable recovery for motor vehicle accident victims, (d) provide for a quicker or more expeditious payment to motor vehicle accident victims, and (e) reduce the portion of the premium dollar retained by the insurance carrier of 42¢ and that received by attorenys of 16¢, so that more than the now remaining 42¢ net might be available for payment to claimants.

My objections to Committee Print One of the National No-Fault Motor Vehicle Insurance Act (S. 945) are that:

(1) The Congress should not preempt the field of No-Fault Insurance from the States without giving the individual States an opportunity to enact legislation in a field which is purely local in that the motor vehicles are licensed by the States, travel and traverse roads within States and the State courts handle the litigation arising from the use of motor vehicles;

(2) The Congress is attempting, by the enactment of Senate Bill 945, to set up another bureaucratic agency to regulate motor vehicle accidents, many of which will occur in far removed areas from Washington, without even the slightest guess as to costs;

(3) The Congress should not encroach upon the right to contract of either insurance carriers or individuals under the guise of lower insurance rates. The two year studies of the Department of Transportation shows that only 42¢ of every personal injury premium dollar was paid to claimants for injuries received in motor vehicle accidents, 16¢ were collected by lawyers and 42¢ were retained

by the insurance carriers. Fourteen cents of the 42¢ retained by the carrier was used in adjusting claims. The same study shows that only 45% of all motor vehicle accident victims were compensated in some amount. The study further indicated that insurance rates varied from state to state. Therefore, it appears that an attempt is to be made to take the 16¢ paid out in lawyers' fees and the 14¢ paid by insurance companies for adjusting and pay the 55% of the motor vehicle accident victims who are now uncompensated. Obviously, if the Statute is enacted, premiums will have to be adjusted so that the insurance carriers can make a profit. Eventually, a Federal Insurance Company will have to be established, and instead of premiums being reduced they will rise from time to time to cover all motor vehicle accident victims.

(4) The Act takes from citizens of the United States one of their most precious rights, the right to recover for personal injuries and property damages. The Act further discriminates against those who are injured by and in motor vehicle accidents by taking from them their right to have the Courts and juries determine and settle their rights to damages, while leaving other citizens, who fall on private property, are injured in a train accident, are injured through some products deficiency or countless other means, their recourse to the courts.

(5) Although the uninsured pedestrian or the occupant of an uninsured motor vehicle may not own a motor vehicle and, therefore, have not submitted themselves to the control of the No-Fault system, their rights to recover from injuries sustained as a result of automobile accidents are destroyed by the proposal.

In conclusion, I would urge the Committee to pause long before recommending for passage any legislative proposal which would effect so drastically the basic right of the American Citizen to a trial by jury.

BOYNTON BROTHERS & CO.,
Perth Amboy, N.J., September 29, 1971.

Re "No Fault" Auto Insurance.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate,
Washington, D.C.

DEAR SENATOR: I notice that meetings will be hold in the near future in connection with the Hart Bill for "No Fault" Auto Insurance in the United States. Frankly, I believe that is the only correct procedure in handling this situation because if it is left up to the various states very few plans will be put into effect.

Most of the members of the Senate and Legislature in the various states are made up of attorneys and they are almost one hundred percent against such a plan.

I am enclosing herewith a copy of a letter you wrote to Senator Clifford P. Case indicating that when hearings are planned on the Hart Bill you were to include me as a prospective witness.

I have been in the insurance business as an agent for 52 years with this company, which is one of the large insurance agents in the State of New Jersey. I am perfectly familiar with all phases of automobile insurance because we wrote a substantial amount of such business and in addition, we have always had a Claim Department next door to our main office here in Perth Amboy. In fact, a number of years ago we built a building for such a Claim Department but that condition no longer exists because the Claim Department which was formerly in the office next door and the one in Trenton were both closed and the claims are now being handled from Eatontown, New Jersey. Having this knowledge, I am fully familiar with all types of automobile claims and all types of automobile insurance and I know the weaknesses in the present situation.

I drew up a "No Fault" Plan which was sent to Mr. Robert L. Clifford, the Insurance Commissioner of the State of New Jersey. A copy was also sent to an executive of the Continental Insurance Companies with no comment from them and I also discussed this Plan with a number of service groups where I was well received.

I know that this Plan is not perfect but I am sure that many of the recommendations in my plan will have to be put into effect if any plan is adopted for all the states in in this country. When the hearings are being held, I would appreciate the opportunity of giving my opinion on this situation. I will not be available during the month of November because I am going down to Lake Taupo

in New Zealand for some rainbow trout fishing; all other times I would be available.

Hoping I may be of service to you and your Committee in this situation, I am

Cordially yours,

D. W. BARTHOLOMEW, *Chairman.*

"NO FAULT" AUTO INSURANCE

1. To start such a Plan, all automobiles must be insured. To make certain of this the Motor Vehicle Department should have the renewal license for the automobile made up in a double card system by the applicant. One portion could be used for the license information and the other portion could be used for indicating the name of the insurance company and the policy number. Under this Plan, the one card should be mailed direct to the insurance company and it would be their obligation to notify the Motor Vehicle Department if the automobile was not insured. If the insurance is cancelled at any time for various reasons, it would be the obligation of the insurance company to notify the Motor Vehicle Department immediately and it would be up to them to pick up the license of the applicant.

It is now estimated that in the States of New Jersey, New York and Massachusetts that at least 250,000 automobiles in each State are not insured properly; although, the application for the license indicates the car is insured. If this is so, it is due entirely to the negligence of the Motor Vehicle Departments because it is their absolute responsibility to check with the insurance company named in the application in order to verify whether the automobile is properly insured as required by the Motor Vehicle Law. In this particular situation, it is up to the Motor Vehicle Department of the State of New Jersey to definitely set up a plan where there is no negligence whatsoever involved in the insurance. At the present time, I believe, this situation is not properly handled by the Motor Vehicle Departments in the States of New Jersey, New York and Massachusetts.

2. If no insurance company wants to insure an applicant, then the Insurance Department must set up an Assigned Risk Plan, somewhat similar to the plan now in effect in New Jersey. Also, there must be taken into consideration the accident record of the applicant, the motor vehicle offense record and the character of the applicant based on his vocation and drunken driving record. In some of these cases, they would not be entitled to any insurance whatsoever and the rules for this procedure should be laid down by the Insurance Department of the State of New Jersey.

3. The insurance rates now in force in the State of New Jersey for insuring automobiles should remain "as is" until the accident record is proved by statistics to require a change by an increase or decrease, whatever the case may be

4. It is recommended that the limit of insurance for loss of wages, medical bills and so forth under the "No Fault" Plan should be at least $20,000 per accident. This would eliminate at least 90% of all accidents from court cases. The saving in the cost of defense attorneys, paid for by the insurance company, court costs and judges salaries would amount to many millions of dollars and help to lower State Taxes.

5. The applicant for insurance should carry a higher limit for accidents to pedestrians, accidents to out-of-state cars and other claims not specifically covered under the "No Fault" Plan.

There must also be taken into consideration as to how commercial automobiles, such as trucks and busses, would apply under the new Plan. Obviously, trucks and busses would not be included in the Plan so the insured could sue these parties in the event of an accident.

6. For Property Damage—each applicant should purchase Collision Insurance on his own car and Property Damage Insurance for legal liability damage to other property, excluding his own automobile.

Under this section, it should be indicated whether an insured who has damages to his own car could sue any other party in connection with a collision claim. If Collision Insurance is purchased, the insurance company should have the right, under subrogation, to go after any other party responsible for the damages.

7. The purchase of Comprehensive, Fire and Theft Insurance should still be voluntary and should be handled by the applicant in any way he seet fit.

8. If these is a justifiable claim by an automobile owner under this Plan, where he or she would be entitled to more than $20,000—a court suit would be

allowed; but if the insurance company pays any amount to the policyholder up to $20,000 for any accident and should a suit be instituted and if the amount received is more than $20,000, the amount paid under the "No Fault" Plan by the insurance company should be paid to them in full and the attorney fee would only apply on the amount collected over $20,000.

9. Here is a difficult situation to work out. Many applicants will have accident and medical insurance protection in other insurance companies, either furnished by their employer in a group plan or purchased individually. If such additional insurance is available at the time of accident, some plan will have to be worked out with the other insurance companies so that there is some kind of a pro rate payment on the claim. This would be very difficult to work out statistically but it could be done. It might be possible that the other insurance companies would change their coverage applying in the State of New Jersey to be Excess over and above what would be paid under the "No Fault" Plan. Or, it could be worked out so that other plans should pay up to their limit and the amount paid under the "No Fault" Plan could be considered only as Excess Insurance.

Also if an injured person is on welfare or social security payments, that must also be taken into consideration.

10. If the insurance companies refuse to go along on these plans, then the Insurance Department should put all automobile insurance in this State under an Assigned Risk Plan and all the companies would share pro rata on each loss. There are probably 150 companies now under the Assigned Risk Plan, so the loss to any one would be minor in nature.

In connection with such insurance, benefits for lost wages and medical attention would be paid under a possible Compensation Claim. This must be taken into consideration. Obviously, if not taken into consideration, an insured under this plan could collect both ways for a compensable accident.

It is true that under this plan the income of many attorneys who specialize in negligence cases would be substantially reduced; that is unfortunate. However, these attorneys must understand that the insurance agents in New Jersey have suffered very, very much from reduced commissions they have received on automobile insurance due to the bad accident record in the State. They have lost substantial income, too. There is one other feature in connection with automobile insurance in this State that must be recognized; although, it is now in effect in the State of Virginia. It is a known factor that many insurance companies have lost money on underwriting automobile insurance in this State as well as other States but at the same time, it is agreed that very few of the companies have actually lost any money because of their income from investments and also capital gains. The Supreme Court in this State will soon rule on this situation but, I believe, it is virtually useless to try to adopt this procedure because almost all insurance companies in this country have a different investment portfolio with the result, many companies are making very little from investments and others are making a lot of money. Therefore, it would be very difficult to base automobile insurance rates in this State on investment and capital gain profits because the percentage would be different in every insurance company. The best plan to take care of this situation would be to publish automobile insurance rates on actual experience and then at the end of each year, when the complete financial statement of an insurance company is available, the Insurance Department could set up a statistical plan where the companies that are making the most profits would have to provide the insurance at a standard rate, less a certain percent of the profit they have made from investments. This may lead to a chaotic situation but, from my standpoint, this is the only way it could be properly put into effect.

While in Canada last April and May, I studied the automobile insurance situation in almost every Province. In several of them, compulsory insurance is required. One or two require insurance for operators under 21 years of age. Several indicate that where they do not require compulsory insurance, if an accident occurs for which the operator is liable for damages, that operator cannot continue to operate an automobile until the claim is paid in full.

I also checked the situation in New Zealand. In that country, they are putting into effect a compulsory insurance plan that is based on payments to claimants similar to Compensation Insurance.

And finally, this must also be taken into consideration at this time—the fact that most of the large major companes have been bought out and are now in what we call a conglomerate. Most of these conglomerates have a Board of Directors

and they really know nothing about the insurance situation. However, they do run the companies in spite of the fact that these subsidiary companies have a separate group of officers. It is my opinion that all these insurance companies should be owned and operated by their own stockholders and nobody else.

I am quite sure that this proposal will not be acceptable and will be criticized. There is no perfect "No Fault" Plan but this plan I recommend is better than what we now have in effect and is worth trying.

FINANCIAL STATEMENTS, JAN. 1, 1964, TO DEC. 31, 1968

	Underwriting loss	Investment income	Capital gains	Taxes paid	Dividends paid
Continental Insurance Co	$58,298,000	$620,382,000	[1] $183,381,000	$36,155,000	$166,285,000
Aetna Casualty & Surety Co	102,937,000	178,594,000	144,712,000	[2] 434,000	56,957,000
Fireman's Fund of California	2,020,000	48,610,000	72,380,000	7,017,000	87,843,000
Great American Insurance Co	53,767,000	84,788,000	67,183,000	389,000	40,944,000
Continental Casualty Co	61,977,000	127,653,000	100,362,000	[2] 10,892,000	136,618,000
Hartford Accident & Indemnity Co	53,787,000	143,140,000	41,791,000	1,352,000	75,414,000
Insurance Co. of N.A	76,447,000	253,285,000	165,229,000	[2] 8,210,000	170,262,000
General Accident	2,245,000	35,597,000	28,280,000	3,815,000	23,194,000
Maryland Casualty Co	33,302,000	62,355,000	31,259,000	6,134,000	37,761,000
Travelers Indemnity Co	85,729,000	168,683,000	13,700,000	[2] 2,651,000	43,118,000
U.S. Fidelity & Guaranty Co	2,529,000	133,264,000	124,950,000	9,031,000	72,611,000

[1] Minus mark for capital gains refers to losses.
[2] Minus mark under taxes paid represents the refund of taxes from the Internal Revenue Department.

Note: This statement represents the 5-year figures for 11 of the larger stock companies. They are particularly impressive because in 1969 these same companies demanded higher insurance rates in New Jersey and increases in automobile rates went into effect February 1970. These companies are still not satisfied. The Supreme Court of the State of Virginia ruled that investment income of insurance companies must be taken into consideration when applying for rates. These figures were taken from Best's "Key Rating Guide—Property-Liability" and published in 1969. The figures, therefore, are correct. (The person who prepared this data, desires to remain anonymous.)

AMERICAN ASSOCIATION OF RETIRED PERSONS,
NATIONAL RETIRED TEACHERS ASSOCIATION,
Washington, D.C., October 20, 1971.

Hon. WARREN G. MAGNUSON,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: Recognizing the inequity and inadequacy of the the present fault system of automobile insurance, the American Association of Retired Persons and National Retired Teachers Association, with a combined membership of over three million older citizens, have come to favor the principle of "no-fault" insurance under which accident victims will receive compensation for loss from their own insurers without the delay, frustration and expense incidental to the determination of fault required under the current system.

To perfect adequately this new insurance concept, AARP–NRTA support its implementation at the state level where there may be introduced whatever variations will best accommodate the needs of the people of each jurisdiction. However, our Associations believe it is essential that Congress legislate certain minimal no-fault standards with which each state must be required to conform within a Congressionally defined, reasonable period of time. Such guidelines should provide a certain basis, common to the laws of all the states, that would preclude that unduly disruptive diversity among state laws that often results in the neglect or disregard of important interests in need of protection and, at the same time, guarantee the creation of a nationwide system of genuine no-fault coverage. The Congress should, perhaps, consider providing certain inducements to encourage each state to enact a qualifying no-fault law within the established time; but it must reserve to itself the preemptive right to intervene, should a state fail to enact such a law within such time.

Our Associations are aware that the Senate Commerce Committee is about to consider no-fault legislation in executive session. As a member of that committee, we urge you to accept the no-fault principle and to work for the adoption of a guideline approach to guarantee its implementation at the state level.

Since our Associations are seriously concerned with the problems of declining mobility and increasing isolation of older persons, we especially wish to obtain your support for the prohibition of the unreasonable and irrationally

discriminatory practice of cancelling or refusing automobile insurance on the basis of age alone. Statistics have clearly established that older persons, as a class, are safe drivers; the laws of each state must provide for mandatory no-fault insurance protection for all licensed drivers.

Finally, our Associations ask that you be mindful of the cost consequences to elderly persons of no-fault insurance. Since the benefits of Medicare are already available to persons receiving social security, such Medicare benefits should be considered primary to the personal injury benefits available under no-fault policy. Consequently, in order to provide a supplemental coverage of medical coverage and an inadvertent higher premium rate which would be an unnecessary burden on the fixed incomes of elderly persons, insurers in each state must be required to provide no-fault coverage at a reduced rate which fully reflects the amount of the primary collateral benefits available under Medicare. To guarantee this result, our Associations especially urge your support of a statutory amendment requiring insurers in each state to harmonize their no-fault policy coverage with the benefits available under Medicare and any supplement and supplemental national health plan.

Sincerely,

CYRIL F. BRICKFIELD,
Legislative Counsel.

AMERICAN ASSOCIATION OF RETIRED PERSONS,
NATIONAL RETIRED TEACHERS ASSOCIATION,
Washington, D.C., October 28, 1971.

Hon. WARREN G. MAGNUSON,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: We wish to correct a discrepancy between our letter of October 20, 1971 and our official position on no-fault insurance, a copy of which was attached to that letter. It is our official position that insurers be *permitted*, rather than required, to provide no-fault personal injury coverage at a reduced rate which reflects the amount of the collateral benefits available under Medicare.

The expectation of the imminence of the meeting of the Commerce Committee in executive session to consider no-fault legislation caused us to act with haste; we apologize for the error and hope that the discrepancy has been adequately corrected. We have attached herewith an additional copy of our position statement.

Sincerely,

CYRIL F. BRICKFIELD,
Legislative Counsel.

Enclosure.

STATEMENT OF THE NATIONAL RETIRED TEACHERS ASSOCIATION, AMERICAN ASSOCIATION OF RETIRED PERSONS

We support the principle of no fault insurance whereby accident victims may recover losses from their own insurers without undue delay and without regard as to who is at fault. We, therefore, request that state insurance laws be revised wherever necessary to introduce no fault personal injury automobile insurance. We ask that no fault coverage be made mandatory for every motor vehicle owner and that all insurance companies be required to sell no fault policies to all licensed drivers. As Associations representing over 3 million elderly, we feel that no fault insurance is especially important to the elderly who, as a class, have proved to be safe drivers, but who in too many cases are being denied insurance or otherwise discriminated against simply because of age.

We favor the implementation of no fault at the state level to encourage experimentation on a state-by-state basis in order that this new concept may be adequately developed and perfected.

At the same time we urge legislation by the U.S. Congress providing certain minimum no fault standards which each state must achieve within the next few years. The standards must include:

1. The benefits of Medicare should be utilized by those receiving social security and companies should be *permitted* to sell no fault insurance as excess benefits over those provided by Medicare, at substantially lower premium rates.

2. Maximum benefits should be high enough to cover all medical costs in the vast majority of cases. The right to tort action should be limited to cases involving serious misconduct or serious injuries. We believe that a maximum benefit of $5,000 and a medical expense threshold of $2,000 (in determining the right to tort) will achieve these desirable objectives.

3. Compulsory automobile insurance as respects no fault personal injury protections, residual bodily injury liability insurance and property damage liability insurance.

In the event that any state or states do not enact no fault auto insurance programs within a reasonable period of time, the Federal Government should preempt their rights to regulate the automobile insurance business.

AMERICAN BAR ASSOCIATION,
OFFICE OF THE PRESIDENT,
Chicago, Ill., October 11, 1971.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: I acknowledge with thanks your letter of October 5 inviting me to appear as a witness in the hearing before the Committee on Commerce on S. 945, Committee Print One, on October 14.

Unfortunately, I must be in Chicago on that day to preside at the fall meetings of the Board of Governors of this Association. Since receiving your letter I have consulted with the Special Committee on Automobile Insurance Legislation of the American Bar Association, under the chairmanship of Judge John T. Reardon, as to whether that Committee may have additional testimony it wished to present at this time. I have been advised that it does not; that the Committee is continuing its review of developments in this field since the action of the House of Delegates of the Association, in August of 1969, in adopting a series of approximately 53 recommendations for improvements in the reparations system.

As you know, in May of this year, these recommendations and the full report of the earlier ABA Committee which gave long and intensive study to the whole problem, were placed before your Committee. At the earlier hearings in the spring Judge Reardon also appeared as a witness, as did Edward W. Kuhn, former President of this Association and chairman of a committee of the Section of Insurance, Negligence and Compensation Law concerned with consideration of state legislation. Their prepared statements also are a part of the Committee record.

At such time as Judge Reardon's Special Committee reports its findings and conclusions, and these can be considered by the official policy bodies of this Association, your Committee will, of course, be informed promptly.

Again, thank you for the courtesy of your invitation to appear at this week's hearings.

Sincerely yours,

LEON JAWORSKI,
President.

STATEMENT OF LORNE R. WORTHINGTON, INSURANCE COMMISSIONER OF THE STATE OF IOWA

My name is Lorne R. Worthington. Today I am appearing on behalf of the National Association of Insurance Commissioners, commonly referred to as the NAIC, both as the Insurance Commissioner of Iowa and as President of the NAIC. Having its inception in and regular meetings since 1871, the NAIC is the oldest voluntary association of state officials. It includes the principle insurance regulatory authorities of the 50 states, the District of Columbia, and the territories of the United States.

1. THE ISSUE

The Uniform Motor Vehicle Insurance Act would create a federally mandated motor vehicle insurance system predicated on the no fault concept for bodily injury. The statute, among other things, would prescribe the minimum coverage which motorists would be required to purchase. In contrast, although the

Administration has tentatively endorsed the no fault concept, it has concluded that mere speculation without actual observation of experience with a new plan is an inadequate basis for massive, uniform national reform; and that the federal assumption of the current state regulatory authority over automobile insurance poses great issues and consequences and is highly undesirable.[1] The Administration recommends that solutions, built upon specified general principles, evolve at the state level to permit experimentation and testing of different approaches. *Thus the basic issue is joined—i.e. what is the most appropriate approach to test and/or implement the no fault concept.*

2. NAIC POSITION ON THE NO FAULT CONCEPT

At the outset, let me indicate the perspective from which the NAIC, as an association of state insurance regulators, views the fault versus no fault concept. The tort liability system is a legal system which is separate and distinct from the automobile insurance system. When the first automobile insurance policy was written prior to 1900, the fault concept was well embedded. The automobile insurance system, and the regulation thereof, of necessity, has in large part been engrafted on and molded by the broader legal environment in which it finds itself. As a consequence, automobile insurance was originally premised on the concept of protecting a person from economic disaster resulting from legal liability—by defending against claims and paying those adjudged to be valid. Only incidentally was the combination of the legal and insurance systems thought of in terms of providing reparation to the victim. In more recent years, there has been a shift in concept. Increasing attention has been focused on the plight of the victim. The inquiry now centers on how dependent upon fault the reparation system should be.

Obviously, the questions being posed extend far beyond the interests of automobile insurance and its regulation. Numerous groups are interested in the ultimate result. These include the policyholder, the claimants, the legal profession, the providers of medical services, insurers, agents, unions, etc. Because of the many groups involved, the extensive diversity within such groups, and the complexity of the issues involved, a wide range of conflicting attitudes and objectives exists. The NAIC, following a comprehensive background study by its Central Office staff, adopted a position statement which, among other things, said that question of fault versus non fault "is an issue involving wide spread ramifications far beyond the traditional confines of insurance regulation * * * 'The decision as to whether the present system should be reformed is not a legal decision nor is it a statistical one: *it is a question of values.*'

"Thus the type of system adopted is a broad question of public policy.

"The NAIC, therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternatives on a state-by-state basis."[2]

Our responsibility as regulators is a limited one. If private enterprise is chosen as the implementing mechanism (whether the third party legal system is retained, modified, or eliminated), our function would continue to be regulation in the interest of a sound, efficient, and equitable system on behalf of the insurance consuming public.

Incidentally, state insurance regulation has no vested interest in either eliminating or continuing the third party legal liability system for automobile insurance. We currently oversee both fault and no fault type coverages. What is ultimately in the best interest of the public is what we favor and support. The problem is determining what is ultimately in the public interest.

3. THE STATE-BY-STATE APPROACH

While we as insurance regulators will not be the ultimate arbiters as to what constitutes the most appropriate reparation system in terms of public policy objectives, we do occupy a unique vantage point for observing the existing system. State insurance departments regulate insurers, examine their operations, approve policy forms, review policyholder and claimholder complaints, and re-

---

[1] House Concurrent Resolution 241, 92d Congress, 1st Sess. (1971).

[2] NAIC Statement of Position on Automobile Insurance, *Report of the Special Committee on Automobile Insurance Problems*, June 16, 1969, p. 17. The report was adopted by the NAIC in June 1969. In addition, the report contains the staff background study. A copy of the report is submitted for the record.

spond to all manner of consumer needs. Consequently, we have a continuing opportunity to closely observe the workings of the insurance mechanism and to do so from the public's viewpoint. Thus, in this sense, as well as from reviewing the studies made by the NAIC, DOT and individual insurance departments, we feel our observations will contribute to your deliberations.

The fault versus no fault concept poses numerous complex and difficult issues. Among the factors requiring primary consideration are finding a means to assure that payments are made promptly, that the distribution of claims payments is an equitable one, and that a greater percentage of each premium dollar is paid out to victims.

In addition, consideration must be given to: overlapping coverages and premiums, flexibility, and impact on rehabilitation. Implicit in these factors are conflicting attitudes and objectives. Public clamor over increased automobile insurance premiums has significantly added to the pressure for change. Proponents of no fault are urging that virtually all injuries be compensated regardless of fault. These are conflicting objectives—i.e. lower cost versus increased benefits. Thus a basic question becomes what benefits the public wants, what benefits the public is willing to forego, and what cost level the public is willing to accept.

The final report of the Department of Transportation, as well as Secretary Volpe's presentation, highlighted the multiplicity of options confronting us and the need for experimentation. For example, the report named six basic areas of consideration, each area involving numerous subconsiderations within itself: (1) the legal rule governing reparations, (2) the role of insurance, (3) the kinds of losses to be compensated, (4) private versus social insurance, (5) compulsory versus voluntary insurance, and (6) insurance and the loss minimization objective.[3] Alternative approaches raised include (1) retain the status quo, (2) improve the present tort legal liability system (e.g. judicial reform, shift to comparative negligence, regulate contingency fees, etc.), (3) rely on evolutionary reform by combining fault and no fault coverages, (4) establish a total no fault system, and (5) utilize government insurance.[4]

In spite of the mass of research conducted, the general public has no clear concept of what is involved or the ramifications posed by the various alternative methods. The DOT report's section on public opinion makes this quite obvious:

"In general, these surveys indicate that *the public has mixed attitudes* about the performance of various aspects of the system, is generally ill-informed about the current system, and, on the whole, shows an openness to change when made aware of alternatives to the present system."[5] (Emphasis supplied.)

In short, a clear and informed consensus has not yet emerged.

With these and other factors in mind, the NAIC has said:

"Because factors, concepts, values, and attitudes vary from locale to locale, this public policy decision can best be made on a state-by-state basis rather than at the federal level. This, in turn, affords the opportunity to test and experiment with different approaches on a limited basis. After a period of experience with different plans, the better solution(s) will emerge. *The NAIC therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternatives on a state-by-state basis.* Whatever the system, the various state insurance regulators can regulate for the public interest most effectively because of the varied needs of a differing populace in the several states. *The public, by its responses to legislation and by the decisions it makes in the market place in accepting or rejecting various coverages and services offered, will ultimately settle the issue.*"[6] (Emphasis supplied)

This remains the judgment of the NAIC. Furthermore, it has been subsequently fortified by both Secretary Volpe's statement before the Senate Commerce Committee[7] and by the DOT report which said:

---

[3] See DOT, *Motor Vehicle Crash Losses and their Compensation in the United States*: a Report to the President and Congress 101–111 (March 1971) (hereafter cited as the DOT Report).

[4] See *id* at 112–127.

[5] *Id* at 81.

[6] NAIC Statement of Position, note 2 supra at 17.

[7] "Nor will I attempt to assess here the relative merits of all the various reform plans that have been offered as alternatives to the present system. In this thicket, there is plainly much less of a consensus: the complexity of the subject and its problems make possible an almost limitless number of combinations, permutations and variations of recovery rules, insurance coverages, etc." Statement of Secretary of Transportation John A. Volpe before the Senate Commerce Committee, March 18, 1971, p. 2.

"Moving in stages toward such a goal would allow us to test its virtues and discover its faults, thereby giving us new knowledge that could serve to modify the goal itself. A little observation is worth a great deal of speculation, and State experience with diverse plans will provide us with that opportunity for pilot project testing which must precede massive reform."[6]

Furthermore, Secretary Volpe said:

"First, it seems clear, at least to us, that *there remains much legitimate uncertainty about how far and how fast the public wants or is willing to pay* in changing the reparations system. It is also clear that *there exists genuine and warranted concern as to the unknown and essentially unknowable price and cost implications of any major change in the system*, which of course would ultimately affect the cost and quality of service to consumers of insurance. Regulators and other responsible public officials would appear to share these feelings. We, ourselves, don't claim to have definite answers to these questions either. As a result, it seems to us that we should seek change through State action, but consistent with the broad outlines or principles of a system such as that described below. We need not and do not insist that a single reform system be imposed upon all the States. The experience of the States should have much to tell us about the most desirable final configuration of the motor vehicle reparations system."[7] (Emphasis supplied)

In brief, we simply don't know at this point what the answer or combinations of answers are. With all due respect to the advocates of the federal no-fault plan, we submit that no one knows the answers to these questions (and others which could be posed)—and until we do, no one knows what final form a national program should take.

4. CAVEATS ON FEDERAL MANDATED STANDARDS AND VOLUNTARY GUIDELINES

Secretary Volpe urged that change commence now and the Administration is supporting a joint concurrent resolution putting the states on notice that they are expected to resolve this problem within a reasonable period of time. We don't disagree that some change is needed, although the magnitude or direction of change is subject to intense debate.

a. *Immediate Uniform Massive Change is Premature.*—At the one extreme the proposed Uniform Motor Vehicle Insurance Act would establish rigid statutory standards as to what must be in an automobile insurance policy. Such an approach has the practical effect of destroying flexibility and tends to freeze in limitations in coverage.[8] Perhaps even worse, the uniformity imposed would preclude the consuming public from the opportunity to register its choice over a meaningful period of time and thereby make the insurance mechanism responsive to the public's evolving concept as to the appropriate balance between benefits and costs.

b. *The Cost Factor.*—No matter how hard we try, it is either impossible or foolhardy to ignore the ramifications of the cost of any given program or alternative. As the NAIC staff study pointed out:

"In appraising the worth of any system, a very important consideration is the cost of such system as compared to the cost of possible alternatives. Public clamor over increasing auto liability insurance premium levels has significantly added to the pressure for change.

"... the NAIC strongly supports efforts to reduce the cost of automobile insurance to the public to the extent that such reductions are consistent with other major objectives. It must be remembered that no program can meet all demands since the demands themselves are frequently in conflict. It is virtually impossible to pay more accident victims more dollars and reduce costs at the same time. Thus whatever changes are recommended they should be evaluated with a view towards the best balance possible between *conflicting objectives and purposes, between the goal of increased benefits and cost savings.*"[9] (Emphasis supplied)

As the DOT report noted, "consumer attitudes about automobile insurance have shown its cost to lead all other concerns."[10] Consequently any program

---

[6] [illegible]

[7] [illegible] supra note 7, supra at 3.

[8] [illegible] of a [illegible] policy is that it facilitates price comparisons. In [illegible] uniform and non-competitive prices. Competition [illegible] insurance contracts and broader terms.

[9] NAIC [illegible] 2 supra [illegible]

[10] DOT [illegible]

which does not afford the consumer an opportunity to relate the benefits he desires to the costs he must pay may create more public dissatisfaction than it eliminates.

This point is particularly relevant to a program such as automobile insurance whose costs are bound to increase. The DOT report has recognized:

"Perhaps the most pervasive influence upon automobile insurance as a public issue in recent years has been inflation."[13]

In effect, an automobile insurance company is a mass purchaser of a variety of goods and services such as medical, hospital, lawyer and court services, wage replacements, repair goods and services, etc. As the cost of these elements increase, the cost of insurance must do the same.[14]

"If such costs continue to inflate (and there is little reason to hope otherwise), initial cost savings resulting from changing the system would soon be forgotten and public frustration with costs would arise anew. This suggests that, while efficiencies in the system are important, drastic changes aimed at reducing premium levels (or lessening increases) may result in only temporary relief."[15]

Much of the American motoring public is being led to believe that no fault is a panacea, bringing with it broader coverage, payment in all cases, and lower costs. The idea that something must be given up in order to get something else back has not yet registered in many quarters. The passage of the proposed legislation, without a preliminary period of trial and error during which the public would become educated as to its advantages and disadvantages and would be able to relate its wants to its costs by choice in the free market, could set the stage for massive public disenchantment with all who were connected with its enactment.

The establishment of minimum mandatory benefits, such as those being discussed, in a federal statute poses far reaching, long-term ramifications. In fact, the same can be said, although perhaps to a lesser extent, as to the establishment of federal guidelines to which the states should strive since such guidelines would tend to become the minimum norm of consumers' expectations as to what they are "entitled to: by right."

If the cost of such benefits exceeds what the public is willing to pay, federal subsidies may be necessary and you should be prepared to recognize that potential need.

c. *Cause for Skepticism.*—Though we don't question the conviction of the proponents of this proposed federal act as to the rightness of their solution, past experience with massive federal programs entitles us to voice some skepticism. For example, we launched into Medicare and Medicaid without an adequate exploration and testing to ascertain the cost implications; the impact on the delivery of health, etc. The program is now being devoured by expenses, the demand on medical facilities has skyrocketed, and now a few short years later persons are advocating scrapping these programs and launching into something else. In conjunction with national health plans it has been said:

"There must be a critical review not only of the estimated cost of such proposals but with the financing mechanisms as well as with the services which are expected to be provided. At the moment, in the rush to design these new proposals, it appears to be forgotten that the planners of Medicare and Medicaid grossly underestimated the cost of these programs. They also gave little heed to the existing shortage of health manpower facilities which had been seriously aggravated by these new programs."[16]

This observation could apply with equal force to the proposals for federal automobile insurance reform. Forecasts as to the costs of this system are necessarily conjectural. It is only by a process of trial and error that the public will ascertain the true costs and only by experimental efforts at the state level can the best solution be found and earlier mistakes more readily rectified before they assume unmanageable proportions.

This example, as well as other examples which could be named, is not cited in criticism of the results which were sought but rather as an example of what occurs when massive federal involvement and planning on a nationwide uniform basis in complex areas precedes or supersedes the market mechanism as an allo-

---

[13] *Id* at 61.

[14] E.g. over the past decade, doctors' fees and hospital daily service charges increased 58% and 155% respectively. *Id* at 61.

[15] NAIC report, note 2 supra 103.

[16] Wheatley, "Promises and Problems of National Health Insurance," an address before the American Pension Conference, N.Y., N.Y., March 1971.

cator of economic resources. Original concepts which were so convincingly put forth have often proved to be wrong, but the adverse consequences of the error have been "frozen in" over a period of time.

Let's avoid making a similar mistake as to automobile insurance, which involves 100 million automobile drivers and nearly all American families. This is the message Secretary Volpe is conveying when he emphasizes the need for experimentation. Certainly the Ontario Experience—where motorist rejected coverage combining the fault and no-fault concepts put forth on a voluntary basis—should give one pause in mandating a fixed uniform standard on a nationwide basis.

d. *Federal Guidelines.*—Although we support the state-by-state approach of the Administration, we do have reservations concerning the adoption of federal guidelines or objectives such as those in the proposed concurrent resolution. Such standards, in addition to the concern previously mentioned above as to the creation of certain expectations, tend to prejudge what the market place has not yet passed upon—e.g., the choice of an essentially no fault over a reformed fault system, the determination that automobile insurance should be the primary coverage, etc. Such standards tend to restrict the range in which proposed changes would fall and hence the range of consumer choice. This does not say that the choices implicit in the standards proposed are incorrect but rather they are premature. If there are to be minimum federal standards, we feel that broader standards which give greater meaning to experimentation should be adopted. The minimum criteria for any automobile insurance system as stated by the NAIC in its Statement of Position on Automobile Insurance could be a sample of the kind of federal standards that would be meaningful.[17] Nevertheless, a resolution by Congress expressing both the need and its will for prompt state action in exploring, testing and implementing improvements in the existing system would be an appropriate indication of the sense of Congress. This would serve notice on both the business and the states that progress is expected.

5. A TIME FOR CHANGE AND CURRENT MOMENTUM

All of this is not to argue for the status quo, nor to minimize the impact of the landmark DOT study, congressional hearings, academic works, state insurance departments' efforts and NAIC research. Quite to the contrary, each of these have significantly contributed to the emerging consensus that improvements are needed and have pointed out possible directions which should be considered and tested. Furthermore, the NAIC supports the Administration's position of recognizing not only the worth but the virtual necessity of a state-by-state approach until a clearer picture emerges as to the right answers—an answer which may vary from state to state or region to region.

To some proponents of the Uniform Motor Vehicle Insurance Act, the state-by-state approach is tantamount to doing nothing. This is incorrect. In addition to the "prod" from Congress in the form of a Congressional resolution, the states are receiving the same pressures for change that Congress receives. Few if any argue for the status quo. The basic research study is done. As of the early part of this month, we understand that no less than 28 states are now considering no fault or modified no fault legislation. (Other states have created study commissions. Some may be waiting to capitalize on the experimentation of others and others no doubt are waiting to see if Congress is going to preempt the field or give the states time to act.) The proposals range from the complete no fault program of the American Automobile Insurance Association to those which primarily seek to improve the existing legal liability system such as the American Trial Lawyer's Reform package with all sorts of variations in between.

---

[17] "Whatever is decided as to the appropriate legal framework, the NAIC believes that any automobile insurance system should include as a minimum the following elements:

"A. reality access to insurance for all licensed drivers at prices which are reasonable, with a means to purchase insurance through an assigned risk mechanism for those who cannot purchase it in the voluntary market.

"B. provision for prompt payment of basic economic loss and improved claims procedures.

"C. provision for protection from insolvencies, uninsured motorists and hit-and-run drivers, etc.

"D. meaningful classifications which are broad enough to spread risks and yet not so broad as to lessen availability of coverage.

"E. a responsive and meaningful pricing and marketing system.

"F. protection for the insured against arbitrary and unfair cancellation and nonrenewal.

"G. full disclosure of the nature of the coverage to the purchaser."

Secretary Volpe, in his statement before the Senate Commerce Committee, said:

"Further change in the auto reparation system at the state level has clearly moved off dead center and would appear to be achieving some momentum. I could not have made that statement a year ago. I think this constructive move should be encouraged, perhaps guided and helped but not preempted by federal action." [18]

The activities mentioned above support the basis for the Secretary's beliefs and clearly demonstrate the heightened momentum. At this point, with so many different and sometimes conflicting ideas "floating around," and so much uncertainty as to what should be done, it is too early to predict what the states will and will not do. But events are moving sufficiently so, in our judgment, to warrant giving the states an adequate opportunity to act. If past experience is any guide, a variety of approaches will be tested and the best features of the various programs will emerge. At that point, the trend will be towards a more uniform system throughout the various states.

Of course, during the period of experimentation, we would be going through a phase when a number of different plans would be used in a number of different states. America is a mobile nation. Complications can be expected in the administration of a system as significant portions of the public journey across state lines. During this period, insurers operating across state border will have to provide for the variations in coverage through appropriate endorsements. It will present some administrative problems for the insurers and regulatory problems for the states. But this is a small price to pay compared to the damage which could occur if an ill-considered national program was imposed upon the nation in one installment from the top.

6. FEDERAL REGULATORY INTERVENTION

Although most attention on the proposed Uniform Motor Vehicle Insurance Act has focused on the mandating of the no fault concept, the Act poses another fundamental issue—i.e. state versus federal regulation of automobile insurance. There can be no mistake as to the pervasive regulatory power vested in the Secretray of Transportation. For example, the Secretary would (1) determine and approve the financial substitutes for insurance (i.e. bonds, self insurance), (2) determine by rules and regulations the percentage of responsibility for net economic loss assigned to motor vehicles larger than ordinary passenger cars, (3) approve policy terms, conditions, exclusions, and deductibles, (4) promulgate a uniform statistical plan for compilation of claims and loss experience which every insurer must follow, (5) require standard uniform and standard minimal policy provisions, classes of risks, and rating territories, (6) prescribe rules and regulations under which insurers would submit premiums being charged for each class of risk in each rating territory, (7) make available a comparison of insurers' rates based upon claim and loss experience, (8) organize an assigned claims bureau in each state, and (9) make, amend, and repeal rules and regulations as he deems necessary.

Under existing state law, the insurance department possesses comprehensive regulatory authority over insurers doing business therein. For example, state regulation encompasses these elements: (1) the incorporation of companies (qualifications, capital and surplus requirements, etc.), (2) the specification of required reserves, (3) the specifications of the areas in which insurance assets may be invested, (4) the approval of policy forms, (5) the supervision or monitoring of rates (for adequacy, excessiveness and non-discrimination), (6) the collection of statistics and the making of reports, (7) the examination of companies to determine if reserves are adequate, investments comply with the law, claim practices are satisfactory, etc. (8) the licensing and supervision of those who sell insurance, and (9) provision for residual coverages such as the assigned risk plans.

The regulatory overlap is substantial and clear. Confusion, waste, an increasingly complex system, and extra cost to the taxpayer in administering the automobile insurance is bound to result. We submit that such a dual system is not in the public interest.

In this connection, it should be pointed out that the DOT report recognized that "* * * the basic determinant of the size and nature of the compensation requirment, i.e., car crash losses, is almost entirely, if not completely, a function of outside forces—traffic law enforcement, safety measure, car design, driver licensing

[18] Volpe's statement, note 7 supra at 4.

and education, highway design, etc. Loss costs, themselves, reflect the prices being charged in the market place for hospital and medical care, auto repair and replacement parts, legal services, the cost of vehicles, etc., and they, too, cannot be significantly influenced, at least directly, by the compensation mechanism."[5]

The NAIC earlier reached the same conclusion.

"(Traffic safety or the absence thereof, the economic climate within which automobile insurance functions and the legal system upon which it rests) have a fundamental impact on the cost and the operation of the automobile insurance system despite the fact that they are external to the system and not subject to that system's control. Nevertheless they comprise the framework within which the system functions. Although the insurance system has its defects, some of the basic problems are caused externally and can only be remedied outside the system. Congress, various federal agencies and administrations, the judicial system, the providers of medical services, the automotive industry, state activity or lack thereof in traffic safety, etc., all have contributed to the basic problems."[6]

Thus the insurance industry and the regulators thereof have had to function in a legal, social and economic environment not of its own choosing. The problems stemming from this environment should not be translated into discarding those operating within it as long as they commit themselves to adjust to a new environment when it comes about. The DOT report, as the outset, made this same point:

"The conclusions made about the present system and its operations should not be interpreted to reflect adversely on any of the participants. The subject under investigation was in fact the 'system' and not those who have tried to make it run and improve it. The conclusions are directed to the system."[7]

Furthermore, the Administration in the proposed resolution stated that "the principal problems and abuses with respect to automobile insurance stem from the defects in the system for compensating accident victims * * * rather than from defects in the insurance institution or in its regulation by the several states * * *." Consequently, shifting to a federal regulatory mechanism (even if federal guidelines or objectives are adopted) is not warranted nor recommended by the comprehensive studies made. As indicated earlier, the state insurance regulating mechanism has no vested interested other than its commitment to meeting the public needs in the extent to which the tort liability system is modified or eliminated. We regulate the providing of insurance now and can continue to do so on either a fault or no fault basis on either basis.

7. A PRACTICAL NOTE

As has been aptly pointed out elsewhere and referred to in this statement, inflation has been the prime cause in rate increases. Thus the basic responsibility for the problem generated rests in Washington. Public expenditures, increase in governmental activities, deficits, monetary policy, taxation, etc., all (with the exception of monetary policy) under the control of Congress largely determines the presence or absence of inflation.

This is not to say that improvements cannot or should not be made in the insurance mechanism at the state level. They should be made and they are being made. But the respite will only be temporary if inflation continues to take its inexorable toll. Efforts by Congress to deal with inflation, often hamstrung by political considerations, have not been effective thus far and there is national pessimism about the likelihood of any improvement in the picture.

8. SUMMARY

The basic issue with which we are confronted is the appropriate means to test and or implement the no fault concept as it applies to motor vehicle insurance. Whether or not this concept or some variation should be adopted is a question of public policy which extends beyond the traditional confines of insurance and the regulation thereof. Whatever the decision, however, the state insurance departments have and continue to be prepared to regulate in the public interest.

This whole concept involves a list of complex factors, conflicting objectives and a multiplicity of alternatives. As the DOT report documented, the public

---

[5] DOT Report, p. 5.

[6] Report of the NAIC *Special Committee on Automobile Insurance Problems*, 15 (June 1968).

[7] DOT Report, p. 5.

attitudes, and understandably so, are confused and "mixed." As a consequence, the NAIC opposes the enactment of the proposed no fault legislation on a federal national level and recommends experimentation on a state by state basis to resolve the problems posed in a manner responsive to the public's choice in the market place reflecting its balance between benefits it wants at costs it is willing to pay. A Congressional mandate as to mandatory and uniform coverage would destroy flexibility, freeze in error and preclude choice and self determination. Massive federal involvement, particularly in light of the substantial cost implications, would seem to be premature. Similarly we express reservations as to the establishment of federal guidelines or objectives since these would prejudge what the market has not yet passed upon and would tend to inhibit the range of consumer choice.

These comments are not to argue for the status quo nor against the no fault concept set out in the proposed legislation. We agree that some change is needed, although the extent is subject to debate. The NAIC supports utilizing the state by state approach to ascertain the best plan or plans. This process is already well underway as indicated by the already extensive activity at the state level.

Furthermore, the NAIC opposes legislation which interjects an extensive federal regulatory mechanism over automobile insurance. Such would create duplicatory regulation, confusion and unnecessary taxpayer expenses. Both Secretary Volpe's statement and the comprehensive DOT study clearly indicate that such intervention is not warranted so long as the states can continue to adjust to the changing environment. Furthermore, the proposed statute with its mandatory uniformity and inflexibility would turn back the clock 25 years to recreate what the antitrust laws and the Senate Antitrust and Monopoly Subcommittee have attempted to discourage these past many years.

In short, the NAIC endorses the Administration's positions of experimenting with different approaches at the state level. If Congress believes that some type of Congressional action is necessary, we feel that the resolution approach is the most appropriate. However, the inclusion of specific federal standards in such a resolution would be premature and would intend to inhibit the wide range of experimentation which it seeks to achieve. On the other hand, the resolution could express the "sense of Congress" by pointing out the problems, taking cognizance of the various studies and conflicting objectives and calling upon the states, the industry and other interested parties to develop and test solutions within a reasonable period of time, such as five years. Failure to do so could be construed as an invitation for Congress to undertake the task.

OREGON LEGISLATIVE ASSEMBLY—1971 REGULAR SESSION

HOUSE BILL 1299

Sponsored by COMMITTEE ON STATE AND FEDERAL AFFAIRS (at the request of the Insurance Commissioner's Special Advisory Committee on Auto Insurance)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Declares that making of advance payments in personal injury and property damage cases is not admission of legal liability for injury or damage. Prevents suspension of statute of limitation in such cases if appropriate notice is given. Provides for reduction of amount of any judgment obtained by person to whom advance payments were made, in amount of such advance payments.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with section.

Be It Enacted by the People of the State of Oregon:

A BILL FOR AN ACT Relating to damages for death, injury or destruction

SECTION 1. As used in this Act, "advance payment" means compensation for the injury or death of a person or the injury or destruction of property prior to the determination of legal liability therefor.

SECTION 1. (1) An advance payment made for any damages arising from the death of or injury to a person is not an admission of liability for the death or injury by the person making the payment unless the parties to the payment agree to the contrary in writing.

(2) For the purposes of subsection (1) of this section, an advance payment is made to:

(a) The injured person;

(b) A person acting on behalf of the injured person with the consent of the injured person; or

(c) Any other person entitled to recover damages on account of the injury or death of the injured or deceased person.

SEC. 2. Any advance payment made for damages arising from the injury to or destruction of property is not an admission of liability for the injury or destruction by the person making the payment unless the parties to the payment agree to the contrary in writing.

SEC. 3. No advance payment referred to in section 1 or 2 of this Act is admissible in evidence in any action for damages arising from the death, injury or destruction for which any such advance payment has been made.

SEC. [illegible]. (1) If the person who makes an advance payment referred to in section 1 or 2 of this Act gives to each person entitled to recover damages for the death, injury or destruction, not later than 30 days after the date the first of such advance payments was made, written notice of the date of expiration of the period of limitation for the commencement of an action for damages set by the applicable statute of limitations, then the making of any such advance payment does not suspend the running of such period of limitation. The notice required by this subsection shall be in such form as the Insurance Commissioner prescribes.

(2) If the notice required by subsection (1) of this section is not given, the time between the date the first advance payment was made and the date a notice is actually given of the date of expiration of the period of limitation for the commencement of an action for damages set by the applicable statute of limitations is not part of the period limited for commencement of the action by the statute of limitations.

SEC. 4. (1) If judgment is entered against a party on whose behalf an advance payment referred to in section 1 or 2 of this Act has been made and in favor of a party for whose benefit any such advance payment has been made, the amount of the judgment shall be reduced by the amount of any such payments in the manner provided in subsection (2) of this section. However, nothing in this Act authorizes the party on whose behalf advance payment has been made to recover such advance payment if no damages are awarded or to recover any amount by which the advance payment exceeds the award of damages.

(2) The amount of any advance payment made may be submitted by the party making the payment in the manner provided in ORS 20.310 and 20.320 for the submission of disbursements. Unless timely objections are filed as provided in ORS 20.310, the court clerk shall apply the amount of the advance payments claimed pursuant to this subsection in partial satisfaction of the judgment. Such partial satisfaction shall be allowed without regard to whether the party claiming the reduction is otherwise entitled to costs and disbursements in the action.

PREVIOUS AMENDMENTS

By House March [illegible]

SECOND HOUSE AMENDMENTS TO HOUSE BILL 1296

BY COMMITTEE ON STATE AND FEDERAL AFFAIRS

April [illegible]

On page 1 of the printed bill, line 1, delete the first "(1)" and insert "(2)".

OREGON LEGISLATIVE ASSEMBLY—1971 REGULAR SESSION

HOUSE BILL 1300

Sponsored by COMMITTEE ON STATE AND FEDERAL AFFAIRS (at the request of the Insurance Commissioner's Special Advisory Committee on Auto Insurance)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Requires insurers issuing automobile liability policies to provide minimum medical payments and loss of income benefits. Authorizes deduction of certain duplicate benefits from such coverages. Provides for reimbursement of benefits between insurers and arbitration of liability and amount of reimbursement. Effective January 1, 1972.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with section.

A BILL FOR AN ACT Relating to motor vehicle insurance benefits; creating new provisions; amending ORS 731.418 and 743.786; and prescribing an effective date

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 9 of this Act are added to and made a part of ORS 743.786 to 743.792.

SEC. 2. Every motor vehicle liability policy issued or delivered in this state that covers any private passenger motor vehicle shall provide to the person insured thereunder and members of his family residing in the same household injured in a motor vehicle accident, guest passengers injured while occupying the insured motor vehicle and pedestrians struck by the insured motor vehicle, the following hospital, medical and disability benefits for each accident:

(1) All reasonable and necessary expenses for medical, hospital, dental, surgical, ambulance and prosthetic services incurred within one year after the date of the accident, in the amount of $3,000 per person; and

(2) If the injured person is usually engaged in a remunerative occupation, 85 percent of the loss of income from work during the period commencing 14 days after the date of the accident and ending on the date the injured person is able to return to his usual occupation; or

(3) If the injured person is not usually engaged in a remunerative occupation, the expenses reasonably incurred for essential services in lieu of those the injured person would have performed without income during the period commencing 14 days after the date of the accident and ending on the date the injured person is reasonably able to perform such essential services.

(4) As used in this section, "income" includes but is not limited to salary, wages, tips, commissions, professional fees, and profits from an individually owned business or farm.

SEC. 3. (1) With respect to the insured and members of his family residing in the same household, an insurer may offer deductible forms up to $250, of coverage for the benefits required by subsection (1) of section 2 of this 1971 Act.

(2) Notwithstanding section 2 of this 1971 Act:

(a) The benefits referred to in subsection (2) of section 2 of this 1971 Act need not exceed $500 per month or be paid for a period exceeding 52 weeks.

(b) The benefits referred to in subsection (3) of section 2 of this 1971 Act need not exceed $12 per day or be paid for a period exceeding 52 weeks.

(3) All benefits required by section 2 of this 1971 Act shall be paid promptly after proof of loss has been submitted to the insurer.

(4) The existence of a potential cause of action in tort that arises out of an accident does not relieve an insurer of the duty to pay the benefits to the injured person as required by section 2 of this 1971 Act.

SEC. 4. The benefits required by section 2 of this 1971 Act, with respect to:

(1) Injuries to the insured and members of his family residing in the same household shall be primary, but such benefits may be reduced or eliminated if they are similarly provided under another motor vehicle liability policy that covers the injured person, or if the injured person is entitled to receive under the laws of this state or any other state of the United States, workmen's compensation benefits or any other similar medical or disability benefits.

(2) Guest passengers injured while occupying the insured motor vehicle, and with respect to pedestrians injured by the insured motor vehicle, may be excess over any other collateral benefits to which the injured person is entitled, including but not limited to insurance benefits, governmental benefits or gratuitous benefits.

Administration has tentatively endorsed the no fault concept, it has concluded that mere speculation without actual observation of experience with a new plan is an inadequate basis for massive, uniform national reform: and that the federal assumption of the current state regulatory authority over automobile insurance poses great issues and consequences and is highly undesirable.[2] The Administration recommends that solutions, built upon specified general principles, evolve at the state level to permit experimentation and testing of different approaches. *Thus the basic issue is joined—i.e. what is the most appropriate approach to test and/or implement the no fault concept.*

2. NAIC POSITION ON THE NO FAULT CONCEPT

At the outset, let me indicate the perspective from which the NAIC, as an association of state insurance regulators, views the fault versus no fault concept. The tort liability system is a legal system which is separate and distinct from the automobile insurance system. When the first automobile insurance policy was written prior to 1900, the fault concept was well embedded. The automobile insurance system, and the regulation thereof, of necessity, has in large part been engrafted on and molded by the broader legal environment in which it finds itself. As a consequence, automobile insurance was originally premised on the concept of protecting a person from economic disaster resulting from legal liability—by defending against claims and paying those adjudged to be valid. Only incidentally was the combination of the legal and insurance systems thought of in terms of providing reparation to the victim. In more recent years, there has been a shift in concept. Increasing attention has been focused on the plight of the victim. The inquiry now centers on how dependent upon fault the reparation system should be.

Obviously, the questions being posed extend far beyond the interests of automobile insurance and its regulation. Numerous groups are interested in the ultimate result. These include the policyholder, the claimants, the legal profession, the providers of medical services, insurers, agents, unions, etc. Because of the many groups involved, the extensive diversity within such groups, and the complexity of the issues involved, a wide range of conflicting attitudes and objectives exists. The NAIC, following a comprehensive background study by its Central Office staff, adopted a position statement which, among other things, said that question of fault versus non fault "is an issue involving wide spread ramifications far beyond the traditional confines of insurance regulation * * * 'The decision as to whether the present system should be reformed is not a legal decision nor is it a statistical one: *it is a question of values.*'

"Thus the type of system adopted is a broad question of public policy.

"The NAIC, therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternatives on a state-by-state basis."[3]

Our responsibility as regulators is a limited one. If private enterprise is chosen as the implementing mechanism (whether the third party legal system is retained, modified, or eliminated), our function would continue to be regulation in the interest of a sound, efficient, and equitable system on behalf of the insurance consuming public.

Incidentally, state insurance regulation has no vested interest in either eliminating or continuing the third party legal liability system for automobile insurance. We currently oversee both fault and no fault type coverages. What is ultimately in the best interest of the public is what we favor and support. The problem is determining what is ultimately in the public interest.

3. THE STATE-BY-STATE APPROACH

While we as insurance regulators will not be the ultimate arbiters as to what constitutes the most appropriate reparation system in terms of public policy objectives, we do occupy a unique vantage point for observing the existing system. State insurance departments regulate insurers, examine their operations, approve policy forms, review policyholder and claimholder complaints, and re-

---

[2] House Concurrent Resolution 241, 92d Congress, 1st Sess. (1971).

[3] NAIC Statement of Position on Automobile Insurance, *Report of the Special Committee on [illegible]*, June 16, 1969, p. 17. The report was adopted by the NAIC in June 1969. In addition, the report contains the staff background study. A copy of the report is submitted for the record.

spond to all manner of consumer needs. Consequently, we have a continuing opportunity to closely observe the workings of the insurance mechanism and to do so from the public's viewpoint. Thus, in this sense, as well as from reviewing the studies made by the NAIC, DOT and individual insurance departments, we feel our observations will contribute to your deliberations.

The fault versus no fault concept poses numerous complex and difficult issues. Among the factors requiring primary consideration are finding a means to assure that payments are made promptly, that the distribution of claims payments is an equitable one, and that a greater percentage of each premium dollar is paid out to victims.

In addition, consideration must be given to: overlapping coverages and premiums, flexibility, and impact on rehabilitation. Implicit in these factors are conflicting attitudes and objectives. Public clamor over increased automobile insurance premiums has significantly added to the pressure for change. Proponents of no fault are urging that virtually all injuries be compensated regardless of fault. These are conflicting objectives—i.e. lower cost versus increased benefits. Thus a basic question becomes what benefits the public wants, what benefits the public is willing to forego, and what cost level the public is willing to accept.

The final report of the Department of Transportation, as well as Secretary Volpe's presentation, highlighted the multiplicity of options confronting us and the need for experimentation. For example, the report named six basic areas of consideration, each area involving numerous subconsiderations within itself: (1) the legal rule governing reparations, (2) the role of insurance, (3) the kinds of losses to be compensated, (4) private versus social insurance, (5) compulsory versus voluntary insurance, and (6) insurance and the loss minimization objective.[3] Alternative approaches raised include (1) retain the status quo, (2) improve the present tort legal liability system (e.g. judicial reform, shift to comparative negligence, regulate contingency fees, etc.), (3) rely on evolutionary reform by combining fault and no fault coverages, (4) establish a total no fault system, and (5) utilize government insurance.[4]

In spite of the mass of research conducted, the general public has no clear concept of what is involved or the ramifications posed by the various alternative methods. The DOT report's section on public opinion makes this quite obvious:

"In general, these surveys indicate that *the public has mixed attitudes* about the performance of various aspects of the system, is generally ill-informed about the current system, and, on the whole, shows an openness to change when made aware of alternatives to the present system."[5] (Emphasis supplied.)

In short, a clear and informed consensus has not yet emerged.

With these and other factors in mind, the NAIC has said:

"Because factors, concepts, values, and attitudes vary from locale to locale, this public policy decision can best be made on a state-by-state basis rather than at the federal level. This, in turn, affords the opportunity to test and experiment with different approaches on a limited basis. After a period of experience with different plans, the better solution(s) will emerge. *The NAIC therefore, opposes the adoption of basic changes in the liability system on a federal level, but encourages experimentation with different alternatives on a state-by-state basis.* Whatever the system, the various state insurance regulators can regulate for the public interest most effectively because of the varied needs of a differing populace in the several states. *The public, by its responses to legislation and by the decisions it makes in the market place in accepting or rejecting various coverages and services offered, will ultimately settle the issue.*"[6] (Emphasis supplied)

This remains the judgment of the NAIC. Furthermore, it has been subsequently fortified by both Secretary Volpe's statement before the Senate Commerce Committee[7] and by the DOT report which said:

---

[3] See DOT, *Motor Vehicle Crash Losses and their Compensation in the United States*: a Report to the President and Congress 101–111 (March 1971) (hereafter cited as the DOT Report).

[4] See *id* at 112–127.

[5] *Id* at 81.

[6] NAIC Statement of Position, note 2 supra at 17.

[7] "Nor will I attempt to assess here the relative merits of all the various reform plans that have been offered as alternatives to the present system. In this thicket, there is plainly much less of a consensus: the complexity of the subject and its problems make possible an almost limitless number of combinations, permutations and variations of recovery rules, insurance coverages, etc." Statement of Secretary of Transportation John A. Volpe before the Senate Commerce Committee, March 18, 1971, p. 2.

"Moving in stages toward such a goal would allow us to test its virtues and discover its faults, thereby giving us new knowledge that could serve to modify the goal itself. A little observation is worth a great deal of speculation, and State experience with diverse plans will provide us with that opportunity for pilot project testing which must precede massive reform." [8]

Furthermore, Secretary Volpe said:

"First, it seems clear, at least to us, that *there remains much legitimate uncertainty about how far and how fast the public wants or is willing to go in* changing the reparations system. It is also clear that *there exists genuine and warranted concern as to the unknown and essentially unknowable price and cost implications of any major change in the system*, which of course would ultimately affect the cost and quality of service to consumers of insurance. Regulators and other responsible public officials would appear to share these feelings. We, ourselves, don't claim to have definite answers to these questions either. As a result, it seems to us that we should seek change through State action, but consistent with the broad outlines or principles of a system such as that described below. We need not and do not insist that a single reform system be imposed upon all the States. The experience of the States should have much to tell us about the most desirable final configuration of the motor vehicle reparations system." [9] (Emphasis supplied)

In brief, we simply don't know at this point what the answer or combinations of answers are. With all due respect to the advocates of the federal no-fault plan, we submit that no one knows the answers to these questions (and others which could be posed)—and until we do, no one knows what final form a national program should take.

4. CAVEATS ON FEDERAL MANDATED STANDARDS AND VOLUNTARY GUIDELINES

Secretary Volpe urged that change commence now and the Administration is supporting a joint concurrent resolution putting the states on notice that they are expected to resolve this problem within a reasonable period of time. We don't disagree that some change is needed, although the magnitude or direction of change is subject to intense debate.

a. *Immediate Uniform Massive Change is Premature.*—At the one extreme the proposed Uniform Motor Vehicle Insurance Act would establish rigid statutory standards as to what must be in an automobile insurance policy. Such an approach has the practical effect of destroying flexibility and tends to freeze in limitations in coverage.[10] Perhaps even worse, the uniformity imposed would preclude the consuming public from the opportunity to register its choice over a meaningful period of time and thereby make the insurance mechanism responsible to the public's evolving concept as to the appropriate balance between benefits and costs.

b. *The Cost Factor.*—No matter how hard we try, it is either impossible or foolhardy to ignore the ramifications of the cost of any given program or alternative. As the NAIC staff study pointed out:

"In appraising the worth of any system, a very important consideration is the cost of such system as compared to the cost of possible alternatives. Public clamor over increasing automobile insurance premium levels has significantly added to the pressure for change.

". . . the NAIC strongly supports efforts to reduce the cost of automobile insurance to the public to the extent that such reductions are consistent with other major objectives. It must be remembered that no program can meet all demands since the demands themselves are frequently in conflict. It is virtually impossible to pay more accident victims more dollars and reduce costs at the same time. Thus, whatever changes are recommended they should be evaluated with a view towards the best balance possible between *conflicting objectives and particularly between the objectives of increased benefits and cost savings.*" [11] (Emphasis supplied)

As the DOT report noted, "consumer attitudes about automobile insurance have shown its cost to lead all other concerns." [12] Consequently any program

---

[8] *DOT Report*, p. 133.

[9] Volpe's statement, note 7 supra at 3.

[10] The chief advantage of a standard policy is that it facilitates prior comparisons. In the past, uniform terms have often lead to uniform and non-competitive prices. Competition in policy terms usually leads to more innovative contrasts and broader terms.

[11] NAIC Report, note 2 supra at 103.

[12] DOT Report at 138.

which does not afford the consumer an opportunity to relate the benefits he desires to the costs he must pay may create more public dissatisfaction than it eliminates.

This point is particularly relevant to a program such as automobile insurance whose costs are bound to increase. The DOT report has recognized:

"Perhaps the most pervasive influence upon automobile insurance as a public issue in recent years has been inflation."[13]

In effect, an automobile insurance company is a mass purchaser of a variety of goods and services such as medical, hospital, lawyer and court services, wage replacements, repair goods and services, etc. As the cost of these elements increase, the cost of insurance must do the same.[14]

"If such costs continue to inflate (and there is little reason to hope otherwise), initial cost savings resulting from changing the system would soon be forgotten and public frustration with costs would arise anew. This suggests that, while efficiencies in the system are important, drastic changes aimed at reducing premium levels (or lessening increases) may result in only temporary relief." [15]

Much of the American motoring public is being led to believe that no fault is a panacea, bringing with it broader coverage, payment in all cases, and lower costs. The idea that something must be given up in order to get something else back has not yet registered in many quarters. The passage of the proposed legislation, without a preliminary period of trial and error during which the public would become educated as to its advantages and disadvantages and would be able to relate its wants to its costs by choice in the free market, could set the stage for massive public disenchantment with all who were connected with its enactment.

The establishment of minimum mandatory benefits, such as those being discussed, in a federal statute poses far reaching, long-term ramifications. In fact, the same can be said, although perhaps to a lesser extent, as to the establishment of federal guidelines to which the states should strive since such guidelines would tend to become the minimum norm of consumers' expectations as to what they are "entitled to: by right."

If the cost of such benefits exceeds what the public is willing to pay, federal subsidies may be necessary and you should be prepared to recognize that potential need.

c. *Cause for Skepticism.*—Though we don't question the conviction of the proponents of this proposed federal act as to the rightness of their solution, past experience with massive federal programs entitles us to voice some skepticism. For example, we launched into Medicare and Medicaid without an adequate exploration and testing to ascertain the cost implications; the impact on the delivery of health, etc. The program is now being devoured by expenses, the demand on medical facilities has skyrocketed, and now a few short years later persons are advocating scrapping these programs and launching into something else. In conjunction with national health plans it has been said:

"There must be a critical review not only of the estimated cost of such proposals but with the financing mechanisms as well as with the services which are expected to be provided. At the moment, in the rush to design these new proposals, it appears to be forgotten that the planners of Medicare and Medicaid grossly underestimated the cost of these programs. They also gave little heed to the existing shortage of health manpower facilities which had been seriously aggravated by these new programs." [16]

This observation could apply with equal force to the proposals for federal automobile insurance reform. Forecasts as to the costs of this system are necessarily conjectural. It is only by a process of trial and error that the public will ascertain the true costs and only by experimental efforts at the state level can the best solution be found and earlier mistakes more readily rectified before they assume unmanageable proportions.

This example, as well as other examples which could be named, is not cited in criticism of the results which were sought but rather as an example of what occurs when massive federal involvement and planning on a nationwide uniform basis in complex areas precedes or supersedes the market mechanism as an allo-

---

[13] *Id* at 61.

[14] E.g. over the past decade, doctors' fees and hospital daily service charges increased 58% and 155% respectively. *Id* at 61.

[15] NAIC report, note 2 supra 103.

[16] Wheatley, "Promises and Problems of National Health Insurance," an address before the American Pension Conference, N.Y., N.Y., March 1971.

cator of economic resources. Original concepts which were so convincingly put forth have often proved to be wrong, but the adverse consequences of the error have been "frozen in" over a period of time.

Let's avoid making a similar mistake as to automobile insurance, which involves 100 million automobile drivers and nearly all American families. This is the message Secretary Volpe is conveying when he emphasizes the need for experimentation. Certainly the Ontario Experience—where motorist rejected coverage combining the fault and no-fault concepts put forth on a voluntary basis—should give one pause in mandating a fixed uniform standard on a nationwide basis.

d. *Federal Guidelines.*—Although we support the state-by-state approach of the Administration, we do have reservations concerning the adoption of federal guidelines or objectives such as those in the proposed concurrent resolution. Such standards, in addition to the concern previously mentioned above as to the creation of certain expectations, tend to prejudge what the market place has not yet passed upon—e.g., the choice of an essentially no fault over a reformed fault system, the determination that automobile insurance should be the primary coverage, etc. Such standards tend to restrict the range in which proposed changes would fall and hence the range of consumer choice. This does not say that the choices implicit in the standards proposed are incorrect but rather they are premature. If there are to be minimum federal standards, we feel that broader standards which give greater meaning to experimentation should be adopted. The minimum criteria for any automobile insurance system as stated by the NAIC in its Statement of Position on Automobile Insurance could be a sample of the kind of federal standards that would be meaningful.[17] Nevertheless, a resolution by Congress expressing both the need and its will for prompt state action in exploring, testing and implementing improvements in the existing system would be an appropriate indication of the sense of Congress. This would serve notice on both the business and the states that progress is expected.

5. A TIME FOR CHANGE AND CURRENT MOMENTUM

All of this is not to argue for the status quo, nor to minimize the impact of the landmark DOT study, congressional hearings, academic works, state insurance departments' efforts and NAIC research. Quite to the contrary, each of these have significantly contributed to the emerging consensus that improvements are needed and have pointed out possible directions which should be considered and tested. Furthermore, the NAIC supports the Administration's position of recognizing not only the worth but the virtual necessity of a state-by-state approach until a clearer picture emerges as to the right answers—an answer which may vary from state to state or region to region.

To some proponents of the Uniform Motor Vehicle Insurance Act, the state-by-state approach is tantamount to doing nothing. This is incorrect. In addition to the "prod" from Congress in the form of a Congressional resolution, the states are receiving the same pressures for change that Congress receives. Few if any argue for the status quo. The basic research study is done. As of the early part of this month, we understand that no less than 28 states are now considering no fault or modified no fault legislation. (Other states have created study commissions. Some may be waiting to capitalize on the experimentation of others and others no doubt are waiting to see if Congress is going to preempt the field or give the states time to act.) The proposals range from the complete no fault program of the American Automobile Insurance Association to those which primarily seek to improve the existing legal liability system such as the American Trial Lawyer's Reform package with all sorts of variations in between.

---

[17] "Whatever is decided as to the appropriate legal framework, the NAIC believes that any automobile insurance system should include as a minimum the following elements:

"A. ready access to insurance for all licensed drivers at prices which are reasonable, with a means to purchase insurance through an assigned risk mechanism for those who cannot purchase it in the voluntary market.

"B. provision for prompt payment of basic economic loss and improved claims procedures.

"C. provision for protection from insolvencies, uninsured motorists and hit-and-run drivers, etc.

"D. meaningful classifications which are broad enough to spread risks and yet not so broad as to lessen availability of coverage.

"E. a responsive and meaningful pricing and marketing system.

"F. protection for the insured against arbitrary and unfair cancellation and nonrenewal.

"G. full disclosure of the nature of the coverage to the purchaser."

Secretary Volpe, in his statement before the Senate Commerce Committee, said:

"Further change in the auto reparation system at the state level has clearly moved off dead center and would appear to be achieving some momentum. I could not have made that statement a year ago. I think this constructive move should be encouraged, perhaps guided and helped but not preempted by federal action." [18]

The activities mentioned above support the basis for the Secretary's beliefs and clearly demonstrate the heightened momentum. At this point, with so many different and sometimes conflicting ideas "floating around," and so much uncertainty as to what should be done, it is too early to predict what the states will and will not do. But events are moving sufficiently so, in our judgment, to warrant giving the states an adequate opportunity to act. If past experience is any guide, a variety of approaches will be tested and the best features of the various programs will emerge. At that point, the trend will be towards a more uniform system throughout the various states.

Of course, during the period of experimentation, we would be going through a phase when a number of different plans would be used in a number of different states. America is a mobile nation. Complications can be expected in the administration of a system as significant portions of the public journey across state lines. During this period, insurers operating across state border will have to provide for the variations in coverage through appropriate endorsements. It will present some administrative problems for the insurers and regulatory problems for the states. But this is a small price to pay compared to the damage which could occur if an ill-considered national program was imposed upon the nation in one installment from the top.

6. FEDERAL REGULATORY INTERVENTION

Although most attention on the proposed Uniform Motor Vehicle Insurance Act has focused on the mandating of the no fault concept, the Act poses another fundamental issue—i.e. state versus federal regulation of automobile insurance. There can be no mistake as to the pervasive regulatory power vested in the Secretray of Transportation. For example, the Secretary would (1) determine and approve the financial substitutes for insurance (i.e. bonds, self insurance), (2) determine by rules and regulations the percentage of responsibility for net economic loss assigned to motor vehicles larger than ordinary passenger cars, (3) approve policy terms, conditions, exclusions, and deductibles, (4) promulgate a uniform statistical plan for compilation of claims and loss experience which every insurer must follow, (5) require standard uniform and standard minimal policy provisions, classes of risks, and rating territories, (6) prescribe rules and regulations under which insurers would submit premiums being charged for each class of risk in each rating territory, (7) make available a comparison of insurers' rates based upon claim and loss experience, (8) organize an assigned claims bureau in each state, and (9) make, amend, and repeal rules and regulations as he deems necessary.

Under existing state law, the insurance department possesses comprehensive regulatory authority over insurers doing business therein. For example, state regulation encompasses these elements: (1) the incorporation of companies (qualifications, capital and surplus requirements, etc.), (2) the specification of required reserves, (3) the specifications of the areas in which insurance assets may be invested, (4) the approval of policy forms, (5) the supervision or monitoring of rates (for adequacy, excessiveness and non-discrimination), (6) the collection of statistics and the making of reports, (7) the examination of companies to determine if reserves are adequate, investments comply with the law, claim practices are satisfactory, etc. (8) the licensing and supervision of those who sell insurance, and (9) provision for residual coverages such as the assigned risk plans.

The regulatory overlap is substantial and clear. Confusion, waste, an increasingly complex system, and extra cost to the taxpayer in administering the automobile insurance is bound to result. We submit that such a dual system is not in the public interest.

In this connection, it should be pointed out that the DOT report recognized that "* * * the basic determinant of the size and nature of the compensation requirment, i.e., car crash losses, is almost entirely, if not completely, a function of outside forces—traffic law enforcement, safety measure, car design, driver licensing

[18] Volpe's statement, note 7 supra at 4.

and education, highway design, etc. Loss costs, themselves, reflect the prices being charged in the market place for hospital and medical care, auto repair and replacement parts, legal services, the cost of vehicles, etc., and they, too, cannot be significantly influenced, at least directly, by the compensation mechanism."[19]

The NAIC earlier reached the same conclusion.

"(Traffic safety or the absence thereof, the economic climate within which automobile insurance functions and the legal system upon which it rests) have a fundamental impact on the cost and the operation of the automobile insurance system despite the fact that they are external to the system and not subject to that system's control. Nevertheless they comprise the framework within which the system functions. Although the insurance system has its defects, some of the basic problems are caused externally and can only be remedied outside the system. Congress, various federal agencies and administrations, the judicial system, the providers of medical services, the automotive industry, state activity or lack thereof in traffic safety, etc., all have contributed to the basic problems."[20]

Thus the insurance industry and the regulators thereof have had to function in a legal, social and economic environment not of its own choosing. The problems stemming from this environment should not be translated into discarding those operating within it as long as they commit themselves to adjust to a new environment when it comes about. The DOT report, as the outset, made this same point:

"The conclusions made about the present system and its operations should not be interpreted to reflect adversely on any of the participants. The subject under investigation was in fact the 'system' and not those who have tried to make it run and improve it. The conclusions are directed to the system."[21]

Furthermore, the Administration in the proposed resolution stated that "the principal problems and abuses with respect to automobile insurance stem from the defects in the system for compensating accident victims * * * rather than from defects in the insurance institution or in its regulation by the several states * * * " Consequently, shifting to a federal regulatory mechanism (even if federal guidelines or objectives are adopted) is not warranted nor recommended by the comprehensive studies made. As indicated earlier, the state insurance regulating mechanism has no vested interested other than its commitment to meeting the public needs in the extent to which the tort liability system is modified or eliminated. We regulate the providing of insurance now and can continue to do so on either a fault or no fault basis on either basis.

7. A PRACTICAL NOTE

As has been aptly pointed out elsewhere and referred to in this statement, inflation has been the prime cause in rate increases. Thus the basic responsibility for the problem generated rests in Washington. Public expenditures, increase in governmental activities, deficits, monetary policy, taxation, etc., all (with the exception of monetary policy) under the control of Congress largely determines the presence or absence of inflation.

This is not to say that improvements cannot or should not be made in the insurance mechanism at the state level. They should be made and they are being made. But the respite will only be temporary if inflation continues to take its inexorable toll. Efforts by Congress to deal with inflation, often hampered by political considerations, have not been effective thus far and there is national pessimism about the likelihood of any improvement in the picture.

8. SUMMARY

The basic issue with which we are confronted is the appropriate means to test and/or implement the no fault concept as it applies to motor vehicle insurance. Whether or not this concept or some variation should be adopted is a question of public policy which extends beyond the traditional confines of insurance and the regulation thereof. Whatever the decision, however, the state insurance departments have and continue to be prepared to regulate in the public interest.

This whole question involves a host of complex factors, conflicting objectives and a multiplicity of alternatives. As the DOT report documented, the public

---

[19] *DOT Report*, p. iv.

[20] *Report of the NAIC Special Committee on Automobile Insurance Problems*, 15 (June 1969).

[21] DOT Report, p. iv.

attitudes, and understandably so, are confused and "mixed." As a consequence, the NAIC opposes the enactment of the proposed no fault legislation on a federal national level and recommends experimentation on a state by state basis to resolve the problems posed in a manner responsive to the public's choice in the market place reflecting its balance between benefits it wants at costs it is willing to pay. A Congressional mandate as to mandatory and uniform coverage would destroy flexibility, freeze in error and preclude choice and self determination. Massive federal involvement, particularly in light of the substantial cost implications, would seem to be premature. Similarly we express reservations as to the establishment of federal guidelines or objectives since these would prejudge what the market has not yet passed upon and would tend to inhibit the range of consumer choice.

These comments are not to argue for the status quo nor against the no fault concept set out in the proposed legislation. We agree that some change is needed, although the extent is subject to debate. The NAIC supports utilizing the state by state approach to ascertain the best plan or plans. This process is already well underway as indicated by the already extensive activity at the state level.

Furthermore, the NAIC opposes legislation which interjects an extensive federal regulatory mechanism over automobile insurance. Such would create duplicatory regulation, confusion and unnecessary taxpayer expenses. Both Secretary Volpe's statement and the comprehensive DOT study clearly indicate that such intervention is not warranted so long as the states can continue to adjust to the changing environment. Furthermore, the proposed statute with its mandatory uniformity and inflexibility would turn back the clock 25 years to recreate what the antitrust laws and the Senate Antitrust and Monopoly Subcommittee have attempted to discourage these past many years.

In short, the NAIC endorses the Administration's positions of experimenting with different approaches at the state level. If Congress believes that some type of Congressional action is necessary, we feel that the resolution approach is the most appropriate. However, the inclusion of specific federal standards in such a resolution would be premature and would intend to inhibit the wide range of experimentation which it seeks to achieve. On the other hand, the resolution could express the "sense of Congress" by pointing out the problems, taking cognizance of the various studies and conflicting objectives and calling upon the states, the industry and other interested parties to develop and test solutions within a reasonable period of time, such as five years. Failure to do so could be construed as an invitation for Congress to undertake the task.

OREGON LEGISLATIVE ASSEMBLY—1971 REGULAR SESSION

HOUSE BILL 1299

Sponsored by COMMITTEE ON STATE AND FEDERAL AFFAIRS (at the request of the Insurance Commissioner's Special Advisory Committee on Auto Insurance)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Declares that making of advance payments in personal injury and property damage cases is not admission of legal liability for injury or damage. Prevents suspension of statute of limitation in such cases if appropriate notice is given. Provides for reduction of amount of any judgment obtained by person to whom advance payments were made, in amount of such advance payments.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with section.

Be It Enacted by the People of the State of Oregon:

A BILL FOR AN ACT Relating to damages for death, injury or destruction

SECTION 1. As used in this Act, "advance payment" means compensation for the injury or death of a person or the injury or destruction of property prior to the determination of legal liability therefor.

SEC. 2. (1) Advance payment made for damages arising from the death or injury of a person is not an admission of liability for the death or injury by the person making the payment unless the parties to the payment agree to the contrary in writing.

(2) For the purpose of subsection (1) of this section, advance payment is made with or to:

(a) The injured person;

(b) A person acting on behalf of the injured person with the consent of the injured person; or

(c) Any other person entitled to recover damages on account of the injury or death of the injured or deceased person.

SEC. 3. Any advance payment made for damages arising from injury or destruction of property is not an admission of liability for the injury or destruction by the person making the payment unless the parties to the payment agree to the contrary in writing.

SEC. 4. No advance payment referred to in section 2 or 3 of this Act is admissible in evidence in any action for damages arising from a death, injury or destruction for which any such advance payment has been made.

SEC. 5. (1) If the person who makes an advance payment referred to in section 2 or 3 of this Act gives to each person entitled to recover damages for the death, injury or destruction, not later than 30 days after the date the first of such advance payments was made, written notice of the date of expiration of the period of limitation for the commencement of an action for damages set by the applicable statute of limitations, then the making of any such advance payment does not suspend the running of such period of limitation. The notice required by this subsection shall be in such form as the Insurance Commissioner prescribes.

(1) If the notice required by subsection (1) of this section is not given the time between the date the first advance payment was made and the date a notice is actually given of the date of expiration of the period of limitation for the commencement of an action for damages set by the applicable statute of limitations is not part of the period limited for commencement of the action by the statute of limitations.

SEC. 6. (1) If judgment is entered against a party on whose behalf an advance payment referred to in section 2 or 3 of this Act has been made and in favor of a party for whose benefit any such advance payment has been received, the amount of the judgment shall be reduced by the amount of any such payments in the manner provided in subsection (2) of this section. However, nothing in this Act authorizes the party on whose behalf advance payment has been made to recover such advance payment if no damages are awarded or to recover any amount by which the advance payment exceeds the award of damages.

(2) The amount of any advance payment made may be submitted by the party making the payment in the manner provided in ORS 20.210 and 20.220 for the submission of disbursements. Unless timely objections are filed as provided in ORS 20.210, the court clerk shall apply the amount of the advance payments claimed pursuant to this subsection in partial satisfaction of the judgment. Such partial satisfaction shall be allowed within regard to whether the party claiming the reduction is otherwise entitled to costs and disbursements in the action.

PREVIOUS AMENDMENTS

By House, March 25

SECOND HOUSE AMENDMENTS TO HOUSE BILL 1299

By COMMITTEE ON STATE AND FEDERAL AFFAIRS

April 27

On page 3 of the printed bill, line 1, delete the first "(1)" and insert "(2)".

OREGON LEGISLATIVE ASSEMBLY—1971 REGULAR SESSION

HOUSE BILL 1300

Sponsored by COMMITTEE ON STATE AND FEDERAL AFFAIRS (at the request of the Insurance Commissioner's Special Advisory Committee on Auto Insurance)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Requires insurers issuing automobile liability policies to provide minimum medical payments and loss of income benefits. Authorizes deduction of certain duplicate benefits from such coverages. Provides for reimbursement of benefits between insurers and arbitration of liability and amount of reimbursement. Effective January 1, 1972.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with section.

A BILL FOR AN ACT Relating to motor vehicle insurance benefits; creating new provisions; amending ORS 731.418 and 743.786; and prescribing an effective date

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 9 of this Act are added to and made a part of ORS 743.786 to 743.792.

SEC. 2. Every motor vehicle liability policy issued or delivered in this state that covers any private passenger motor vehicle shall provide to the person insured thereunder and members of his family residing in the same household injured in a motor vehicle accident, guest passengers injured while occupying the insured motor vehicle and pedestrians struck by the insured motor vehicle, the following hospital, medical and disability benefits for each accident:

(1) All reasonable and necessary expenses for medical, hospital, dental, surgical, ambulance and prosthetic services incurred within one year after the date of the accident, in the amount of $3,000 per person; and

(2) If the injured person is usually engaged in a remunerative occupation, 85 percent of the loss of income from work during the period commencing 14 days after the date of the accident and ending on the date the injured person is able to return to his usual occupation; or

(3) If the injured person is not usually engaged in a remunerative occupation, the expenses reasonably incurred for essential services in lieu of those the injured person would have performed without income during the period commencing 14 days after the date of the accident and ending on the date the injured person is reasonably able to perform such essential services.

(4) As used in this section, "income" includes but is not limited to salary, wages, tips, commissions, professional fees, and profits from an individually owned business or farm.

SEC. 3. (1) With respect to the insured and members of his family residing in the same household, an insurer may offer deductible forms up to $250, of coverage for the benefits required by subsection (1) of section 2 of this 1971 Act.

(2) Notwithstanding section 2 of this 1971 Act:

(a) The benefits referred to in subsection (2) of section 2 of this 1971 Act need not exceed $500 per month or be paid for a period exceeding 52 weeks.

(b) The benefits referred to in subsection (3) of section 2 of this 1971 Act need not exceed $12 per day or be paid for a period exceeding 52 weeks.

(3) All benefits required by section 2 of this 1971 Act shall be paid promptly after proof of loss has been submitted to the insurer.

(4) The existence of a potential cause of action in tort that arises out of an accident does not relieve an insurer of the duty to pay the benefits to the injured person as required by section 2 of this 1971 Act.

SEC. 4. The benefits required by section 2 of this 1971 Act, with respect to:

(1) Injuries to the insured and members of his family residing in the same household shall be primary, but such benefits may be reduced or eliminated if they are similarly provided under another motor vehicle liability policy that covers the injured person, or if the injured person is entitled to receive under the laws of this state or any other state of the United States, workmen's compensation benefits or any other similar medical or disability benefits.

(2) Guest passengers injured while occupying the insured motor vehicle, and with respect to pedestrians injured by the insured motor vehicle, may be excess over any other collateral benefits to which the injured person is entitled, including but not limited to insurance benefits, governmental benefits or gratuitous benefits.

SEC. 5. (1) The insurer may exclude from coverage of the benefits required by section 2 of this 1971 Act any injured person:

(a) Whose injury resulted from an accident in which he is convicted of violating ORS 164.650, 164.670, subsection (1) of 482.040, ORS 482.650, 483.049 or subsection (2) of 483.992;

(b) Who intentionally causes injury to himself; or

(c) Who is participating in any prearranged or organized racing or speed contest or in practice or preparation for any such contest.

(2) The insurer may exclude from coverage of the benefits required by subsection (2) of section 2 of this 1971 Act any person injured in an accident outside this state if that injured person is not the named insured, a member of the named insured's family residing in his household or a guest passenger in motor vehicle owned or operated by the named insured.

SEC. 6. Nothing in this 1971 Act is intended to prevent an insurer from providing more favorable benefits than those required by section 2 of this 1971 Act.

SEC. 7. (1) Every insurer that transacts motor vehicle liability insurance, if its insured is or would be held legally liable for damages for injuries sustained by a person to whom benefits required by section 2 of this 1971 Act have been paid by another insurer, shall reimburse such other insurer for the benefits so paid in an amount not to exceed the damages so recoverable. Disputes between insurers as to the issues of liability for and the amount of the reimbursement required by this subsection shall be decided by arbitration.

(2) Findings and award made in an arbitration proceeding referred to in subsection (1) of this section are not admissible in any action at law or suit in equity.

SEC. 8. If an insurer has paid benefits required by section 2 of this 1971 Act to a claimant injured by a person who is not covered by a motor vehicle liability policy issued by an insurer authorized to issue such policies in this state:

(1) The insurer shall be entitled to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of the claimant against any uninsured motorist legally responsible for the bodily injury because of which such payment is made;

(2) The claimant shall hold in trust for the benefit of the insurer all rights of recovery which he shall have against such uninsured person because of the damages which are the subject of claim made under this coverage, but only to the extent that such claim is made or paid herein;

(3) The claimant shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;

(4) If requested in writing by the insurer, the claimant shall take, through any representative not in conflict in interest with the claimant, designated by the insurer, such action as may be necessary or appropriate to recover such payment as damages from such uninsured person, such action to be taken in the name of the claimant, but only to the extent of the payment made hereunder. In the event of a recovery, the insurer shall be reimbursed out of such recovery for expenses, costs and attorney fees incurred by it in connection therewith; and

(5) The claimant shall execute and deliver to the insurer such instruments and papers as may be appropriate to secure the rights and obligations of the claimant and the insurer established by this provision.

SEC. 9. Payment of any benefit required by section 2 of this 1971 Act to or for any insured shall be applied in reduction of the amount of damage that the insured may be entitled to recover from any insurer under bodily liability or uninsured motorist coverage for the same accident.

Section 10. ORS 731.418 is amended to read:

731.418. (1) The commissioner may refuse to continue or may suspend or revoke an insurer's certificate of authority if he finds after a hearing that the insurer:

(a) Has violated or failed to comply with any lawful order of the commissioner, or any provision of the Insurance Code other than those for which suspension or revocation is mandatory;

(b) Is in unsound condition, or in such condition or using such methods and practices in the conduct of its business, as to render its further transaction of insurance in this state hazardous or injurious to its policyholders or to the public.

(c) Has failed, after written request by the commissioner, to remove or discharge an officer or director who has been convicted in any jurisdiction of an offense which, if committed in this state, constitutes a misdemeanor involving

moral turpitude or a felony, or is punishable by death or imprisonment under the laws of the United States, in any of which cases the record of his conviction shall be conclusive evidence.

(d) Is affiliated with and under the same general management, interlocking directorate or ownership as another insurer that transacts direct insurance in this state without having a certificate of authority therefor, except as permitted under the Insurance Code.

(e) Refuses to be examined; or its directors, officers, employes or representatives refuse to submit to examination relative to its affairs, or to produce its accounts, records and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination.

(f) Has failed to pay any final judgment rendered against it in this state upon any policy, bond, recognizance or undertaking issued or guaranteed by it, within 30 days after the judgment became final, or within 30 days after time for taking an appeal has expired, or within 30 days after dismissal of an appeal before final determination, whichever date is the later.

(g) Fails to comply with subsection (1) of section 7 of this 1971 Act.

(2) Without advance notice or a hearing thereon, the commissioner may suspend immediately the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings, have been commenced in any state by the public insurance supervisory official of such state.

Section 11. ORS 743.786 is amended to read:

743.786. As used in ORS [*743.789*] 743.786 to 743.792:

(1) "Uninsured motorist coverage" means coverage within the terms and conditions specified in ORS 743.792 insuring the insured, his heirs or his legal representative for all sums which he or they shall be legally entitled to recover as damages for bodily injury or death caused by accident and arising out the ownership, maintenance or use of an uninsured motor vehicle in amounts or limits not less than the amounts or limits prescribed for bodily injury or death for a policy of insurance meeting the requirements of ORS chapter 486.

(2) "Motor vehicle" means every self-propelled device in, upon or by which any person or property is or may be transported or drawn upon a public highway, but does not include:

(a) Devices used exclusively upon stationary rails or tracks;

(b) Motor busses, motor trucks or taxicabs as defined in ORS 481.030, 481.035 and 481.050, when the insured has employes who operate such busses, trucks or taxicabs and such employes are covered by any workmen's compensation law, disability benefits law or any similar law; or

(c) Farm-type tractors or self-propelled equipment designed for use principally off public highways.

SEC. 12. This Act takes effect on January 1, 1972.

OREGON LEGISLATIVE ASSEMBLY—1971 REGULAR SESSION

HOUSE AMENDMENTS TO HOUSE BILL 1300

By COMMITTEE ON STATE AND FEDERAL AFFAIRS

May 6

On page 2 of the printed bill, line 7, delete "or delivered" and insert "for delivery".

On page 2, line 8, after "vehicle" insert "other than a motorcycle".

On page 2, line 18, delete "85" and insert "70."

On page 3, after line 10, insert:

"(5) Disputes between insurers and beneficiaries as to the amount of the benefits shall be decided by arbitration.".

On page 3, delete lines 27 through 29.

On page 3, line 30, delete "(b)" and insert "(a)".

On page 3, line 31, delete "(c)" and insert "(b)".

On page 4, line 11, delete "paid" and insert "furnished" and in the same line after "insurer," insert "or for whom benefits have been furnished by a health insurer or health care service contractor,".

On page 4, line 12, delete "insurer" and insert "insurers and other contractors furnishing such benefits" and in the same line delete "paid" and insert "furnished".

On page 4, line 13, after "recoverable" insert "if the other insurer and contractor are entitled to such reimbursement by the terms of their policy or agreement" and in the same line after "insurers" insert "and contractors".

On page 4, line 20, after "Act" insert "or a health insurer or health care service contractor has furnished benefits".

On page 4, line 23, after "insurer" insert "or contractor".

On page 4, line 25, delete "uninsured".

On page 4, line 28, after "insurer" insert "or contractor".

On page 4, line 29, delete "uninsured".

On page 4, delete line 30.

On page 4, line 31, delete "coverage".

On page 4, line 34, after "insurer" in sert "or contractor."

On page 5, line 2, after "insurer" insert "or contractor."

On page 5, line 3, delete "uninsured".

On page 5, line 5, delete "hereunder" and insert "by the insured or contractor" and in the same line after "insurer" insert "or contractor".

On page 5, line 8, after "insurer" insert "or contractor".

On page 5, line 10, after "insurer" insert "or contractor".

On page 5, line 12, after "insured" insert "and any payment required by section 7 of this 1971 Act to any health insurer or health care service contractor".

OREGON LEGISLATIVE ASSEMBLY—1971 REGULAR SESSION

HOUSE BILL 1343

Sponsored by COMMITTEE ON JUDICIARY (at the request of the Committee on Procedure and Practice of the Oregon State Bar)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Replaces doctrine of contributory negligence with doctrine of comparative negligence. Diminishes recovery proportionately to negligence of person recovering.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with Section.

A BILL FOR AN ACT Relating to comparative negligence in civil actions.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Contributory negligence, including assumption of the risk, shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or injury to person or property if such negligence contributing to the injury was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of such negligence attributable to the person recovering.

Features	Proposed National no-fault bill (committee print No. 1 of S. 945	Puerto Rico law (act No. 138 of 1968; effective July 1, 1969)	Massachusetts law (acts of 1970, c. 670 and 774; effective Jan. 1, 1971)	Florida law (acts of 1971, C. 71-252; effective Jan. 1,1972)	Delaware law (H.B. No. 270 of 1971; effective Jan. 1, 1972)	Oregon law (H.B. No. 1851 of 1971; effective Jan. 1, 1972)	Illinois law
A. No-fault personal injury benefits:							
1. Costs of medical, hospital, surgical, nursing, etc. services	All such expenses reasonably and necessarily incurred.	All that the condition of victim requires, in accordance with regulations of Automobile Accident Compensation Administration.	To a maximum limit of $2,000 [1] (must be incurred within 2 years of accident).	To a maximum limit of $5,000 [2].	To a maximum limit of $20,000 [3] for all persons injured in any 1 accident; $10,000 [3] for any 1 person.	All reasonable charges for reasonably necessary products, services and accommodations for an injured person's care, recovery and rehabilitation.	To a maximum limit of $2,000 [4].
2. Rehabilitation	All such expenses reasonably and necessarily incurred—for psychiatric, physical and occupational rehabilitation.	All as per regulations	None, except for cost of prosthetic devices.	do [2]	None, except for cost of prosthetic devices.	All reasonable charges for reasonably necessary services for injured person's rehabilitation.	None, except for cost of prosthetic devices.
3. Lost wages, earnings and prospects of earnings.	All lost after income-tax earnings for period during which injury results in inability to work including lost earnings anticipated or reasonable expectable (up to $1,000 a month, indefinitely).	50 percent of lost salary, $50 a week maximum for 1st 52 weeks, $25 a week maximum for 2d 52 weeks.	75 percent of actual lost wages to a maximum limit of $2,000.[1]	85 percent of lost pre-income-taxes gross income and 100 percent of nontaxable lost income and loss of earning capacity to a maximum limit of $5,000. [2]	"Loss of earnings" to a maximum of $20,000 [3] for all persons injured in any one accident, $10,000 [3] for any 1 person.	$750 maximum [4]	85 percent of lost wages and salary to a limit of $150 per week for 1st 52 weeks, nothing thereafter.
4. Services victim would have performed for self and family.	All such expenses reasonably and necessarily incurred.	No such benefits	To a maximum limit of $2,000. [1]	To a maximum limit of $5,000.[2]	To a maximum limit of $20,000 [3] for all persons injured in any 1 accident; $10,000 [3] for any 1 person.	$750 maximum [4]	$12 a day for 365 days.
5. Funeral expenses.	do	$500. Also "death benefits" of $5,000 to primary dependent" and $1,000 to each 'secondary dependent".	do	$1,000 maximum [2]	$2,000 maximum [3]	$1,000 maximum	$2,000 maximum [5]
6. Attorneys fees.	All such expenses incurred in actually collecting benefits from insurer.	None	None	None	None	Reasonable amount if court finds insurer unreasonably refused to pay benefits or unreasonably delayed making proper payment.	None.

See footnotes at end of table, p. 2434.

Features	Proposed National no fault bill (committee print No. 1 of S. 945	Puerto Rico law (act No. 138 of 1968; effective July 1, 1969)	Massachusetts law (acts of 1970, c. 670 and 774; effective Jan. 1, 1971)	Florida law (acts of 1971, C. 71 252; effective Jan. 1,1972)	Delaware law (H.B. No. 270 of 1971; effective Jan. 1, 1972)	Oregon law (H.B. No. 1851 of 1971; effective Jan. 1, 1972)	Illinois law
B. Intangible personal benefits.	All intangible losses, without regard to fault, measured by applicable State law (optional for insured drivers; mandatory for uninsured pedestrians and passengers).	No such benefits. Pay "dismemberment benefits" up to $5,000.	None	None	None	None	Do.
C. No fault property injury benefits.	An amount equal to the loss, subject to optional deductibles.	None	None at present. Legislation to provide now pending.	An amount equal to the loss (optional).	To a maximum of $300 for loss of use, actual cash value maximum as to vehicle, $5,000 maximum for property other than motor vehicle.	Optional as to damage to motor vehicle owned by insured; mandatory as to damage to property other than a motor vehicle.	Do.
D. Treatment of collateral sources of benefits.	Only as to any public health insurance or plan or any private insurance or plan explicitly so providing.	Benefits received from other sources deducted from benefits under act, except when otherwise provided.	Only as to payments under any program for "continuation of . . . wages or salary or their equivalent" and as to workmen's compensation benefits.	Only as to benefits received under any workmen's compensation law.	No provision	No provision	No provision.
E. Freedom from tort lawsuits.	Total, No owner, operator, or user shall be liable for tort damages unless engaged in criminal conduct.	Exempted from tort liability to extent of benefits received by victim unless loss exceeds $3,000.	Exempted from suit in tort unless plaintiff's hospital and medical espenses more than $500.	Exempted to extent of no-fault benefits payable to plaintiff; exempted from suit in tort unless plaintiff's hospital and medical expenses more than $1,000.	No exemption whatever. Plaintiff precluded from proving damages for which first party compensation is available.	No exemption whatever. After a tort recovery, amount of first-paid benefits received to be subtracted and paid to insurer.	No exemption whatever. But there is a limitation on the amount of general damages recoverable in a tort lawsuit (50 percent of medical costs up to $500; 100 percent of medicals over $500.
F. Insurance company lawsuits (subrogation) permitted?	No	Administration entitled to indemnity from person responsible in case of criminal conduct, intentional injury, etc.	Yes	Yes	Yes	Yes	Yes.

G. Consumer safeguards:							
1. Payment of no-fault benefits—protection in case of refusal to pay by insurer.	Payments made as loss is incurred; if unpaid within 30 days, insurer also must pay interest, at the rate of 2 percent per month on the unpaid amount plus attorneys fees if victim must go to court to collect.	Payments made on a weekly basis. Entire system operated by Government agency.	Benefits paid as loss accrues; if unpaid within 30 days, claimant may sue insurer in contract.	Benefits unpaid within 30 days of date due, insurer also must pay interest, at the rate of 10 percent per annum on the unpaid amount.	No particular method required; no protection in case of nonpayment.	Benefits paid as loss accrues; if unpaid within 30 days insurer must also pay interest at rate of 6 percent per annum on unpaid amount and attorney's fees if unreasonable refuse to pay.	No particular method required; no protection in case of nonpayment.
2. Availability of Insurance.	Policy cannot be cancelled, must be renewed and must be sold to each applicant unless insured or applicant has no valid operator's license or has failed to pay premiums.	do	Subject to exceptions: Policies of those 65 or older, and of those under 65 who are entitled to merit rating discount must be renewed.	No provision for guarantee of availability of insurance.	"Nothing . . . shall be construed to require an insurer to insure any particular risk".	No provision	No provision.
3. Rate regulation and policyholder classifications and policy standards.	States to continue regulating rates except that DOT, with industry and States, will set policyholder classifications and policy standards.	do	No change	No change	No change	No change	No change.
4. Price and claims. Practice disclosure.	All insurers must disclose under a uniform statistical plan, data on claims and loss experience and price of policies. DOT to make this analysis and make information available.	do	No change. No disclosure required in No-Fault law.	No change. No disclosure required under No-Fault law.	No change. No disclosure required.	No change. No disclosure required.	No change. No disclosure required.
5. Protection of beneficiaries.	No part of no-fault personal injury benefits may be applied as attorney's fees; contingent fees permitted as to intangible personal benefits and no-fault property benefits but limited to 25 percent of any award claimant receives.	do	Insurer and claimant may agree to lump sum discharging all no-fault benefit entitlement; no prohibition or restriction of attorney's contingent fees.	No provision	No provision	Lump sum payments in excess of $1,000 must first be approved by court; an "agreement for assignment of any rights to benefits payable in the future is unenforceable."	None.

See footnotes at end of table, p. 2434.

Features	Proposed National no-fault bill (committee print No. 1 of S. 945	Puerto Rico law (act No. 138 of 1968; effective July 1, 1969)	Massachusetts law (acts of 1970, c. 670 and 774; effective Jan. 1, 1971)	Florida law (acts of 1971, C. 71-252; effective Jan. 1,1972)	Delaware law (H.B. No. 270 of 1971; effective Jan. 1, 1972)	Oregon law (H.B. No. 1851 of 1971; effective Jan. 1, 1972)	Illinois law
H. Extraterritoriality provision.	None needed since measure applies to the entire United States, its territories and possessions; no-fault benefits payable in United States for motor-vehicle accident losses to insured citizen in Mexico, Canada and other foreign countries; foreign tort judgments not entitled to full-faith and credit.	None; not necessary because jurisdiction ar island.	None. No exemption from tort liability outside Massachusetts; must carry extra insurance if desire protection from claims of others outside State.	No-fault benefits paid to owner of motor vehicle or relative of owner in accident anywhere in United States or Canada; no exemption from tort liability outside Florida; must carry extra insurance if desire protection from claims of others outside State. Tourist in Florida entitled to no-fault benefits if a pedestrian but not if occupant of a motor vehicle; no exemption from tort suit by tourist-motorist.	None	Mandatory "residual liability insurance" for liability outside Oregon; first-party benefits payable for accident anywhere in United States or Canada.	Do.
I. Source of insurance	Private insurance companies.	Government	Private insurance companies.	Private insurance companies.	Private insurance companies.	Private insurance companies.	Private insurance companies.
J. Categorization of plan	Complete no-fault, no-tort-lawsuit.	Substantial no-fault, no-tort-lawsuit.	Limited no-fault, no-tort-lawsuit.	Limited no-fault, no-tort lawsuit.	Fault, liability insurance with mandatory first-party benefits add-on.	Fault, liability insurance with mandatory first-party benefits add-on.	Fault, liability insurance modified by limitation on general damages with mandatory first-party benefits add-on.

[illegible] is an overall limitation of $2,000 on no-fault benefits.
[illegible] in an overall limitation of $5,000 on no-fault benefits.
[illegible] overall limitation on all first-party benefits.

[4] There is an overall limitation of $750 on both, which are termed work/loss.
[5] Overall total of $2,000 on hospital, medical, and funeral expenses.

Source: U.S. Senate Antitrust and Monopoly Subcommittee.

91